

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1287/2019

Date of Institution ... 24.09.2019
Date of Decision ... 18.07.2022

Raees Khan, Constable No.3466/4620, Elite Force, R/O Village Tela Khel,
P.O Sherkera, District Peshawar.

... (Appellant)

VERSUS

Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar
and four others.

... (Respondents)

Asad Mehmood,
Advocate

... For appellant.

Muhammad Adeel Butt,
Additional Advocate General

... For respondents.

Mrs. Rozina Rehman
Miss. Fareeha Paul

... Member (J)
... Member (E)

JUDGMENT

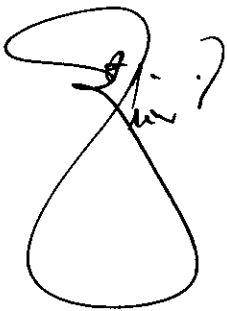
ROZINA REHMAN, MEMBER (J): Appellant has filed the instant service appeal U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned orders dated 24th May, 2019 and 28th October 2019, whereby, he was reinstated into service with immediate effect instead of from the date of dismissal.

2. Brief facts of the case are that appellant was recruited as Constable in the Police Department in the year 2007. During the course of his service, he was transferred to Elite Force where he rendered uninterrupted five years of service. He fell ill and upon

medical checkup, he was diagnosed with symptoms of Hepatitis-B. His illness did not improve even after rest for few days, therefore, he applied for medical leave. He was referred to Police Services Hospital Peshawar on 09th March, 2012 on the direction of SP Cantt. and despite the fact that he was diagnosed positive with Hepatitis-B, his application for leave was regretted for unknown reason. Medical condition of the appellant compelled him to complete bedrest. Subsequently departmental proceedings were initiated against the appellant in violation of law and rules, where-again departmental appeal was preferred but was rejected. His review petition was also rejected. He filed service appeal which was accepted with direction to Department to conduct a de-novo inquiry. The Department conducted de-novo inquiry and reinstated appellant into service with immediate effect, wherein, back benefits for the period he remained out of service were denied. He filed departmental appeal which was decided during pendency of service appeal, hence, the present service appeal.

3. We have heard Asad Mehmood, Advocate learned counsel for the appellant and Muhammad Adeel Butt, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Asad Mehmood Advocate, learned counsel for the appellant argued inter alia that the impugned orders dated 24th May, 2019 and 28th October, 2019^{are} illegal, against law and facts, therefore, liable to be modified. He contended that the appellant's leave application was regretted by the competent authority for unknown reasons and that the



appellant was entitled to medical leave in view of his medical reports but despite medical record, his absence period was not treated as medical leave with full pay. It was further argued that appellant was suffering from Hepatitis-B which was diagnosed even by Police Services Hospital, therefore, medically justified leave could not be refused and that instead of reinstating the appellant from the date of his dismissal, he was reinstated into service with immediate effect which order is not sustainable in the eyes of law and liable to be modified.

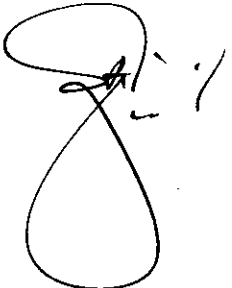
5. Conversely, learned AAG submitted that appellant remained out of service for a period of five months and 24 days without taking prior permission from the competent authority, hence, he was dismissed from service after observing all codal formalities. However, he was reinstated into service in the light of judgment of this Tribunal and that proper de-novo inquiry was conducted as per directions of this Tribunal by deputing Inquiry Officer, wherein, he after fulfilling all codal formalities, recommended his absence period to be treated as without pay and that no back benefits to be granted for the period he remained out of service. After the submission of inquiry report, the competent authority in the light of recommendations of the Inquiry officer, reinstated the appellant into service with immediate effect and was not held entitled to all back benefits.

6. From the record it is evident that that appellant was enlisted on 19.07.2007. Due to positive report in respect of Hepatitis-B, he submitted an application for two months leave which is available on file and which was properly referred to Police Hospital for detailed



medical report. The medical report in respect of his disease is available on file and it was on 30.11.2012 when appellant was dismissed from service. He filed departmental appeal which was also rejected, whereafter he filed Service Appeal No.1034/2016 and vide order dated 26.12.2018 of this Tribunal, impugned orders passed by respondents were set aside with direction to the respondents to conduct de-novo inquiry but only in accordance with law/rules while providing an ample opportunity to the appellant in defending himself. The respondents were made conscious in respect of medical record and application for grant of leave by the appellant to be kept in consideration while re-deciding the matter. The concluding para from judgment of this Tribunal is hereby reproduced for ready reference:

"Resultantly, we dispose of the appeal in hand in terms that the impugned orders dated 30.11.2012, 19.12.2013 and 15.09.2016, passed by respondents are set aside. A denovo enquiry in the matter shall be undertaken by respondents but only in accordance with law/rules while providing an ample opportunity to the appellant in defending himself. Needless to note that his medical record and application for grant of leave shall also be kept in consideration while re-deciding the matter departmentally."



7. In pursuance of the judgment of this Tribunal, appellant was proceeded against departmentally and SSP Coordination/CCP Peshawar was recommended by CPO for conducting de-novo inquiry and the Inquiry Officer in his findings reported that his absence period

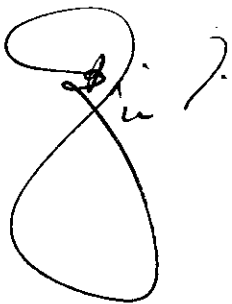
may be treated as leave without pay and no back benefits shall be granted for the period he remained out of service. The competent authority agreed with the recommendation of the Inquiry Officer, reinstated the appellant into service with immediate effect without back benefits and the period of absence he remained out of service was treated as without pay. He filed departmental appeal and vide order dated 28.10.2019 of Additional Inspector General of Police Elite Force Khyber Pakhtunkhwa, Peshawar, his appeal was accepted in the following terms.

"His appeal is accepted on the ground that his medical documents were found genuine and convert the period of absence (five months and 24 days) into leave of the kind due."

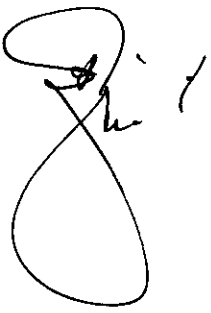
From the order of the Additional Inspector General of Police it is very much evident that the appellant was dismissed from service due to absence w.e.f 06.06.2012 till issuance of his dismissal order on 30.11.2012 (five months and 24 days). Now, the points of Inquiry Officer were very much before the appellate authority i.e.

1. *His medical documents found genuine and plea taken by the alleged official seems to be genuine.*
2. *His application for earned leave was regretted by unknown reasons.*

These two points were before the Inquiry Officer in view of the directions of this Tribunal and these were also taken into consideration by the appellate authority but even then, the appellant was not properly compensated. His medical documents were found



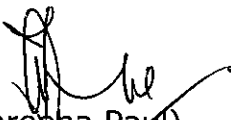
genuine but his absence period before dismissal order was converted into leave of the kind due which order is against law and rules. Once competent authority concluded upon its satisfaction that the order of dismissal from service was not in accordance with law or without lawful authority; and the employee was not at fault in any manner, then the employee could not be deprived of his salary and other benefits during the period for which he had been wrongfully kept out of service by the Department by not deciding the appeal. His entire medical record was genuine and his application for earned leave was regretted by unknown reasons. Nothing is available on record that appellant was gainfully employed anywhere during the relevant period, therefore it would be unjust and harsh to deprive him of back benefits for the period for which he remained out of job without any fault from his side. As per Civil Servant Revised Leave Rules, 1981, leave applied for on medical ground shall not be refused. In the instant case, his genuine documents in the shape of medical reports and his proper application for leave were not taken into consideration not only by the competent authority but also by the appellate authorities.

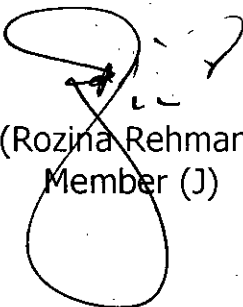


8. We are unison on acceptance of this appeal in the light of our observation in the preceding paras which immediately call for the acceptance of the instant service appeal. All the impugned orders are set aside and the appellant is reinstated into service from the date of his dismissal from service i.e 06.06.2012 with all consequential benefits. The whole absence period w.e.f 06.06.2012 to 30.11.2012 be considered as medical leave with full pay while the intervening

period w.e.f 01.12.2012 till the date of judgement be considered as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
18.07.2022


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

SA 1287/2019.

18.07.2022

Asad Mahmood, Advocate for appellant present.

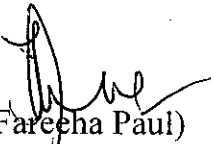
Muhammad Adeel Butt, Additional Advocate General for the respondents present.

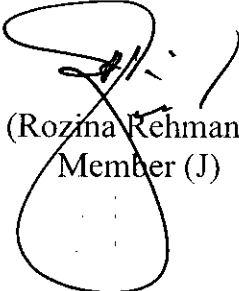
We have heard learned counsel for the appellant and learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

Vide our detailed judgment of today, containing 07 pages, we are unison on acceptance of this appeal in the light of our observation in the concluding paras which immediately call for the acceptance of the instant service appeal. All the impugned orders are set aside and the appellant is reinstated into service from the date of his dismissal from service i.e 06.06.2012 with all consequential benefits. The whole absence period w.e.f 06.06.2012 to 30.11.2012 be considered as medical leave with full pay while the intervening period w.e.f 01.12.2012 till the date of judgement be considered as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

18.07.2022


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

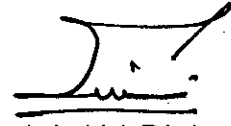
01.02.2022

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not prepared the brief. Adjourned. To come up for arguments on 12.05.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-Ud-Din)
Member (J)

12.05.2022

Appellant in person present. Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today. Last opportunity is granted to the appellant to argue the case failing which, the case will be decided on the strength of available record without arguments.. To come up for arguments before the D.B on 18.07.2022.



(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman


21.10.2021 to 20.02.2022


Nemo for the appellant the respondent present. Mr. Kabir

Ullah, learned Additional Advocate General, the
Mr. Muhammad Rasheed, Deputy District Attorney for
respondents present.

~~For counsel for the appellant requested for~~
Notice be issued to the appellant/counsel for arguments on
adjournment on the ground that he has not appeared on
01.02.2022 before D.B.
~~Adjourned for come up for arguments on 12.05.2022 before~~
the D.B.


As →
✓ 22
Akad Mahmood
19/12


(ATIQ UR REHMAN WAZIR)
(ROZINA MEMBER (E)
Member (J)


(ROZINA REHMAN)
(MEMBER (J))
Member (J)

29.03.2021


The concerned D.B is not available today, therefore, the appeal is adjourned to 29.06.2021 for the same.

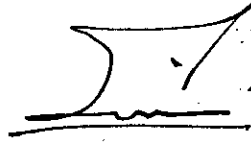

Reader

29.06.2021

Appellant in person present. Muhammad Adeel Butt, Additional Advocate General alongwith Mian Niaz Muhammad DSP (legal) for the respondents present.

We being Members of Larger Bench, remained busy in hearing arguments in the appeals fixed before the Larger Bench, therefore, arguments in the instant appeal could not heard. Adjourned. To come up for arguments before the D.B on 21.10.2021

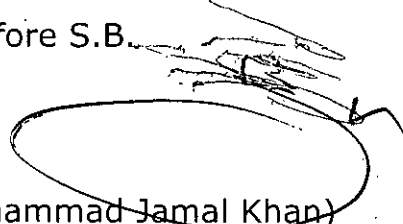

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

22.10.2020

Since the Members of the High Court as well as of the District Bar Association Peshawar are observing strike today, therefore, learned counsel for appellant is not available today. Mr. Kabirullah Khattak, Additional AG is present.


Written reply on behalf of respondents No. 1 to 4 has already been submitted while neither written reply on behalf of respondent No. 5 is submitted nor any representative on his behalf is present despite issuance of notice by way of last chance. Again notice be issued to respondent No. 5 for submission of written reply/comments by way of another last chance. File to come up for written reply/comments on behalf of respondent No. 5 on 29.12.2020 before S.B.


(Muhammad Jamal Khan)
Member (Judicial)

29.12.2020

Counsel for the appellant and Muhammad Rasheed DDA for respondents present.

Reply on behalf of respondents No. 1 to 4 has already been submitted. Respondent No. 5 failed to furnish reply despite last chance on 22.10.2020. The appeal is posted to D.B for arguments on 29.03.2021.


(Atiq-Ur-Rehman Wazir)
Member (E)

15.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 09.07.2020 for the same. To come up for the same as before S.B.



Reader

09.07.2020

Counsel for the appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Nadeem H.C for the respondents present.

Written reply was not submitted. Learned AAG requested for adjournment in order to submit written reply/comments. Opportunity is granted. To come up for written reply/comments on 02.09.2020 before S.B.



Member (J)

02.09.2020

Appellant alongwith counsel and Addl. AG alongwith Muhammad Naeem, H.C for the respondents present. Nemo for respondent No.5.

Representative of the respondents No. 1 to 4 has furnished comments on behalf of official respondents which are placed on record. Fresh notice be issued to respondent No. 5 for submission of reply on 22.10.2020 as a last chance.



Chairman

07.01.2020

Counsel for the appellant present.

Learned counsel has submitted amended appeal which is made part of the record.

Contends that in the impugned order dated 24.05.2019 the period of absence of appellant was treated as without pay upon his reinstatement into service. On the other hand, while deciding the departmental appeal the absence period was converted into leave of the kind due although the departmental appellate authority had found the medical record of appellant to be genuine. In the circumstances, the appellant was entitled for medical leave and adjustment of his salary towards the alleged absence.

In view of the available record and arguments of learned counsel, instant appeal is admitted to regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 06.03.2020 before S.B.

Appellant Deposited
Security & Process Fee

7/1


Chairman

06.03.2020

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Shiraz H.C for the respondents present. Representative of the respondent seeks tie to file written reply/comments. Adjourned. To come up for written reply/comments on 15.04.2020 before S.B.

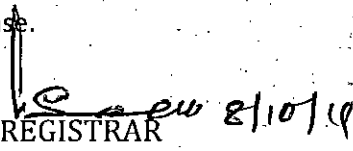
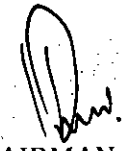


(Hussain Shah)
Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1287/2019

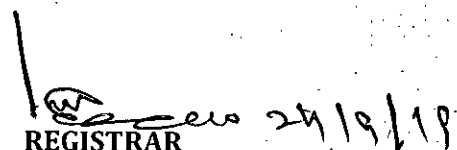
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/10/2019	<p>The appeal of Mr. Raees Khan resubmitted today by Mr. Asad Mahmood Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-	14/10/19.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>28/11/19.</u></p> <p> CHAIRMAN</p>
28.11.2019		<p>Appellant in person present.</p> <p>An application for amendment in the memorandum of appeal has been submitted on the ground that during pendency of instant appeal the departmental appeal of appellant was decided on 28.10.2019. The appellant requests for permission to submit an amended appeal to impugn the order of departmental appellate authority as well.</p> <p>Application is allowed. Amended appeal may be submitted on or before next date of hearing. Adjourned to 07.01.2020 before S.B.</p> <p> Chairman</p>

The appeal of Mr. Raees Khan No. 3466/4620, Elite Force, Distt Peshawar received to-day i.e. on 23.09.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Annexures of the appeal may be flagged
2. Annexures of the appeal may be attested.
3. Affidavit may be got attested by the Oath Commissioner.
4. Memorandum of appeal may be got signed by the appellant.
5. Copy of first departmental appeal and review petition are not attached with the appeal which may be placed on it.
6. Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

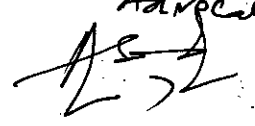
No. 1638 /S.T.

Dt. 24-9-2019


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Asad Mahmood Adv.
Peshawar.

- 1- Annexures are properly flagged.
2. Annexures are attested.
3. Attested by Oath Commissioner.
4. Properly signed by appellant.
5. Removed.
6. Seven copies provided.

Asad Mahmood
Advocate.


BEFORE KHYBER PAKHTUNWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. _____ /2019

1. Raees Khan, Constable No. 3466/4620, Elite Force.
R/O Village Tela Khel, P.O Sherkera, District Peshawar.

..... APPELLANT

VERSUS

Police Department

..... RESPONDENTS

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Raees Khan
APPELLANT

Through

Asad Mahmood
Advocate High Court

Taimur Ali Khan
Advocate High Court

**BEFORE KHYBER PAKHTUNWA SERVICE TRIBUNAL,
PESHAWAR**

Appeal No. _____ /2019

*Raes Khan, Constable No. 3466/4620, Elite Force,
R/O Village Tela Khel, P.O Sherkera, District Peshawar.*

.....**APPELLANT**

VERSUS

1. *Inspector General Of Police, KPK, Peshawar.*
2. *Additional Inspector General of Police, Elite Force, KPK, Peshawar.*
3. *Commandant, Elite Force, KPK, Peshawar.*
4. *Deputy Commandant, Elite Force, KPK, Peshawar.*
5. *Secretary Finance, Govt. of KPK, Peshawar.*

.....**RESPONDENTS**

**AMENDED APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST IMPUGNED ORDERS DATED
24TH MAY, 2019 & 28TH OCTOBER, 2019:**

- a. **WHEREBY THE APPELLANT HAS BEEN RE-INSTATED INTO
SERVICE WITH IMMEDIATE EFFECT INSTEAD OF FROM THE
DATE OF DISMISSAL (ANNEX-F);**
- b. **WHEREBY BACK/ CONSEQUENTIAL BENEFITS WAS DENIED AND
THE INTERVENING PERIOD WAS CONVERTED INTO LEAVE
WITHOUT PAY (ANNEX-F);**
- c. **WHEREBY ABSENCE PERIOD HAS BEEN TREATED AS LEAVE OF
KIND DUE IN GROSS VIOLATION OF LAW (ANNEX-H)
AND AGAINST DEPARTMENTAL APPEAL NOT RESPONDED WITH
IN A STATUTORY PERIOD OF 90 DAYS.**

PRAYER:

ON ACCEPTANCE OF THIS APPEAL, IMPUGNED ORDERS DATED 24TH MAY, 2019 & 28TH OCTOBER, 2019, BEING ILLEGAL AND UNLAWFUL, MAY KINDLY BE MODIFIED TO THE EXTENT THAT:

- a. APPELLANT MAY BE RE-INSTATED INTO SERVICE WITH EFFECT FROM THE DATE OF DISMISSAL;
- b. AWARDED WITH ALL THE BACK AND CONSEQUENTIAL BENEFITS IN TERMS OF FINANCIAL AND SERVICE BENEFITS FOR THE INTERVENING PERIOD WHERE HE REMAINED OUT OF ANY GAINFUL JOB
- c. AND THE WHOLE ABSENCE PERIOD MAY BE CONSIDERED AS A MEDICAL LEAVE WITH FULL PAY. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

FACTS:

Respectfully Sheweth,

Appellant humbly submitted as under:

1. That appellant has been recruited as Constable in the Police Department Khyber Pakhtunkhwa in the year 2007 and having commendable service record on his credit. (Copy of Enlistment Order is attached as Annexure-A)
2. That during the course of his service, he was transferred to Elite Force Khyber Pakhtunkhwa where he had rendered uninterrupted 05 years of service. All of sudden, appellant fell ill and upon Medical check up, he was diagnosed with symptoms of Hepatitis-B.
3. That appellant's illness did not improve even after the rest for few days, hence he applied for medical leave to the competent authority. He was referred to Police & Services Hospital, Peshawar dated 9th March, 2012 on the direction of SP Cantt and despite the fact that he was diagnosed positive with Hepatitis-B, his application for leave was regretted for unknown reasons. Medical condition of appellant compelled him to complete bed rest and hindered him to perform his duty in a condition

beyond his control. (Copy of application for medical leave and Medical Record is attached as Annexure-B)

4. Subsequently, departmental proceedings were initiated against the appellant without satisfying the codal procedure and in violation of Civil Servant (Efficiency and Disciplinary) Rules, he was dismissed from service through order dated 30.11.2012 with effect from 07.01.2012 (Annexure- C) where-against departmental appeal was preferred which was rejected on 19.12.2013 and a review petition was preferred on 10.09.2014 which was rejected on 15.09.2016 (Annexure-D).
5. That appellant filed Service Appeal no. 1034/2016 against the impugned orders dated 30.11.2012, 19.12.2013 and 15.09.2016 which were set aside by the KPK Service Tribunal, Peshawar through an order dated 26.12.2018 (Annexure-E) and was kind enough to accept the appeal with a direction to respondent's department to conduct a *denovo* inquiry but only in accordance with law/rules while providing an ample opportunity to the appellant of defending himself.
6. That the respondent's department conducted *denovo* inquiry and re-instated appellant into service with IMMEDIATE EFFECT vide order dated 24th May, 2019 (Annexure-F) wherein appellant's back benefits for the period he remained out of service are denied and absence period is due through order dated 28th October, 2019 passed during pendency of service appeal.
7. That appellant filed departmental appeal (Annexure-G) against the impugned order which was decided vide order dated 28th October 2019 (Annexure-H), during pendency of service appeal before this hon'ble Service Tribunal.
8. Feeling aggrieved from impugned orders, appellant files service appeal on the grounds *inter alia*:

LEGAL GROUNDS:

- A. Impugned orders dated 24th May, 2019 and 28th October, 2019, being illegal and unlawful, passed in violation of law, norms of justice and judgments of Apex Court, are liable to be modified to the extent of reinstating the appellant from the date of dismissal, awarding back and

consequential benefits for the intervening period and treating absence period with full pay instead of treating as leave of kind due.

- B. That regretting appellant's leave application by competent authority for unknown reasons (**Annexure-H**), proves negligence/fault on the part of respondents and the law does not permit appellant to suffer loss for the fault at respondent's end.
- C. That despite the medical record of the appellant found genuine (**Annexure-H**); appellant absence period is not treated as medical leave with full pay without awarding back benefits for the intervening period through order dated 28th October, 2019 passed in gross violation of law and judgments of Apex Court.
- D. That appellant was suffering from Hepatitis-B which was also diagnosed even by Police Services Hospital, hence medically justified leave can not be refused. 1985 PLC (CS) 484.
- E. That the respondents, under Rule 13 of Revised Leave Rules 1981, were bound to grant medically justified leave to appellant upon diagnosis of Hepatitis-B even confirmed from Police & Services Hospital and continuation thereof to further more than ten months.
- F. That denial of legally justified medical leave under Rule 13 of Revised Leave Rules 1981 and the resultant illegal dismissal of appellant is caused for the fault on the part of respondents.
- G. That appellant has been re-instated into service with **IMMEDIATE EFFECT INSTEAD OF FROM THE DATE OF HIS DISMISSAL**. Hence, the impugned order is not sustainable in the eyes of law and liable to be modified to the extent of re-instatement of appellant in service from the date of dismissal i.e. 30.11.2012.
- H. That appellant remained out of any gainful job since his illegal dismissal on 30.11.2012 due to whimsical and arbitrary act of respondents and for no fault on the part of appellant entitles him for all the back benefits and emoluments for the period between dismissal from service and re-instatement in service.
(2012 TD(Services)18, 1999SCMR1873, 2002 TD(Services)420, PLJ 2016 TrC (Ser)317)

I. That in view of the judgment of Supreme Court Of Pakistan reported as 2007 PLC Supreme Court 184.

"SALARIES AND BACK BENEFITS OF THE CIVIL SERVANT CAN NOT BE WITHHELD FOR THE INTERVENING PERIOD WHEN HE REMAINED OUT OF SERVICE DUE TO WHIMSICAL AND ARBITRARY ACTION OF THE FUNCTIONARIES. CIVIL SERVANT HAD EVERY RIGHT TO RECOVER THE ARREARS".

Hence, appellant is also entitled for the back benefits under the umbrella of judgment enunciated above.

J. That treating absence period as leave of kind due and then treating intervening period without back benefits is hit by DOUBLE JEOPARDY.

K. Seeking permission to take further legal grounds while advancing arguments.

It is, therefore, most humbly prayed that this appeal may kindly accepted as prayed for.

Rais Khan
APPELLANT

Through

Asad Mahmood
Asad Mahmood
Advocate High Court

Taimur Ali Khan
Advocate High Court

ENLISTMENT ORDER.

Recruit/Constable Raees Khan S/O Hazrat Khan
 R/O Tela Sherkeri Mattani PS Mattani
 Distt: Peshawar is hereby enlisted as recruit/Constable in BPS-5
 as selected by the recruitment Committee w.e.f _____ and
 allotted Constabulary No 4620
 Height 5'-7 1/2" Chest 34" x 35 1/2"
 Education 10th D/O Birth 3 / 4 / 1984

His service is purely on temporary basis and liable for termination at any time without any notice.

OB No. 2063

SUPERINTENDENT OF POLICE.
 ✓ HQRS: PESHAWAR.

Dated 19 / 7 2007.

ANNEXURE - A

Date: 19/11/2012

955R
18.4.12

Handwritten notes in Urdu, including a date '19/11/2012' and various illegible text.

Call him for
Superintendent of Police HQs
Capital City Police Peshawar
SP, HQS - 18/11/2012

Remarks
Please refer his
case to Police
Hospital for detail
medical report as
affiant letterhead

CP
18/11/2012
for medical
assistance
SP
O.S. No. 1755
Date: 19/11/2012

03048459044

ATTESTED

P-08

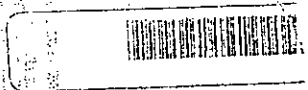
P-08

PATIENT ID :	1202012451	DATE TIME :	09/02/12	REPORT :
PATIENT :	RAHES	AGE :	5	
SEX :	Male	EXAMEN :	Blood	
REFERRED BY :				
TEST REQUIRED :	HBsAg			

RESULT

HBsAg Reactive(249)
 C₀t of index for Non-Reactive HBsAg..... 2
 METHOD: Microparticle Enzyme Immunoassay (MEIA)
 (3rd Generation ELISA)

Remember: This is not a viral quantitation test and the figures given have no prognostic significance. For quantitative viral load measurement, PCR must be used.



Haematologist
Dr. FAZAL UR-REHMAN
 M.B.S., D.C.P.
 M.Phil (Haematology)



Condition

ATTENDED

P-09

12/5, 76, 77, Auqaf Plaza, Durgam Garden Peshawar.
Phone: 091-2219651 Fax: 091-250-8690
mail: info@citylab.com.pk URL: www.citylab.com.pk



A. Latif Malik
Microbiologist
MIASULT CLS INCAAM (USA)

VERIFICATION: Dr. Nizam ud Din Khan
MBBS, FCPS, Ph.D. (Postgraduate)
Prof. Dr. Lijiat Ali
MBBS, DCP, M. Phil (Microbiology)
Dr. Fazal-ur-Rehman
MBBS, DCP, M. Phil (Haematology)

Uo...
0306-56700
P-09

PATIENT ID	1202012451	DATE / TIME	08/02/12 18:29:47
PATIENT	RAEES	AGE	26 Yr
SEX	Male	SPECIMEN	Blood
REFERRED BY			
TEST REQUIRED	HBsAg		

RESULT

HBsAg Reactive(249) ✓
Cut of index for Non-Reactive HBsAg.....
METHOD: Microparticle Enzyme Immunoassay (MEIA)
(3rd Generation ELISA)

SCRIPT. (ALT)

Remarks: This is not a viral quantitation test and the figures given have no regard to magnitude. For quantitative viral load quantitative PCR is required.



Haematologist
Dr. FAZAL-UR-REHMAN
M.B.B.S., D.C.P.
M.Phil (Haematology)



ATTESTED

Al-Shafi Welfare Hospital

Near Speen Jumat, Badhabair, Peshawar.
Cell: 0313-7878883



الشافي وليفيسر هسپتال

نزد جمن جماعت، بدھابیر، پشاور
موبائل: 0313-7878883

Patient Name: Raza Khan Age 27y Gender M Date 6/9/2012 Opd No. _____

↑
Sp 2/12
cutting
C/O
pyrexia
CCxRS -
wt ↓
Rt hypochondri
pain
Nausea
anorexia
Malaise
Gxime Cap/Sus

- Tab Metyl 500mg
1 x 1 (1 week)
- Tab Flagyl 400mg
1 x 1
- Tab Diagnostic - P
1 x 1
- Cap Anvitoff 20mg
1 x 1 (1 1/2 month)
- Sp Trimethoprim
2 x 2
- Tab Tenova 300mg
1 x 1 (12 months)
Tab: Anemix

ATTESTED

~~12-03-12~~

U.S.S.
F.B.C. Ag. Posidon
PLATELATE
B.D.
P.S.V.
R.S.R.

^{D.L.C.}
Neutrophils F.B.C. Ag. Respid
Eosinophils
after to Elvies
Method

Laboratory
Dales Hospital

سنت، بولسنت، سائل

ATTESTED

AL-SHAFI WELFARE

HOSPITAL

Patient Name: Raees Khan Sex: M Date: 6/9/12

HAEMATOLOGY		SEROLOGY		BIOCHEMISTRY	
Test	Result Normal	Test	Result	Test	Result Normal
Hb	12-14 F g/DL 14-18 M g/DL	Widal Test		Bilirubin	0.8 Up to 1.0mgdl
TLC	/cmm (4000-11000)	Abortus		ALT (SGPT)	42 Up to 40mgdl
		Melitensis		Alk: Phosphate	160 Adult 98-306 UI. Child 250-630 UI.
Neutrophils	%45-65	Toxoplasma		Total Proteins	6.0-8.0 gdl
Lymphocytes	%25-45	Widal		Glucose Fasting	70-110mgdl
Monocytes	%0-10	Widal		Glucose Random	80-150mgdl
Eosinophils	%2-5	IgM		Uric Acid	4.2-6.4mgdl
Basophils	%0-1	IgG		Urea	15-45mgdl
Platelet Count	15,000-400,000	HIV		Creatinine	0.6-1.6mgdl
ESR	01-15	H. Pylori	negative	Serum Calcium	8-10.150mgdl
Malaria		ICT for TB		Serum Cholesterol	15-250mg/dl
Blood Group		Toxoplasma		Triglycerides	80-150mg/dl
RH Factor		HBS Ag	positive	HDL	>45 mgdl
CT		HCV	negative	LDL	< 150mgdl
BT		RA Factor		Semen Analysis	
Examination		A.S.O. Titer		Volume	
Color		Stool R.B		Color	
Ph		Color		Normal	
Albumin		Consistency		Abnormal	
Sugar		Mucus		Pus Cells	
Pus Cell		Blood		RBCs	
RBCs		Ova or cyst		Active	
Epithelial Cell		Other		Sluggish	
Casts				Dead	
Cal. Oxalate				Sperm Count	

ATTESTED

ORDER

You Constable Raees-Khan No. 3466/4620 of Elite Force remained absent from duty since 06.06.2012 till this date.

Proper departmental enquiry was conducted against you by Inspector Javed Iqbal Khan of Elite Headquarters. You were given full opportunity but you did not appear before the enquiry officer. To ensure your appearance a notice was issued to you in daily newspaper "Express" dated 15.11.2012 and were directed to join the enquiry within 07 days after the publication of notice, but you neither joined the enquiry proceeding conducted against you nor appeared for duty. It seems that you have no interest in your official duty, the enquiry officer recommended you for major punishment.

I, Muhammad Iqbal Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, impose major penalty of dismissal from service upon you from the date of absence.

(MUHAMMAD IQBAL)

Deputy Commandant.

Elite Force, Khyber Pakhtunkhwa, Peshawar.

No. 10777-87 /EF, dated Peshawar the 30/11/2012.

Copy of above is forwarded to the:-

1. Capital City Police Officer, Peshawar.
2. Deputy Superintendent of Police, Elite Force Headquarters.
3. OS, Elite Force Khyber Pakhtunkhwa Peshawar.
4. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Inspector Javed Iqbal Khan of Elite Headquarters.
6. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
7. OASI / Incharge Kot Elite Force, Khyber Pakhtunkhwa, Peshawar.
8. SRC / FMC, Elite Force, Khyber Pakhtunkhwa, Peshawar.
9. Constable Raees Khan No. 3466/4620 of Elite Force.

W/S
P. Raees Khan
3/12

ATTESTED



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 6181 /16, dated Peshawar the 15/9/2016.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Constable Raees Khan No. 3466/4620. The appellant was dismissed from service w.e.f 07.01.2012 by Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar vide order Endst: No. 10777-87/EF, dated 30.11.2012, on the charge of absence from duty for 10 months and 23 days.

This appeal was filed by Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar vide order No. 1722/EF, dated 19.12.2013.

Meeting of Appellate Board was held on 11.08.2016 wherein appellant was heard in person. During hearing petitioner contended that he was suffering from Hepatitis C. He also produced medical documents.

Perusal of record reveals that petitioner absented himself for long period of 10 months and 23 days. Moreover, the impugned order of his dismissal from service was passed vide order dated 30.11.2012 and his appeal was filed vide order dated 19.12.2013. The instant review petition filed on 15.09.2016 is badly time barred. Thus his appeal is rejected on grounds of limitation and merit as well.

This order is issued with the approval by the Competent Authority.

Najeeb
(NAJEEB-UR-REHMAN BUGVI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

Copy of the above is forwarded to the:

1. Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl. IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supd: E-IV CPO Peshawar.
7. Central Registry Cell, CPO.

ATTESTED

BEFORE K.P.K. SERVICE TRIBUNAL, PESHAWAR.



Service Appeal No. 1034 / 2016

Raees Khan son of Hazrat Khan,
Ex-Constable No. 3466/4620,
Elite Force, K.P.K. Peshawar
R/O village Tela Khel P.O. Sherkera District
Peshawar

Case No. 1048
Dated 06-10-2016

APPELLANT

VERSUS

1. Deputy Commandant, Elite Force, K.P.K. Peshawar
2. Commandant, Elite Force, K.P.K. Peshawar
3. Additional Inspector General of Police,
Elite Force, K.P.K. Peshawar
4. Inspector General of Police, K.P.K.
Peshawar.

..... RESPONDENTS.

APPEAL U/S 4 OF K.P.K. SERVICE TRIBUNAL ACT, 1974,
AGAINST OFFICE ORDER DATED 30-11-2012 OF RESPONDENT
NO.1, WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM
SERVICE VIDE WHICH HIS DEPARTMENTAL APPEAL FOR
RE-INSTATEMENT IN SERVICE WAS NOT ACCEPTED TO BY
RESPONDENT NO.3 VIDE HIS ORDER DATED 19-12-2013
AND THUS THE REVISION PETITION U/S 11-A OF POLICE
RULES, 1975 REFERRED TO RESPONDENT NO.4 (I.G.P),
FOR RE-INSTATEMENT IN SERVICE WAS ALSO REJECTED BY
AN ORDER DATED 15-09-2016.

Filed to day

Registrar

6/10/16

Prayer-in-Appeal

ON ACCEPTANCE OF THIS APPEAL, THE IMPUGNED ORDER
DATED 30-11-2012 OF RESPONDENT NO.1 REGARDING
DISMISSAL FROM SERVICE MAY PLEASE BE SET ASIDE AND
THE APPELLANT MAY PLEASE BE RE-INSTATED IN SERVICE
WITH ALL BACK BENEFITS OR ANY OTHER RELIEF DEEMS FIT
AND APPROPRIATE UNDER THE CIRCUMSTANCES OF THE CASE
MAY ALSO BE GRANTED IN FAVOUR OF THE APPELLANT.

ATTESTED

REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

FILED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 1034/2016

Date of Institution ... 06.10.2016

Date of Decision ... 26.12.2018



Raees Khan son of Hazrat Khan, Ex-Constable No. 3466/4620, Elite Force, Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar and 3 others. ... (Respondents)

Present.

MR. ABDUL HAMEED,
Advocate.

For appellant

MR. MUHAMMAD RIAZ KHAN PAINDA KHEL,
Asstt. Advocate General

For respondents.


MR. HAMID FAROOQ DURRANI,
MR. AHMAD HASSAN,

CHAIRMAN
MEMBER(E)

JUDGMENT

ATTESTED

HAMID FAROOQ DURRANI, CHAIRMAN:-


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

The facts as laid down in the instant appeal are that the appellant was recruited as Constable in the Police Department Khyber Pakhtunkhwa on 19.07.2007. During the course of his service he was transferred to Elite Force Khyber Pakhtunkhwa Peshawar where he worked for about 10 years. The appellant, while working as constable in Police Station Nasir Bagh, Peshawar, fell ill and upon Medical checkup he was diagnosed with symptoms of Hepatitis-B,

ATTESTED

therefore, was advised complete rest. As his condition did not improve, the appellant applied to the concerned Authority for grant of medical leave for a period of two months. He was referred to Police & Services Hospital, Peshawar and despite the fact that he was diagnosed positive with Hepatitis-B he was not granted requisite leave. Subsequently, departmental proceedings were initiated against the appellant and without affording him opportunity of being heard he was dismissed from service through order dated 30.11.2012. An appeal was preferred which was also rejected on 19.12.2013. Subsequently, a Review Petition was preferred by the appellant on 10.09.2014, which met the same fate and was dis-allowed on 15.09.2016, hence the appeal in hand.

2. We have heard learned counsel for the appellant and learned Asst. Advocate General on behalf of the respondents.

At the outset, learned Assistant Advocate General raised the objection regarding delay in filing departmental review petition by the appellant and stated that it was brought after a delay of about eight months, having been filed on 10.09.2014, while the rejection order of his appeal was issued on 19.12.2013.

Attending to the objection, learned counsel for the appellant relied on judgments reported as 2004-PLC(C.S)1014, 2003-PLC(C.S)796, 986-SCMR-962, PLD 1959-Supreme Court-522 and stated that it was consistent view of Apex Court that decisions on merits were always to be encouraged instead of non-suiting litigants on technicalities, including limitation. He further stated that the order of dismissal of appellant was given retrospective effect i.e. having been passed on 30.11.2012 and was made effective since 06.06.2012, therefore, it was void and, as such, period of limitation would not run against a void order.

ATTESTED

[Signature]

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

3. We have considered the averments by the learned counsels and have also gone through the available record with their assistance.

The record is depictive of the fact that on 19.04.2012 the appellant, after having been diagnosed of Hepatitis-B, applied for two months leave to respondent No. 1 but the application remained un-attended. On the other hand, it was noted in the impugned order of dismissal, passed by respondent No. 1 on 30.11.2012, that the appellant remained absent from duty since 06.06.2012 till the date of order. It was concluded therein that major penalty of dismissal from service was imposed upon the appellant from the date of absence. The departmental appeal preferred before respondent No. 3 was rejected on 19.12.2013 through a one liner order. The appellant thereafter, preferred a Review Petition before respondent No. 4 which was decided on 15.09.2016. It was, however, conspicuously noted therein that the appellant was dismissed from service w.e.f. 07.01.2012 and the review petition was dismissed being barred by time.

4. It is also a fact that in the summary of allegations and the charge sheet it was recorded that the appellant remained absent w.e.f. 07.01.2012, contrary to the order of dismissal. The mentioning of discrepant dates of alleged absence in the charge sheet; the order of dismissal of appellant and the order of rejection of his review petition had rendered the appellant at loss in defending his cause aptly, besides, having been put in jeopardy of retrospective removal from service. It is also not ascertainable that whether the appellant was dismissed from service w.e.f. 07.01.2012 or from 6.6.2012. Had the effective date being 06.06.2012, the appellant had much prior to it submitted an application for medical leave on

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

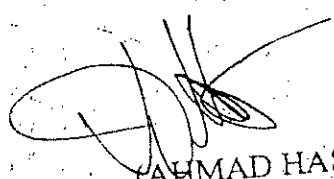
ATTESTED

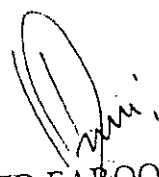
19.04.2012 which remained un-dilated and undecided on the part of the respondents.

5. In view of the above we are of the considered view that the departmental proceedings against the appellant were taken in a slipshod manner and he was made to confront with inconsistent charges/allegations. The said proceedings, therefore, are not sustainable in the eyes of law.

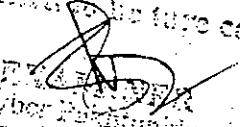
Resultantly, we dispose of the appeal in hand in terms that the impugned orders dated 30.11.2012, 19.12.2013 and 15.09.2016, passed by respondents are set aside. A denovo enquiry in the matter shall be undertaken by respondents but only in accordance with law/rules while providing an ample opportunity to the appellant in defending himself. Needless to note that his medical record and application for grant of leave shall also be kept in consideration while re-deciding the matter departmentally.

Parties are left to bear their respective costs. File be consigned to the record room.

(Chairman)

(AHMAD HASSAN)
MEMBER(E)


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
26.12.2018

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 01-01-19
Number of Words 2000
Copying Fee 12-00
Urgent 2-00
Total 14-00
Name of Copyist [Signature]
Date of Completion of Copy 01-01-19
Date of Delivery of Copy 01-01-19

ATTACHED



Office of the Addl: Inspector General of Police,
Elite Force, Khyber Pakhtunkhwa Peshawar.



No/EF/EC/Orders 2313-20

Dated: 24/05/2019

ORDER

In light of Judgment of Services Tribunal Khyber Pakhtunkhwa Peshawar dated 26.12.2019, Ex-Constable Raees Khan No. 3466/4620 was proceeded departmentally for the purpose of re-instatement into service and SSP Coordination, CCP Peshawar was recommended by CPO vide letter No. 1437/CPO/IAB/C&E, dated 10.04.2019 for conducting denovo enquiry against the defaulter Constable, wherein the enquiry officer in his findings reported that his absence period may be treated as without pay and no back benefit shall be granted for the period he remained out of service.

Therefore, the undersigned being competent authority agreed with the recommendations of the enquiry officer and the defaulter Constable is re-instated into service without back benefits with immediate effect and the period of absence he remained out of service is treated as without pay.

Order announced!

(MUHAMMAD HUSSAIN) P.S.P.
Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar

7/23/19

No. _____ /EF.

Copy of above is forward for information and necessary action to the:-

1. AIG/C&E, Internal Accountability Branch, Khyber Pakhtunkhwa w/r to his letter No. 2001/CPO/IAB, dated 22.05.2019.
2. Sr. Superintendent of Police, Coordination, CCP, Peshawar w/r to his letter No. 92/R, dated 16.05.2019.
3. Superintendent of Police, HQrs: Elite Force, Peshawar.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
6. S.R.C/FMC/OHC, Elite Force Khyber Pakhtunkhwa.

ATTESTED

To,

The Commandant,
Elite Force,
Khyber Pakhtunkhwa, Peshawar.

DEPARTMENTAL APPEAL AGAINST AN IMPUGNED ORDER NO. 8313-20 DATED 24TH MAY, 2019 WHEREBY APPELLANT HAS BEEN AWARDED PENALTY OF ABSENCE PERIOD TREATED WITHOUT PAY AND BACK BENEFITS ARE ALSO DENIED FOR THE PERIOD HE REMAINED OUT OF SERVICE IN GROSS VIOLATION OF LAW.

Respected Sir,

Appellant humbly submitted as under:

1. That appellant belongs to underprivileged family including school-going children and had gone through severe financial hardships - being out of gainful job - for last couple of years.
2. That appellant dated 06.06.2012 till dismissal order 30.11.2012 remained absent due to diagnosis of Hepatitis-B which compelled him to go under a medical treatment but department despite submission of sick leave application, proceeded against appellant and dismissed him from service. Medical record speaks of his illness and application for leave is also available on record with department.
3. That appellant filed departmental appeal followed by service appeal no. 1034/2016 in the KPK Service Tribunal which has been recently decided by the Tribunal with direction to conduct denovo inquiry wherein appellant has been awarded a penalty of absence period treated without pay and denied back benefits for the period he remained out of service in addition thereto.
4. That appellant has been re-instated in service without awarding back benefits for the period remained out of service in addition to treating absence period without pay resulted in increase of miseries to the existing financial hardships and ultimately affecting not only appellant but also his dependents.
5. That feeling aggrieved from the impugned order, appellant files the instant appeal on the grounds inter alia:

ATTACHED

GROUNDS:

- a. The impugned order is passed in gross violation of law and hit by the judgments of Apex Court and even the KPK Service Tribunal, Peshawar.
- b. The impugned order where appellant is awarded penalty of treating absence period without pay and denying back benefits for the period remained out of service is hit by the law of DOUBLE JEOPARDY. Awarding two penalties for single charges is against law and norms of justice is liable to be set aside.
- c. The KPK Service Tribunal, in number of judgments, awarded back benefits for the intervening period from dismissal till re-instatement. Hence, appellant is also liable to be treated at par with them under the law of equality and to avoid infringement of his legal right guaranteed by superior courts.

As a sequel of the above-narrated facts, it is most humbly requested that keeping in view the severe financial hardships of appellant, his appeal may kindly be accepted and back benefits may kindly be granted in favour of appellant on sympathetic and compassionate grounds.

Yours Obediently

R Ais Khan

Raees Khan

Ex-Constable No. 3466/4620

Dated: 20th June, 2019

ATTESTED

ELITE
KHYBER PAKHTUNKHWA POLICE

Office of the Addl: Inspector General of Police,
Elite Force, Khyber Pakhtunkhwa Peshawar.



Dated: 28/10/2019

ORDER

This order will dispose of the departmental appeal submitted by the FC Races No. 3466 of this unit against the order issued by Deputy Commandant vide order Indst No. EF/EC/orders/8313-20, dated 24.05.2019 wherein his absent period was treated as leave without pay and no-back benefits for the period he remained out of service.

Brief facts of the case are that the appellant was dismissed from service due to his absent from duty w.e.f 06.06.2012 till issuance of his dismissal order on 30.11.2012 (total: 05 months and 24 days). He preferred departmental appeal before the then Addl: IGP Elite Force for reinstatement into service which was filed. Then he preferred service appeal before the Khyber Pakhtunkhwa Service Tribunal for re-instatement into service which was decided on 26.12.2018. court decision is reproduce below:-

“In light of the judgment of Service Tribunal a denovo enquiry in the matter shall be undertaken by the respondents but only in accordance with law/rules while providing ample opportunity to the appellant in defending himself. Needless to note that his medical record that his medical record and applications for grant of leave shall also be kept in consideration while re-deciding the matter departmentally.”

Consequently his inquiry file along with his application for re-instatement was sent to AIG/Legal CPO for legal opinion who opined that the competent authority has directed that the judgment may be implemented. Therefore DIG/Internal Accountability nominated SSP Coordination/CCP Peshawar for conducting Denovo inquiry proceedings. The enquiry officer reported that after going through the pros & cons of the proceedings. The points of enquiry officer are appended below:-

- I. His medical documents found genuine & plea taken by the alleged official seems to be genuine.
- II. His application for earned leave was regretted by unknown reasons.

The Deputy Commandant Elite Force agreed with the recommendations of the enquiry officer hence the defaulter constable was re-instated into service without back benefits and the period of absence he remained out of service was treated as without pay vide order quoted above.

Now, he preferred the instant departmental appeal before the Addl: IGP Elite Force for the provision of back benefits. He was called and heard in OR by the undersigned and also examined the opinion of AIG/Legal, CPO.

Therefore, keeping in view all the facts and circumstance, I, Sadiq Kamal Khan, P.S.P, Addl: IGP, Elite Force, being competent authority accept his appeal on the ground that his medical documents was found genuine, and convert the period of absence (05 months and 24 days) into leave of the kind due with immediate effect.

Order announced!

(SADIQ KAMAL KHAN) P.S.P.

Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar

No/16224-28/EF

Copy of above is forwarded for information and necessary action to the:-

1. Superintendent of Police, Elite Force HQs: Peshawar.
2. RI/ Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
3. SRC/OASI/FMC, Elite Force, Pakhtunkhwa, Peshawar. Encls. (File)

ATTACHED

سرحدی ٹریبونل پشاور

2ء منجانب
بنام

رئیس خان

مورخہ

مقدمہ

دعویٰ

جرم

بناک
حکمہ پولیس

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام پشاور کیلئے اسد محمود پیمور علی خان ایڈووکیٹس

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Accepted

20

ماہ

المرقوم

العبد گواہ العبد

کے لئے منظور ہے۔

مقام

P. A. S. Khan

BEFORE THE HONORABLE SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1287 /2019.

Raees Khan..... (Appellant)

VERSUS

Inspector General of Police KPK and others.....(Respondents)

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1.	Para-wise comments		1-4
2.	Affidavit		5
3.	Copy of office Order dated 30.11.2012	A	6
4.	Copy of judgment dated 26.12.2018	B	7-10
5.	Copy of office order No. EF/EC/Orders/ 8313-20 dated 24.05.2019	C	11
6.	Copy of office order No. 16224-29/ EF dated 28.10.2019	D	12

Respondents through



MIAN NIAZ MUHAMMAD,
ADSP/ Legal,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
0315-9869601

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1287 /2019.

Raes Khan..... (Appellant)

VERSUS

Inspector General of Police KPK and others.....(Respondents)

COMMENTS ON BEHALF OF RESPONDENT NO. 1, 3 & 4

RESPECTIVELY SHEWETH:

PRELIMINARY OBJECTIONS:-

- a) That the appeal is not based on facts.
- b) That the appeal is not maintainable in the present form.
- c) That the appeal is bad for miss-joinder and non-joinder of necessary parties.
- d) That the appellant is estopped to file the appeal by his own conduct.
- e) That the appellant has not come to this Honorable Tribunal with clean hands.
- f) That the appellant has got no cause of action to file present Appeal.

FACTS:-

1. Para No. 1 is relating to the recruitment of appellant in Police Department as Constable in the year 2007 hence, no comments.
2. First portion of this Para pertains to record however, with respect to the remaining Para appellant was remained absent from his duty since 06.06.2012 till to date of his dismissal i.e. 30.12.2012, without obtaining prior permission from the Competent Authority.
3. Pertains to record.
4. Correct to the extent that departmental proceedings have been initiated against the appellant as he was remained absent from his lawful duty for a period of 5 months and 24 days without obtaining

prior permission from high-ups. Proper departmental inquiry has been initiated against the appellant by deputing enquiry officer. Proper charge sheet, statement of allegation and show cause notice have been issued to the appellant and was also provided opportunity of personal hearing but his reply was found unsatisfactory hence, he was dismissed from service vide Office Order dated 30.11.2012 **(Annexure- A)**.

5. That admittedly, appellant filed Service Appeal No. 1034/ 2016, against the impugned order dated 30.11.2012, which was accepted by this Honorable Tribunal vide judgment dated 26.12.2018, the Operating Para of which is reproduced as under:-

“A denovo enquiry in the matter shall be undertaken by respondent but only in accordance with law/ rules while providing an impenetrable opportunity to the appellant in defending himself. Needless to note that his medical record and application for grant of leave shall also be kept in consideration while re-deciding the matter departmentally.” **(Annexure- B)**.

6. That in pursuance of judgment dated 26.12.2018, appellant was reinstated into service for the purpose of denovo enquiry by deputing enquiry officer wherein, the enquiry officer after fulfilling all codal formalities in his findings stated that his absence period may be treated as without pay and no back benefits shall be granted for the period he remained out of service. Therefore, the Competent Authority in light of recommendations of enquiry officer, appellant was reinstated into service without all back benefits with immediate effect and the period of absence he remained out of service was treated as without pay vide Office Order No. EF/ EC/ Orders/ 8313-20, dated 24.05.2019. **(Annexure-C)**

7. Pertains to record.

8. That the orders passed by the answering respondents are quite legal and in accordance with law therefore, the instant service appeal may kindly be dismissed on the following Grounds.

GROUND:-

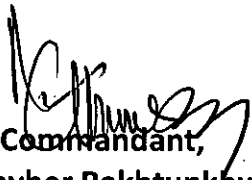
- A. Incorrect. That the orders dated 24.05.2019 & 28.10.2019, passed by the answering respondents are quite legal and in accordance with the law as denovo enquiry had been conducted in light of judgment dated 26.12.2018, of this Honorable Tribunal.
- B. Incorrect. That the departmental appeal submitted by appellant against order dated 24.05.2019, wherein, his absence period was treated as without pay and no back benefits for the period he remained out of service was accepted by the respondent No. 2 i.e. Addl: IG/ Elite Force, Khyber Pakhtunkhwa, Peshawar vide his Office Order No. 16224-29/ EF, dated 28.10.2019. **(Annexure-D)**
- C. Incorrect. As already explained above.
- D. Pertains to record.
- E. That lenient view has been taken by the answering respondents by accepting his departmental appeal on the ground that his medical documents were found genuine and convert the period of absence (5 months & 24 days) into leave of kind due.
- F. As explained in the preceding Paras.
- G. This Para is already explained above hence, needs no comments.
- H. That the appellant has been reinstated into service in compliance of this Honorable Tribunal judgment dated 26.12.2018.
- I. Incorrect. Appellant remained out of service for period of 5 months & 24 days without taking prior permission from the Competent Authority hence, he was quite legally dismissed from service. However, later on appellant was reinstated into service in light of judgment of Tribunal


and the punishment awarded to him in light of denovo enquiry is quite legal one.


J. Incorrect.

PRAYERS:-

As the very spirit of the judgment dated 26.12.2018, of this Honorable Tribunal has been implemented in letter & spirit, therefore, the instant Service Appeal may graciously be dismissed being meritless.


Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 4)


Commandant
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 3)


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 1)

BEFORE THE HONORABLE SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 1287 /2019.

Raees Khan..... (Appellant)

VERSUS

Inspector General of Police KPK and others.....(Respondents)

AFFIDAVIT

I, Mian Niaz Muhammad ADSP/ Legal Elite Force, Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm on oath that the contents of accompanying comments on behalf of Respondents No. 1, 3 & 4 are are correct to the best my knowledge and belief. Nothing has been concealed from this Honorable Tribunal.

DEPONENT



MIAN NIAZ MUHAMMAD,
ADSP/ Legal,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
0315-9869601

ORDER

You Constable Raees Khan No. 3466/4620 of Elite Force remained absent from duty since 06.06.2012 till this date.

Proper departmental enquiry was conducted against you by Inspector Javed Iqbal Khan of Elite Headquarters. You were given full opportunity but you did not appear before the enquiry officer. To ensure your appearance a notice was issued to you in daily newspaper "Express" dated 15.11.2012 and were directed to join the enquiry within 07 days after the publication of notice, but you, neither joined the enquiry proceeding conducted against you nor appeared for duty. It seems that you have no interest in your official duty, the enquiry officer recommended you for major punishment.

I, Muhammad Iqbal Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, impose major penalty of dismissal from service upon you from the date of absence.

(MUHAMMAD IQBAL)
Deputy Commandant.

Elite Force, Khyber Pakhtunkhwa, Peshawar.

No. 10777-87 IEF, dated Peshawar the 30/11/2012.

Copy of above is forwarded to the:-

1. Capital City Police Officer, Peshawar.
2. Deputy Superintendent of Police, Elite Force Headquarters.
3. OS, Elite Force Khyber Pakhtunkhwa Peshawar.
4. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Inspector Javed Iqbal Khan of Elite Headquarters.
6. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
7. OASI / Incharge Kot Elite Force, Khyber Pakhtunkhwa, Peshawar.
8. SRC / FMC, Elite Force, Khyber Pakhtunkhwa, Peshawar.
9. Constable Raees Khan No. 3466/4620 of Elite Force.

W/S
P...
30/11

ATTACHED

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1034/2016

Date of Institution ... 06.10.2016

Date of Decision ... 26.12.2018



Raes Khan son of Hazrat Khan, Ex-Constable No. 3466/4620, Elite Force, Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar and 3 others. ... (Respondents)

Present

MR. ABDUL HAMEED,
Advocate.

... For appellant

MR. MUHAMMAD RIAZ KHAN PAINDA KHEL,
Asstt. Advocate General

... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER(E)

JUDGMENT

ATTESTED

HAMID FAROOQ DURRANI, CHAIRMAN:-

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

The facts as laid down in the instant appeal are that the appellant was recruited as Constable in the Police Department Khyber Pakhtunkhwa on 19.07.2007. During the course of his service he was transferred to Elite Force Khyber Pakhtunkhwa Peshawar where he worked for about 10 years. The appellant, while working as constable in Police Station Nasir Bagh, Peshawar, fell ill and upon Medical checkup he was diagnosed with symptoms of Hepatitis-B,

ATTESTED

therefore, was advised complete rest. As his condition did not improve, the appellant applied to the concerned Authority for grant of medical leave for a period of two months. He was referred to Police & Services Hospital, Peshawar and despite the fact that he was diagnosed positive with Hepatitis-B he was not granted requisite leave. Subsequently, departmental proceedings were initiated against the appellant and without affording him opportunity of being heard he was dismissed from service through order dated 30.11.2012. An appeal was preferred which was also rejected on 19.12.2013. Subsequently, a Review Petition was preferred by the appellant on 10.09.2014, which met the same fate and was dis-allowed on 15.09.2016, hence the appeal in hand.

2. We have heard learned counsel for the appellant and learned Asst. Advocate General on behalf of the respondents.

At the outset, learned Assistant Advocate General raised the objection regarding delay in filing departmental review petition by the appellant and stated that it was brought after a delay of about eight months, having been filed on 10.09.2014, while the rejection order of his appeal was issued on 19.12.2013.

Attending to the objection, learned counsel for the appellant relied on judgments reported as 2004-PLC(C.S)1014, 2003-PLC(C.S)796, 986-SCMR-962, PLD 1959-Supreme Court-522 and stated that it was consistent view of Apex Court that decisions on merits were always to be encouraged instead of non-suiting litigants on technicalities, including limitation. He further stated that the order of dismissal of appellant was given retrospective effect i.e. having been passed on 30.11.2012 and was made effective since 06.06.2012, therefore, it was void and, as such, period of limitation would not run against a void order.

ATTESTED

ATTESTED

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal

3. We have considered the averments by the learned counsels and have also gone through the available record with their assistance.

The record is depictive of the fact that on 19.04.2012 the appellant, after having been diagnosed of Hepatitis-B, applied for two months leave to respondent No. 1 but the application remained un-attended. On the other hand, it was noted in the impugned order of dismissal, passed by respondent No. 1 on 30.11.2012, that the appellant remained absent from duty since 06.06.2012 till the date of order. It was concluded therein that major penalty of dismissal from service was imposed upon the appellant from the date of absence. The departmental appeal preferred before respondent No. 3 was rejected on 19.12.2013 through a one liner order. The appellant, thereafter, preferred a Review Petition before respondent No. 4 which was decided on 15.09.2016. It was, however, conspicuously noted therein that the appellant was dismissed from service w.e.f. 07.01.2012 and the review petition was dismissed being barred by time.

4. It is also a fact that in the summary of allegations and the charge sheet it was recorded that the appellant remained absent w.e.f. 07.01.2012, contrary to the order of dismissal. The mentioning of discrepant dates of alleged absence in the charge sheet, the order of dismissal of appellant and the order of rejection of his review petition had rendered the appellant at loss in defending his cause aptly, besides, having been put in jeopardy of retrospective removal from service. It is also not ascertainable that whether the appellant was dismissed from service w.e.f. 07.01.2012 or from 6.6.2012. Had the effective date being 06.06.2012, the appellant had much prior to it submitted an application for medical leave on

ATTESTED

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


19.04.2012 which remained un-dilated and undecided on the part of the respondents.

5. In view of the above we are of the considered view that the departmental proceedings against the appellant were taken in a slipshod manner and he was made to confront with inconsistent charges/allegations. The said proceedings, therefore, are not sustainable in the eyes of law.


Resultantly, we dispose of the appeal in hand in terms that the impugned orders dated 30.11.2012, 19.12.2013 and 15.09.2016, passed by respondents are set aside. A denovo enquiry in the matter shall be undertaken by respondents but only in accordance with law/rules while providing an ample opportunity to the appellant in defending himself. Needless to note that his medical record and application for grant of leave shall also be kept in consideration while re-deciding the matter departmentally.

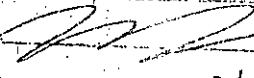
Parties are left to bear their respective costs. File be consigned to the record room.


(AHMAD HASSAN)
MEMBER(E)


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
26.12.2018

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 01-01-19
Number of Words 2000
Copying Fee 12-00
Urgent 2-00
Total 14-00
Name of Copyist 
Date of Completion of Copy 01-01-19
Date of Delivery of Copy 01-01-19

ATTACHED

ANNEXURE-F P22



Office of the Addl: Inspector General of Police,
Elite Force, Khyber Pakhtunkhwa Peshawar.



No/EF/EC/Orders 8313-20

Dated: 24/05/2019

ORDER

In light of Judgment of Services Tribunal Khyber Pakhtunkhwa Peshawar dated 26.12.2019, Ex-Constable Raees Khan No. 3466/4620 was proceeded departmentally for the purpose of re-instatement into service and SSP Coordination, CCP Peshawar was recommended by CPO vide letter No. 1437/CPO/IAB/C&E, dated 10.04.2019 for conducting denovo enquiry against the defaulter Constable, wherein the enquiry officer in his findings reported that his absence period may be treated as without pay and no back benefit shall be granted for the period he remained out of service.

Therefore, the undersigned being competent authority agreed with the recommendations of the enquiry officer and the defaulter Constable is re-instated into service without back benefits with immediate effect and the period of absence he remained out of service is treated as without pay.

Order announced!

(MUHAMMAD HUSSAIN) P.S.P.

Deputy Commandant

Elite Force Khyber Pakhtunkhwa Peshawar

23/5

No. _____ /EF.

Copy of above is forward for information and necessary action to the:-

1. AIG/C&E, Internal Accountability Branch, Khyber Pakhtunkhwa w/r to his letter No. 2001/CPO/IAB, dated 22.05.2019.
2. Sr. Superintendent of Police, Coordination, CCP, Peshawar w/r to his letter No. 92/R, dated 16.05.2019.
3. Superintendent of Police, HQrs: Elite Force, Peshawar.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. BI, Elite Force Khyber Pakhtunkhwa Peshawar.
6. S.R.C/FMC/OHC, Elite Force Khyber Pakhtunkhwa.

ATTESTED

Office of the Addl: Inspector General of Police,
Elite Force, Khyber Pakhtunkhwa Peshawar.



Dated: 28/10/2019

ORDER

This order will dispose of the departmental appeal submitted by the FC Races No. 3466 of this unit against the order issued by Deputy Commandant vide order Endst No. EF/FC/orders/8313-20, dated 24.05.2019 wherein his absent period was treated as leave without pay and no back benefits for the period he remained out of service.

Brief facts of the case are that the appellant was dismissed from service due to his absent from duty w.e.f 06.06.2012 till issuance of his dismissal order on 30.11.2012 (total: 05 months and 24 days). He preferred departmental appeal before the then Addl: IGP Elite Force for reinstatement into service which was filed. Then he preferred service appeal before the Khyber Pakhtunkhwa Service Tribunal for re-instatement into service which was decided on 26.12.2018, court decision is reproduce below:-

"In light of the judgment of Service Tribunal a denovo enquiry in the matter shall be undertaken by the respondents but only in accordance with law/rules while providing ample opportunity to the appellant in defending himself. Needless to note that his medical record that his medical record and applications for grant of leave shall also be kept in consideration while re-deciding the matter departmentally."

Consequently his inquiry file along with his application for re-instatement was sent to AIG/Legal CPO for legal opinion who opined that the competent authority has directed that the judgment may be implemented. Therefore DIG/Internal Accountability nominated SSP Coordination/CCP Peshawar for conducting Denovo inquiry proceedings. The enquiry officer reported that after going through the pros & cons of the proceedings. The points of enquiry officer are appended below:-

- I. His medical documents found genuine & plea taken by the alleged official seems to be genuine.
- II. His application for earned leave was regretted by unknown reasons.

The Deputy Commandant Elite Force agreed with the recommendations of the enquiry officer hence the defaulter constable was re-instated into service without back benefits and the period of absence he remained out of service was treated as without pay vide order quoted above.

Now, he preferred the instant departmental appeal before the Addl: IGP Elite Force for the provision of back benefits. He was called and heard in OR by the undersigned and also examined the opinion of AIG/Legal, CPO.

Therefore, keeping in view all the facts and circumstance, I, Sadiq Kamal Khan, P.S.P, Addl: IGP, Elite Force, being competent authority accept his appeal on the ground that his medical documents was found genuine, and convert the period of absence (05 months and 24 days) into leave of the kind due with immediate effect.

Order announced!

(SADIQ KAMAL KHAN) P.S.P.
Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar

No/16224-28 /EF

Copy of above is forwarded for information and necessary action to the:-

1. Superintendent of Police, Elite Force HQs: Peshawar.
2. RI/ Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
3. SRC/OASI/FMC, Elite Force, Pakhtunkhwa, Peshawar. Encls. (File)

ATTACHED

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1287/2019

Date of Institution ... 23.09.2019
Date of Decision ... 18.07.2022

Raees Khan, Constable No.3466/4620, Elite Force, R/O Village Tela Khel,
P.O Sherker, District Peshawar.

... (Appellant)

VERSUS

Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar
and four others.

... (Respondents)

Asad Mehmood,
Advocate

... For appellant.

Muhammad Adeel Butt,
Additional Advocate General

... For respondents.

Rozina Rehman
Fareeha Paul

... Member (J)
... Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): Appellant has filed the instant service appeal U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned orders dated 24th May, 2019 and 28th October ²⁰¹⁹ ^{was} whereby, he ~~has been~~ reinstated into service with immediate effect instead of from the date of dismissal.

2. Brief facts of the case are that appellant was recruited as Constable in the Police Department in the year 2007. During the course of his service, he was transferred to Elite Force where he rendered uninterrupted five years of service. He fell ill and upon medical checkup, he was diagnosed with symptoms of Hepatitis-B.

P-15

ANNEXURE - C

K/S

ORDER

You Constable Raees Khan No. 3466/4620 of Elite Force remained absent from duty since 06.06.2012 till this date.

Proper departmental enquiry was conducted against you by Inspector Javed Iqbal Khan of Elite Headquarters. You were given full opportunity but you did not appear before the enquiry officer. To ensure your appearance a notice was issued to you in daily newspaper "Express" dated 15.11.2012 and were directed to join the enquiry within 07 days after the publication of notice, but you neither joined the enquiry proceeding conducted against you nor appeared for duty. It seems that you have no interest in your official duty, the enquiry officer recommended you for major punishment.

I, Muhammad Iqbal Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar as competent authority, impose major penalty of dismissal from service upon you from the date of absence.

(MUHAMMAD IQBAL)
Deputy Commandant.

Elite Force, Khyber Pakhtunkhwa, Peshawar.

No. 10777-87 IEF, dated Peshawar the 30/11/2012.

Copy of above is forwarded to the:-

1. Capital City Police Officer, Peshawar.
2. Deputy Superintendent of Police, Elite Force Headquarters.
3. OS, Elite Force Khyber Pakhtunkhwa Peshawar.
4. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Inspector Javed Iqbal Khan of Elite Headquarters.
6. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
7. OASI / Incharge Kot Elite Force, Khyber Pakhtunkhwa, Peshawar.
8. SRC / FMC, Elite Force, Khyber Pakhtunkhwa, Peshawar.
9. Constable Raees Khan No. 3466/4620 of Elite Force.

w/SC
Raees Khan
3/12

Printed and Published by the Government of Khyber Pakhtunkhwa, Peshawar.

ATTACHED

His illness did not improve even after ~~the~~ rest for few days, therefore, he applied for medical leave. He was referred ^{to} Police Services Hospital Peshawar on 09th March, 2012 on the direction of SP Cantt. and despite the fact that he was diagnosed positive with Hepatitis-B, his application for leave was regretted for unknown reason. Medical condition of the appellant compelled him to complete bedrest. Subsequently departmental proceedings ^{were} ~~ever~~ initiated against appellant in violation of law and rules, where ^{again} ~~against~~ departmental appeal was preferred but was rejected. His review petition was also rejected. He filed service appeal which was accepted with direction to Department to conduct a de-novo inquiry. The Department conducted de-novo inquiry and reinstated appellant into service with immediate effect, wherein, back benefits for the period he remained out of service were denied. He filed departmental appeal which was decided during pendency of service appeal, hence, the presents ~~service~~ service appeal.

3. We have heard Asad Mehmood, Advocate learned counsel for the appellant and Muhammad Adeel Butt, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Asad Mehmood Advocate, learned counsel for the appellant argued inter alia that the impugned orders dated 24th May, 2019 and 28th October, 2019 are illegal, against law and facts, therefore, are liable to be modified. He contended that the appellant's leave application was regretted by the competent authority for unknown reasons and that the appellant was entitled to medical leave in view of

therefore, was advised complete rest. As his condition did not improve, the appellant applied to the concerned Authority for grant of medical leave for a period of two months. He was referred to Police & Services Hospital, Peshawar and despite the fact that he was diagnosed positive with Hepatitis-B he was not granted requisite leave. Subsequently, departmental proceedings were initiated against the appellant and without affording him opportunity of being heard he was dismissed from service through order dated 30.11.2012. An appeal was preferred which was also rejected on 19.12.2013. Subsequently, a Review Petition was preferred by the appellant on 10.09.2014, which met the same fate and was dis-allowed on 15.09.2016, hence the appeal in hand.

2. We have heard learned counsel for the appellant and learned Asst. Advocate General on behalf of the respondents.

At the outset, learned Assistant Advocate General raised the objection regarding delay in filing departmental review petition by the appellant and stated that it was brought after a delay of about eight months, having been filed on 10.09.2014, while the rejection order of his appeal was issued on 19.12.2013.

Attending to the objection, learned counsel for the appellant relied on judgments reported as 2004-PLC(C.S)1014, 2003-PLC(C.S)796, 986-SCMR-962, PLD 1959-Supreme Court-522 and stated that it was consistent view of Apex Court that decisions on merits were always to be encouraged instead of non-suiting litigants on technicalities, including limitation. He further stated that the order of dismissal of appellant was given retrospective effect i.e. having been passed on 30.11.2012 and was made effective since 06.06.2012, therefore, it was void and, as such, period of limitation would not run against a void order.

ATTESTED

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

his medical reports but despite medical record, his absence period was not treated as medical leave with full pay. It was further argued that appellant was suffering from Hepatitis-B which was diagnosed even by Police Services Hospital, therefore, medically justified leave cannot be refused and that instead of reinstating the appellant from the date of his dismissal, he was reinstated into service with immediate effect which order is not sustainable in the eyes of law and liable to be modified.

5. Conversely, learned AAG submitted that appellant remained out of service for a period of five months and 24 days without taking prior permission from the competent authority, hence, he was dismissed from service after observing all codal formalities. However, he was reinstated into service in the light of judgment of this Tribunal and that proper de-novo inquiry was conducted as per directions of this Tribunal by deputing Inquiry Officer, wherein, he after fulfilling all codal formalities, recommended his absence period to be treated as without pay and that no back benefits to be granted for the period he remained out of service. After the submission of inquiry report, the competent authority in the light of recommendations of the Inquiry officer, reinstated the appellant into service with immediate effect as he was not entitled to all back benefits.

6. From the record it is evident that that appellant was enlisted on 19.07.2007. Due ^{to} positive report in respect of Hepatitis-B, he submitted an application for two months leave which is available on file and which was properly referred to Police Hospital for detailed medical report. The medical report in respect of his disease is available

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1034/2016

Date of Institution ... 06.10.2016

Date of Decision ... 26.12.2018



Raees Khan son of Hazrat Khan, Ex-Constable No. 3466/4620, Elite Force, Khyber Pakhtunkhwa, Peshawar. ... (Appellant)

VERSUS

Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar and 3 others. ... (Respondents)

Present.

MR. ABDUL HAMEED, ... For appellant
Advocate.


MR. MUHAMMAD RIAZ KHAN PAINDA KHEL, ... For respondents.
Asstt. Advocate General

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER (E)

JUDGMENT

ATTESTED

HAMID FAROOQ DURRANI, CHAIRMAN:-


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

The facts as laid down in the instant appeal are that the appellant was recruited as Constable in the Police Department Khyber Pakhtunkhwa on 19.07.2007. During the course of his service he was transferred to Elite Force Khyber Pakhtunkhwa Peshawar where he worked for about 10 years. The appellant, while working as constable in Police Station Nasir Bagh, Peshawar, fell ill and upon Medical checkup he was diagnosed with symptoms of Hepatitis-B,

ATTESTED

on file and it was on 30.11.2012 when appellant was dismissed from service. He filed departmental appeal which was also rejected, whereafter he filed Service Appeal No.1034/2016 and vide order dated 26.12.2018 of this Tribunal, impugned orders passed by respondents were set aside with direction to the respondents to conduct de-novo inquiry but only in accordance with law/rules while providing an ample opportunity to the appellant in defending himself. The respondents were made conscious in respect of medical record and application for grant of leave by the appellant to be kept in consideration while re-deciding the matter. The concluding para is hereby reproduced.

"Resultantly, we dispose of the appeal in hand in terms that the impugned orders dated 30.11.2012, 19.12.2013 and 15.09.2016, passed by respondents are set aside. A denovo enquiry in the matter shall be undertaken by respondents but only in accordance with law/rules while providing an ample opportunity to the appellant in defending himself. Needless to note that his medical record and application for grant of leave shall also be kept in consideration while re-deciding the matter departmentally."

7. In pursuance of the judgment of this Tribunal, appellant was proceeded against departmentally and SSP Coordination/CCP Peshawar was recommended by CPO for conducting de-novo inquiry and the Inquiry Officer in his findings reported that his absence period may be treated as leave without pay and no back benefits shall be granted for the period he remained out of service. The competent

3. We have considered the averments by the learned counsels and have also gone through the available record with their assistance.

The record is depictive of the fact that on 19.04.2012 the appellant, after having been diagnosed of Hepatitis-B, applied for two months leave to respondent No. 1 but the application remained un-attended. On the other hand, it was noted in the impugned order of dismissal, passed by respondent No. 1 on 30.11.2012, that the appellant remained absent from duty since 06.06.2012 till the date of order. It was concluded therein that major penalty of dismissal from service was imposed upon the appellant from the date of absence. The departmental appeal preferred before respondent No. 3 was rejected on 19.12.2013 through a one liner order. The appellant thereafter, preferred a Review Petition before respondent No. 4 which was decided on 15.09.2016. It was, however, conspicuously noted therein that the appellant was dismissed from service w.e.f. 07.01.2012 and the review petition was dismissed being barred by time.

4. It is also a fact that in the summary of allegations and the charge sheet it was recorded that the appellant remained absent w.e.f. 07.01.2012, contrary to the order of dismissal. The mentioning of discrepant dates of alleged absence in the charge sheet, the order of dismissal of appellant and the order of rejection of his review petition had rendered the appellant at loss in defending his cause aptly, besides, having been put in jeopardy of retrospective removal from service. It is also not ascertainable that whether the appellant was dismissed from service w.e.f. 07.01.2012 or from 6.6.2012. Had the effective date being 06.06.2012, the appellant had much prior to it submitted an application for medical leave on

ATTESTED

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

authority agreed with the recommendation of the Inquiry Officer and he reinstated the appellant into service with immediate effect without back benefits and the period of absence he remained out of service was treated as without pay. He filed departmental appeal and vide order dated 28.10.2019 of Additional Inspector General of Police Elite Force Khyber Pakhtunkhwa, Peshawar, his appeal was accepted in the following terms.

"Hi appeal is accepted on the ground that his medical documents were found genuine and convert the period of absence (five months and 24 days) into leave of the kind due."

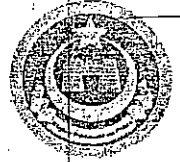
From the order of the Additional Inspector General of Police it is very much evident that the appellant was dismissed from service due to absence w.e.f 06.06.2012 till issuance of his dismissal order ~~on~~ 30.11.2012 (five months and 24 days). Now, the points of Inquiry Officer were very much before the appellate authority i.e.

1. *His medical documents found genuine and plea taken by the alleged official seems to be genuine.*
2. *His application for earned leave was regretted by unknown reasons.*

These two points were before the Inquiry Officer in view of the directions of this Tribunal and these were also taken into consideration by the appellate authority but even the appellant was not properly compensated. His medical documents were found genuine but his absence period before dismissal order was converted into leave of the kind due which order is against law and rules. Once competent authority concluded upon its satisfaction that the order of



Office of the Addl: Inspector General of Police,
Elite Force, Khyber Pakhtunkhwa Peshawar.



Dated: 28/10/2019

ORDER

This order will dispose of the departmental appeal submitted by the IC Races No. 3466 of this unit against the order issued by Deputy Commandant vide order Endst No. EF/IC/orders/8313-20, dated 24.05.2019 wherein his absent period was treated as leave without pay and no back benefits for the period he remained out of service.

Brief facts of the case are that the appellant was dismissed from service due to his absent from duty w.e.f 06.06.2012 till issuance of his dismissal order on 30.11.2012 (total: 05 months and 24 days). He preferred departmental appeal before the then Addl: IGP Elite Force for reinstatement into service which was filed. Then he preferred service appeal before the Khyber Pakhtunkhwa Service Tribunal for re-instatement into service which was decided on 26.12.2018, court decision is reproduce below:-

"In light of the judgment of Service Tribunal a denovo enquiry in the matter shall be undertaken by the respondents but only in accordance with law/rules while providing ample opportunity to the appellant in defending himself. Needless to note that his medical record that his medical record and applications for grant of leave shall also be kept in consideration while re-deciding the matter departmentally."

Consequently his inquiry file along with his application for re-instatement was sent to AIG/Legal CPO for legal opinion who opined that the competent authority has directed that the judgment may be implemented. Therefore DIG/Internal Accountability nominated SSP Coordination/CCP Peshawar for conducting Denovo inquiry proceedings. The enquiry officer reported that after going through the pros & cons of the proceedings. The points of enquiry officer are appended below:-

- I. His medical documents found genuine & plea taken by the alleged official seems to be genuine.
- II. His application for earned leave was regretted by unknown reasons.

The Deputy Commandant Elite Force agreed with the recommendations of the enquiry officer hence the defaulter constable was re-instated into service without back benefits and the period of absence he remained out of service was treated as without pay vide order quoted above.

Now, he preferred the instant departmental appeal before the Addl: IGP Elite Force for the provision of back benefits. He was called and heard in OR by the undersigned and also examined the opinion of AIG/Legal, CPO.

Therefore, keeping in view all the facts and circumstance, I, Sadiq Kamal Khan, P.S.P, Addl: IGP, Elite Force, being competent authority accept his appeal on the ground that his medical documents was found genuine, and convert the period of absence (05 months and 24 days) into leave of the kind due with immediate effect.

Order announced!

(SADIQ KAMAL KHAN) P.S.P.

Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar

No/16224-29 /EF

Copy of above is forwarded for information and necessary action to the:-

1. Superintendent of Police, Elite Force HQs: Peshawar,
2. RI/ Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
3. SRC/OASII/MC, Elite Force, Pakhtunkhwa, Peshawar. Encl: (File)

ATTACHED

dismissal from service was not in accordance with law or without lawful authority; and the employee was not at fault in any manner, then the employee could not be deprived of his salary and other benefits during the period for which he had been wrongfully kept out of service by the Department by not deciding the appeal. His entire medical record was genuine and his application for earned leave was regretted by unknown reasons. Nothing is available on record that appellant was gainfully employed anywhere during the relevant period, therefore it would be unjust and harsh to deprive him of back benefits for the period for which he remained out of job without any fault from his side. As per Civil Servant Revised Leave Rules, 1981, leave applied for on medical certificate shall not be refused. In the instant case, his genuine documents in shape of medical reports and his proper application for leave were not taken into consideration not only by the competent authority but also by the appellate authorities.

8. We are unison on acceptance of this appeal in the light of our observation in the preceding paras which immediately call for the acceptance of the instant service appeal. All the orders are set aside and the appellant is reinstated into service from the date of his dismissal from service on 30.11.2012 with all consequential benefits. He is also held entitled to full pay for the period of five months and 24 days ^{and} ~~and~~ the whole absence period ~~of~~ be considered as medical leave with full pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
18.07.2022

ANNEXURE-F: P-22



Office of the Addl: Inspector General of Police,
Elite Force, Khyber Pakhtunkhwa Peshawar.



No/EF/EC/Orders 2313-20


Dated: 24/05/2019

ORDER

In light of Judgment of Services Tribunal Khyber Pakhtunkhwa Peshawar dated 26.12.2019, Ex-Constable Raees Khan No. 3466/4620 was proceeded departmentally for the purpose of re-instatement into service and SSP Coordination, CCP Peshawar was recommended by CPO vide letter No. 1437/CPO/IAB/C&E, dated 10.04.2019 for conducting denovo enquiry against the defaulter Constable, wherein the enquiry officer in his findings reported that his absence period may be treated as without pay and no back benefit shall be granted for the period he remained out of service.

Therefore, the undersigned being competent authority agreed with the recommendations of the enquiry officer and the defaulter Constable is re-instated into service without back benefits with immediate effect and the period of absence he remained out of service is treated as without pay.

Order announced!


(MUHAMMAD HUSSAIN) P.S.P.
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar
23/5

No. _____ /EF.

Copy of above is forward for information and necessary action to the:-

1. AIG/C&E, Internal Accountability Branch, Khyber Pakhtunkhwa w/r to his letter No. 2001/CPO/IAB, dated 22.05.2019.
2. Sr. Superintendent of Police, Coordination, CCP, Peshawar w/r to his letter No. 92/R, dated 16.05.2019.
3. Superintendent of Police, HQrs: Elite Force, Peshawar.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
6. S.R.C/FMC/OHC, Elite Force Khyber Pakhtunkhwa.

ATTACHED

KHYBER PAKHTUNWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1287 /2019

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 1201

Raees Khan, Constable No. 3466/4620, Elite Force,
R/O Village Tela Khel, P.O Sherker, District Peshawar.

Date 20-11-2019

.....**APPELLANT**

VERSUS

1. Deputy Commandant, Elite Force, KPK, Peshawar and others.

.....**RESPONDENTS**

**APPLICATION FOR AMENDMENT IN THE
SERVICE APPEAL FOR IMPUGNING THE
ORDER DATED 28.10.2019 PASSED DURING
PENDENCY OF SERVICE APPEAL.**

Respectfully Sheweth,

Applicant humbly submitted as under:

1. That the captioned case is pending for adjudication before this Hon'ble Tribunal wherein date 28th November, 2019 is fixed for preliminary hearing.
2. That applicant filed departmental appeal dated 20th June 2019 against the impugned order dated 24th May, 2019 wherein he was reinstated into service with immediate effect; treating absence period as leave without pay and denied back benefits for the intervening period.
3. That departmental appeal of the applicant is decided during pendency of service appeal before this Hon'ble Tribunal through order dated 28th October, 2019 wherein absence period is treated as leave of kind due without awarding back benefits for the intervening period. (Copy of Annex-R attached)

*Recd copy to the
Court along with
original appeal.
Jasim
20/11/19*

Recd

It is, therefore, most humbly prayed that applicant may kindly be allowed to amend the instant service appeal to satisfy the requirement of law.

Raes Khan
Raees Khan

Through

Asad Mahmood

Asad Mahmood

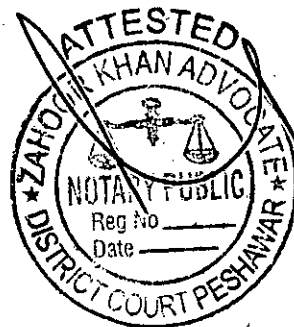
Advocate High Court

Dated: 18.11.2019

AFFIDAVIT

I, Raees Khan, hereby solemnly affirm on oath that contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon'ble Tribunal.

Raes Khan
DEPONENT



12 0 NOV 2020

ANNEX-R

ELITE
KHYBER PAKHTUNKHWA POLICE

Office of the Addl: Inspector General of Police,
Elite Force, Khyber Pakhtunkhwa Peshawar.



Dated: 28/10/2019

ORDER

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Order announced!

(SADIQ KAMAL KHAN) P.S.P.

Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar

No. 16224-28 AEF

Copy of above is forwarded for information and necessary action to the:-

1. Superintendent of Police, Elite Force HQrs: Peshawar.
2. RI/Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
3. SRC/OASI/FMC, Elite Force, Pakhtunkhwa, Peshawar. Encls. (File)