

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 3988/2021

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Syed Muhammad Tariq Shah Bacha S/O Syed Ikram Shah Bacha
(Ex-Technical Constable Belt No. 756/SB Special Branch) R/O Sofaid
Dheri P/O University of Peshawar, Tehsil and District Peshawar.
..... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. AIG Establishment/Special Branch of Police, Khyber Pakhtunkhwa,
Peshawar.
4. Deputy Inspector General of Police, Special Branch, Khyber
Pakhtunkhwa, Peshawar.
5. Senior Superintendent of Police, Admn, Special Branch, Khyber
Pakhtunkhwa, Peshawar. (Respondents)


Mr. Haseen Ullah Gammariyani,
Advocate ... For appellant

Mr. Muhammad Jan,
District Attorney ... For respondents

Date of Institution.....09.03.2021
Date of Hearing.....24.05.2023
Date of Decision..... 24.05.2023

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 of respondent No. 5 dated 22.04.2020, whereby the appellant was compulsorily retired from service. It has been prayed that



on acceptance of the appeal, the impugned order dated 22.04.2020 might be set aside and the appellant might be reinstated in service ^{with} all back benefits or in-alternate he might be retired from service on medical ground.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was serving as Technical Constable in the Police Department and was posted in Special Branch, Peshawar. Due to serious mental ailment, he had been admitted in hospital on 12.11.2019. He submitted written application for medical leave and was of the impression that the leave had been sanctioned. While under treatment, he left the hospital without the consent of hospital authorities and went somewhere else. After hectic efforts of his relatives, he was found in a very miserable condition and was shifted to Islamabad for treatment. When he recovered and approached the department for joining his duty, he got the knowledge about the order dated 22.04.2020 of his compulsory retirement, after which he again lost his memory and fell in a bad condition. The mother of the poor appellant tried her best and took loans from various persons and spent huge amount of money on his treatment. Aggrieved from the impugned order, he filed departmental appeal on 10.09.2020, which was not decided within the statutory period; 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 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 inquiry proceedings, as prescribed under the prevailing law, were never conducted. No show cause notice was served upon him, nor any opportunity of hearing was afforded to him and punishment of compulsory retirement was awarded without mentioning any reason. He further argued that absence of the appellant was not willful but due to his mental disease and the punishment awarded to him was not proportionate with his fault. He requested that the appeal might be accepted as prayed for.

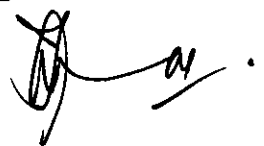
5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant submitted an application alongwith OPD chit through his mother mentioning therein that he was suffering from fever and admitted in Khyber Teaching Hospital, Peshawar but on verification it was found bogus. He further argued that the appellant was proceeded against departmentally and he was served with charge sheet alongwith statement of allegations which was never replied by him. A detailed enquiry was conducted and the charge was proved against him. Thereafter, final show cause notice was published in Daily "Ajj" dated 14.03.2020 for reply within 15 days but he did not turn up within the stipulated period and was rightly punished. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant was serving in the Police Department as Technical Constable. During his service he became mentally ill, which could be ascertained from the medical prescriptions attached with the service appeal which indicate that he



remained under treatment from 2015 to 2020 at the Khyber Teaching Hospital, Peshawar, Hayatabad Medical Complex, Peshawar and with different doctors of Psychiatry at their clinics. During this period, based on his absence, he was proceeded against, an inquiry was conducted and charge of absence was proved against him and he was awarded major penalty of compulsory retirement from the date of his absence i.e. 12.11.2019 vide order dated 22.04.2020. A point that has been noted here is that the appellant did not present himself before the inquiry officer and, hence, he was proceeded ex-parte and awarded major punishment.

7. While going through the inquiry proceedings, it was found that the charge sheet and statement of allegations were served through the AGO Cantt: Special Branch, Peshawar at the home address of the appellant, which were received by his sister. When time for replying to the charge sheet passed, the appellant was informed again through the same messenger to submit his reply and to appear before the Inquiry Officer. Instead of appearing before the Inquiry Officer, the appellant submitted a prescription of some private hospital with the name of "The New Life", according to which he was suffering from a psychological illness and under indoor treatment at the hospital and advised for complete bed rest. When the Inquiry Officer received that prescription, it would have been in the fitness of the matter for him to personally visit that institute to ascertain whether the certificate and its contents were true or not. If we suppose, for a moment, that the appellant was not in a good mental condition, how can we expect any reply from him to the charge sheet and statement of allegations? The



appellant could not even show his presence before this Tribunal and was represented by his mother. Another point, noted in the reply of respondents, was that the two page inquiry report was without any annexures and they could not be produced before us even during the hearing to see the statements, if any, recorded by the Inquiry Officer. The entire process adopted by the respondent department indicates that no effort was made by the Inquiry Officer to ascertain the facts and guilt of the appellant while the competent authority awarded a major punishment without giving an opportunity to the appellant to defend himself, which is against the spirit of a fair trial and justice.

8. In view of the above discussion, the appeal in hand is allowed, the impugned order is set aside and the matter is remitted back to the respondents to conduct a denovo inquiry, strictly under the rules, by associating the appellant in the entire process and giving him an opportunity to present and defend his case. The appellant is reinstated for the purpose of Enquiry while the issue of back benefits will be subject to final outcome of the denovo enquiry. The department shall conclude the denovo enquiry within (60) days of receipt of copy of this judgment. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 24th day of May, 2023.*


(FARIHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman