

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

Service Appeal No.671/2020

Date of Institution ... 02.01.2020
Date of Decision ... 09.03.2023

Mujahid Khan S/O Qadar Khan, R/O Village & P/O Akhgram,
Tehsil Wadh, Sub District Khuzdar.

... (Appellant)

VERSUS

Provincial Police Officer Government of Khyber Pakhtunkhwa
Central Police Officer, Peshawar and two others.

... (Respondents)

Muhammad Javid
Advocate

... For appellant

Umair Azam
Additional 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 impugned order dated 14.11.2009 issued by respondent No. 3 may kindly be declared illegal, unlawful and unconstitutional and the appellant may be reinstated in service with all back benefits since 14.11.2009”.

2. Brief facts of the case are that appellant was appointed as constable in the police department on 25.01.1995. He performed his

duties honestly to the utmost satisfaction of his superior officers. He went on leave with pay w.e.f 14.07.2009 vide OB No. 87. He proceeded for Saudi Arabia for earning his livelihood and came back to Pakistan after 27 months. He went back after six months and no notice was issued to him during the intervening period. He came back to Pakistan where he was informed regarding his suspension and pending inquiry. He filed departmental appeal which was not responded to; hence the present service appeal.

3. We have heard Muhammad Javid Advocate learned counsel for appellant and Umair Azam learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Muhammad Javid Advocate learned counsel appearing on behalf of appellant, in support of appeal contended with vehemence that impugned orders are illegal and void-ab-initio as the appellant was not treated according to law and rules. That the appellant was discriminated and given step motherly treatment and was condemned unheard. He argued that no regular inquiry was initiated against the appellant and that the appellant was not given fair trial as enshrined under the Constitution of Islamic Republic of Pakistan, 1973. Lastly, he submitted that no limitation runs against the void order, therefore, appellant may kindly be reinstated in service with all back benefits.

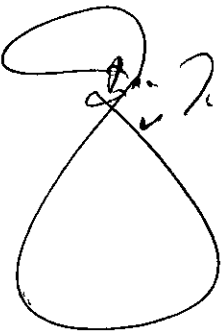
5. Conversely, learned Additional Advocate General submitted that the appellant deliberately absented himself from duty. He contended that he was allowed leave but after the termination of his leave period, he did not attend his duty nor informed his high ups rather proceeded to Saudi Arabia without prior permission from the



authority. He contended that the performance of appellant during service was not up to the mark as he was having bad entries in his service record. Lastly he submitted that the appellant proceeded abroad without sanctioning ex-Pakistan leave which was a gross misconduct on his part and that he willfully remained absent from his lawful duty w.e.f 17.06.2009 till the date of dismissal, therefore, after completion of all codal formalities he was dismissed from service.

6. From the record, it is evident that appellant was enlisted as Constable on 25.01.1995. He absented himself from duty w.e.f 17.06.2009, therefore, was served with charge sheet alongwith summary of allegation on 07.09.2009. An inquiry committee was also constituted to inquire into the matter. In this regard statement of Alamgir Khan and Murad Khan were also recorded. Admittedly appellant had gone to Saudi Arabia for earning his livelihood without sanctioning ex-Pakistan leave which is a gross misconduct on the part of appellant, he was, therefore, dismissed from service vide order of DPO Dir Upper dated 14.11.2009. The government servant becomes liable for disciplinary action after 7 days of his willful absence. If he in pursuance to the willful process does not come up to reasons of his absence the ex-parte decision against him is the requirement of law irrespective of any factual position under which he absented himself from attendance of the duty. In the instance case appellant remained absent since 17.06.2009 and was dismissed on 14.11.2009. He filed departmental appeal on 30.09.2019 which is badly time barred.

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




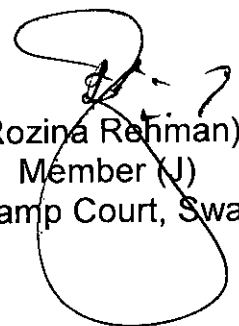
be made to cases titled Anwarul Haq v. Federation of Pakistan 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others 2004 SCMR 1426.

8. For what has been discussed above, instant service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

09.03.2023


(Fareeha Paul)
Member (E)
Camp Court, Swat


(Rozina Rehman)
Member (J)
Camp Court, Swat

08th Feb, 2023

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Pindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant seeks adjournment in order to properly assist the court on the next date. Adjourned. To come up for arguments on 09.03.2023 before the D.B at Camp Court Swat.

SCANNED
KPST
Peshawar



(Salah-ud-Din)
Member (J)
Camp Court Swat



(Kalim Arshad Khan)
Chairman
Camp Court Swat

ORDER

09.03.2023

Appellant present through counsel.

Umair Azam, learned Additional Advocate General for respondents present. Arguments heard. Record perused.

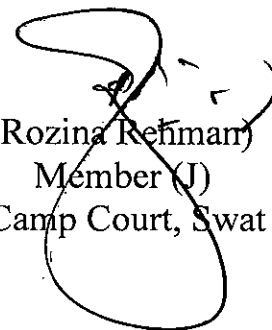
Vide our detailed judgment of today of this Tribunal placed on file, instant service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

09.03.2023



(Fareeha Paul)
Member (E)
Camp Court, Swat



(Rozina Rehman)
Member (J)
Camp Court, Swat