

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 1154/2022

Date of presentation of Appeal.....27.07.2022
Date of Hearing.....31.10.2024
Date of Decision.....31.10.2024

Muhammad Idrees, Ex-Constable No. 3060 lastly posted at Police Station Bara, District Khyber.**Appellant**

Versus

1. Inspector General of Police near Civil Secretariat, Khyber Pakhtunkhwa at Peshawar.
2. Chief Capital Police Officer, Peshawar.
3. District Police Officer, Khyber.

.....(**Respondents**)

Present:

Miss. Mehwish Ashfaq, AdvocateFor appellant
Mr. Muhammad Jan, District AttorneyFor respondents

.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case are that the appellant was appointed as a constable on 01/11/2014 and was posted in Police Station Bara. An FIR, No. 893, was registered against him and another on 16/07/2021 under Section 9D of the KP CNSA, 2019 at Police Station Chamkani, Peshawar, alleging recovery of 05Kgs Charas from them. Following the FIR, the appellant was charged and subsequently dismissed from service vide impugned order dated 27/07/2021. The appellant filed departmental appeal on 11/05/2022, which was rejected vide impugned order dated 01/07/2022. The appellant has now

Handwritten signature and date: 31/10/2024

approached this Tribunal through filing of instant appeal for redressal of his grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. The learned counsel for the appellant contended that the dismissal order of the appellant was executed without conducting any inquiry or providing an opportunity to the appellant to defend against the charges, thus violating principles of natural justice. She next contended that the issuance of a dismissal order without an inquiry contravenes established legal standards and Supreme Court rulings, which emphasize the necessity of due process. She further contended that the dismissal order was based on an FIR from which the appellant has been honorably acquitted, rendering the dismissal order unreasonable and unsustainable. She also contended that the actions taken by the respondents are without lawful authority and jurisdiction, warranting the setting aside of the dismissal orders. In the last, she argued that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, the learned District Attorney for the respondents contended that the appellant was involved in criminal activities, leading to the FIR and subsequent dismissal. He next contended that the appellant was informed through a show-cause notice but his reply was found unsatisfactory. He further contended that the appellant was heard in the orderly room and that the


31/10/2024.

dismissal order followed a thorough examination of the relevant records. He also contended that the departmental appeal of the appellant is time-barred, further diminishing the merits of the appellant's case. He next argued that the dismissal order was passed in compliance with the KP Police rules (Amended 2017) and that the sanctity of the police department warranted decisive action against any involvement with narcotics. In the last, he argued that the appeal in hand being meritless may be dismissed with cost.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The record shows that the appellant was arrested following the registration of FIR No. 893 under section 9D of the CNSA at Police Station Chamkani, Peshawar on 16/07/2021 against him. Following his arrest, disciplinary proceedings were instituted against him by the District Police Officer (DPO) Khyber, resulting in his dismissal from service vide impugned order dated 27/07/2021 without a proper inquiry or opportunity for defense. The dismissal order of the appellant occurred without conducting a fair hearing or inquiry, directly contravening the principles of natural justice. The appellant was not given the opportunity to present his case or respond to the charges laid against him. Legal precedents and Supreme Court rulings have established that any disciplinary action initiated based on criminal charges must follow due process, which includes conducting an inquiry and issuing a show-cause notice prior to dismissal. The acquittal of the appellant in the underlying


31/10/2024.


criminal case by the Sessions Judge/Judge Special Court, Peshawar on 26/03/2022 substantiates that the allegations leading to his dismissal were not proven. The prosecuting department has not filed any appeal before the next higher forum against this acquittal, indicating that it has become final and binding. Upon reviewing the records and the circumstances surrounding the dismissal, it is clear that the dismissal order of the appellant dated 27/07/2021 was executed without the requisite procedural safeguards. The appellant was deprived of his right to a fair hearing, illustrating a significant breach of natural justice principles. The dismissal was primarily based on criminal charges, which have since been resolved in favor of the appellant through acquittal. There is no record of appeal against this acquittal and hence the allegations cannot stand. The actions taken by the respondents lacked justification, given the established legal standards for such disciplinary measures. The record transpires that since the registration of the FIR till the acquittal of the appellant on 26/03/2022, he remained in judicial lock-up. So keeping in view the incarceration of the appellant his appeal is within time. Reliance is placed on PLD 2010 SC 695.

7. Due to the violations of legal norms and principles of natural justice evident in this case, we are compelled to set aside the impugned orders and reinstate the appellant in service with the direction to the respondents to conduct a de-novo inquiry in line with legal and procedural mandates, ensuring the appellant fair treatment and right to defense, in accordance with constitutional

Amir G. Paul
31/10/2024

protections and relevant judicial precedents. The de-novo inquiry is to be completed within a period of 03 months from the date of receipt of copy of this judgment. The issue of back benefits, if any, shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 31st day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial)




FAREEHA PAUL
Member (Executive)

Nacem Amin

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1154 of 2022

Muhammad Idrees versus Inspector General of Police near Civil Secretariat, Khyber Pakhtunkhwa at Peshawar and 02 others.

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<u>Order-12</u> 31 st October, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Miss. Mehwish Ashfaq, Advocate on behalf of the appellant.2. Mr. Asif Masood Ali Shah, Deputy District Attorney assisted by Mr. Mazhar Khan, DSP with authority letter on behalf of respondents. <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, we are compelled to set aside the impugned orders and reinstate the appellant in service with the direction to the respondents to conduct a de-novo inquiry in line with legal and procedural mandates, ensuring the appellant fair treatment and right to defense, in accordance with constitutional protections and relevant judicial precedents. The de-novo inquiry is to be completed within a period of 03 months from the date of receipt of copy of this judgment. The issue of back benefits, if any, shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 31st day of October, 2024.</i></p> <p style="text-align: center;"> (Fareeha Paul) Member (Executive)</p> <p style="text-align: right;"> (Aurangzeb Khattak) Member (Judicial)</p> <p style="text-align: right;">31/10 2024.</p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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-**(Respondents)**

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 27/07/2021 PASSED BY RESPONDENT NO. 3, WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE AND AGAINST THE ORDER DATED 01/07/2022 PASSED RESPONDENT NO. 2, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS FILED.

PRESENT


1. Miss. Mehwish Ashfaq, AdvocateFor appellant
2. Mr. Muhammad Jan, District AttorneyFor respondents

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 31st day of October 2024.


Fareeha Paul
Member (Executive)


Aurangzeb Khattak
Member (Judicial) 31/10/2024.