


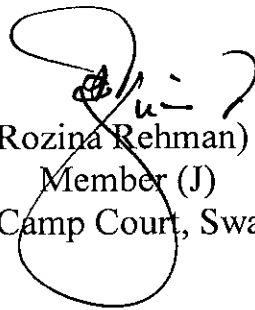
cases titled Anwarul Haq v. Federation of Pakistan 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others 2004 SCMR 1426.

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.

07.03.2023


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


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

submitted that the appeal was badly time barred, therefore, the same was rightly rejected by the respondents.

6. From the record, it is evident that appellant was enlisted as Constable in the year 2002. He applied for 120 days leave which was allowed to the extent of 60 days vide order dated 07.07.2008, however, he left for Dubai and failed to continue his service. Proper process was issued for service upon the appellant by the Inquiry Officer and in this regard, statement of his brother Liaqat Amin was also recorded and signature was obtained thereon. As per record, the appellant had left for Dubai and there was no hope of his early return to the country, therefore, he was proceeded against departmentally and vide order dated 21.07.2009 he was dismissed from service from the date of his absence i.e. 26.04.2009. He filed an application to the Inspector General of Police Khyber Pakhtunkhwa, regarding his reinstatement on 23.06.2021 which application/appeal is badly time barred and was rejected vide order dated 07.07.2021. The government servant becomes liable for disciplinary action after seven 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 26.04.2009 and was dismissed on 21.07.2009. He filed departmental appeal on 23.06.2021 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

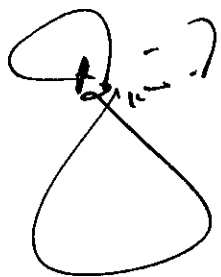


2. Brief facts of the case are that appellant was appointed as Constable in the year 2002. He applied for leave of 120 days on 30.06.2008 which was accepted to the extent of 60 days. Due to financial crisis, the appellant left for Dubai and could not continue his service. Resultantly, he was dismissed from service vide order dated 21.07.2009. Feeling aggrieved, he filed mercy petition which was rejected, hence, the present service appeal.

3. We have heard Muhammad Javid Khan Advocate 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 Khan Advocate learned counsel appearing on behalf of appellant, in support of appeal, contended with vehemence that impugned orders are illegal, unlawful and unconstitutional. He submitted that the inaction of the respondents is against Article-4, 10 (a) & 25 of the Constitution of Islamic Republic of Pakistan. Lastly, he submitted that impugned order is void-ab-initio because the order was passed by incompetent authority, therefore, the impugned order may kindly be set aside and the appellant be reinstated in service with all back benefits.

5. Conversely, learned Additional Advocate General submitted that the appellant being a member of uniformed force, proceeded to Dubai without seeking leave or permission from his seniors. He contended that the inquiry committee after proper verification, recommended his dismissal and that after fulfillment of all codal formalities, he was dismissed from service according to law. Lastly, he



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

Service Appeal No.7401/2021

Date of Institution ... 13.09.2021
Date of Decision ... 07.03.2023

Mukhtiar Amin S/O Gul Amin R/O Makhai Dara P/O Khazan Tehsil
Munda District Dir Lower.

... (Appellant)

VERSUS

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

... (Respondents)

Muhammad Javid Khan
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 orders
passed by the respondents No.1 and 3 dated 21.07.2009 and
07.07.2021 respectively may be set aside and the appellant be
reinstated into service with all back benefits”.**

