

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
AURANGZEB KHATTAK ... MEMBER (Judicial)

Service Appeal No. 1241/2024

Date of presentation of Appeal.....23.08.2024
Date of Hearing.....15.11.2024
Date of Decision.....15.11.2024

Haroon Jadoon, DSP (BPS-17) Police Headquarter, Peshawar.
.....**Appellant**

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Additional Inspector General of Police, Headquarter, Khyber Pakhtunkhwa, Peshawar.....(**Respondents**)

Present:

Mr. Noor Muhammad Khattak, Advocate.....For appellant.
Mr. Muhammad Jan, District AttorneyFor respondents.

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 19.08.2024, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS PARTIALLY ALLOWED/ACCEPTED BY MODIFYING THE MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE INTO MAJOR PUNISHMENT OF REDUCTION IN RANK IE FROM THE RANK OF DSP TO SUBSTANTIVE RANK OF INSPECTOR (BPS-16) AND AGAINST THE ORIGINAL ORDER DATED 05.04.2024 WHEREBY MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE WAS IMPOSED ON THE APPELLANT.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN:- The facts of the case are that the appellant, while serving as SDPO Cantt, Peshawar, was subjected to disciplinary action following registration of an FIR lodged against him and his subordinates under sections 409/419/420/201

PPC/118-C&D of Police Act, 2017, leading to an inquiry. Following this, the appellant was suspended from service and was issued charge sheet and statement of allegations on 07/02/2024, to which he responded and denied the allegations leveled against him. On 04/05/2024, the trial court discharged the appellant from the criminal charges but despite his acquittal, the departmental inquiry continued, which resulted in appellant dismissal from service vide office order dated 05/04/2024. Feeling aggrieved, the appellant filed departmental appeal, which was partially accepted vide order dated 19/08/2024, converting the punishment of appellant from dismissal to a reduction in rank from DSP to Inspector and marking the intervening period as leave without pay. The appellant has now approached this Tribunal through filing of instant appeal for setting-aside the impugned penalties and reinstating him in his original post of DSP with all back benefits.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections.

3. The learned counsel for the appellant contended that the departmental inquiry and penalties are contrary to the principles of natural justice, as no proper show cause notices or opportunities for a personal hearing were afforded to the appellant. He next contended that the appellant's discharge in the criminal case exonerates him from the charges that formed the basis of the departmental proceedings. He further contended that the inquiry conducted by the respondent department lacked procedural regularity and was biased, as no regular

inquiry or custodial responsibility of the appellant was established. He next argued that the penalties imposed are violative of the Fundamental Rules and Articles 4 and 25 of the Constitution of Pakistan, which guarantee due process and equality before the law. He further argued that no period has been specified in the impugned appellate order dated 19/08/2024 which is violative of FR-29 of the Fundamental Rules. He also argued that the reduction in rank and intervening period treated as leave without pay constitute undue hardship and are not sustainable in law. In the last, he argued that the impugned order dated 05/04/2024 may be set-aside and the impugned appellate order dated 19/08/2024 may be set-aside to the extent of reduction in rank from DSP to Inspector and the appellant might be restored to his original rank of DSP with all back benefits.

4. On the other hand, learned District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was implicated in serious offenses, specifically in replacing and embezzling case property under FIR No. 1100 dated 12/12/2023, which involved a substantial quantity of contraband. He next contended that following the FIR, a fact-finding inquiry was conducted that linked the appellant to misconduct involving contraband. This led to his suspension and subsequent charge sheet issuance. He further contended that the appellant was issued final show-cause notice but he did not respond to the same after the inquiry findings were released, indicating a lack of a credible defense. He also contended that criminal and departmental proceedings are separate and can operate independently, therefore, the outcome of the criminal case does not

influence the disciplinary actions taken by the department. He next argued that the lenient view has already been taken by the appellate authority converting dismissal of the appellant into reduction in rank reflects a balanced approach, given the gravity of the appellant's actions. He further argued that all procedural steps were correctly followed, including the issuance of notices and the opportunity for self-defense, which the appellant failed to utilize effectively. In the last, he argued that the appeal in hand being meritless might be dismissed with cost.

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

6. The available record shows that the appellant, was serving as Deputy Superintendent of Police (DSP) (BPS-17)/ the then SDPO Cantt, Peshawar when an FIR dated 29/01/2024 was registered against him under sections 409/419/420/201 PPC/118-C&D of Police Act, 2017, concerning allegations of corruption and misconduct. Following the registration of the FIR, inquiry was initiated, leading to the appellant's suspension on 02/02/2024. On 07/02/2024, the appellant was issued charge sheet as well as statement of allegations. Mr. Irfan Tariq, Deputy Inspector General was appointed as inquiry officer, who conducted the inquiry and recorded statements, including the appellant. The inquiry finding indicates that the appellant was supervisor officer and all the recovered contrabands were sealed in his presence but in conclusion para, the inquiry officer stated that the appellant required to keep surveillance on the affairs of Police Stations under his command but he showed negligence and lack of interest toward his responsibility and recommended the appellant for major punishment. However, during the

inquiry process, the appellant was not provided opportunity to cross-examine witnesses, which is a fundamental right for ensuring a fair defense. Supreme Court of Pakistan in its judgment reported as 2017 PLC (C.S). 180 has held as below:-

Civil service--.

--Employee of State-owned Bank--Misconduct--Dismissal from service---Right of fair trial---Scope---Inquiry was conducted and employee was dismissed from service---Contention of employee was that neither he was examined nor allowed to cross-examine the representative of the management--Validity--No defense witness was produced by the employee and complainant Bank did not cross-examine him---Reply of employee was disregarded by the Bank and defense was not considered -No examination-in-chief or cross-examination was recorded in the inquiry --Such defect in inquiry proceedings was sufficient to declare entire process as sham and distrustful--Right of fair trial was a Fundamental Right by dint of which a person was entitled to a fair trial and due process of law---Employee had been deprived of his indispensable Fundamental Right of fair trial--Impugned order of dismissal of employee was set aside and he was reinstated in service with back benefits/-High Court observed that Bank could conduct de novo inquiry but should conclude the same within two months---If inquiry was conducted, ample opportunity should be provided to the employee to defend the charges---Payment of back benefit amount would be subject to the final outcome of the de novo inquiry if any -Constitutional petition was disposed of in circumstances.

Qanun-e-Shahadat (10 of 1984)---

--Arts. 131 & 133---Examination-in-chief and cross-examination---Significance--Non-examination-in-chief or cross-examination in an inquiry was incurable and irredeemable oversight and discernible defect in the inquiry proceedings sufficient to declare entire process sham and distrustful."

7. The above referred judgment indicates that, right to a fair trial is a fundamental legal principle, ensuring that any individual accused of

misconduct is given a fair opportunity to present his case and challenge evidence against him. This is the initial phase where witnesses provide their testimony. Its purpose is to establish the facts of the case from the perspective of the party calling the witness. This follows the examination-in-chief and allows the opposing party to challenge the credibility of witnesses and the coherence of their testimony. Failure to conduct examination-in-chief or cross-examination represents a critical oversight. It can undermine the integrity of the inquiry, as it limits the ability of parties to test the evidence thoroughly. In the discussed case, the lack of examination-in-chief and cross-examination led to the proceedings being declared sham and distrustful. This was sufficient to invalidate the inquiry's findings and the subsequent dismissal of the employee.

8. Furthermore, the respondents also failed to issue a show-cause notice alongwith copy of the inquiry report, denying the appellant the opportunity to adequately defend himself. The process appeared to violate constitutional rights outlined in Articles 4 and 10-A, which emphasize lawful procedures and ensure the right to a fair trial. The inquiry was not conducted as per lawful standards, as essential procedural rights were not upheld. Furthermore, the appellant was discharged in the concerned criminal court due to insufficient evidence, suggesting that the accusations of negligence or misconduct were unproven.

9. Moreover, the Authority has not mentioned in the order dated 19/08/2024 of reduction of rank from DSP to Inspector of the appellant that for how much period, the reduction in rank shall remain effective.

The impugned order is thus in violation of FR-29, which provides that the Authority ordering reduction of a government servant to a lower grade or post shall state the period for which it shall to remain effective. We have thus come to the conclusion that the impugned orders are not sustainable in the eye of law and are liable to be set-aside.

10. Consequently, we found that the penalties imposed upon the appellant are unjustified as it stemmed from flawed proceedings lacking substantive evidence. Given the absence of a valid inquiry process, the failure to issue proper show-cause notices, opportunity of cross-examination and the dismissal's context following the trial court discharge, the original order (05/04/2024) and the appellate decision (19/08/2024) are found to be inconsistent with legal norms and principles of justice. Therefore, we set-aside the impugned orders dated 05/04/2024 and 19/08/2024. The appellant is reinstated to his original rank of Deputy Superintendent of Police (BPS-17). Parties are left to bear their own costs. File be consigned to the record room.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of November, 2024.*


KALIM ARSHAD KHAN
Chairman


AURANGZEB KHATTAK
Member (Judicial)

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1241/2024

Date of presentation of Appeal 23.08.2024
Date of hearing 15.11.2024
Date of Decision 15.11.2024

Haroon Jadoon, DSP (BPS-17) Police Headquarter, Peshawar.

.....**Appellant**

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Additional Inspector General of Police, Headquarter, Khyber Pakhtunkhwa, Peshawar.

.....(**Respondents**)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED APPELLATE ORDER DATED 19.08.2024, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS PARTIALLY ALLOWED/ACCEPTED BY MODIFYING THE MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE INTO MAJOR PUNISHMENT OF REDUCTION IN RANK I.E FROM THE RANK OF DSP TO SUBSTANTIVE RANK OF INSPECTOR (BPS-16) AND AGAINST THE ORIGINAL ORDER DATED 05.04.2024 WHEREBY MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE WAS IMPOSED ON THE APPELLANT.


PRESENT

1. Mr. Noor Muhammad Khattak, Advocate.....For appellant.
2. Mr. Muhammad Jan, District AttorneyFor 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.100/-	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. 100/-	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 15th day of November 2024.




Aurangzeb Khattak 15th 2024.
Member (Judicial)


Kalim Arshad Khan
Chairman

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 1241/2024

Haroon Jadoon versus The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and
01 another.

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
Order-07 15 th November, 2024.	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Noor Muhammad Khattak, Advocate on behalf of appellant.2. Mr. Muhammad Jan, District Attorney, on behalf of respondents.3. Arguments heard and record perused.4. Vide our detailed judgment of today placed on file, we found that the penalties imposed upon the appellant are unjustified as it stemmed from flawed proceedings lacking substantive evidence. Given the absence of a valid inquiry process, the failure to issue proper show-cause notices, opportunity of cross-examination and the dismissal's context following the trial court discharge, the original order (05/04/2024) and the appellate decision (19/08/2024) are found to be inconsistent with legal norms and principles of justice. Therefore, we set-aside the impugned orders dated 05/04/2024 and 19/08/2024. The appellant is reinstated to his original rank of Deputy Superintendent of Police (BPS-17). Parties are left to bear their own costs. File be consigned to the record room.5. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 15th day of November, 2024.</i> <p style="text-align: center;"> (Aurangzeb Khattak) 2024 Member (Judicial)</p> <p style="text-align: center;"> (Kalim Arshad Khan) Chairman</p> <p>*Naeem Amin*</p>