

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 821/2018

Date of Institution ... 25.06.2018

Date of Decision... 19.05.2023

Shaukat Khan, HC No. 4098, District, Peshawar.

... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 03 others.

... (Respondents)

MR. TAIMUR ALI KHAN,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MR. MUHAMMAD AKBAR KHAN

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant appeal are that the appellant was deputed to perform his duty on 02.05.2013 as Incharge of Polling Station, located in the jurisdiction of Police Station Phandu District Peshawar. The appellant, however remained absent from duty, therefore, disciplinary action was initiated against him. During the inquiry proceedings, it divulged that during the period of his absence, the appellant was also charged in case FIR No. 405 dated 09.05.2013 under sections 302/324/34 PPC Police Station Badhber. On conclusion of the inquiry, he was awarded major



penalty of dismissal from service vide order dated 13.10.2014 passed by Superintendent of Police Headquarters Peshawar. The departmental appeal of the appellant was, however allowed by Capital City Police Officer, Peshawar vide order dated 24.03.2017 and he was reinstated in service by treating the period of his absence from duty as leave without pay. The appellant then preferred representation before Provincial Police Officer Khyber Pakhtunkhwa Peshawar seeking financial back benefits of the intervening period, however the same was declined vide order dated 28.05.2018 by Inspector General of Police Khyber Pakhtunkhwa Peshawar. The appellant has now approached this Tribunal through filing of instant service appeal with the prayer that he may be granted monetary back benefits for the period during which he remained absent as well as for the period during which he remained out of service on account of his dismissal from service.

2. On admission of the appeal for regular hearing, notices were issued to the respondents, who contested the appeal by way of filing reply, wherein they refuted the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Deputy District Attorney for the respondents has controverted the arguments of

learned counsel for the appellant and has supported the comments submitted by the respondents.

4. We have heard the arguments of learned counsel for the parties and have perused the record.

5. A perusal of the record would show that disciplinary action was taken against the appellant on account of his absence from duty, which is evident from the copies of charge sheet as well as statement of allegations issued to the appellant. The appellant did not join the inquiry proceedings and it transpired during the inquiry that he was also charged in case FIR No. 405 dated 09.05.2013 under sections 302/324/34 PPC Police Station Badhber. On conclusion of the inquiry, the appellant was dismissed from service vide order dated 13.10.2014 passed by Superintendent of Police Headquarters Peshawar. It appears from the record that the appellant had then remained in abscondence for considerable long period and after procuring bail from the court on 04.02.2017, he preferred departmental appeal, which was disposed of by Capital City Police Officer Peshawar in the terms reproduced as below:-

“He was called in O.R . on 08.03.2017 and heard in person. The relevant record was thoroughly examined along with comments of DSP-Legal. Perusal of the enquiry file and comments of the DSP-Legal reveals that he has rendered 21 years service with clean record. During personal hearing the appellant defended himself stated that h was wrongly charged in the above case and the court has granted him bail. His absence was not willful but the circumstances constrained him to remain absent. Due to loss of

his service, he and his family are facing great hardships.

Keeping in view all the above circumstances, a lenient view of the case taken, therefore, he is re-instated in service. The period of absence is treated as leave without pay. Moreover, no benefit is granted for the period in which he remained out of service."

6. While going through order dated 24.03.2017 passed by Capital City Police Officer Peshawar, it can be observed that reinstatement of the appellant in service was not on merits, rather the same was on account of lenient view being taken by the appellate Authority. Otherwise too, granting financial back benefits to the appellant would be giving him premium of his abscondence.

7. In view of the above discussion, the appeal in hand being without any merits stand dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

19.05.2023



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)