

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR CAMP COURT ABBOTTABAD.**

BEFORE: **KALIM ARSHAD KHAN .. CHAIRMAN**
SALAH UD DIN .. MEMBER (Executive)

Service Appeal No.864/2019

Zeeshan Ahmed, Junior Clerk, Sub Jail, Dassu Kohistan.
.....(**Appellant**)

Versus

1. **The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.**
 2. **Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.**
 3. **The Superintendant Sub Jail, Dassu Kohistan.**
-(**Respondents**)

Present:

Mr. Arshad Khan Tanoli,
Advocate.....For appellant.

Muhammad Adeel Butt,
Additional Advocate General.....For respondents.

Date of Institution.....01.07.2019
Dates of Hearing.....16.11.2022
Date of Decision.....16.11.2022

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 04.11.2015 VIDE ANNEXURE 'A' WHEREBY, THE MAJOR PENALTY OF REDUCTION TO A LOWER STAGE IN A TIME SCALE FOR A PERIOD OF FIVE YEARS HAS BEEN IMPOSED UPON THE APPELLANT AND THE PERIOD OF HIS ABSENCE FROM 01.02.2015 TO 15.03.2015 (43 DAYS) HAS BEEN TREATED AS LEAVE WITHOUT PAY.

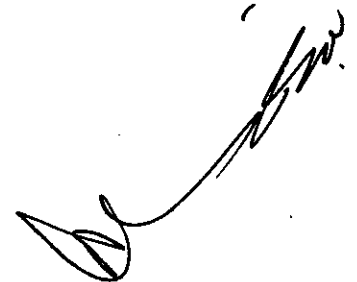


JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN.: The appellant is aggrieved of order dated 04.11.2015, whereby major penalty of reduction to a lower stage in a time scale for a period of five years was imposed upon him and the period of his absence from 01.02.2015 to 15.03.2015 (43 days) had been treated as leave without pay.

2. According to the appeal, the appellant was serving as Junior Clerk in the Prison Department and was in Sub-Jail Dassu, Kohistan; that because of his involvement in a criminal case, he remained absent from duty for 43 days, because of which he was awarded major penalty of reduction to a lower stage in a time scale for a period of five years and his absence period was treated as leave without pay vide impugned order dated 04.11.2015; that the appellant was acquitted from the charge by the learned Additional & Sessions Judge, Lahore on 19.02.2019 and he filed departmental appeal which was not responded within the statutory period, hence this appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who, on putting appearance, contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.



4. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned Additional Advocate General controverted the same by supporting the impugned order.

6. The first moot point for determination before us was question of limitation but that had already been settled vide the admitting note dated 13.07.2021 in the following manner:-

"However, in the impugned order, the competent authority deviated from his own tentative decision and imposed major penalty of reduction to a lower stage in a time scale for a period of five years. Apart from the said major penalty, the period of absence of 43 days was also treated as leave without pay. The impugned order on its face, for the reasons of absence of formal charge sheet at the time of commencement of enquiry proceedings, and on account of deviation of the competent authority from its tentative decision of imposition of minor penalty indicated in the show cause notice, is likely to suffer from voidness, if not rebutted by sufficient material and justification by the respondents. Thus, there is uncertainty as to whether the question of limitation will have any bearing or not"

7. The only question remained before this Tribunal for determination is whether the impugned order of reduction to a lower stage in a time scale for a period of five years. It is in this respect observed that the very and only charge against the appellant in the statement of allegation was that he remained absent from duty w.e.f

01.02.2015 to 15.03.2015 that is 43 days and period of absence of 43 days was treated as leave without pay. The competent authority had thus itself regularized the absence of the appellant by treating the same as leave without pay, therefore, there existed no legal justification for awarding the impugned penalty to the appellant. We, therefore, allow this appeal and set aside the impugned order dated 04.11.2015. Costs shall follow the event. Consign.

8. *Pronounced in open Court at Abbottabad and given under our hands and the seal of the Tribunal on this 16th day of November, 2022.*



KALIM ARSHAD KHAN
Chairman
Camp court Abbottabad



SALAH UD DIN
Member (Judicial)
Camp court Abbottabad

ORDER

16th Nov, 2022

1. Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

2. Vide our detailed judgement of today placed on file (containing 04 pages), we, therefore, allow this appeal and set aside the impugned order dated 04.11.2015. Costs shall follow the event. Consign.

3. *Pronounced in open court at Swat and given under our hands and seal of the Tribunal on this 16th day of November, 2022.*



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad



(Salah Ud Din)
Member(Judicial)
Camp Court Abbottabad