

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.7578/2021

Date of Institution ... 04.10.2021
Date of Decision ... 19.12.2022

Abdullah, Constable No. 782, Police Station Pabbi, Nowshera.

... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two others:

... (Respondents)

Taimoor Ali Khan
Advocate

... For appellant.

Naseer Ud Din Shah
Assistant Advocate General

... For respondents.

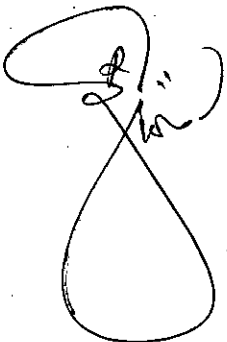
Mrs. Rozina Rehman
Miss Fareeha Paul

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

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the jurisdiction of this Tribunal through above titled appeal with the prayer as copied below:

“That on acceptance of this appeal the order dated 07.06.2021 may kindly be set aside and the respondents may kindly be directed to restore the stages in pay of the appellant as were before the penalty order dated 14.07.2020



by modifying the order dated 14.07.2020 to that extent only with all back and consequential benefits.”

2. Brief facts of the case are that appellant was appointed as constable in the respondent's department in 2013. He was performing his duties with great devotion and honesty. He fell ill and was unable to perform his duties therefore, remained absent from duty. An inquiry was initiated against him and he was recommended for major punishment of reduction in pay by one stage with counting his absence period as leave without pay but despite the recommendations of inquiry officer, appellant was dismissed from service. He filed departmental appeal which was partially accepted and major punishment of dismissal was converted into major punishment of reduction in pay to the lowest stage for a period of 5 years. He filed revision petition which was rejected, hence the present service appeal.

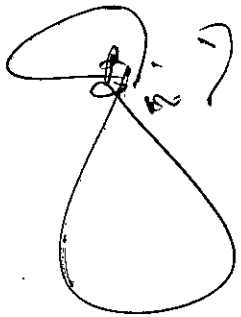
3. We have heard Taimoor Ali Khan, Advocate learned counsel for the appellant and Naseer Ud Din Shah, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Taimoor Ali Khan Advocate, learned counsel for the appellant submitted that impugned rejection order dated 07.06.2021 and order dated 14.07.2020 are against law, facts and norms of natural justice therefore, not tenable and liable to be set aside. He contended that the appellant was ill and remained absent from duty but the punishment did not commensurate with the gravity of offence/misconduct. He argued

that appellant being low paid employee suffered badly from the punishment of reduction to lowest stage, therefore, requested for acceptance of instant appeal.

5. Conversely, learned AAG submitted that nothing was brought in black and white that appellant was ill and that he did not bother to obtain leave/permission of the competent authority rather remained absent at his own sweet will and that the plea of alleged illness was taken only to give covering to his prolong absence of 107 days. Lastly, he submitted that the appellant was punished after fulfillment of all codal formalities.

6. From the record it is evident that departmental inquiry was initiated against the appellant under Khyber Pakhtunkhwa Police Rules 1975, upon the allegations that he while posted at Police Post Pir Sabaq remained absent from duty without any leave/permission of the competent authority vide DD No. 26 dated 22.12.2019 to DD No. 10 dated 27.03.2020 of PS Kalan and relieved for PP Badrashi for special duty but he absented again vide DD No. 4 dated 07.04.2020 of PP Badrashi. He was served with show cause notice on 27.02.2020 but he failed to submit his reply, therefore, he was proceeded against departmentally through SDPO Pabbi, who submitted his report and recommended him for major punishment. He was served with final show cause notice but he failed to reply, therefore, major punishment of dismissal from service was imposed upon him from the date of his absence vide order dated 12.06.2020. He filed departmental appeal and the departmental authority vide order dated 14.07.2020 modified the



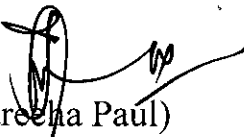
major punishment of dismissal from service into major punishment in reduction in pay to the lowest stage for a period of 5 years. The intervening period as well as the absence period was treated as leave without pay. He then filed revision petition on 04.05.2021 which was dismissed being badly time barred. The appellant failed to justify his absence. Similarly he filed revision petition against order of the appellate authority which was badly time barred. As per Rule 11-A (4) of the Khyber Pakhtunkhwa Police Rules, 1975, the revision petition shall lie within thirty days of the order passed on original appeal.

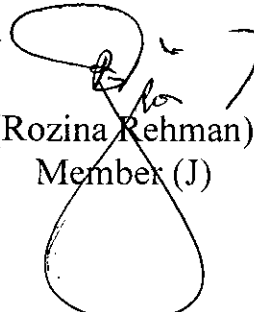
7. It is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled AnwarulHaq v. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

8. Having considered the matter from all angles in the light of material available on file, we do not find any merit in the instant service appeal which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

19.12.2022


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)


ORDER
19.12.2022


Appellant present through counsel.

Naseer Ud Din Shah learned Assistant Advocate General for respondents present. Arguments heard. Record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the instant service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
19.12.2022

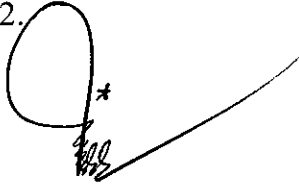

(Farzeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

19.07.2022

Learned counsel for the appellatn present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Muhammad Fayyaz, H.C for the respondents present.


Reply/comments on behalf of respondents submitted which ^{are} placed on file and copy of the same is handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder if any, and arguments before the D.B on 20.10.2022.


(Mian Muhammad)
Member (E)

20th Oct., 2022

Counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asstt. Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 19.12.2022 before D.B.


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman