

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 60/2022

Date of presentation of Appeal.....18.01.2022
Date of Hearing.....29.10.2024
Date of Decision.....29.10.2024

Sana Ullah S/o Zardali Khan, R/o Near Fouji Foundation Hospital
Lachi Bala District Kohat.**Appellant**

Versus

1. Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
 2. Deputy Inspector General of Police Kohat Region, Kohat.
 3. District Police Officer, Kohat.
 4. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
-(**Respondents**)

Present:

Mr. Shahid Qayum Khattak, AdvocateFor appellant
Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case are that the appellant joined the Police Department as a Constable in the year 2014. Disciplinary proceedings were initiated against the appellant based on allegations stemming from a source report. The report indicated that the appellant was involved in the smuggling of Non-Customs Paid (NCP) vehicles and that he provided assistance to NCP smugglers for personal gain. Following the inquiry into these allegations, the appellant was subjected to a

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disciplinary action. As a result, he was imposed a minor penalty of stoppage of 2 increments with cumulative effect vide impugned order dated July 1, 2021. The appellant, feeling aggrieved by the imposed penalty, filed a departmental appeal on July 30, 2021, which was rejected vide impugned order dated September 14, 2021. Following the rejection of his departmental appeal, the appellant filed a revision petition, which was also rejected vide impugned order dated December 22, 2021. Consequently, the appellant has now approached this Tribunal by filing the instant appeal, seeking redressal of his grievances.

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 appellant was not issued a show-cause notice, nor was he granted an adequate opportunity to defend himself, violating principles of natural justice. He next contended that the inquiry report lacked cogent evidence and no witnesses substantiated the allegations against the appellant. He further contended that the impugned orders were arbitrary, lacked jurisdiction and was issued with mala fide intent. He also contended that the appellant's otherwise clean service record should not be tarnished based on unproven charges. He next argued that the inquiry report failed to prove charges with concrete evidence and the respondent ignored the appellant's defense. He further argued that essential legal procedures and rights

under the Constitution and Service Law were not followed. In the last, he argued that the impugned orders may be set-aside and the appeal in hand may be accepted as prayed for.

4. On the other hand, the learned Assistant Advocate General for the respondents contended that the appellant engaged in serious misconduct, causing revenue loss and the inquiry confirmed his involvement through multiple secret sources. He next contended that the appellant was involved in departmental proceedings consistent with relevant rules and was given the chance to defend himself but failed to provide any substantial counterarguments. He further contended that the decisions were consistent with the evidence and law and both the inquiry processes and resultant orders were justified. He next argued that despite the serious nature of the offense, only a minor penalty was imposed, showing leniency from the authorities. He further contended that under the Khyber Pakhtunkhwa Police Rules, the final show-cause notice wasn't mandatory. In the last, he argued that as the review petition of the appellant was time barred, therefore, the appeal in hand is liable to be dismissed on this score alone.

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

6. The record shows that the appellant, Sana Ullah, joined the police department in the year 2014. On March 9, 2021, he faced

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allegations of involvement in smuggling non-custom paid (NCP) vehicles. Subsequently, a departmental inquiry was initiated, culminating in imposition of penalty of two increment stoppages vide impugned order dated July 1, 2021. However, the procedure leading to this penalty exhibited several procedural deficiencies and irregularities that undermined the fairness of the disciplinary process. The appellant was issued a charge sheet on 09.03.2021 and the same day the District Police Officer, Kohat, appointed the Deputy Superintendent of Police (DSP) Headquarters, Kohat, as the inquiry officer. The inquiry officer, conducted the inquiry without the appellant being involved or given the chance to present his defense. This exclusion fundamentally violated the appellant's right to fair hearing, contravening the principles of natural justice which necessitate that a charged individual must be able to confront and respond to allegations made against them. The findings relied upon by the inquiry officer were predominantly based on assumptions and unwarranted rumours. There was a conspicuous absence of concrete evidence or corroborative witness testimony to support the claims of smuggling against the appellant. A pertinent report from the Station House Officer (SHO) at Police Station Jarma indicated that the appellant was performing his duties reasonably well and suggested that the allegations were based on unverified rumours rather than factual occurrences. The inquiry report's failure to account for this evidence further reinforced the inadequacies in the


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proceedings. The lack of a show-cause notice deprived the appellant of an essential procedural safeguard required to prepare an adequate defense. The issuance of a show-cause notice is a critical component of a transparent disciplinary process and its absence severely undermined the integrity of the inquiry. The imposition of a minor penalty, i.e., two increment stoppages, in light of the severe allegations posed questions regarding the rationale behind the disciplinary decision. This inconsistency suggested a potentially arbitrary nature of the punitive measures, raising concerns over the objectivity and fairness of the inquiry. The disciplinary proceedings against the appellant were marred by significant procedural deficiencies and failures that collectively contravened his rights to a fair hearing. The lack of evidence substantiating the accusations, combined with the procedural lapses, leads to the conclusion that the disciplinary action taken was unjust and without merit. We underscore the necessity of adhering to due process and upholding the principles of natural justice in disciplinary matters within law enforcement agencies. In light of these factors, the disciplinary proceedings lacked procedural fairness, suffered from significant evidentiary deficiencies and violated the appellant's right to a fair hearing.


7. In light of the above reasoning, the impugned order dated 01/07/2021, and the subsequent orders dated 14/09/2021 and 22/12/2021 are hereby set aside. The appeal is accepted, restoring

29/10/2024.

the appellant's career rights and annulling the penalties imposed.

Parties are left to bear their own cost. 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 29th day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial)


FAREEHA PAUL
Member (Executive)

Naeem Amin

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 60/2022

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District Kohat..**Appellant**

Versus

1. Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police Kohat Region, Kohat.
3. District Police Officer, Kohat.
4. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
.....(**Respondents**)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 01.07.2021 PASSED BY RESPONDENT NO. 3 BY WHICH MINOR PUNISHMENT OF STOPPAGE OF TWO INCREMENTS WITH CUMULATIVE EFFECT HAS BEEN AWARDED TO THE APPELLANT AS WELL AS AGAINST THE ORDER DATED 14.09.2021 OF RESPONDENT NO. 2 BY WHICH THE DEPARTMENTAL APPEAL FILED BY APPELLANT HAS BEEN DISMISSED AND AGAINST ORDER DATED 22.12.2021 OF RESPONDENT NO. 1 WHEREBY THE REVIEW PETITION FILED BY THE APPELLANT WAS REJECTED.

PRESENT

1. Mr. Shahid Qayum Khattak, AdvocateFor appellant
2. Mr. Naseer-ud-Din Shah, Assistant Advocate GeneralFor 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.600/-	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. 600/-	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 29th day of October 2024.

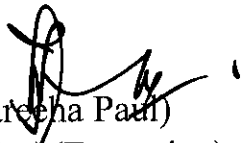
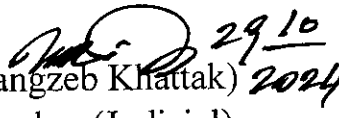

Fareed Paul
Member (Executive)


Aurangzeb Khattak
Member (Judicial) 29/10/2024

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 60 of 2022

Sana Ullah versus Provincial Police Officer/Inspector General of Police Khyber Pakhtunkhwa, Peshawar and 03 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
<p>Order-17 29th October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Shahid Qayum Khattak, Advocate on behalf of the appellant.2. Mr. Naseer-ud-Din Shah, Assistant Advocate General on behalf of respondents. <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, the impugned order dated 01/07/2021, and the subsequent orders dated 14/09/2021 and 22/12/2021 are hereby set aside. The appeal is accepted, restoring the appellant's career rights and annulling the penalties imposed. Parties are left to bear their own cost. 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 29th day of October, 2024.</i></p> <p style="text-align: center;"> (Fareeha Paul) Member (Executive)</p> <p style="text-align: right;"> (Aurangzeb Khattak) 29/10/2024 Member (Judicial)</p> <p>*Naeem Amin*</p>

16th Sept, 2024

Learned counsel for the appellant present. Mr. Asif Masood Ali Shah; Deputy District Attorney for the respondents present.

Learned Deputy District Attorney stated that service appeals of similar matters are fixed for arguments on 19/09/2024, therefore, the appeal in hand may also be fixed on the same date. Adjourned. To come up for arguments on 19/09/2024 before the D.B. Parcha Peshi given to the parties.

(Fareeha Paul)
Member (Executive)

(Aurangzeb Khattak)
Member (Judicial)

Naeem Amin

- 19.09.2024
1. Junior to counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.
 2. Junior to counsel for the appellant requested for adjournment on the ground that senior counsel for the appellant is busy before the Hon'ble Peshawar High Court, Peshawar. Last chance is given. To come up for arguments on 29.10.2024 before D.B. P.P given to the parties.

(Rashida Bano)
Member (J)

(Kalim Arshad Khan)
Chairman

SCANNED
Peshawar

Kaleemullah