

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No.10819/2020

Date of Institution ... 11.09.2020
Date of Decision ... 06.04.2023

Zubair Khan Ex-FC (Cook) No.3231 S/O Raheem Khan R/O Mohallah
Malak Abad Gudar Tehsil & District Mardan.

... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa and two others.

... (Respondents)

Sagheer Iqbal Gulbela,
Advocate

... For appellant.

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents.

Mrs. Rozina Rehman

... Member (J)


Mr. Muhammad Akbar Khan

... 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 instant Service Appeal, the impugned office order No.7895-97/PA Dated 29.10.2019 of the Office of District Police Officer Mardan as well as impugned Office order No.706/ES Dated 20.01.2020 of the office of Regional Police Officer Mardan & impugned Office order No.2924/20 Dated 27.07.2020 of the Office of Inspector General of Police Khyber Pakhtunkhwa may kindly be set aside & by doing so



the Appellant may kindly be reinstated into service with all back benefits”.

2. Brief facts of the case are that appellant was appointed as Cook in the Police Department. During service, he was suddenly hit by a chronic disease (Depressive Disorder) and accordingly he requested for leave which was not considered by the respondent Department. He started his treatment from Iftikhar Psychiatric Hospital Peshawar which lasted for three months and due to which the appellant could not join his duty and was dismissed without any reason and without following the due course of law and codal formalities vide order dated 29.10.2019. Feeling aggrieved, he moved a departmental appeal which was turned down. He moved a mercy petition before the Inspector General of Police Khyber Pakhtunkhwa but the same also met the same fate and was dismissed, hence, the present service appeal.

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

4. Sagheer Iqbal Gulbela Advocate, learned counsel for the appellant contended that impugned dismissal order is wrong, illegal, against law and facts as no proper inquiry was conducted in presence of appellant and major penalty was imposed without conducting inquiry. Learned counsel contended that no charge sheet alongwith statement of allegations was ever issued to the appellant and that no proper right of defense was extended to him nor he was heard in person but even then harsh penalty



was imposed upon appellant. He contended that final show cause notice was never issued which is mandatory provision of law and no opportunity of personal hearing was extended to the appellant. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned DDA contended that the performance of appellant was not satisfactory as previously he was awarded two times major punishment of dismissal from service vide order dated 13.11.2012 and 20.04.2015. He contended that the service record of appellant is tainted with bad entries due to lethargic attitude. He further argued that he was proceeded against departmentally by issuing him charge sheet with statement of allegations which was duly served upon appellant and he duly signed the photocopy of the charge sheet as token of its receipt. During the course of inquiry, he was contacted time and again to appear before the Inquiry Officer but fiasco. Lastly, he submitted that major punishment was awarded after completion of all codal formalities which does commensurate with the gravity of misconduct of the appellant.

6. From the record, it is evident that the appellant was proceeded against departmentally under the allegation that while posted at Police Lines Mardan, he remained absent from duty without any leave/permission of the competent authority vide DD No.27 dated 14.08.2019 till the date of dismissal i.e. 25.10.2019. Admittedly, he never applied for leave which is evident from the record. No application was forwarded to the competent authority for grant of leave and he remained absent from duty without permission w.e.f 14.08.2019. He was served



with charge sheet alongwith statement of allegations and the arguments of learned counsel that no proper charge sheet alongwith statement of allegations was ever issued to the appellant has got no force as the record does not favor the appellant in this regard. The respondents have annexed all the relevant documents with the comments which show that charge sheet was properly served upon appellant and in this regard, his signature was obtained on the back of the charge sheet. Final show cause notice was also issued but he failed to submit reply or appear for personal hearing. Proper inquiry was conducted and in order to scrutinize the conduct of appellant, one Zia Ullah SDPO Takht Bhai was nominated as Inquiry Officer. He contacted the appellant time and again on his mobile number to appear before the Inquiry Officer but fiasco. All the codal formalities were properly complied with, where-after, major punishment was awarded according to law. Even otherwise, his service record is replete with bad entries and as per record, he was dismissed from service on 15.11.2012 due to absence for 64 days but later on in view of his poor family circumstances a lenient view was taken and he was reinstated in service, however, minor punishment of stoppage of two annual increments were imposed on him. Similarly, he was once again awarded major punishment of dismissal from service on account of his willful absence on 20.04.2015 but later on the board decided to reinstate him into service. He is incorrigible and has no justification for his long absence.

7. In view of the circumstances of the case, we do not find any viable reason to interfere in the impugned order. Resultantly, this appeal having



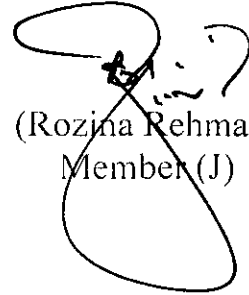
no substance is dismissed. Parties are left to bear their own costs. File be
consigned to the record room.

ANNOUNCED.

06.04.2023



(Muhammad Akbar Khan)
Member (E)



(Rozina Rehman)
Member (J)

Mutazem Shah