

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, SWAT.

Service Appeal No. 7353/2021

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

Wazir S/O Muhammad Rahim, Ex-Ward Orderly, THQ Hospital,
Samarbagh, Dir Lower. (*Appellant*)

Versus

1. The Director General Health Services Government of Khyber Pakhtunkhwa, Peshawar.
2. The District Health Officer, Dir Lower. (*Respondents*)

Mr. Imdadullah,
Advocate ... For appellant

Mr. Umair Azam Khan,
Additional Advocate General ... For respondents

Date of Institution.....30.08.2021
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 10.07.2019 whereby the service of the appellant was terminated and against the order dated 16.08.2021, whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal both the impugned orders might



be set aside and the appellant might be reinstated in service with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Ward Orderly vide order dated 14.12.2012. He was involved in criminal case vide FIR No. 494 dated 08.08.2014 under sections 302, 324, 148, 149, 337D and 337F(iii). He was on bail but was again remanded to judicial lock upon cancellation of bail on 16.05.2016 and since then was in judicial lockup till his acquittal. The learned Sessions Judge convicted the appellant alongwith other accused vide judgment dated 22.05.2019. Feeling aggrieved, the appellant alongwith others filed a criminal appeal before the Honorable Peshawar High Court, Mingora Bench, Dar-ul-Qaza, Swat bearing No. Cr.A No. 245-M of 2019, which was allowed and the appellant was acquitted of the charges vide judgment dated 29.06.2021. After his release from judicial lockup the appellant reported for duty but he was informed that his service had been terminated vide order dated 10.07.2019. Feeling aggrieved, he preferred a departmental appeal, through proper channel, but instead of forwarding the same to the next authority, respondent No. 2 filed the same vide order dated 16.08.2021; hence the present appeal.

3. Respondents were put on notice but despite many opportunities, and imposing payment of cost, no reply was submitted, hence, they were placed ex-parte vide order dated 06.10.2022. Today, the learned Additional Advocate General came with a reply of respondent No. 1 & 2

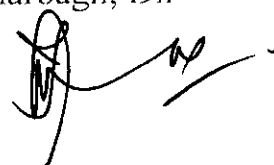


with a request to accept the same, which was allowed and placed on file. We have heard the learned counsel for the appellant as well as the learned Additional Advocate General for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented the details of the case and argued that before imposing major penalty of dismissal from service, observance of codal formalities was mandatory, but in the case of appellant, no charge sheet was served upon him, no proper enquiry was conducted nor any chance of self-defence was afforded to him and he was condemned unheard. He further argued that the departmental appeal of the appellant was decided by the same authority who passed the impugned order of removal from service of the appellant. He further argued that absence of the appellant was never willful, rather was due to circumstances beyond his control. He requested that the appeal might be accepted as prayed for.

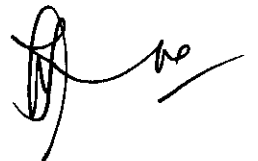
5. The learned Additional Advocate General, while rebutting the arguments of the learned counsel for the appellant argued that the appellant was involved in a murder case being proved by the FIR and that there was no need of any regular enquiry and he was, therefore, rightly removed from service by the competent authority. He requested that the appeal might be dismissed.

6. Arguments and record presented before us reveal that the appellant was appointed as Ward Orderly in 2012 at THQ Hospital, Samarbagh, Dir



Lower. He was involved in FIR u/s 302/324/148/149/337F/337A- PPC dated 08.08.2014 and was arrested on 04.05.2016. For the period between the registration of FIR and his arrest, as admitted by the learned counsel for the appellant, he was an absconder but it was noted that during that period he applied for earned leave of 90 days with effect from 01.01.2016 which was sanctioned with full pay. Record provided by the appellant also indicates that another leave of 70 days with effect from 01.04.2016 was further sanctioned on full average pay. Another sanction order dated 14.02.2017 is also available on record for 180 days Extra-ordinary leave, without pay, with effect from 24.01.2017. Record provided by the appellant further indicates that he applied for the above motioned leave which was sanctioned accordingly by his competent authority but he never mentioned in his applications that he was nominated in any FIR. From the record provided by the respondents it transpires that they were in knowledge of the fact that the appellant was involved in a criminal case under Section 302 PPC. A better course of action in such circumstances would have been to put him under suspension till the outcome of the case in the court of law, which was not done.


7. The impugned order has been issued based on the absence and involvement in the criminal case. It is an undisputed fact that the appellant remained absconder after registration of FIR for a certain period. After that he surrendered and was proceeded against in the court of law as a result of which he was convicted by the learned Sessions Judge but

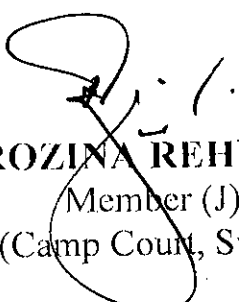


acquitted of the same charges by the Hon'ble Peshawar High Court, Mingora Bench. It is also an undisputed fact that he applied for leave for a certain period and the same has been sanctioned by his competent authority. Now, that he has been acquitted by the Hon'ble Peshawar High Court Mingora Bench, this means that mere involvement in a criminal case was no ground to pass any order of punishment against the appellant when none of the charges were proved in the criminal proceedings, especially when otherwise no misconduct of the appellant is shown or proved. Therefore, in the absence of convincing proof of allegations made against the appellant, order of dismissal from service is not sustainable.

8. In view of above, we have no hesitation in accepting the appeal in hand as prayed for. However, aside from the leave sanctioned by his competent authority, the period he remained absconder be treated as leave of the kind due, whereas the period he was behind the bar be treated as under suspension as provided in CSR-194. Parties are left to bear their own costs. Consign.

9. *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)