BEFORE THE SINDH SERVICE TRIBUNAL AT KARACHI

PRESENT:
JUSTICE (R) SADIQ HUSSAIN BHATTI, CHAIRMAN
TARIQ MEHMOOD KHOSO, MEMBER
SHAHID ABDUL SALAM KHAN, MEMBER



APPEAL NO. 06 OF 2024

Aqib Khalid S/o Khalid Pervaiz,
Muslim, Adult, Ex-Police Constable #1594,
Lastly posted at Police Headquarter, West Zone,
[redacted].....Appellant

VERSUS

1. The Inspector General of Police
   Having office at CPO I.I Chandrigar Road Karachi

2. The Deputy Inspector General of Police
   West Zone Karachi

3. The Superintendent of Police
   PHQ, West Zone, Karachi.....Respondents

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Date of hearing: 24.02.2025.

Date of Judgment: 17.03.2025.

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Ms. Sana Junjhi, advocate for the appellant alongwith the appellant.
Mr. Shariq Mubashir, Assistasnt A.G for the respondents.

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JUDGMENT

TARIQ MEHMOOD KHOSO, MEMBER:

The appellant being aggrieved by and dissatisfied with the impugned original order dated 05.01.2018 passed by respondent No.3 and appellate order dated 15.02.2019 passed by respondent No.02, has preferred the instant appeal.



2. The brief facts are that the appellant while undergoing a Recruitment Course at the Shaheed Benazir Bhutto Elite Police Training Centre in Razzaquabad, Karachi was arrested in FIR No. [redacted] u/s: 6/9-C at PS Docks Karachi. This arrest was reported to the Incharge Headquarters, leading to passing of impugned original order dated 05.01.2018, whereby he was Discharged from Service under Rule 12.21

of the Police Rules, 1934. The departmental appeal of the appellant against his Discharge order was considered and "filed" by the respondent No.02. He then filed another departmental appeal to the Additional IGP Karachi Range which remained pending. In the meantime the appellant was acquitted by the Trial Court on 05.09.2023. Following his acquittal, he filed a departmental appeal to respondent No.01 on 12.09.2023, which remained undecided for the statutory period of 90 days, hence, he filed instant service appeal.

3. The Respondent No.03 in his written statement submitted that the appellant was arrested on 20.12.2017, in FIR No. [redacted] under Section 6/9-C of the CNS Act, while undergoing the Recruit Course in the 5th Batch at the Shaheed Benazir Bhutto Elite Police Training Centre (SBB, EPTC) Razzakabad, Karachi. Following this arrest, a letter from the Commandant of SBB, EPTC Razzakabad, dated 29.12.2017, recommended the repatriation of the appellant to his parent unit and suggested severe departmental action against him. Consequently, based on the recommendation of the Commandant, the then SP Headquarters West Zone Karachi issued the Discharge Order on 05.01.2018. The respondent No.02 in his written statement has taken almost similar stance as by respondent No.03. However, in addition it has been pleaded that the appellant filed an appeal on 09.01.2019, against his Discharge Order. The appellant was called in person on 14.02.2019 by respondent No.02, his appeal was considered and "filed" vide order dated 15.02.2019, as no appeal lies against the order of Discharge from Service under Rule 12.21. The written statement of respondent No.03 has been adopted on behalf of respondent No.01.

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4. The learned counsel for the appellant has contended that that the Discharge Order dated 05.01.2018 and all related proceedings are illegal, void, and unsustainable under the law; the Discharge Order was not issued simply due to inefficiency as per Rule 12.21 of the Police Rules, 1934, but rather based on the arrest of the appellant in an FIR,

which necessitated a Show Cause Notice. The Show Cause Notice did not allege that the appellant was "found unlikely to prove an efficient officer," indicating that the Discharge Order did not adhere to the spirit of Rule 12.21. Furthermore, there is no provision in the Police Rules for discharging or dismissing an officer solely due to involvement in a criminal case, such an officer should be suspended under Rules 16-19 of Police Rules, 1934. The department was required to wait for the outcome of the appeal before proceeding with the Discharge order, but in this case, the Discharge Order was issued without waiting for the decision in the criminal case. The original and appellate orders were made without a proper inquiry. The dismissal of the appeal of the appellant prior to his acquittal is irrelevant, as the Discharge was based solely on his arrest, which was nullified by his subsequent acquittal, creating a fresh cause of action for a new appeal. The Discharge Order, based on the arrest, is no longer valid following the acquittal. He has relied upon case laws reported as 2010 PLC (C.S.) 1165, 2010 Supreme Court 695, 1997 SCMR 1543, 2022 SCMR 745, Judgment dated 18.09.2024, passed by this Tribunal in SA No.115 of 2024.

5. The learned Assistant AG has contended that the appellant while on basic training course was arrested in a criminal case. Hence, he was not found likely to become a good officer and does not deserve to be retained any further in Police Force. Thus, he was rightly Discharged from Service under Rule 12.21 of Police Rules. The impugned orders do not call for interference.

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6. The first point involved in this appeal is that whether an appeal is maintainable against an order of discharge under Rule 12.21 of Police Rules, 1934?

7. The Rule 12.21 of Police Rules, 1934 provides that, "There shall be no appeal against the order of discharge under this rule." However, the Honourable Supreme Court of Pakistan in case of

Government of Sindh through Advocate General Sindh v. Muhammad Hussain and 06 others, (2002 SCMR 75) held as under:

> *"Furthermore, no doubt Rule 12.8 lays down that the officer against whom action is taken under the said Rule shall not have any right of appeal but the respondents being civil servants, they are governed by provisions of Civil Servants Act, 1973. The right of departmental appeal being provided to civil servants under the relevant rules, the provision of Rule 12.8 cannot prevail over the same."*

8. The above cited judgment of the Honourable Supreme Court was followed by this Tribunal vide judgment dated 28.09.2023 in case of *Majid Ali v. Province of Sindh & others,* in *Service Appeal No.599 of 2021.* Therefore, we are of the opinion that instant service appeal against an order of discharge under Rule 12.21 is maintainable.

9. Now we would like to deal with the point of limitation and question of maintainability of instant appeal. The appellant was Discharged from service vide order dated 05.01.2018, which was challenged by him through departmental appeal which was "filed" vide order dated 15.02.2019. The appellant in his pleadings averred that he did not approach this Tribunal within time as criminal case was pending against him. Meanwhile, the appellant was acquitted from the criminal case on the basis of which he was discharged from service, vide judgment dated 05.09.2023. After his acquittal, the appellant preferred another appeal before Inspector General of Police, Sindh on 12.09.2023, within one month from the date of his acquittal which remained undecided despite lapse of statutory period, hence, he filed instant service appeal on 05.01.2024.

10. The learned counsel for the appellant has relied upon case of *MUHAMMAD ZAMEER v. D.I.G. Police D.G. Khan and another,* reported as *2010 PLC (C.S.) 1165,* wherein the Honourable Supreme Court of Pakistan has held as under:

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"The appellant had filed fresh departmental appeal before the Inspector General of Police Punjab after his acquittal, which was not decided and responded within 90 days. This fact had also the effect of creating fresh cause of action in favour of appellant to file a fresh appeal before the Punjab Service Tribunal. The order of Removal accordingly could not be considered a final order of Removal as it was founded upon the foundation of conviction, which itself had proved invalid due to delivery of final judgment of acquittal from the learned Divisional Bench of Lahore High Court."

The facts involved in the above cited case were that the appellant was Removed from Service on the ground of registration of an FIR. In the first round of litigation his departmental and service appeals were dismissed/rejected. Ultimately, the appellant was acquitted by the Lahore High Court, Multan Bench and upon his acquittal, he filed fresh departmental appeal which was not responded to and then he filed a fresh service appeal before Service Tribunal which was dismissed. The Honourable Supreme Court held that fresh appeal was competent before Punjab Service Tribunal. In view of the above cited case law, the instant appeal is treated as maintainable and within time.

11. Now we advert to the merits of the case. The appellant was Discharged from Service on account of registration of an FIR. His first departmental appeal was "filed" on 15.02.2019. Later on, the appellant was acquitted from the criminal charge vide judgment dated 05.09.2023 by the Additional Session Judge-I/Model Criminal Trial Court, Karachi West, in Special (Narcotics) Case No.780 of 2022. Thus, it is evident from the record that the appellate order was passed prior to acquittal of the appellant. Obviously, for that reason the aspect of his acquittal from the criminal charge was not dealt with in the impugned appellate order. The learned counsel for the appellant has primarily contended that in view of Rule 16.3 (1) of the Police Rules, 1934, the appellant upon acquittal from

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a criminal charge shall not be departmentally punished on same charge or on different charge based upon the evidence cited in the criminal case.

12. The perusal of the written statements filed by the respondents do not indicate that any enquiry was conducted against the appellant in order to collect evidence pertaining to the charge leveled against him. Thus, the departmental authorities did not possess any other material or evidence against the appellant except the criminal case registered against him from which he has ultimately been acquitted. In view of Sub-Rule (1) of Rule 16.3 of the Police Rules, 1934, a Police officer is to be reinstated in service when he has been acquitted from a criminal case unless his case falls within exception clauses (a) to (e) of Rule 16.3 (1) of the Police Rules, 1934. The learned Assistant AG has neither placed any material nor has pointed out anything from the record to show that the case of the appellant did attract these exception clauses.

13. In view of reasons discussed above, instant appeal is allowed. The impugned original and appellate orders are set-aside and the appellant is reinstated in service with back benefits. His out of service period be treated as leave of kind due.

Pronounced in open Court on this 17th day of March, 2025.

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Sd/-
(JUSTICE (R) SADIQ HUSSAIN BHATTI)
CHAIRMAN
Sd/-
(TARIQ MEHMOOD KHOSO)
MEMBER
Sd/-
(SHAHID ABDUL SALAM KHAN)
MEMBER

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