

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT.

Service Appeal No. 11145/2020

BEFORE: MRS. ROZINA REHMAN ... MEMBER(J)
 MISS FAREEHA PAUL ... MEMBER(E)

Mumtaz Ali Belt No. 33/RR, S/O Fazal Hussain R/O Kukrai, Saidu Sharif, Tehsil Babozai, District Swat. (*Appellant*)

Versus

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer at Saidu Sharif, Swat.
3. District Police Officer, Swat. (*Respondents*)

Mr. Jehangir,
 Advocate

For appellant

Mr. Muhammad Jan,
 District Attorney

For respondents

Date of Institution.....17.08.2020
 Date of Hearing.....07.03.2023
 Date of Decision..... 07.03.2023

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 25.04.2019 of respondent No. 3 and order dated 28.10.2019 of respondent No. 2 and order dated 17.02.2020 of respondent No. 1. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant



might be reinstated in service with all back benefits alongwith any other remedy which this Tribunal deems fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as constable on 15.01.2010 in District Police, Swat. He was awarded major punishment of dismissal from service by respondent No. 3 on 25.04.2019 against which his departmental appeal was rejected by respondent No. 2 on 28.10.2019. Thereafter, the appellant filed review petition before respondent No. 1 which was also rejected on 17.02.2020. The appellant requested the officials of the respondent department to provide him copies of service book, and other relevant record pertaining to inquiry proceedings which were not provided to him on the oral directions of respondent No. 3; hence the instant 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 District Attorney for the respondents and perused the case file with connected documents in detail.

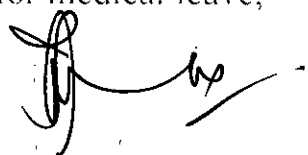
4. Learned counsel for the appellant presented the details of the case and contended that the impugned orders were illegal, void ab-initio, incorrect and against the principles of natural justice, hence liable to be set aside. He further argued that no proper & legal procedure had been adopted which was mandatory under the law. No show cause notice was served upon the appellant, nor any inquiry was conducted against him. No



opportunity of defence & personal hearing was provided to him. According to him, the appellant had unblemished service record and no adverse remarks were there against him. He requested that the appeal might be accepted as prayed for.

5. The learned District Attorney while rebutting the arguments of the learned counsel for the appellant argued that the appellant while posted at Police Lines Kabal, Swat was absent from his lawful duty w.e.f. 19.12.2018 till the order of his dismissal from service on 25.04.2019 without any prior permission or approved leave. He was issued show cause notice which was not replied by him nor he appeared before the competent authority to defend the charges leveled against him, hence he was awarded punishment of dismissal from service as per law and rules. Learned District Attorney further contended that departmental appeal as well as revision petition were thoroughly examined and filed by the appellate authorities. According to him there was no application available on record to show that the appellant had requested for provision of record. He requested that the appeal might be dismissed.

6. Perusal of record and arguments presented before us reveal that the appellant was appointed in the District Police Swat in 2010. He was proceeded against on account of his absence and dismissed from service in 2019. Record presented before us by the appellant indicates that he became ill and was admitted in hospital from 18.12.2018 to 30.12.2018. When confronted whether he submitted any application for medical leave,



(ROZINA REHMAN)
Member (J)
(Camp Court, Swat)



(FARZANA RAULI)
Member (F)
(Camp Court, Swat)



hands and seal of the Tribunal this 07th day of March, 2023.

8. Pronounced in open court at camp court, Swat and given under our

to bear their own costs. Consign.

completed within 60 days of the receipt of this judgment. Parties are left

opportunity to the appellant to present and defend his case. The process be

is directed to conduct denovo inquiry into the matter by giving full

appellant for the purpose of denovo inquiry. The respondent department

7. In view of above facts, we consider it appropriate to reinstate the

treatment.

authority to ascertain the fact that he was ill and in hospital, under

appellant never produced any medical prescription before his competent

supported by any documentary evidence. He further highlighted that the

issued to him to which he did not respond, but his claim has not been

formalities had been fulfilled and that show cause notice had also been

to him or not. The learned District Attorney claimed that all the legal

relevant law and rules and any opportunity of fair trial had been extended

question before us is whether he had been proceeded against under the

absence has been admitted by the appellant himself. Now the only

the response was in negative from the learned counsel for appellant. His


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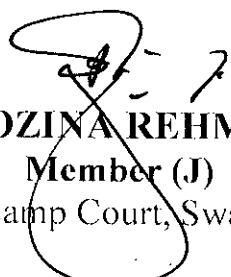
07th Mar. 2023

Mr. Jehangir, Advocate for the appellant present.
Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment consisting of 04 pages, we consider it appropriate to reinstate the appellant for the purpose of denovo inquiry. The respondent department is directed to conduct denovo inquiry into the matter by giving full opportunity to the appellant to present and defend his case. The process be completed within 60 days of the receipt of this judgment. Parties are left to bear their own costs. Consign.

3. *Pronounced in open court at camp court, Swat and given under our hands and seal of the Tribunal this 07th day of March, 2023.*


(FAREEHA PAUL)
Member (E)
(Camp Court, Swat)


(ROZINA REHMAN)
Member (J)
(Camp Court, Swat)