

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No. 157 of 2018

(PLA Filed on 28.4.2018)

Muhammad Yasir, Constable No. 1635, Reserve Police Muzaffarabad, presently dismissed from service, r/o Chak Dhamni p/o Rawalakot, District Poonch, Azad Kashmir.

.... APPELLANT

VERSUS

1. Senior Superintendent of Police, Reserve Muzaffarabad.
2. Superintendant of Police, District Rawalakot.
3. Accountant General, Azad Jamm7 & Kashmir, Muzaffarabad.
4. DSP, Rawalakot.

..... RESPONDENTS

5. Deputy Inspector General of Police Reserve/Rangers, Muzaffarabad.
6. Adnan Usman, Constable No. 1066, Presently posted in Reserve Police, Muzaffarabad.

..... PROFORMA RESPONDENTS

(On appeal from the judgment of the Service Tribunal dated 28.2.2018 in Service Appeal No. 420 of 2013)

FOR THE APPELLANT: Mr. Anees-ul-Arfeen Abbasi,
Advocate.

FOR THE RESPONDENTS: Mr. Saqib Javed, Advocate.

Date of hearing: 8.11.2018.

JUDGMENT:

Ghulam Mustafa Mughal, J.— The captioned appeal by leave of the Court arises out of the judgment dated 28.2.2018 passed by the learned Service Tribunal in service appeal No. 420 of 2013.

2. The facts forming the background of the captioned appeal are that one Asmat Khan son of Faiz Muhammad r/o Gahni Kotli moved an application to the Police Station Rawlakot to the effect that he is a resident of District Kotli and has a tailoring shop in Gulf Market. It was stated in the application that on 24.10.2012 the complainant along with his companions after closing the shop went to residential room located near the old investigation building. It was further stated that the complainant and his companions had slept in the room when at 10:30p.m. a man knocked at the door. The

complainant opened the door and saw a man who was in police uniform armed with a Kalashnikov and revolver. He was intoxicated and entered the room. He forced one of the complainant's companions to commit the act of obscenity on gun point. Thereafter, at about 12:30p.m., his another companion came in the room. The first one asked the second one to throw down the bottle of wine from the stairs, who threw down the same, upon which all the residents woke up. It was further stated that at 6:30.a.m. the accused left the room threatening them that he will take your lives if you narrated this incident to anyone. The complainant stated in the application that he had Rs.30000/- to Rs. 35000/- in his pocket, which have been snatched by the accused. On this report, the Additional S.H.O interrogated the matter and the allegations levelled by the complainant against the appellant, herein, found to be true. The S.S.P, District Rawlakot separately charge-sheeted both the accused and ordered D.S.P.

Traffic Region Rawalakot to conduct departmental inquiry. After investigating the matter, the Inquiry Officer submitted its report whereby the appellant, herein, was recommended to be dismissed from service whereas two annual increments of proforma respondent No.6, herein, were recommended to be stopped. The Senior Superintendent Police, Reserve issued show-cause notices to the accused to explain their position. The accused replied the same. After analyzing the inquiry report and reply of the show-cause notices, the S.S.P. Reserve vide Order Book No. 202 dated 28.2.2013 removed the appellant, herein, from service under section B of E&D Rules, 1992 whereas stopped one annual increments of proforma respondent No. 6, herein. Feeling aggrieved from this order, the appellant, herein, filed an appeal before the Azad Jammu & Kashmir Service Tribunal on 28.5.2013. The appeal was admitted for regular hearing on 29.5.2013 and the respondents were directed to

file comments/objections. The official respondents filed their comments on 21.1.2014 whereby it was stated that the allegation levelled against the appellant has duly been proved through the evidence of eye witnesses. It was further stated that the previous conduct of the appellant is also not satisfactory. The other claim of the appellant was also refuted. The learned Service Tribunal after necessary proceedings, vide impugned judgment dated 28.2.2018 has dismissed the appeal.

3. Mr. Anees-ul-Arfeen Abbasi, the learned Advocate appearing for the appellant argued that the Inquiry Officer has violated the procedure envisaged in the relevant E&D rules because 14 days period has not been given to the appellant, herein, for reply, which fact according to the learned Advocate, has been admitted in the written statement filed to the appeal of the appellant, herein, in the Service Tribunal. The learned Advocate argued that the matter was compromised and the complainant

withdrew the complaint, hence, dismissal of the appellant was not justified in the circumstances of the case. The learned Advocate further argued that final show-cause notice was also not issued to the appellant by the competent authority, hence, the conviction recorded against the appellant was bad in law and is violative of the rules of natural justice.

4. Conversely, Mr. Saqib Javed the learned Advocate appearing for the respondents contended that the appellant, herein, absented himself from duty and entered in the residential room of the complainant. He has violated the police discipline while doing obscene activities, which brought a bad name for the police force. The learned Advocate argued that the compromise itself shows that the incident as was reported took place. The learned Advocate argued that the appellant has been given sufficient time for reply and he was issued show-cause notice. He argued that the judgment recorded by the learned Service Tribunal is well

reasoned, hence, no interference is required on any ground.

5. Advocates representing the parties have been heard and the record has been perused. The contention of the learned Advocate for the appellant that mandatory condition of the relevant rules has been violated because 14 days time was not given to the appellant, is devoid of any force. Though the aforesaid period is listed in the E&D rules but the accused has submitted his reply before the Inquiry Officer and has not requested the Inquiry Officer for time. He is also not able to show that due to curtailment of the postulated period, he has been seriously prejudiced. In such circumstances, until and unless an accused/civil servant is prejudiced due to violation of some condition precedent, he cannot be given benefit of such violation. The other contention of the learned Advocate for the appellant that the appellant, herein, has not been issued show-cause notice, is also negated from the record. The authority has issued the

show-cause notice before passing the impugned order of dismissal of the appellant, herein. The conduct of the appellant was unbecoming and has violated the discipline of the police force, therefore, the decision of the competent authority has rightly not been disturbed by the learned Service Tribunal while deciding the appeal through the impugned judgment.

The upshot of the above discussion is that finding no force in this appeal, it is hereby dismissed with no order as to costs.

JUDGE
Muzaffarabad.
12.11.2018

CHIEF JUSTICE

