

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No. 7771/2021

Syed Asghar Ali Shah S/o Baqir Ali Shah Caste Syed R/o Post Office Madhran Kalan Village Thatal Tehsil Paharpur District D.I.Khan presently posted at Legal Branch D.I.Khan D.P.O Office L.H.C No. 342.**Appellant**

Service Appeal No. 7772/2021

Ehsan Ullah S/o Haji Kashmir Khan Caste Marwat P/o Gillofi Tehsil Pharpur Paniyala District D.I.Khan I.H.C No. 1071 presently posted at PS Paniyala District D.I.Khan.**Appellant**

Versus

1. District Police Officer, D.I.Khan.
2. Regional Police Officer, D.I.Khan.
3. Provincial Police Officer/Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.**(Respondents)**

Date of presentation of Appeals.....20.10.2021

Date of Hearing.....07.10.2024

Date of Decision.....07.10.2024

Present:

Mr. Muhammad Saeed Bhutta, AdvocateFor appellants

Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

CONSOLIDATED JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): This consolidated judgment is directed to dispose of both the service appeals captioned above, as common questions of law and facts are involved in both the appeals.

2. The appellants, Syed Asghar Ali Shah and Ehsanullah, were tasked with the responsibility of L.H.C, Incharge at the CRBC

Check Post and Hatala Check Post Tehsil Kulachi, respectively, in D.I. Khan. During their tenure, a truck bearing registration number EA 3054, carrying firewood, passed through their check posts. However, at a Punjab check post in Kundiyan, District Mianwali, the truck was found to be smuggling almonds hidden beneath the firewood, which resulted in allegations of negligence against the appellants since the truck had successfully passed through their check posts. Following an inquiry, they were found guilty of negligence and misconduct and the District Police Officer (DPO) of D.I. Khan imposed a penalty of forfeiture of two years of service on June 2, 2020. The appellants challenged this decision by filing separate departmental appeals with the Regional Police Officer (RPO) of D.I. Khan, which were dismissed on October 14, 2020. Subsequently, they filed individual revision petitions; however, the revision petition of Syed Asghar Ali Shah was rejected on July 12, 2021 and that of Ehsanullah was rejected on August 8, 2021. The appellants have now brought these appeals before this Tribunal, seeking redressal for their grievances.

3. The respondents were summoned and contested the appeals by filing their respective written replies and comments.

4. The learned counsel for the appellants argued that the impugned orders were contrary to facts, law and justice. He next contended that the inquiry was not conducted in the matter nor the appellants were given the opportunity of personal hearing by the

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D.P.O of D.I.Khan, which rendered the impugned orders arbitrary.

He further contended that the orders of the RPO of D.I. Khan and the Inspector General were cursory, allegedly without proper consideration of the appellants' unblemished service records. He next argued that the truck was thoroughly inspected at both check posts and that no illegal goods were found, suggesting the possibility that the almonds were loaded after the truck passed their check posts but before reaching Mianwali. He further argued that the appellants have been made scapegoats, suggesting malicious intention behind the charges. In the last, he argued that both the appeals may be accepted and the impugned orders may be set-aside.

5. Conversely, the learned Deputy District Attorney for the respondents argued that between 06:00 to 10:00 hours on April 14, 2020, the appellants failed to conduct a thorough check, allowing the truck to pass uninspected. He next contended that the discovery of smuggled almonds at the Punjab check post confirmed the negligence and misconduct of the appellants. He further contended that the appellants were issued charge sheets and statements of allegations and an inquiry was conducted, during which they were given an opportunity for a personal hearing which they did not effectively use to prove their innocence. He also contended that the departmental appeals were dismissed by the RPO of D.I. Khan on merit, with the appellate board review affirming the initial decision after examining the

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inquiry records. He next argued that all procedural requirements and statutory formalities, including the opportunity for a personal hearing, were observed throughout the disciplinary process. He further argued that the service records of the appellants contained adverse entries indicating previous misconduct and the orders issued were consistent with the law and the rules governing police conduct. He concluded by arguing that both the appeals may be dismissed as meritless, with costs.

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

7. The available record shows that the appellants were serving as L.H.C, Incharge at CRBC and Hatala Check Posts in D.I. Khan, respectively, when a truck carrying firewood (Registration No. EA 3054) passed through their posts. The truck was later found at a Punjab check post in Kundiyan District Mianwali to be smuggling almonds concealed beneath the firewood. These events led to the appellants being charged with negligence, as the smuggling was not detected at their respective check posts. Mr. Muhammad Saleem Tariq, DSP HQrs: D.I.Khan was appointed as inquiry officer to scrutinize/investigate the conduct of the appellants. It has been noted that the contentions of the respondents rely heavily on the findings and recommendations of the inquiry conducted by Mr. Muhammad Saleem Tariq, DSP HQrs: D.I.Khan. However, the case files lack the complete record of the inquiry conducted by the inquiry officer. Specifically, there

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is no documentation detailing the steps, evidence examined, or the process followed during the inquiry. There is no evidence on files indicating that the statements of the appellants were recorded as part of the inquiry process. This absence raises concerns about whether the appellants were given a fair opportunity to present their defense or provide their version of events. The statement of the truck driver, who was purportedly involved in the incident with vehicle registration No. EA 3054, is conspicuously absent from the case files. This omission eliminates a potentially crucial piece of evidence that could clarify the circumstances surrounding the incident. In light of the missing records, the established principles of fair procedure and justice come into question. It is axiomatic in law that for any penalty to be legitimately imposed based on inquiry findings, the inquiry must be conducted transparently and thoroughly, duly documenting all relevant testimonies and pieces of evidence. The absence of fundamental records and statements undermines the reliability of the inquiry's outcome and suggests procedural irregularities. Due process not only requires that a proper inquiry be conducted but also mandates that such an inquiry be demonstrably documented, ensuring accountability and fairness. After a thorough review, we conclude that the imposition of the penalty on the appellants was based on an inquiry process that failed to adhere to the essential principles of natural justice and procedural transparency. The absence of


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critical records and statements renders the penalty legally unsustainable.

8. Consequently, we hold that the penalty imposed on the appellants is illegal and is liable to be set aside. Both the above captioned appeals are allowed and the impugned penalties are quashed. Parties are left to bear their own costs. File be consigned to the record room.


9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 07th day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial)


RASHIDA BANO
Member (Judicial)

Note


4th October, 2024 The case could not be fixed before DB at Camp Court, D.I. Khan due to cancellation of tour. Therefore, instant case be fixed on 07/10/2024 before D.B at the Principal Seat Peshawar. Counsel has been informed telephonically who requested for hearing of arguments on same date via videolink at 02:00 PM.



(Habib Ur Rehman Orakzai)
Registrar

ORDER

07th Oct, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Khalid Nawaz, Inspector (Legal) for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, we hold that the penalty imposed on the appellant is illegal and is liable to be set aside. The appeal in hand is allowed and the impugned penalty is quashed. 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 07th day of October, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak) 07/10
Member (Judicial) 2024