

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 9268/2020

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

Mr. Shah Faisal Khan S/O Sheerin, Ex-Constable No. 143 R/O
Charsadda Road, Khan Pur, P.O Nahaqi Daudzai, Tehsil & District,
Peshawar. (Appellant)

Versus

1. District Police Officer, Hangu.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Kohat Region.
4. Provincial Police Officer, Khyber Pakhtunkhwa,
..... (Respondents)

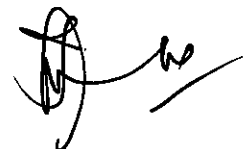
Miss Roeeda Khan,
Advocate ... For appellant

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

Date of Institution..... 06.08.2020
Date of Hearing..... 14.04.2023
Date of Decision..... 14.04.2023

JUDGEMENT

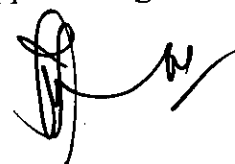
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 16.05.2019, whereby the appellant was awarded major penalty of dismissal from service against which his departmental appeal dated 16.12.2019 was rejected on 25.06.2020. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant be reinstated into service with all back benefits and any other remedy which this Tribunal deems fit.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable in 2006. In the year 2018, some domestic problem arose due to which he was unable to perform his duty. On 22.10.2019, he was transferred from District Hangu to CCP, Peshawar. On 16.05.2019, he was dismissed from service on the ground of being absent by the respondent department. The appellant came to know regarding the said dismissal order on 18.11.2019, when he went to the concerned department in pursuance of his transfer order dated 22.10.2019. The appellant submitted departmental appeal to respondent No. 2 on 16.12.2019 which was forwarded to respondent No. 3, who rejected the same on 25.06.2020, communicated to the appellant on 06.07.2020; hence the present appeal.

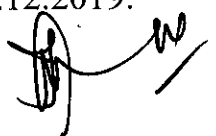
3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant after presenting the case in detail argued that the appellant had not been treated in accordance with law. He contended that absence of the appellant was not intentional or deliberate but due to the reason that there was a domestic issue for him to handle. He further argued that before passing the impugned order neither charge sheet & statement of allegations nor final show cause notice were served upon him. According to him neither any opportunity of defence and cross examination was provided to him nor proper departmental inquiry was conducted which were mandatory under the law. 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 during his initial stage of service, when he was under training, remained absent for 15 days and was awarded punishment of 19 days extra drill. He also willfully absented himself from lawful duty on different occasions and was awarded different kinds of punishments but he did not mend his way. The learned DDA informed that he was removed from service previously also for his misconduct. He further informed that the appellant was at the strength of District Police Hangu and under the command of respondent No. 1 who initiated departmental inquiry against the appellant which culminated into his dismissal vide order dated 16.05.2019. In the meanwhile his transfer to other district was under process, which was not in the knowledge of the competent authority and due to a misunderstanding the transfer order of the appellant was passed after his dismissal. The proceedings were intimated to the appellant through different sources and he was lastly directed to resume his duty within 15 days vide show cause notice published in Daily "Ausaf" dated 26.04.2019 but he neither resumed his duty nor joined the departmental proceedings. The learned DDA argued that the appellant willfully concealed the facts as he was in knowledge of the impugned order and he had filed an application for grant of copy of the same on 28.10.2019. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was inducted in provincial police as Constable in 2006. He absented himself from lawful duty in 2018 which resulted in his dismissal from service on 16.05.2019. He filed departmental appeal on 16.12.2019.



Before awarding major punishment, an inquiry was conducted, after issuance of charge sheet and statement of allegations. The inquiry report indicates that the appellant was absent for seventy-nine (79) days. He did not bother to join the inquiry proceedings also. In his service appeal before this Tribunal, the appellant has stated that he came to know about his dismissal order on 18.11.2019 but an application dated 28.10.2019 attached with the reply indicates that he was very much aware of his dismissal order before 18.11.2019, and hence his departmental appeal is time barred. As regards his absence from duty, the appellant himself admits that he was unable to perform his official duty and when confronted whether he submitted any application for leave, the response was in negative. Being an employee of a uniformed and disciplined force, the appellant was bound by certain rules according to which he had to seek prior approval of his high ups before proceeding on any kind of leave, which was not done in this case.

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

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 14th day of April, 2023.*


(FAREEHA PAUL)
Member (E)


(ROZINA REHMAN)
Member (J)

Fazal Subhan P.S