

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT SWAT.

Service Appeal No. 1199/2022

Date of Institution ... 02.08.2022

Date of Decision ... 08.02.2023

Naseeb Zada S/O Gul Zamin R/O Sanam Sundvi PO Aloooh Tehsil Poran
District Shangla.

... (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa at Peshawar and 02 others.

... (Respondents)

MR. KHWAJA SALAH-UD-DIN,
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts giving rise to filing of the instant service appeal are the an accused namely Syed Akbar Shah was arrested in narcotics case, who was under custody of local police of Police Station Karora District Shangla. The afore-mentioned accused, while in police custody had died at night time and case FIR No. 222 dated 18.06.2020 under section 302 PPC was registered against the appellant in Police



Station Karora. During the investigation of the case, other police officials were also charged and sections 200/201/202/203/297/34 PPC read with Section 109 PPC were thus inserted in the FIR. Disciplinary action was taken against the appellant on the basis of his involvement in the aforementioned incident and on conclusion of the inquiry, was awarded major penalty of dismissal from service vide order dated 24.09.2020. The appellant challenged the order of his dismissal through filing of departmental appeal before the Regional Police Officer, Malakand Region, Saidu Sharif Swat. In the meanwhile, the appellant was acquitted of the charge under Section 302 PPC on the basis of compromise. The departmental appeal of the appellant was allowed vide order dated 29.07.2021 and he was reinstated in service, however the period during which the appellant had remained out of service was treated as leave without pay. The aforementioned order to the extent of treating the intervening period as leave without pay, was challenged by the appellant through filing of revision petition, which was rejected vide order dated 06.07.2022, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel

for the appellant and has supported the comments submitted by the respondents.

4. Arguments heard and record perused.

5. The appellant was proceeded against departmentally on the allegations of his involvement in case FIR No. 222 dated 18.06.2020 under section 302 PPC. On conclusion of the inquiry, he was dismissed from service vide order dated 24.09.2020 passed by the District Police Officer Shangla. The departmental appeal of the appellant was, however accepted by the Regional Police Officer, Malakand Region, at Saidu Sharif Swat vide order dated 29.07.2021 and he was ordered to be reinstated in service by treating the intervening period i.e period spent out of service as leave without pay. The appellant is now seeking the modification of the order dated 29.07.2021 passed by Regional Police Officer, Malakand Region, at Saidu Sharif Swat by praying that the period during which he remained out of service may be treated as on duty with all consequential benefits. It is an admitted fact that the appellant has been acquitted in the concerned criminal case. During the intervening period with effect from 24.09.2020 till reinstatement of the appellant on 29.07.2021, he was unable to perform his duty on account of his dismissal from service, which penalty was set-aside by the Regional Police Officer, Malakand Region, at Saidu Sharif Swat. When the appellant was reinstated in service, there was no justification for treating the out of service period as leave without pay for the reason that the period which the appellant spent out of

service was that period during which he remained dismissed, which dismissal was thus set-aside by the Regional Police Officer vide order dated 29.07.2021.

6. In view of the above discussion, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.02.2023



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT SWAT



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

ORDER
08.02.2023

Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
08.02.2023



(Kalim Arshad Khan)
Chairman
Camp Court Swat



(Salah-Ud-Din)
Member (Judicial)
Camp Court Swat