

21.06.2022

Mr. Amad Nasir Khan Kundi, advocate for the appellant present and arguments at preliminary hearing heard.

Learned counsel for the appellant contended that the appellant is aggrieved of the impugned order dated 23.04.2013 whereby major penalty of dismissal from service was imposed on the appellant for willful absence w.e.f. 03.07.2012. The appellant was charged in FIR No. 257 dated 28.03.2012. He was arrested on 16.02.2020 and acquitted by the competent court of jurisdiction on 22.03.2021. It was further argued that as the appellant was facing criminal proceedings therefore he remained absent from duty and it was only after acquittal on 22.03.2021 that he submitted departmental appeal on 21.05.2021 which was not decided within the statutory period whereafter the appellant approached the august Peshawar High Court in Writ Petition No. 3584-P/2021. However, his Writ Petition was dismissed on the ground of jurisdiction under Article 212 of the constitution, on 10.11.2021. The appellant thereafter submitted the instant service appeal on 23.11.2021. It was further contended that the appellant after having been nominated in the said FIR, had requested for 30 days leave which was accordingly granted on 08.05.2012. Thereafter, the appellant submitted another application on 28.05.2012 for 2 months leave which was also accordingly sanctioned w.e.f. 04.05.2012 to 02.07.2012 vide office order dated 02.07.2012. However, on expiry of the leave period, the appellant did not report for duty and remained absent as a result of which notices were issued and departmental proceedings initiated against him under Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Learned counsel for the appellant further argued that ends of justice have not been met because the appellant was facing criminal proceedings and absence was not willful on his part. He has not been afforded personal hearing before the imposition of major penalty of dismissal from service which is in itself harsh penalty and there are plethora of judgements of the superior court that in case of imposition of major penalty of dismissal or removal from service, it is obligatory for the respondents to give the appellant fair chance of defence and personal hearing.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments. To come up for reply/comments before the S.B on 09.08.2022.

(Mian Muhammad)
Member (E)

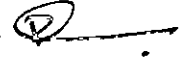
Rs-500/-
Appellant Deposited
Security & Process Fee

A. J. 21/6/22

Notice Issued
for 09/08/22

Q.B. 2022 Due To The Public Holidays The

Case is Adjourned To 30-9-2022

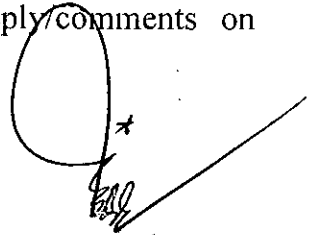


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30.09.2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the respondents present. Learned AAG requested for further time to contact the respondents for submission of written reply/comments. Request is accepted. To come up for written reply/comments on 28.11.2022 before S.B.



(Mian Muhammad)
Member (E)

28.11.2022

Junior to counsel for the appellant.

Kabir Ullah Khattak, learned Additional Advocate General alongwith Janat Khan Assistant for respondents present.

Reply on behalf of respondents No. 1 to 3 submitted, which is placed on file. A copy of the same is handed over to junior counsel for the appellant. To come up for rejoinder/arguments on 26.01.2023 before D.B.



(Rozina Rehman)
Member (J)