

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 1462/2023

Date of presentation of Appeal.....12.07.2023
Date of Hearing.....03.10.2024
Date of Decision.....03.10.2024

Fazal Nabi, (IHC No. 698) Presently Constable at Police Station
Tarnab District Charsadda Khyber Pakhtunkhwa Peshawar.
.....**Appellant**

Versus

1. Provincial Police Officer, Khyber Pakhtunkhwa at CPO, Peshawar.
2. Additional Inspector General of Police HQrs Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Mardan.
4. District Police Officer, Charsadda.....(**Respondents**)

Present:

Mr. Muhammad Irshad Mohmand, AdvocateFor appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as alleged by the appellant in his memorandum of appeal, are that he was initially appointed as a Constable in the Respondent Department on January 30, 1999 and was promoted to Head Constable in 2010. During his posting at Police Station Prang, the DPO Charsadda (Respondent No. 4) issued a charge sheet concerning a complaint involving the appellant. The DPO Charsadda issued Office Order No. O.B No. 342 dated March 24, 2022, imposing a penalty of reduction in pay by one stage. Feeling aggrieved, he filed departmental appeal before the RPO Mardan (Respondent No. 3), however, he was issued

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show-cause notice for enhancing the penalty. The appellate authority escalated the penalty of reduction in pay into reduction in rank, from Head Constable to Constable, vide order dated June 20, 2022. Following this, he filed a Revision Petition on June 28, 2022, which was dismissed on May 15, 2023. He has now approached this Tribunal by filing the instant appeal for redress of his grievance.

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

3. Learned counsel for the appellant contended that the impugned orders were issued without following the prescribed legal and procedural safeguards, including the failure to issue a statement of allegations and a final show-cause notice. He next contended that the appellant was not provided an opportunity to defend himself, thus violating the principles of natural justice. He further contended that the appellant had not committed any misconduct warranting such severe punitive measures, therefore, the actions taken against the appellant lack legal basis and are inherently unjust, constituting an abuse of discretion by the respondents. He also contended that the response provided by the appellant established that the complaint in question pertained to an issue beyond the jurisdiction of Police Station Prang, therefore, this fact warranted consideration and should have influenced the decision-making process of the respondents. He next argued that the enhancement of the penalty from one of reduction in pay to reduction in rank was performed without adequate inquiry or justification, failing to consider the appellant's substantial service record of over twenty years, which included

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satisfactory performance evaluations. He further argued that the reduction in rank was characterized as excessively punitive and completely unwarranted under the circumstances, particularly given the absence of any serious misconduct on the part of the appellant. He also argued that the actions taken against the appellant did not adhere to the standards of fairness and equality as dictated by law, which entitled him to equal treatment under similar circumstances.

4. On the other hand, the learned Deputy District Attorney for the respondents contended that the service record of the appellant is marred by multiple adverse entries, including instances of corrupt practices, gross misconduct and inefficiency, leading to both major and minor punishments throughout his tenure. He next contended that the appellant while posted at PS Prang, failed to act on a serious complaint from Mst. Fahmida, who reported an intrusion, assault and threats to her life by an individual named Wasif. He further contended that the appellant's negligence in addressing her complaint is particularly grave, as it resulted in the tragic murder of the complainant and her sister within her home and the murder took place in the jurisdiction of PS Prang, directly implicating the appellant's failure to act. He also contended that respondent No. 4, the DPO of Charsadda, issued a charge sheet and statement of allegations against the appellant on March 3, 2022. He next argued that despite the appellant's explanation to the Inquiry Officer, it became evident that his inaction led to the loss of two lives, warranting serious repercussions for his negligence. He further argued that after the inquiry, the Inquiry Officer recommended a major punishment due to the

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catastrophic consequences resulting from the appellant's failure to respond appropriately to Mst. Fahmida's complaint. He also argued that following this, a final show cause notice was issued by respondent No. 4, leading to a reduction in pay as a punishment on March 24, 2022. He next added that the appellant filed a departmental appeal against the penalty, which prompted respondent No. 3 (RPO Mardan) to issue a show cause notice for enhancement of the penalty, who after reviewing the case and considering the evidence of negligence indicated by the appellant himself, respondent No. 3 ultimately enhanced the punishment to a reduction in rank, in recognition of the appellant's critical failure to uphold his duties. He further added that the appellant filed revision petition, which was duly considered by the appellate board, however, the appellant's justifications were deemed insufficient and the board found no grounds to overturn the previous decisions. He also added that the appellant's own admissions during the inquiry reflected a dismissive attitude towards the serious complaint — an attitude that is incompatible with the standards expected of a police officer, particularly when lives are at stake. In the last, he argued that the appeal in hand may be dismissed with cost.

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

6. The perusal of the record shows that the appellant was appointed as a Constable on January 30, 1999 and promoted to the rank of Head Constable in 2010. The appellant, while posted at Police Station Prang, a complaint was filed against him, leading the DPO Charsadda to issue a

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charge sheet. On March 24, 2022, the DPO Charsadda issued an order imposing a penalty of reduction in pay by one stage. The appellant filed departmental appeal against the order dated March 24, 2022, passed by the DPO Charsadda, but in response, a show-cause notice was issued to the appellant for enhancing the penalty. The penalty was escalated to a reduction in rank from Head Constable to Constable by the appellate authority (Regional Police Officer, Mardan Region, Mardan) on June 20, 2022. The appellant filed a Revision Petition on June 28, 2022, which was dismissed on May 15, 2023. Perusal of the record further reveals that the present case arises from a tragic incident involving the appellant, who was stationed at Police Station (PS) Prang, failed to act upon a serious complaint filed by Mst. Fahmida, reporting intrusion, assault and threats by an individual named Wasif. The subsequent inaction tragically led to the murder of Mst. Fahmida and her sister within their home. The appellant received a serious complaint from Mst. Fahmida about intrusion and threats by Wasif. This report was within the jurisdiction of PS Prang, where the appellant was posted. That despite the gravity of the complaint, the appellant exhibited negligence by failing to take any remedial or preventive measures to address the threats reported. The negligence of the appellant culminated in the murder of the complainant and her sister. This incident underscores a direct link between the appellant's inaction and the escalation of events leading to the fatalities. The District Police Officer, Charsadda (Respondent No. 4), issued a charge sheet and statement of allegations to the appellant on March 3, 2022. Mr. Inam Jan Khan, DSP Shabqadar was nominated as inquiry

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officer, who conducted the inquiry. It is evident from the inquiry report, the appellant's inactions directly contributed to the loss of life. The Inquiry Officer recommended significant disciplinary action, leading to a reduction in pay by one stage as a punishment on March 24, 2022. The appellant filed a departmental appeal against this penalty. In response to this, the RPO Mardan (respondent No. 3) issued an enhancement notice, reflecting the severity of the appellant's lapses. Considering the evidence, it was decided to enhance the penalty to a reduction in rank, acknowledging the critical failure of duty. The appellant's justification through a revision petition was evaluated by the appellate board. However, the appellate board found the justifications insufficient, particularly noting the appellant's dismissive attitude towards the complaint. The conduct of the appellant fell significantly short of the standards expected from a police official, especially given the potential threat to life. The actions of the supervisory bodies in enhancing the penalties are justified by the need for accountability and the grievous outcome of inaction. The decision of reducing the appellant's rank is a proportionate response to the breach in duty and moral obligation in a position entrusted with public safety. In light of these findings, the actions and decisions made by the investigating and supervising bodies, in response to the appellant's conduct, are affirmed. The appellant's failure to fulfill his responsibilities effectively and the subsequent consequences must serve as a cautionary precedent, emphasizing the critical importance of immediate and appropriate responses to complaints involving threats to life and safety. Furthermore,

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Irfan Khan, who was serving as Sub-Inspector/SHO Police Station Prang, District Charsadda, has filed Service Appeal No. 1861/2022 before this Tribunal, which was decided on 12.07.2023. Para-8 of the said judgment is relevant, which is reproduced as below:-

"8. It is also admitted fact on record that Mst. Fehmida in her life submitted an application to the appellant which he marked to Fazal Nabi, ASI for taking legal action on the same day i.e 05.01.2022 but he failed to follow it which is negligence on his part and being incharge of P.S Prang Charsadda, as he was under obligation to look after all the affairs of police station and to protect life and property of people who reside in his territorial jurisdiction and to prevent crimes. So he remained negligent in performing his official duties for which he will have to suffer and face the consequences of his negligence and deserves punishment but not major punishment because same is no commensurate with the negligent act of the appellant. Therefore, major punishment awarded to the appellant is harsh and cannot be sustainable in peculiar circumstances of the case."


7. It is clear that Mst. Fehmida, filed an application to Irfan Khan, Sub-Inspector/SHO Police Station Prang, District Charsadda, on January 5, 2022. Who then entrusted it to the appellant, for further action on the same day. His failure to act on the application reflects a lapse in fulfilling his official responsibilities. While this negligence warrants consequences, so we are of the opinion that the punishment has rightly been imposed upon the appellant. However, the punishment of reduction in rank cannot be held valid and effective for indefinite period.

8. Consequently, the appeal of the appellant is partially allowed and the impugned order is modified to the effect that the punishment of reduction in rank from Head Constable to his substantive rank of


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Constable shall remain effective for three years. Parties are left to bear their own costs. File be consigned to the record room.

09. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 03rd day of October, 2024.


AURANGZEB KHATTAK
Member (Judicial)

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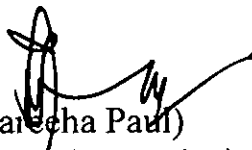

FAREEHA PAUL
Member (Executive)

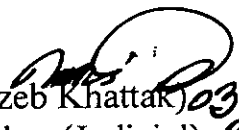
Naeem Amin

ORDER

03rd Oct, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Shah Jehan, ASI (Legal) for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal of the appellant is partially allowed and the impugned order is modified to the effect that the punishment of reduction in rank from Head Constable to his substantive rank of Constable shall remain effective for three years. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 03rd day of October, 2024.*


(Fareeha Paul)
Member (Executive)


(Aurangzeb Khattak) 03/10
Member (Judicial) 2024.