

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 1296/2022

BEFORE: ROZINA REHMAN --- MEMBER(J)
MUHAMMAD AKBAR KHAN--- MEMBER(E)

Mr. Saleem Shah, Constable No. 519, Police Wireless Station, Doaba,
District Hangu..... (*Appellant*)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
2. The Additional Inspector General of Police Telecom & Transport,
Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Inspector General of Police. Telecommunication &
Transport, Khyber Pakhtunkhwa, Peshawar.....(*Respondents*)

Present:

NOOR MUHAMMAD KHATTAK,
Advocate

--- For Appellant

ASAD ALI,
Assistant Advocate General,

--- For respondents

Date of Institution.....05.09.2022
Date of Hearing.....04.04.2023
Date of Decision.....04.04.2023

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service
appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa
Service Tribunal, Act 1974 with the prayer as copied below;

*“That on acceptance of this appeal the impugned order
dated 27.04.2022 may very kindly be set aside and the
appellant may please be restored in the Rank of Head
Constable with all back benefits. Any other remedy*

which this august Tribunal deems fit that may also be awarded in favor of the appellant.”

02. Brief facts of the case are that the appellant was appointed in the police department as Constable Wireless Operator in the year 1990 and has rendered 32 years service. The appellant was granted promotion to the post of Head Constable in the year 2018 and was denied intermediate course for the reason of being overage. The appellant feeling aggrieved from the inaction of the department, approached the Hon'ble Peshawar High Court, Peshawar and in the meanwhile he was transferred to District Hangu. The appellant while posted at Police Station Doaba at District Hangu, was issued charge sheet and statement of allegations for absence from duty w.e.f 19.10.2021 to 30.11.2021 (36 days) and showing himself present through fake signal messages. The appellant submitted his reply and denied the allegations leveled against him. In the meanwhile, the respondent department issued show cause notice to the appellant which was duly replied by him and on the basis of show cause notice, the respondent department issued the impugned order dated 27.04.2022 awarding the appellant major punishment of reduction in rank from Head Constable to the rank of Constable. Feeling aggrieved, the appellant filed departmental appeal which was not responded within the statutory period hence, the present service appeal.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant

and learned Assistant Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order dated 27.04.2022 is against the law, facts, norms of natural justice hence liable to be set aside. That the appellant has not been treated in accordance with law and rules and as such violation of Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973 as well as Police Rules, 1975 amended in 2014. No chance of personal hearing/self defense has been provided to the appellant. He has therefore, been condemned unheard. He pointed out that no regular inquiry has been conducted which is necessary in punitive action against the Civil Servant as per judgment of Supreme Courts. The learned counsel further pointed out that the appellant was awarded punishment for the reason that he and his other colleagues filed Writ Petition against the respondents, therefore, the impugned order is based on malafide and arbitrary intentions which is not tenable and liable to be set aside. He, therefore, requested for acceptance of the instant service appeal.

05. Learned Assistant Advocate General argued that the appellant was transferred to Police Station Doaba District Hangu on 13.10.2021 and directed to report to his new place of posting. On 24.10.2021, the appellant reported at PS Doaba vide Incharge Tele Hangu Signal No. 137/WSH dated 24.10.2021. He further contended that Mr. Lal Hussain H.C intimated that the appellant did not make arrival on transfer at PS Doaba till 30.11.2021 which was also confirmed by the Moharrar Staff of PS Doaba. Learned Assistant Advocate General argued that after the

surprise visit of SP MT to Control Hangu and PS Doaba, it came to notice that the appellant had actually made arrival at PS Doaba on 30.11.2021 afternoon instead of 24.10.2021 and absented himself w.e.f. 19.10.2021. During the said period the appellant through fake signals showed himself present at PS Doaba, which act of the appellant is a gross misconduct. He further argued that the appellant was absent from lawful duty without prior permission or leave from the competent authority which was unbecoming of a personnel of disciplined force. That proper charge sheet and statement of allegations were issued to the appellant and upon the recommendation of the inquiry officer he was awarded the major punishment of reduction in rank from Head Constable to Constable. He was also provided ample opportunity of self defense but he failed to justify his absence Moreover, final Show Cause Notice was also issued to the appellant. Since all the codal formalities were fulfilled before passing the impugned order, the appeal in hand may therefore, be dismissed, he concluded.


06. It is evident from the record available on case file that the appellant was proceeded against for not performing duty at Police Station Doaba District Hangu to which he was transferred from Peshawar on 13.10.2021. The reply of the appellant in response to the explanation, charge sheet and show cause notice available on record reveals that he complied with the transfer order and reported for duty to his new station at District Hangu. His supervising officer assigned him duty at control at Hangu and assigned duty at Police Station Doaba to his other colleague Mr. Laal Hussain Head Constable. Statement of Mr. Hidayat Khan

Officer Incharge is available on record which was not taken into consideration at any stage of the proceedings against the appellant. There is nothing on record that could counter the stance of the appellant. There is reference of inquiry report in the show cause notice and the impugned order of imposition of major penalty upon the appellant but neither copy of inquiry report was annexed with the para-wise comments by the respondents nor it was produced during hearing of the case and as such we are constrained to believe that no inquiry was conducted to substantiate the charge of absence from duty for 36 days by the appellant.

07. Foregoing in view we accept the appeal in hand and set aside the impugned orders and restore the appellant to his original position/rank with all back benefits. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 04th day of April, 2023.*


(ROZINA REHMAN)
MEMBER (J)


(MUHAMMAD AKBAR KHAN)
MEMBER (E)