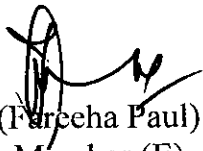


concerned and that his CNIC was already in possession of Levies which was used by the DFC concerned while submitting report in respect of the present appellant. All these facts lead to the conclusion that a proper regular inquiry is a must in order to arrive at a correct conclusion.

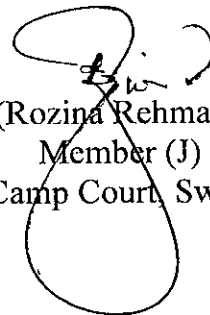
7. In view of the facts and circumstance of the case, instant service appeal is partially accepted. Appellant is reinstated into service and case is remitted back to the Department for de-novo inquiry within 60 days of the receipt of this judgment. Needless to mention that the appellant shall be provided proper opportunity of defense during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of the inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

09.03.2023



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



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

attend his duty which summons were properly signed by the appellant and his statement was also recorded by DFC concerned. Assistant Commissioner, Batkhela was then appointed as Inquiry Officer who reported that the appellant failed to attend the inquiry proceedings despite service. Final show cause notice was then issued to the appellant but he was not interested, therefore, he was terminated from service on 06.12.2016. He submitted that major punishment was awarded after fulfillment of all codal formalities.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that the appellant was appointed against the post of Levy Sepoy in Malakand Levies (Federal) in BS-05 vide order dated 19.04.2010. It is not denied that the appellant had applied for five days leave for examination purposes and the same was accordingly granted vide order dated 01.08.2016. In view of the report of Post Commander Thana, appellant was suspended from service vide order dated 07.10.2016. The record is silent in respect of any charge sheet alongwith statement of allegation. An order dated 07.10.2016 is available on file vide which appellant was suspended and Assistant Commissioner Batkhela was appointed as Inquiry Officer. The Inquiry Officer did nothing except issuance of summons to the appellant which is evident from the record. A final show cause notice is available on file which service upon appellant is disputed because as per respondents, the appellant refused to continue his service after signing the report of DFC Ajmal Khan and that his statement was witnessed by Zia Ullah and Ghulam Hussain. In this regard, Zia Ullah submitted an affidavit before this Bench that he was never contacted by the DFC

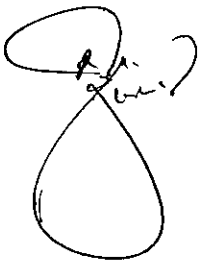
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suspended on the allegation of absentia on the report of Post Commander, Thana. An inquiry was also initiated but he was not informed, where-after, final show cause notice was issued and appellant was terminated from service. Feeling aggrieved, he filed departmental appeal which was not responded to. He then filed revision petition which was also filed, hence, the present service appeal.

3. We have heard Shahid Ali Advocate, learned counsel for the appellant and Muhammad Jan, learned District Attorney for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Shahid Ali Advocate, learned counsel for the appellant argued inter-alia that the impugned order is wrong, illegal, against law and facts as no proper inquiry was conducted against the appellant. It was argued that the appellant was not afforded any opportunity of personal hearing as per law and rules and that he was never given the opportunity of cross-examining the witnesses who appeared before the Inquiry Officer. He submitted that neither charge sheet nor show cause notice were properly issued and served upon appellant and that the impugned order is, therefore, arbitrary and against law. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned AAG argued that as per report of Post Commander Levy Post Thana, appellant was granted five days leave as per date sheet for M.A Examination. That he remained absent after the expiry of leave without any proper permission of the competent authority; that he was issued a show cause notice but he did not submit his reply. It was on 28.09.2016 when Post Commander reported for departmental action against the appellant, he was summoned again to



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

Service Appeal No. 726/2019

Date of Institution ... 12.06.2019
Date of Decision ... 09.03.2023

Habib un Nabi son of Muhammad Rahim (Ex-Sepoy Malakand Levies),
resident of Jalala District Malakand.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department
through Secretary Home Khyber Pakhtunkhwa at Peshawar and three
others.

... (Respondents)

Shahid Ali,
Advocate

... For appellant.

Muhammad Jan,
District Attorney

... 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:

**“On acceptance of this appeal the order passed by
respondents may kindly be declared as illegal, against law,
void ab-initio by setting aside the same and the appellant
may be reinstated into service with all back benefits from
the date of termination.”**

2. Brief facts of the case are that appellant was recruited as Sepoy in
Levies on 19.04.2010. He was performing his duties honestly up to the
entire satisfaction of the higher authority when in the meanwhile, he was

