

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No. 1773/2022**

Date of presentation of Appeal.....02.12.2022  
Date of Hearing.....22.10.2024  
Date of Decision.....22.10.2024

Aurangzeb Khan Ex-Constable No. 1329 Bannu  
Region.....(Appellant)

**VERSUS**

1. Regional Police Officer Bannu Region, Bannu, Khyber Pakhtunkhwa.
2. District Police Officer, Bannu Region, Bannu, Khyber Pakhtunkhwa.  
.....(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 20/08/2022 WHEREBY THE APPELLANT WAS AWARDED PUNISHMENT OF DISMISSAL FROM SERVICE IN UTTER VIOLATION OF LAW, RULES AND APPELLATE ORDER DATED 26/09/2022 WHEREBY THE DEPARTEMNTAL APPEAL OF APPELLANT HAS BEEN REJECTED IN A CURSORY AND HAPHAZARD MANNER THROUGH A NON SPEAKING ORDER.

**PRESENT**


Miss Naila Jan, Advocate for the appellant present.  
Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

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	3. Pleader's fee	Rs. Nil
4. Security Fee	Rs. Nil	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
<b>Total</b>	<b>Rs. Nil</b>	<b>Total</b>	<b>Rs. Nil</b>

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

Given under my hand and the seal of this Court, this 22<sup>nd</sup> day of October 2024.

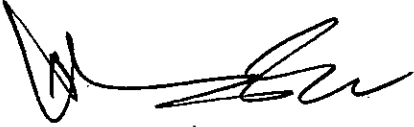

(Muhammad Akbar Khan)  
Member (E)

  
Kalim Arshad Khan  
Chairman

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No. 1773/2022

Aurangzeb Khan versus Regional Police Officer Bannu Region, Bannu, Khyber Pakhtunkhwa, Peshawar and 03 others

S. No. of Order & Date of Proceedings	<b>Order or other proceedings with signature of Chairman/Member (s)/Registrar and that of parties or counsel where necessary</b>
<p><u>Order-13</u> 22<sup>nd</sup> Oct, 2024</p>	<p>Present:</p> <ol style="list-style-type: none"><li>1. Miss Naila Jan, Advocate on behalf of the appellant present.</li><li>2. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.</li><li>3. Vide our detailed judgment of today placed on file, the appeal in hand is dismissed. Costs shall follow the event. Consign.</li><li>4. <i>Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 22<sup>nd</sup> day of October, 2024.</i></li></ol> <p style="text-align: right;"> (KALIM ARSHAD KHAN) CHAIRMAN</p> <p style="text-align: right;"> (MUHAMMAD AKBAR KHAN) MEMBER (E)</p> <p>*Kamranullah*</p>

*Ministry of Finance, Islamabad and 2 others (1996 SCMR 315), Talib Hussain v. Anar Gul Khan and 4 others (1993 SCMR 2177), Mud Izharul Ahsan Qureshi v. Messrs P.I.A.C. (1994 SCMR 1608), Muhammad Nazir v. The Superintendent of Police, Toba Tek Singh and others (1990 SCMR 1556) Muhammad Tufail v. Assistant Commissioner/Collector (1989 SCMR 316), Muhammad Saleem v. Superintendent of Police, Sialkot and another (PLD 1992 SC 369), Muhammad Ayub v. The Chairman, Electricity Board, WAPDA, Peshawar and another (PLD 1987 SC 195), The Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rehman Khan (PLD 1985 SC 134) and Begum Shams-un-Nisa v. Said Akbar Abbasi and another (PLD 1982 SC 413).*

09. The allegations against the appellant stood proved in a regular inquiry, therefore, his acquittal in the criminal case by itself could not entitle him to his exoneration in the departmental proceedings. It is a well settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge, provided his misconduct is proved in departmental proceedings.
10. In view of the above discussion, it is held that the appeal in hand is without merit, hence dismissed. Costs shall follow the event. Consign.
11. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 22<sup>nd</sup> day of October, 2024.*



(KALIM ARSHAD KHAN)  
CHAIRMAN



(MUHAMMAD AKBAR KHAN)  
Member (E)

Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), this Court held that a civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge arising out of the same impugned transaction; these two are entirely different jurisdictions with different standards of proof as well as procedures; criminal prosecution requires strict proof through a narrowly jacketed procedure and, thus, State's failure on criminal plane does not provide shield of double jeopardy to a delinquent officer. Whereas in the case of District Police Officer, Mianwali and 2 others vs. Amir Abdul Majid (2021 SCMR 420), this Court again held that a civil servant facing expulsive proceedings on departmental side on account of his indictment on criminal charge may not save his job in the event of acquittal as the department still may have reasons/material, to conscionably consider his stay in the service as inexpedient; there are additional reasons to disregard his acquittal inasmuch as criminal dispensation of justice involving corporeal consequences, comparatively, requires a higher standard of proof so as to drive home the charge beyond doubt, an exercise to be routed through a procedure stringently adversarial, therefore, factuality of the charge notwithstanding, procedural loopholes or absence of evidence, sufficient enough to sustain the charge, at times occasion in failures essentially to maintain safe administration of criminal justice out of abundant caution. Departmental jurisdiction, on the other hand, can assess the suitability of a civil servant, confronted with a charge through a fact finding method, somewhat inquisitorial in nature without heavier procedural riders, otherwise required in criminal jurisdiction to eliminate any potential risk of error, therefore, the Tribunal has undoubtedly misdirected itself in reinstating the respondent, considering his acquittal as the sole criterion in isolation to the totality of circumstances where under he had succeeded to vindicate his position. Reference may be made to the cases of Dr. Sohail Hassan Khan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708), Liaqat Ali v. Government of N.W.F.P. through Secretary Health, Peshawar and others (2011 PLC (C.S) 990), Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC 695), Government of Pakistan through Secretary Ministry of Finance and others v. Asif Ali and others (2007 PLC (C.S.) 271), Superintendent of Police, D.I.Khan and others v. Ihsanullah (2007 SCMR 562), Sami Ullah v. Inspector-General of Police and others (2006 SCMR 554), Ractor Comsats v. Ghulam Umar Kazi (2006 SCMR 1894), Executive Engineer and others v. Zahid Sharif (2005 SCMR 824), Khaliq Dad v. Inspector-General of Police and 2 others (2004 SCMR 192), Arif Ghafoor v. Managing Director, H.M.C, Texila and others (PLD 2002 SC 13), Mir Nawaz Khan v. Federal Government through Secretary,

*decorum in the institution and efficiency of the department to strengthen and preserve public confidence.*

*13. A civil servant cannot escape departmental proceedings or consequences thereof on account of his acquittal/exoneration on a criminal charge. While facing expulsive proceedings on departmental side on account of his indictment on criminal charge, he may not save his job in the event of acquittal as the department may still have reasons to conscionable consider his stay in the service as inexpedient. The department can assess the suitability of a civil servant, confronted with a charge through a fact finding method, which somewhat inquisitorial in nature, but without the heavier procedural riders otherwise required in criminal jurisdiction to eliminate any potential risk of error. Ref: Dr. Sohail Hassan and others v. Director General (Research), Livestock and Dairy Development Department, Punjab, Lahore and others (2020 SCMR 1708) and District Police Officer, Mianwali and 2 others v. Amir Abdul Majid (2021SCMR 420)."*

08. Similarly, worthy apex court in its judgment reported as 2022 SCMR

1770 has held as below:-

*"11. The rationale and astuteness of initiating disciplinary proceedings by the employer is to unmask whether the charges of misconduct leveled against the delinquent are proved or not and in case his guilt is proved, what action should be triggered against him under the applicable Service Laws, Rules and Regulations, which may include the imposition of minor or major penalties in accordance with the fine sense of judgment of the competent Authority. Quite the reverse, the acuteness and raison d'être to set into motion the criminal prosecution is altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt. Both have distinctive characteristics and attributes with regard to the standard of proof. It is well settled exposition of law that the prosecution in the criminal cases as well as the departmental inquiry on the same allegations can be conducted and continued concurrently at both venues without having any overriding or overlapping effect. The object of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is inaugurated to enquire into the allegations of misconduct in order to keep up and maintain the discipline and decorum in the institution and efficiency of department to strengthen and preserve public confidence. In the departmental inquiry, the standard of proof is that of "balance of probabilities or preponderance of evidence" but not "proof beyond reasonable doubt", which strict proof is required in criminal trial because the potential penalties are severe. In the case of Dr. Sohail Hassan Khan and others vs.*

Rule-16:3 of the Khyber Pakhtunkhwa Police Rules, 1934, which is as below:-

**16:3. Action following on a judicial acquittal.** - (1) *When a Police Officer has been tried and acquitted by a criminal court he shall not be punished departmentally on the same charge or on a different charge based upon the evidence cited in the criminal case, whether actually led or not, unless –*

*(a) the criminal charge has failed on technical grounds; or*

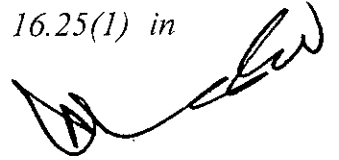
*(b) in the opinion of the Court or of the Superintendent of Police, the prosecution witnesses have been won over; or*

*(c) the Court has held in its judgment that an offence was actually committed and that suspicion rests upon the police officer concerned; or*

*(d) the evidence cited in the criminal case discloses facts unconnected with the charge before the court which justify departmental proceedings on a different charge; or*

*(e) additional evidence admissible under rule 16.25(1) in departmental proceedings is available.*


*(2) .....*



07. In view of Sub Rule (1) of Rule-16:3 of the Khyber Pakhtunkhwa Police Rules, 1934, mere acquittal of an accused employee would not automatically absolve him from taking of departmental action by departmental Authority. Worhty apex court in its judgment reported as 2022 SCMR 1796 has held as below:-

*"12. The learned counsel for the respondent argued that the respondent was booked in the NAB reference as well, but he was acquitted by the Accountability Court. In response, the learned DAG argued that an acquittal appeal is pending in the Sindh High Court. The underlying principle of initiating disciplinary proceedings is to ascertain whether the charges of misconduct against the delinquent are proved or not, whereas prosecution under the penal statutes is altogether different where the prosecution has to prove the guilt of accused beyond any reasonable doubt. The common sense or realism of criminal trial is to mete out punishment of the offences committed by the accused while departmental inquiry is started off for making inquiry into the allegations of misconduct in order to maintain and uphold discipline and*

05. Perusal of record reveals that the appellant alongwith Yasir and Nasir were arrested in District Rahim Yar Khan in case FIR No. 209 dated 17.04.2021 U/S CNSA 1997, Section-9 (c), at PS City Division. The matter was brought into the notice of respondent No. 2 who probed the matter and nominated the DSP HQrs. Bannu as inquiry officer. The departmental inquiry proceedings were conducted fairly and transparently substantiating allegations against the appellant through credible evidence. The Report of inquiry officer dated 26.07.2021 established the appellant deliberate absence despite repeated summons. Charge sheet with statement of allegations were duly served upon the appellant but the appellant failed to provide satisfactory explanations for the allegation leveled against him. Moreover, the inquiry officer recorded the statement of all the witnesses including ASI Muhammad Asim, S.I Muhammad Aslam, Abdul Samad and Abdul Jabbar which was annexed with the reply of respondents. The appellant was given ample opportunity to defend himself but he did not appear before inquiry officer. The appellant being a police official was supposed to protect honour of the citizens but he himself got involved in immoral acts, which amount to gross misconduct.



06. Record further reveals that vide order dated 11.06.2022 passed by Additional Sessions Judge/Judge Special Court (CNSA), Rahim Yar Khan, the appellant has been acquitted in the afore-mentioned criminal case. Now the question for determination before us is that as to whether the penalty awarded to the appellant in the departmental proceedings could sustain despite acquittal of the appellant in the criminal proceedings? In order to appreciate the issue in a proper way, it would be advantageous to reproduce

02. Brief facts of the case are that the appellant was inducted into service as Constable on 25.05.2006. The appellant alongwith Nasir and Yasir, proceeded to District Rahim Yar Khan, Punjab Province to investigate disappearance of Siraj Ahmed where the appellant alongwith Nasir and Yasir were implicated and arrested in connection with FIR No. 209 dated 18.08.2021 under CNSA 1997, Section-9 (c), at PS City Division, Rahim Yar Khan. While in judicial custody, the appellant was proceeded departmentally and was awarded major penalty of dismissal from service vide order dated 20.08.2021. The appellant was subsequently acquitted from the charges vide judgment dated 11.06.2022 passed by Additional Session Judge/Judge Special Court (CNSA) Rahim Yar Khan, thereafter the appellant filed departmental appeal 04.07.2022 which was rejected vide order dated 06.09.2022, hence preferred the instant service appeal on 02.12.2022.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned Additional Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.



**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR**

**BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN**  
**MUHAMMAD AKBAR KHAN ... MEMBER (E)**

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Aurangzeb Khan Ex-Constable No. 1329 Bannu Region.....(**Appellant**)

**VERSUS**

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2. District Police Officer, Bannu Region, Bannu, Khyber Pakhtunkhwa.  
.....(**Respondents**)

NAILA JAN,  
Advocate

--- For appellant.

NASEER-UD-DIN SHAH,  
Assistant Advocate General

--- For respondents

**JUDGMENT**

**KALIM ARSHAD KHAN, CHAIRMAN:-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*"On acceptance of the instant appeal the impugned order dated 20.08.2022 and order dated 26.09.2022 may kindly be set aside, being contrary to law, rules and corm non-judice, the service of the appellant may kindly be reinstated with all back benefits."*

