

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, ABBOTTABAD.

Service Appeal No.6597/2021

Date of Institution ... 14.06.2021
Date of Decision ... 25.01.2023

Niaz Khan S/O Gohar Rehman Ex-Constable No. 130, R/O Kasakay Khord
Tehsil & District Abbottabad.

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs, Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer Hazara, Abbottabad.
4. District Police Officer Abbottabad.

... (Respondents)

Sardar Muhammad Azeem
Advocate

... For appellant.

Muhammad Jan
District Attorney

... For respondents

Mrs. Rozina Rehman

...

Member (J)

Miss Fareeha Paul

...

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:

“On acceptance of instant service appeal, the impugned order against the appellant may graciously be set aside and appellant be reinstated in service with all back benefits in the interest of justice”.



2. Brief facts of the case are that appellant was appointed as Constable in Police Department in July 2007. He performed his duty to the entire satisfaction of his superiors. During service he became ill and remained absent from 12.03.2019 till the date of dismissal. He was fully engaged with his mother too as she was seriously ill and there was no male member to take care of his mother. He sent different applications alongwith medical certificates to the respondents but to no avail. After recovery of his mother, he made his arrival on duty in P.S Bakot and then in police station Abbottaabd, where he was handed over copy of charge sheet alongwith statement of allegations and his order of dismissal from service. Felling aggrieved he filed departmental representation which was rejected. He filed revision petition which also met the same fate, hence the present service appeal.

3. We have heard Sardar Muhammad Azeem, Advocate learned counsel for the appellant and Muhammad Jan, District Attorney for respondents and have gone through the record and the proceedings of the case in minute particulars.

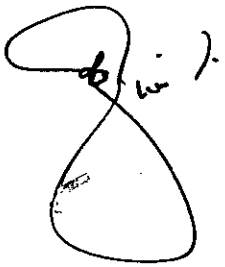
4. Sardar Muhammad Azeem, Advocate learned counsel for the appellant submitted that the impugned orders are against law and facts hence not tenable in the eyes of law as no proper charge sheet or show cause notice was served upon the appellant. It was contended that the respondents violated Article 4 & 25 of Constitution of Islamic Republic of Pakistan. As the appellant was

A handwritten signature or set of initials, possibly 'S. Azeem', written in black ink. The signature is stylized and somewhat circular, with a large loop at the bottom.

discriminated and other constables who had been discharged from service were latter on reinstated. It was argued that no proper inquiry was conducted and the appellant was not given any chance of personal hearing. It was, therefore, requested that appeal may kindly be accepted.

5. Conversely, learned District Attorney submitted that the appellant was a habitual absentee who created problems for the respondents which is evident from the official record. He contended that in his entire service he remained absent for 1153 days (3 years and 2 months) and considering the absence period, the total service of the appellant is 9 years and 7 months which is not a satisfactory service et-al. He further submitted that being member of a disciplined force he was bound to avail leave from his senior but fiasco which amounts to gross misconduct on the part of the appellant. And lastly he submitted that after fulfillment of all codal formalities he was dismissed from service according to law.

6. We have heard learned counsel for the parties and perused the record carefully. From the record it is evident that charge sheet alongwith statement of allegations were issued to the appellant by Additional Superintendent of Police, Abbottabad who was not competent to issue the same and in view of the inquiry report, Additional Superintendent of Police Abbottabad awarded major punishment of dismissal from service to the appellant who was



not competent authority to impose major punishment. This aspect of the case was not taken into consideration by the Regional Police Officer Hazara Region, Abbottabad who filed the appeal of the appellant by maintaining the order of incompetent authority. In fact the order passed by the Additional SP is a void order and no limitation runs against the same.

7. The main allegation against the appellant was in respect of his absence from 12.03.2019 to 26.06.2019 which is evident from his statement of allegations. The impugned order passed by the Additional Superintendent of Police on 20.03.2020 reveals that appellant was posted at PS Bakot, where he absented himself without sufficient cause from 12.03.2019 to 26.06.2019 (3 months & 13 days) and again absented vide DD No.6 dated 29.06.2019 till the date of his dismissal from service i.e 20.03.2020. For the purpose of scrutinizing his conduct with reference to the allegations mentioned above one Iltaf Khan SDPO was appointed as inquiry officer. Inquiry report is available on file which shows that the inquiry was in respect of his absence for 3 months & 13 days and it was silent for the period from 29.06.2019 till the date of dismissal. Proper opportunity of defence was not provided to the appellant. Moreover, he had annexed his medical record showing his illness as well as his different applications submitted before the competent authority in respect of leave which were not taken into consideration by the inquiry officer. The appellant is



also ready to forego all the back benefits and requested for reinstatement only.

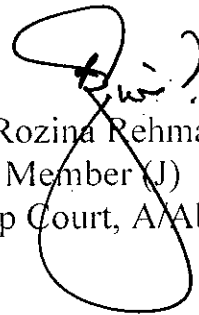
8. Keeping in view the above discussion, we are left with no option but to accept this appeal by reinstating the appellant into service from the date of judgment. The entire period of absence as well as intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

25.01.2023



(Fareeha Paul)
Member (E)
Camp Court, A/Abad



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

ORDER

25.01.2023

Appellant present through counsel.

Muhammad Jan, learned District Attorney for respondents present.

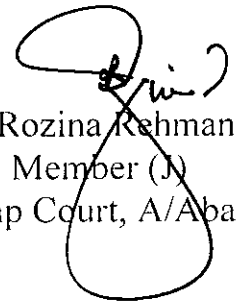
Vide our detailed judgment of today placed on file, we accept this appeal by reinstating the appellant into service from the date of judgment. The entire period of absence as well as intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

25.01.2023



(Fareeha Paul)
Member (E)
Camp Court, A/Abad



(Rozina Rehman)
Member (J)
Camp Court, A/Abad