

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

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

**Service Appeal No. 1342/2022**

Date of presentation of Appeal.....06.09.2022  
Date of Hearing.....29.10.2024  
Date of Decision.....31.10.2024

**Masroor Ali**, Ex-Constable No. 1064, Son of Alamzeb, Police Lines  
Mardan. .... **Appellant**

Versus

1. Deputy Inspector General of Police, Region-I, Mardan.
2. District Police Officer, Mardan.
3. SDPO/Rural, Mardan.
4. Regional Police Officer, Mardan.
5. Sub-Inspector, Police City, Mardan.

.....(Respondents)

Present:

Mr. Aslam Khan Khattak, Advocate .....For appellant  
Mr. Naseer-ud-Din Shah, Assistant Advocate General .....For respondents

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** Masroor Ali,  
Ex-Constable No. 1064 of the District Police Mardan, herein appellant,  
has instituted the present appeal under Section 4 of the Khyber  
Pakhtunkhwa Service Tribunal Act, 1974, praying for setting aside the  
impugned order dated 08-08-2022, passed by the appellate  
authority/respondent No. 4, whereby his departmental appeal was turned  
down and the impugned order dated 09-06-2022 passed by the District  
Police Officer, Mardan/respondent No. 2, whereby he was dismissed  
from his service.

6.27/10/2024

2. Briefly, the facts of the case as per record are that, since his appointment as Constable in the respondent's department in the year 2004, the appellant was performing his duties regularly. However, disciplinary proceedings were initiated against him on account of his nomination in case FIR No. 89 dated 07-01-2022, under Sections 371A/371B/109 PPC of Police Station City Mardan, with the accusations that he and his wife, Mst. Shaista Bibi, have been running a brothel in their residential house situated in Kochi Abad, Mardan. On 17-01-2022, during a raid at his house, the local police of Police Station City Mardan found accused Farhan Ali and Mst. Nousheen in an objectionable condition in one room of the house, while accused Zakria and Mst. Zeenat were found in an objectionable condition in another room of the house. Upon conclusion of the inquiry, the appellant was found guilty of gross misconduct and the penalty of major punishment of dismissal from service was imposed upon him vide order dated 09-06-2022 by the DPO/respondent No. 2. The appellant filed departmental appeal against the said order on 05-07-2022 with the RPO/respondent No. 4 but his departmental appeal was turned down on 08-08-2022 by respondent No. 4. So, he instituted the instant appeal for redressal of his grievance.

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

4. The learned counsel for the appellant contended that respondent No. 2 initially served the appellant with a show-cause notice and statement of allegation on charges of absence from duty but the inquiry officer deviated from the original charge of absence and instead focused on unrelated false criminal allegations, thereby lacking a foundational

basis. He next contended that the appellant was not given a fair opportunity to present evidence or defense witnesses during the inquiry, undermining the legitimacy of the inquiry process. He further contended that the appellant was never formally notified regarding the criminal case that was cited as a ground for dismissal, nor was he given a chance to rebut these claims. He also contended that the appellant was acquitted in the criminal proceedings; therefore, the basis for his dismissal was substantially weakened. He next argued that both the inquiry and subsequent dismissal were conducted in violation of departmental regulations and legal standards of due process. Lastly, he argued that the impugned orders may be set aside and the appellant reinstated in service with all back benefits.

5. On the other hand, Assistant Advocate General for the respondents contended that the police officials are expected to perform their duties satisfactorily, however the appellant's service record was marred by negative entries indicating poor performance. He next contended that the appellant was charged for immoral activities and the inquiry officer provided him numerous opportunities to defend himself during the inquiry, which he failed to capitalize on. He further contended that the running of brothel is not a onetime offence/occurrence rather it is continuous repetition of immoral activities and that the departmental inquiries and criminal investigations are distinct; thus, the outcome of one does not affect the other. He contended that besides oral complaints, the residents of the locality filed written complaint against him with Police. He next argued that all procedural requirements were met in conducting the inquiry and dismissing the appellant, deeming the steps

  
21/10/2024.

taken as lawful and justified. He further argued that the punishment of dismissal was appropriate in light of the seriousness of the allegations of moral turpitude and the appellant's failure to provide a viable defense warranted such action. In the last, he argued that the appeal in hand being meritless may be dismissed with cost.

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

7. The record shows that the appellant was issued a charge sheet for his involvement in a criminal case (FIR No. 89) under sections 371-A/371-B/109 of the Pakistan Penal Code for running brothel in his house. A charge sheet along with a statement of allegations was issued to him on 27.01.2022 and an inquiry officer was appointed. On conclusion of inquiry the appellant was found guilty and major punishment was recommended for him by the inquiry officer.


8. The inquiry officer recommended major punishment based on undisclosed information and reports, culminating in the appellant's dismissal on 09.06.2022, without the opportunity for the appellant to adequately respond to the allegations. The process contravened the principles of natural justice. The appellant was not afforded a fair opportunity to defend himself, as he was neither allowed to cross-examine the alleged informers, nor was he provided with a fair hearing. This procedural deficiency is significant and undermines the legitimacy of the dismissal order. The appellant's subsequent acquittal in the criminal case under section 249 Cr.PC on 06.06.2024 has not been taken into consideration. The failure of the inquiry officer to collect cogent

*31/10/2024*

evidence in the inquiry process and the subsequent acquittal necessitate the revocation of the dismissal order.

9. Consequently, the impugned orders are set aside and the case is remitted to the respondents to conduct a proper inquiry against the appellant, adhering strictly to all legal and procedural mandates. Admittedly, as pointed out by the learned AAG, the running of a brothel house is not a one-time offence, rather, it is a perpetual repetition of offences involving immoral activities, which cannot be eliminated with the registration of a single FIR. It is also an admitted fact that the continuation of such activities in a residential area will certainly affect the peaceful life of the other residents of the locality. Therefore, the inquiry officer must visit Kochi Abad and record statements of the locals if they wish to do so. This inquiry must be conducted within 90 days in a manner that ensures the appellant's right to fair treatment and defense, fully respecting constitutional protections and relevant judicial precedents. The parties are left to bear their own costs. File to be consigned to the record room.

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

  
AURANGZEB KHATTAK <sup>31/10</sup> 2024 .  
Member (Judicial)

  
FAREEHHA PAUL  
Member (Executive)

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

**Service Appeal No. 1342/2022**

Date of presentation of Appeal 06.09.2022  
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**Masroor Ali**, Ex-Constable No. 1064, Son of Alamzeb, Police Lines  
Mardan.....**Appellant**

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  2. District Police Officer, Mardan.
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  5. Sub-Inspector, Police City, Mardan.
- .....(Respondents)

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**PRESENT**


1. Mr. Aslam Khan Khattak, Advocate .....For appellant
2. Mr. Naseer-ud-Din Shah, Assistant Advocate General .....For respondents

<b>Appellants</b>	<b>Amount</b>	<b>Respondent</b>	<b>Amount</b>
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
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

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 31<sup>st</sup> day of October 2024.



  
**Fareeha Paul**  
Member (Executive)

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

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No. 1342/2022

Masroor Ali versus Deputy Inspector General of Police, Region-I, Mardan and others.

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
<u>Order-14</u> 31 <sup>st</sup> October, 2024.	<p>Present:</p> <ol style="list-style-type: none"><li>1. Appellant in person.</li><li>2. Mr. Naseer-ud-Din Shah, Assistant Advocate General on behalf of respondents.</li></ol> <p>Arguments have already been heard and record perused.</p> <p>Vide our judgment of today placed on file, the impugned orders are set aside and the case is remitted to the respondents to conduct a proper inquiry against the appellant, adhering strictly to all legal and procedural mandates. Admittedly, as pointed out by the learned AAG, the running of a brothel house is not a one-time offence, rather, it is a perpetual repetition of offences involving immoral activities, which cannot be eliminated with the registration of a single FIR. It is also an admitted fact that the continuation of such activities in a residential area will certainly affect the peaceful life of the other residents of the locality. Therefore, the inquiry officer must visit Kochi Abad and record statements of the locals if they wish to do so. This inquiry must be conducted within 90 days in a manner that ensures the appellant's right to fair treatment and defense, fully respecting constitutional protections and relevant judicial precedents. The parties are left to bear their own costs. File to 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 31<sup>st</sup> day of October, 2024.</i></p> <p style="text-align: center;"> (Faheeha Paul) Member (Executive)</p> <p style="text-align: center;"> (Aurangzeb Khattak) 31/10/2024 Member (Judicial)</p> <p>*Naeem Amin*</p>