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. 115 OF 2024

Zahid Saleem S/o Raja Dhaman Khan,
Muslim, Adult, Ex-Assistant Sub-Inspector (ASI)
Lastly posted at CTD Civil Lines, Karachi
[redacted].....Appellant

V E R S U S

1. The Inspector General of Police Sindh,
   C.P.O, I.I. Chundrigar Road, Karachi

2. The Addl: Inspector General of Police (CTD)
   C.P.O, I.I. Chundrigar Road, Karachi

3. The DIGP (Establishment)
   For Inspector General of Police Sindh,
   C.P.O, I.I. Chundrigar Road, Karachi.....Respondents

-:-:-:-:-:-:-:-:-:-:-:-:-

Date of hearing: 28.08.2024.

Date of Judgment: 18.09.2024.

-:-:-:-:-:-:-:-:-:-:-:-:-

Ms. Sana Junjhi, advocate for the appellant.

Mr. Ahmed Khan Khaskheli, Asst A.G. alongwith DSP Juma Din, SIP Imran & ASI Asif Raza for the respondents.

-:-:-:-:-:-:-:-:-:-:-:-:-

J U D G M E N T

TARIQ MEHMOOD KHOSO, MEMBER:

The appellant being aggrieved by and dissatisfied with the impugned original and appellate orders dated 15.12.2019, 14.12.2022 and 03.01.2023 (actual date is 03.01.2024) passed by respondent Nos.02, 03 and 01 respectively, has preferred this appeal under section 4 of the Sindh Service Tribunals Act, 1973.

2. The brief facts of the instant appeal are that the appellant, while being posted as Assistant Sub-Inspector at CTD Civil Lines, arrested an accused Shahbaz. Subsequently, on the complaint of father of said Shahbaz an FIR N[redacted] under sections 365/34 of the Pakistan Penal Code (PPC) was registered at PS Sir Syed against the

appellant and others on 18.11.2019 and the appellant was arrested therein. On 25.12.2019, the Additional Inspector General of Police (CTD), Sindh Karachi, dismissed the appellant from service due to his involvement in the criminal case. It is claimed that the dismissal order was not communicated to the appellant while he was incarcerated in Central Prison, Karachi. He became aware of his dismissal after being released on bail on 12.11.2020 when attempted to rejoin his duties. The departmental appeal of the appellant was rejected by the Inspector General of Police Sindh on 14.12.2022. The appellant was dismissed from service when the criminal case was still pending. He awaited the outcome of the criminal proceedings. On 11.07.2023, the appellant was acquitted in the criminal case by the learned Trial Court. After his acquittal, the appellant filed an appeal to the Inspector General of Police on 01.08.2023, citing the fresh ground of his acquittal. However, that appeal was also regretted by the DIGP/Establishment on 03.01.2024 which was erroneously recorded as 03.01.2023. Hence, the appellant has filed the instant service appeal on 02.02.2024.

3. Respondent Nos.01 and 03 have submitted their parawise comments in which they have reiterated the same facts as narrated by appellant. Additionally, they have averred that despite being summoned on several occasions, the appellant failed to appear before the competent authority. The records indicate that his appeal was not filed within the prescribed time limit, resulting in the rejection of his appeal by the DIGP/Establishment CPO Sindh Karachi vide order dated 14.12.2022. Subsequently, the appellant filed a review appeal against the order of dismissal which was rejected by the DIGP/Establishment CPO Sindh Karachi, vide order dated 03.01.2023 (actual date is 03.01.2024). The respondent no.02 in his written statement has offered no comments on the ground that pleadings of the appeal do not pertain to him.

4. The learned counsel for the appellant has contended that the Dismissal Order of the appellant, is unlawful and void ab initio; he

further argues that the Police Rules do not authorize the dismissal of a police official solely on the basis of involvement or arrest in an FIR. Instead, such an officer may be suspended pursuant to Rule 16-19 and Rule 16.2(2) of the Police Rules, 1934; the punishment of dismissal from service can only be awarded after conviction by a competent court of law; in the present case, the Dismissal Order was issued without waiting for the outcome of the criminal proceedings; the learned counsel further contends that the dismissal order was issued by an authority lacking jurisdiction, rendering the entire basis for the dismissal invalid; he further emphasized that the original and appellate orders were issued without holding a regular inquiry, which is a procedural irregularity; the learned counsel further contends that the dismissal and subsequent rejection of the appeal of the appellant prior to his acquittal were illegal; the appellant was entitled to be reinstated in view of Rule 16.3 of Police Rules, 1934. She has relied upon case laws reported as 2010 PLC (C.S.) 1165, PLD 2010 SC 695, 1985 SCMR 1483, 1997 SCMR 1543, 2022 SCMR 1387 and 2022 SCMR 745.

5. The learned Assistant AG has contended that the appellant was rightly awarded major punishment of Dismissal from Service on account of his involvement in the criminal case; despite acquittal from the criminal case, he is not liable to be reinstated in service as the departmental proceedings and criminal proceedings are distinct from each other; the impugned orders have properly been passed which do not call for interference.

6. In the first instance we would like to deal with the issue of limitation which has not only been raised by the Registrar of this Tribunal in his submission note but has also been raised by the respondent Nos.01 and 03 in their joint written statement. The appellant was dismissed from service vide order dated 15.12.2019, which was challenged by him through departmental appeal which was rejected vide order dated 14.12.2022. Meanwhile, the appellant was acquitted from

the criminal case on the basis of which he was dismissed from service, vide judgment dated 11.07.2023. After his acquittal, the appellant preferred a review appeal before Inspector General of Police, Sindh on 01.08.2023, within one month from the date of his acquittal which was regretted vide order dated 03.01.2024.

7. The learned Assistant AG has contended that only one appeal is provided under Rule 13(b) of Sindh Police (Efficiency & Discipline) Rules, 1988 and the instant appeal is time barred as well. In this regard he has relied upon the case of Superintendent of Police, D.I. Khan and others v. IHSANULLAH, reported as 2007 SCMR 562. The facts involved in that case were that the respondent was dismissed from service due to his involvement in a criminal case. After his acquittal on 09.10.2003, he filed service appeal on 18.03.2004 on the ground that he was acquitted from the charges. The said service appeal was filed belatedly from the date of his dismissal and after 05 months from the date of his acquittal from the criminal case in which the Honourable Supreme Court held that acquittal of civil servant from criminal charge would have absolutely no bearing on the merits of the case as the disciplinary proceedings are to be initiated according to service rules independently. This argument of learned Assistant AG has strongly been rebutted by the learned counsel for the appellant who has contended that the appellant was dismissed from service solely due to his involvement in criminal case from which he was acquitted and after his acquittal he filed a fresh departmental appeal to IGP within 30 days. He has relied upon case of *MUHAMMAD ZAMEER v. D.I.G. Police D.G. Khan and another*, reported as *2010 PLC (C.S.) 1165*. The facts of the case of Muhammad Zameer in brief were that the appellant was removed from service on 14.04.2000 on the basis of involvement in a murder case. His departmental appeal was rejected on 31.07.2001, then he filed service appeal before Service Tribunal which was dismissed on the ground that the appellant was convicted by the Trial Court. The said appellant was

SINDH SERVICE TRIBUNAL KARACHI

acquitted by the Lahore High Court vide judgment dated 20.10.2004. Hence, he filed a fresh departmental appeal on 22.12.2004 which was not responded to within the prescribed period, hence, he filed fresh service appeal which was dismissed on the ground that the Tribunal has no power to entertain fresh appeal with regard to the matter decided earlier. The Honourable Supreme Court of Pakistan in said case held that the judgment of conviction has lost its validity, thus, ground of removal from service could be considered through fresh appeal, therefore, fresh appeal was competent before Punjab Service Tribunal.

8. Likewise in the present case, the sole reason on which the appellant was dismissed from service was his involvement in abduction or kidnapping case from which the appellant has been acquitted. First departmental appeal of the appellant was dismissed when the criminal case was pending trial. Upon his acquittal, he filed a fresh departmental appeal before IGP within a period of 30 days from the date of his acquittal which was competent in view of case law laid down by the Honourable Supreme Court of Pakistan in case of Muhammad Zameer referred supra. Upon regression of the said appeal, the appellant filed the instant service appeal within 30 days which is within the limitation period. Therefore, we are of the view that the instant appeal is competent and maintainable.

SINDH SERVICE TRIBUNAL KARACHI

9. The merits of the case are that the appellant was dismissed from service vide original order dated 15.12.2019 by respondent No.02 as he was involved in a criminal case. The appellant faced the criminal trial and ultimately acquitted from the charge vide judgment dated 11.07.2023 by IInd Additional Sessions Judge, Karachi Central. In a case where a civil servant has been acquitted from a criminal case which was the sole reason for the departmental punishment, his reinstatement cannot be refused. There is nothing on record to show that the appellant was facing any other or additional charge beside the charge of his being involved in the criminal case. After the acquittal of the appellant, the said

reason has been washed away, hence, there is no impediment in his reinstatement.

10. The learned Assistant AG while relying upon case of Faraz Naveed, reported as 2022 SCMR 1770, has contended that disciplinary proceedings are independent and distinct from the criminal proceedings against a civil servant and despite acquittal yet he could be proceeded against departmentally and awarded punishment. In present case, the department has not carried out any regular enquiry in which the charge against the accused could have been proved within the parameters set by the Honourable Supreme Court of Pakistan in case of Faraz Naveed referred supra. Therefore, the ratio held in case of Faraz Naveed is not applicable to the facts and circumstances of the present case.

11. The Honourable Supreme Court of Pakistan in case of SENIOR SUPERINTENDENT OF POLICE, GOVERNMENT OF SINDH, HYDERABAD and others v. IQBAL AHMAD and another, reported as 2004 SCMR 641, upheld the judgment of Service Tribunal, whereby the respondents were reinstated in service upon their acquittal in a criminal case. The Honourable Supreme Court in the cited case has held as under:



"The higher police authorities did not give weight to the acquittal order of the respondents passed by a Court of competent jurisdiction, inasmuch as there was no other charge or show-cause notice against the respondents. Keeping in view the circumstances, the Tribunal had considered the case in its proper perspective."

12. Moreover, under Rule 16.3 of Police Rules, 1934, a police official upon his acquittal is to be reinstated subject to the exception clauses (a) to (c) of Rule 16.3. It has not been pointed out during the arguments that the case of the appellant falls within the exception clauses of Rule 16.3 of Police Rules, 1934.

13 The perusal of the case laws relied upon by the learned counsel for the appellant shows that the facts and circumstances of the case laws reported as PLD 2010 SC 695, 1985 SCMR 1483, 1997 SCMR 1543, 2022 SCMR 1387, 2022 SCMR 745 are distinguishable from the facts and circumstances of the present case.

14. For the reasons discussed above, the instant appeal is allowed. The original and appellate orders are set-aside. The appellant is reinstated in service with back benefits, if he was not gainfully employed elsewhere.

Pronounced in open Court on this 18th day of September 2024.

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

SINDH SERVICE TRIBUNAL KARACHI

COPY APPLIED FOR ON 19.9.24
FEES ESTIMATED ON 19.9.24
ESTIMATED FEES DEPOSITED ON 19.9.24
STAMPS SUPPLIED ON 19.9.24
COPY CERTIFIED ON 19.9.24
COPY DELIVERED ON 19.9.24
COPYING FEE RS.
URGENT FEE RS.
COMMISSION FEE RS.
PAPER CHARGES RS.
TOTAL RS.
TYPED BY
COMPARED BY

CERTIFIED TRUE COPY
ISSUED THIS THE 20th
DAY OF September 2024

REGISTRAR