

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 2238/2019

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

Mr. Muhammad Ismail, Warder (BPS-5), Headquarters Prisons, Peshawar. (Appellant)

Versus

1. **The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.**
2. **The Superintendent Circle Headquarter Prison, Mardan. (Respondents)**

Mr. Noor Muhammad Khattak,
Advocate ... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney, ... For respondents

Date of Institution.....27.12.2019
Date of Hearing.....11.04.2023
Date of Decision..... 11.04.2023

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 03.11.2015 whereby the appellant was terminated from service. It has been prayed that on acceptance of the appeal, the impugned order might be set aside and the appellant might be reinstated in service with all back benefits and any other remedy which this Tribunal deems fit might also be awarded in favour of the appellant.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was enrolled as Warder (BPS-05) in the respondent department in the year 2015 after fulfilling all the codal formalities required for appointment to the post. During service he became ill and after check up the doctor advised him complete bed rest. He, accordingly, submitted application for medical leave but no response was received from the concerned respondent. After recovery from the said illness, when the appellant visited the concerned quarter for his arrival, he was refused on the pretext that he was terminated from service vide impugned order dated 03.11.2015. Feeling aggrieved, the appellant filed departmental appeal before respondent No. 1 but the same was not replied; hence the present appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

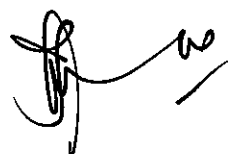
4. Learned counsel for the appellant after presenting the case in detail contended that the appellant had not been treated in accordance with law and rules on the subject and the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973. He further argued that before awarding major penalty of termination from service, codal formalities had not been fulfilled by the respondents; neither show cause notice was issued to the appellant nor proper inquiry was conducted into the matter.



Even no chance of personal hearing and defence was provided to him by the respondents. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant argued that the appellant was serving as Warder in Prison Department but his service record was not satisfactory. He violated terms & conditions of service which clearly mentioned that his appointment was purely temporary and his services could be terminated at any time without assigning any reason during the probation period. The appellant was terminated from service on 03.11.2015 which clearly indicated that he was under probation. He further argued that the appellant submitted application for 08 days leave on 26.10.2015 but after that he did not submit any application for leave/medical leave till 26.10.2021 nor did he inform the office about the reason of his absence and therefore he violated Rule 1083 and 1096 of NWFP Prisons Rules, 1985. He contended that show cause notice dated 01.10.2015 for his absence was sent on his home addressed vide letter dated 16.10.2015. On 26.10.2015, the appellant submitted application for leave after willful absence for 96 days after which he was called for personal hearing on 01.11.2015 by the competent authority but his reply was found unsatisfactory. According him, the appellant did not file any departmental appeal before respondent No. 1 and requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was appointed as Warder in the Prison Department on



22.01.2015 and was on probation for two years, extendable to another one year. During that period, he absented himself from his lawful duty with effect from 23.07.2015 on the ground that he was not well and the doctor had advised him complete bed rest. The only application available with the appeal is undated and without any receiving stamp of the concerned office which raises question on its authenticity and legality. The respondents, however, admitted in their reply that an application was submitted by the appellant on 26.10.2015, after remaining absent for 96 days, but it was noted that application was submitted by him after a show cause notice was issued to him on 01.10.2015 and sent to his home address on 16.10.2015. Official respondents deny submission of any departmental appeal but an appeal dated 25.09.2019 is available with the service appeal but that too has no receiving stamp or signature on it to ascertain whether it was submitted by the appellant to the concerned authority, actually.

7. From the above discussion, it is evident that being an employee of Prison Department, the appellant was bound to adhere to Prison Rules 1985 and properly apply for leave and get it sanctioned from his competent authority, which he badly failed to do. Moreover, he was on probation and as per his terms and conditions, his appointment was purely temporary and liable to be terminated at any time without assigning any reason during his probation period. As he was found absent from duty without any approval of his competent authority, he was proceeded against under the relevant rules. Section 11 of Civil Servant Act 1973 clearly mentions that service of a civil




servant may be terminated without notice during the initial or extended period of his probation. As the appellant was on probation for two years, as per his terms and conditions, he was rightly terminated from service.

8. In view of the above, the appeal in hand is dismissed. Parties are left to bear their own costs. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of April, 2023.*


(FAREEHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)

Fazal