

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

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

Service Appeal No. 6707/2021

Date of presentation of Appeal.....02.07.2021
Date of Hearing.....08.10.2024
Date of Decision.....08.10.2024

Muhammad Arshad (Ex-Constable No. 1629) S/o Muhammad Mushtaq Ahmad, R/o Roda, Post Office Daraban Khurd, Tehsil Parova, District Dera Ismail Khan, lastly posted at Police Line, Dera Ismail Khan..**Appellant**

Versus

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Region Dera Ismail Khan.
3. District Police Officer, Dera Ismail Khan.
4. SDPO, Dera Ismail Khan.

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

Present:

Mr. Muhammad Nauman Khan Kundi, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant, Muhammad Arshad, was inducted into the police department in the year 2007 and served as a constable in Dera Ismail Khan. On 08/04/2020, an FIR was registered against him under sections 489B/489C of the Pakistan Penal Code, accusing him and his colleague, Hammad Suleman, of being caught with counterfeit currency. Following this, departmental proceedings were initiated against him, which led to his dismissal from service vide order dated

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17/08/2020. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 12/01/2021, there-after, the appellant filed Revision Petition, which was not responded within the statutory period of 90 days. The appellant filed the instant appeal before this Tribunal on 02/07/2021, however, during the pendency of the appeal, revision petition filed by the appellant, was partially accepted vide order dated 13.04.2022, resulting in the conversion of his dismissal into time scale for three years and his intervening period was treated as without pay. The appellant has now challenged the order dated 13.04.2022 to the extent of treating his intervening period as without pay.

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

3. The learned counsel for the appellant contended that the FIR lodged against the appellant was based on ill will and grudges by the SHO. He next contended that the inquiry conducted recommended no punitive action against the appellant until the court's trial decision. He further contended that the appellant was denied a copy of the inquiry report and claimed that the process followed violated principles of natural justice as he was condemned unheard. He also contended that the appellant was acquitted by the competent court, casting doubt on the propriety of the departmental actions taken against him. He next argued that the other accused, Hammad Suleman, was merely suspended, whereas the appellant faced harsher penalties, indicating discriminatory treatment. He further argued that the appellant maintained a clean service record without any prior adverse entries,

which would support his contention of innocence and dedication. He also argued that the inquiry was alleged to be factually incorrect and recommendations were inconsistent with the subsequent actions taken. In the last, he argued that the appeal in hand may be accepted as prayed for.

5. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was allegedly caught red-handed with counterfeit currency and his actions tarnished the police force's image. The departmental inquiry confirmed the allegations against him. He next contended that the dismissal and revision petition decisions were accordance with law and procedures, based on substantial evidence and appropriate hearings. He further emphasized the independence of departmental proceedings from criminal trials, suggesting the acquittal does not automatically negate departmental actions. He next argued that the appellant was purportedly given ample opportunity to defend himself, including a personal hearing, yet failed to prove his innocence. In the last, he argued that the appeal in hand being merit less may be dismissed with cost.

6. The record shows that the appellant was inducted into the police department in the year 2007 and served as a constable in Dera Ismail Khan. On 08.04.2020, he was implicated in an FIR under sections 489B/489C of the Pakistan Penal Code, alongside his colleague Hammad Suleman, alleging their involvement in possessing counterfeit currency. In light of these allegations, a departmental inquiry was conducted and inquiry officer recommended that no action against the

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appellant be taken till the outcome of criminal case. However, the competent authority dismissed the appellant from service on 17/08/2020. Following his dismissal, the appellant filed departmental appeal, which was rejected, leading him to file a Revision Petition. There-after, he filed the present appeal. However, during the pendency of the appeal, revision petition of the appellant was partially accepted vide order dated 13/04/2022, converting the dismissal to a lesser penalty of time scale for three-years, while designating the intervening period as without pay. The appellant has already been acquitted by the learned Additional Sessions Judge-I D.I.Khan, vide judgment dated January 4, 2022 in the concerned criminal case. This acquittal is a pivotal factor in the present proceedings. The core issue in hand is whether the departmental actions against the appellant can be sustained following this acquittal. It is acknowledged that, while a criminal court's acquittal is not necessarily determinative of the outcome of departmental inquiries, it does indeed cast significant doubt on the factual foundation of the departmental charges against the appellant. It is apparent that the particulars leading to the departmental actions may lack substantial evidentiary support in light of the appellant's acquittal. The records fail to indicate any effort by the department to challenge the acquittal through an appeal to a higher judicial authority. Consequently, the acquittal order stands as conclusive and authoritative. Jurisprudence establishes that an acquittal, even when based on the principle of granting the benefit of the doubt, is regarded as an honorable exoneration of the accused. Therefore, we conclude that maintaining the departmental proceedings in this context


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undermines the subsidiary objectives of justice, given the finality and honor associated with the appellant's acquittal. Based on the above considerations, we hold that the charges against the appellant, having lost their foundation due to the acquittal, cannot be justifiably pursued.

7. As regard the contention of learned counsel for the appellant regarding the allegations of discrimination, it was noted that Constable Hammad Suleman, another co-accused charged under the same FIR dated 08/04/2020 for offenses under sections 489B and 489C, received differential treatment compared to the appellant. Specifically, Constable Hammad Suleman's case resulted in a suspension, while the appellant was subjected to more severe penalties. This discrepancy in the handling of the cases suggests potentially discriminatory treatment, raising questions about the fairness and consistency in the application of justice in this matter.

8. Consequently, the appeal in hand is accepted by setting-aside the impugned orders. 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 08th day of October, 2024.*



AURANGZEB KHATTAK *08/10/2024*
Member (Judicial)



RASHIDA BANO
Member (Judicial)

ORDER

08th Oct, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the appeal in hand is accepted by setting-aside the impugned orders. 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 08th day of October, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak) 08/10
Member (Judicial) 2024.