

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1286/2018

BEFORE: MR. KALIM ARSHAD KHAN, ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Muazam Khan S/O Malik Ghulam Hazrat, Ex-Driver Excise,
Taxation and Narcotics Control, Khyber Pakhtunkhwa.
.... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
 2. Secretary to Government of Khyber Pakhtunkhwa, Excise, Taxation and Narcotics Control.
 3. Director General Excise, Taxation and Narcotics Control, Khyber Pakhtunkhwa, Peshawar.
- (Respondents)

Mr. Yasir Saleem,
Advocate

For appellant

Mr. Muhammad Riaz Khan Paindakhel,
Assistant Advocate General alongwith
Mr. Aftab Hussain, Legal Advisor.

For respondents

Date of Institution.....14.09.1998
Date of Hearing.....29.11.2022
Date of Decision..... 29.11.2022

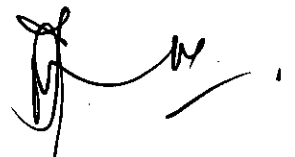
JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 09.12.2016, whereby the



appellant had been awarded major punishment of removal from service besides recovery of salaries received by him during the absence period and against the order dated 02.08.2018 whereby his departmental appeal was rejected, with the prayer that both the impugned orders might be set aside and the appellant might be reinstated in service with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Driver in the respondent department vide order dated 16.05.2009. During the course of service, he was detailed to work at Excise & Taxation Office, Bannu. While performing his duties in the said capacity, he suffered from sciatica pain in the month of November 2015. He got medical treatment and the doctor advised him complete bed rest. Later on, the appellant was proceeded against departmentally for absence from duty. Charge sheet alongwith statement of allegation was issued to him on 22.06.2016 containing the allegations of absence, though issued but not communicated to him. Without conducting a proper enquiry, the appellant was served with show cause notice dated 24.10.2016, though issued, however never communicated to the appellant containing the allegations of willful and deliberate absence from duty w.e.f 27.11.2015. Thereafter, the appellant was removed from service vide order dated 09.02.2016. Feeling aggrieved he submitted departmental appeal on 19.12.2016 which was rejected vide



order dated 02.08.2018, communicated to the appellant on 15.08.2018; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

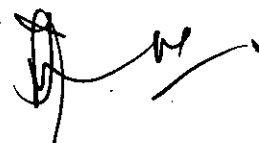
4. Learned counsel for the appellant after presenting the case in detail contended that proper procedure was not followed before removal of the appellant from service. Neither charge sheet alongwith statement of allegations was served upon him nor regular inquiry was conducted before passing the impugned order of removal and hence the impugned order was defective in the eyes of law. He further contended that no proper opportunity of personal hearing was provided to him before awarding him the penalty and he was condemned unheard. He further contended that absence of the appellant was not willful but due to his prolonged illness which forced him to remain away from his duty. He further contended that it had been consistently held by the superior courts that punishment must commensurate to the magnitude of guilt, however harsh view had been taken against the appellant. He requested that the appeal might be accepted as prayed for.

5. The learned Assistant Advocate General while rebutting the arguments of learned counsel for the appellant contended that the



appellant remained absent from his official duties without any intimation and approval of the competent authority. He further contended that the appellant was proceeded against departmentally by issuing charge sheet and statement of allegations to him and Engineer Eid Badshah, the then Deputy Director Excise and Taxation D.I.Khan Region, was appointed as Inquiry Officer to conduct the inquiry. Based on the report of the inquiry officer a show cause notice was issued to him. The learned AAG further apprised the bench that the appellant was given proper opportunity to defend himself but he could not prove his innocence. He requested that the appeal might be dismissed with cost.

6. After hearing the arguments and going through the record presented before us, it transpires that the appellant, while posted as driver in the Excise & Taxation Department, absented himself from official duties because of his illness. Certain medical prescriptions have been attached with the appeal but no application from the appellant addressed to his high-ups/competent authority is available seeking leave, even for a single day. When confronted, learned counsel for the appellant admitted that the appellant did not submit any application seeking either medical or earned leave. If we accept all the arguments presented by the learned counsel for the appellant, how can we disagree with the fact that the appellant remained absent from duty for quite a long time without intimating his competent authority and without getting the leave sanctioned from him?



This act of the appellant tantamounts to misconduct for which he has been rightly proceeded against.

7. In view of the above discussion, the appeal in hand, being groundless, is dismissed. Parties are left to bear their own costs. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29th day of November, 2022.*



(KALIM ARSHAD KHAN)
Chairman



(FARÉEHA PAUL)
Member (E)

Service Appeal No. 1286/2018


Mr. Yasir Saleem, Advocate, learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr, Aftab Hussain, Legal Advisor for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgement containing 06 pages, it transpires that the appellant, while posted as driver in the Excise & Taxation Department, absented himself from official duties because of his illness. Certain medical prescriptions have been attached with the appeal but no application from the appellant addressed to his high-ups/competent authority is available seeking leave, even for a single day. When confronted, learned counsel for the appellant admitted that the appellant did not submit any application seeking either medical or earned leave. If we accept all the arguments presented by the learned counsel for the appellant, how can we disagree with the fact that the appellant remained absent from duty for quite a long time without intimating his competent authority and without getting the leave sanctioned from him? This act of the appellant tantamounts to misconduct for which he has been rightly proceeded against. In view of the above discussion, the appeal in hand, being groundless, is dismissed. Parties are left to bear their own costs. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29th day of November, 2022.*



(KALIM ARSHAD KHAN)
Chairman





(FAREEHA PAUL)
Member (E)

19th Oct, 2022

Junior to counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel: AG for respondents present.

This case was heard by us on 11.05.2022 and judgment was reserved for 13.05.2022, but because of non-availability of the bench on 13.05.2022, the order could not be recorded and announced. The matter was fixed for today but in view of the judgment of the august Supreme Court of Pakistan reported as 1996 SCMR 669, the matter was to be reheard and a request was made by Junior to counsel for the appellant for its rehearing by fixing on 10.11.2022 before D.B. Adjourned accordingly to 14.10.2022.


(Fareeha Paul)
Member(Executive)



(Kalim Arshad Khan)
Chairman


10.11.2022

Counsel for the appellant present.

Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

On 11.05.2022, arguments were heard by the Bench comprising of Learned Chairman and Miss Fareeha Paul, learned Member (E) but the order could not be announced. On preceding date, the appeal was adjourned for rehearing but inadvertently it has been fixed before this Bench. This appeal be fixed before the said learned Bench for arguments on 29.11.2022.


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)


SCANNED
KPST
Peshawar

1286/2018

23rd June, 2022

Junior to counsel for the appellant present. Mr. Muhammad Riaz Khan Painsakhel, Asstt. AG for the respondents present.

Because of the Departmental Selection Committee proceedings, we could not record the judgment. To come up on 08.07.2022 for order.


(Fareeha Paul)
Member(E)


(Kalim Arshad Khan)
Chairman

8-7-22

*Due to Public Holiday on account of
Eid-ul-Adha therefore the case is adjourned
for the same case 19-10-22 before DR*

Rehman

11th May, 2022

Mr. Yasir Saleem, Advocate for the appellant present.
Muhammad Riaz Khan Paindakheil, Assistant Advocate General
and Mr. Gohar Rehman Khattak, Legal Advisor for the
respondents present.

Arguments heard. To come up for order before the D.B on
13.05.2022.



(Fareeha Paul)
Member(E)



Chairman

ORDER
13.05.2022

Deleted for reconstitution of Bench. To come up for
order on 26.05.2022.

Reader

26th May, 2022

Counsel for the appellant present. Mr. Muhammad
Riaz Khan Paindakheil, Assistant Advocate General for
respondents present.

To come up for order on 23.06.2022 before D.B.



(Fareeha Paul)
Member(E)



(Kalim Arshad Khan)
Chairman

17.09.2021

Counsel for appellant present.

Muhammad Rasheed learned D.D.A for respondents present.

Request for adjournment was made on behalf of respondents; granted. To come up for arguments on 18.01.2022 before D.B.

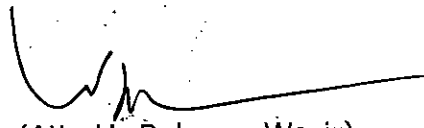

(Rozina Rehman)
Member (J)


Chairman

18.01.2022

Nemo for the appellant present. Mr. Riaz Khan Paindakheil, Assistant AG for respondents present.

Notice be issued to the appellant and his counsel for 11.05.2022 before D.B.


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

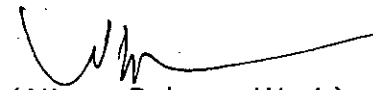

Chairman



08.12.2020 Junior to counsel for the appellant and Mr. Muhammad Jan, DDA for the respondents present.

States that learned counsel for the appellant is over-occupied before the Honourable Peshawar High Court, therefore, adjournment is sought.

Adjourned to 26.02.2021 for hearing before the D.B.


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


Chairman

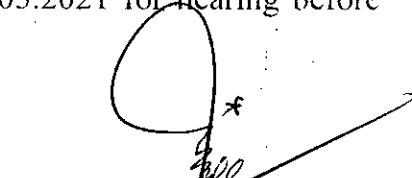
26.02.2021

Counsel for the appellant and Addl. AG for the respondents present.

The Hon'ble Chairman is on leave. Due to incomplete bench, the matter is adjourned to 31.05.2021 for hearing before the D.B.

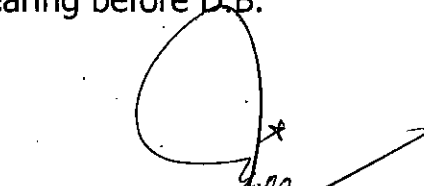
31.05.2021


Nemo for parties.


(Mian Muhammad)
Member(E)

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Both the parties be put on notice for 17.09.2021 for hearing before D.B.

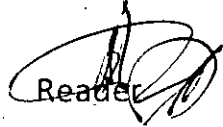

(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

_____ .2020

Due to COVID19, the case is adjourned to

11/8/2020 for the same as before.


Reader


11.08.2020

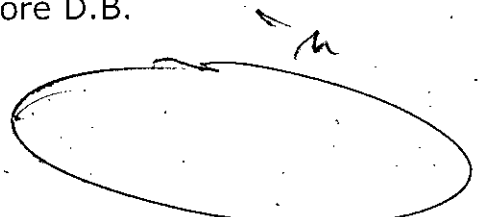
Due to summer vacations case to come up for the same on 13.10.2020 before D.B.


Reader

13.10.2020

Counsel for the appellant is present: Mr. Usman Ghani, District Attorney for respondents No. 1 & 2 and Legal Advisor for respondent No. 3 are also present. Learned counsel for the appellant submitted that he has not prepared the brief and requested for adjournment. Adjourned to 08.12.2020 on which to come up for arguments before D.B.


(Atiq-ur-Rehman Wazir)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

24.12.2019

Appellant in person present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Arshid Javid Inspector present. Appellant submitted rejoinder placed on file and seeks adjournment as his counsel is not available. Adjourn. To come up for arguments on 13.02.2020 before D.B.



Member



Member

13.02.2020

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 20.03.2020 for arguments before D.B.



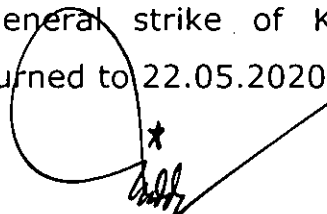
(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member

20.03.2020

Clerk to counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Inayat Gul, Clerk to Legal Advisor for the respondents present. Clerk to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 22.05.2020 for arguments before D.B.



(Mian Muhammad)
Member



(M. Amin Khan Kundi)
Member

11.07.2019

Counsel for the appellant and Addl. AG present.
Representative of the respondents is not in attendance.

Fresh notices be issued to the respondents by way of
last chance for submission of their written reply/comments
on 04.09.2019 before S.B.


Chairman

04.09.2019

Counsel for the appellant and Mr. Usman Ghani
District Attorney alongwith Noman, Inspector for the
respondents present.

Reply on behalf of respondents No. 1 to 3 submitted
which is placed on record. The appeal is assigned to D.B for
arguments on 06.11.2019. The appellant may submit
rejoinder, within a fortnight, if so advised.


Chairman

06.11.2019

Appellant with counsel present. Mr. Kabir Ullah Khattak
learned Additional Advocate General present. Learned counsel
for the appellant seeks adjournment. Adjourn. To come up for
arguments on 24.12.2019 before D.B.


Member


Member

21.03.2019

Nemo for the appellant. Mr. Kabirullah Khattak learned Addl: AG for the respondents present. Learned AAG seeks time to file written reply/comments. Adjourn. To come up for written reply/comments on 23.04.2019 before S.B.


Member


23.04.2019

Appellant in person present. Addl: AG for respondents present. Written reply/comments not submitted. Requested for adjournment. Adjourned. Case to come up for written reply of respondents on 18.06.2019 before S.B.


(Ahmad Hassan)
Member

18.06.2019

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department is present therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date by way of last chance. Adjourned to 11.07.2019 for written reply/comments before S.B.


(Muhammad Amin Khan Kundi)
Member