

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 621/2019

Date of Institution ... 13.05.2019  
Date of Decision ... 11.04.2023

Mr. Salim Khan, Ex-Constable No.1455, Police Lines, Dir Lower.

... (Appellant)

VERSUS

The Inspector General of Police Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

Noor Muhammad Khattak,  
Advocate

... For appellant

Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

Mrs. Rozina Rehman

...

Member (J)

Miss. Fareeha Paul

...

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 impugned orders dated 01.07.2016 and 18.04.2019 may very kindly be set aside and the appellant may be reinstated into service with all back benefits.”**

2. Brief facts of the case are that appellant was appointed as Constable in the Police Department. During service, he was affected by mental stress and depression and due to the said illness, he was unable to continue his duty. He remained absent and after recovery when he approached the concerned quarter to join his duty, he was handed over the impugned order dated 01.07.2016 vide which the appellant had been

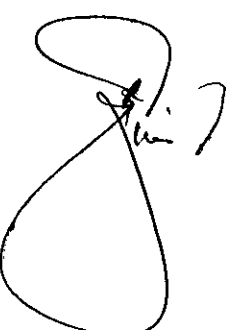
dismissed from service. Feeling aggrieved, he filed departmental appeal but the same was rejected, hence, the present service appeal.

3. We have heard Noor Muhammad Khattak Advocate, learned counsel for the appellant and Asif Masood Ali Shah learned Deputy District Attorney for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Noor Muhammad Khattak Advocate, learned counsel for the appellant argued inter-alia that impugned orders dated 01.07.2016 and 18.04.2019 are against law, facts and norms of justice, hence, not tenable and liable to be set aside. It was submitted that the appellant was not treated in accordance with law and rules and respondents violated Articles-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973; that no charge sheet alongwith statement of allegation was served upon the appellant before issuing the impugned order and that the appellant was not given any chance of personal hearing. He contended that no regular inquiry was conducted in the matter of appellant and that no show cause notice was served upon him. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned Deputy District Attorney argued that appellant was enlisted as Constable in the year 2010 but his short service period is tainted with several bad entries. He contended that he was required to bring the issue and nature of illness before his seniors and to seek leave but he, on his own sweet will, absented himself from his duty. He further contended that proper inquiry was conducted to verify the facts and after fulfillment of all codal formalities, he was punished according to law.

6. From the record, it is evident that while posted in Police Station Dir, Constable Salim Khan No.1455 absented himself from his lawful




duty w.e.f 28.11.2015 till the date of his dismissal i.e. 01.07.2016 without any leave or prior permission from his superior, therefore, charge sheet alongwith statement of allegations was served upon him and Sher Rehman Khan SDPO Dir was appointed as Inquiry Officer. He was summoned by the Inquiry Officer but he did not appear. therefore, the Inquiry Officer submitted his report and recommended his dismissal from service. The inquiry report is available on file which shows that despite repeated notices he failed to appear before the Inquiry Officer, therefore, his brother-in-law namely Qareeb Ullah was given the task of service of due process upon the appellant. In this regard, statement of Qareeb Ullah Constable No.1161 was also recorded which is available on file. The appellant failed to produce cogent evidence not only before the Inquiry Officer but also before this Bench in order to justify his absence. A prescription chit of Dr. Muhammad Younas Khan was placed on file, however the same has got no evidentiary value as neither the name of patient nor age, sex and date was mentioned therein. The impugned order of dismissal was passed vide OB No.475 dated 01.07.2016. He filed appeal before the Inspector General of Police on 11.04.2019 which was filed being badly time barred.

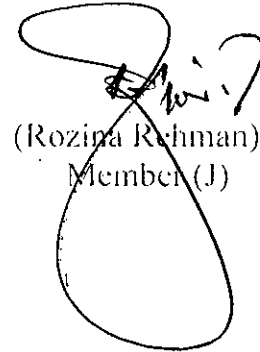
7. As per Rule-3 of Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986, a civil servant aggrieved by an order passed or penalty imposed by the competent authority relating to the terms & conditions of his service may, within 30 days from the date of communication of the order to him, prefer an appeal to the appellate authority. It is a well-entrenched legal proposition that where 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. In view of the foregoing reasons, the instant appeal stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.  
11.04.2023

  
(Fareeha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)