

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 1406/2018

Date of Institution... 08.11.2018

Date of Decision... 17.05.2023

Bakhtiar Ali, Ex-Constable No. 1234 Police Lines Bannu.

... (Appellant)

**VERSUS**

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

MR. KAMRAN KHAN,  
Advocate

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--- For appellant.

MR. ASIF MASOOD ALI SHAH,  
Deputy District Attorney

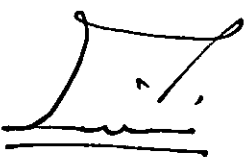
--- For respondents.

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

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

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Brief facts forming the background of the instant appeal are that disciplinary action was taken against the appellant on the allegations that he while posted as Telephone Operator at DPO Bungalow, had remained absent from official duty with effect from 09.01.2018 to 05.03.2018 without any sanctioned leave or prior permission of the competent Authority. On conclusion of the inquiry, he was awarded major penalty of dismissal from service vide order bearing O.B No. 340 dated 28.03.2018. The departmental appeal of the appellant was also rejected vide order dated



30.05.2018, copy of which was handed over to the appellant on 11.10.2018, hence the instant service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance through their representative and contested the appeal by filing written reply, raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

3. Learned counsel for the appellant argued that the appellant was critically injured in attack of terrorists on Police Station City District Bannu and had remained under treatment in various hospitals in the country as well as abroad. He next contended that the appellant had obtained 14 days leave, however the condition of his injuries became deteriorated and he had to rush abroad for availing medical treatment; that the absence of the appellant from duty was not willful rather the same was on account of availing medical treatment. He also argued that the mandatory provisions of Khyber Pakhtunkhwa Police Rules, 1975 were not complied with in the inquiry proceedings, therefore, the impugned orders are liable to be set-aside.

4. On the other hand, learned Deputy District Attorney for the respondents contended that the appellant had remained absent from duty without any leave or permission of the competent

Authority. He next contended that a regular inquiry was conducted in the matter by complying all legal and codal formalities by providing opportunity of personal hearing as well as self defence to the appellant. He also argued that the appellant had proceeded abroad without obtaining NOC from the competent Authority, therefore, he has rightly been dismissed from service.

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

6. A perusal of the record would show that disciplinary action was taken against the appellant on the allegations of absence from duty with effect from 09.01.2018 to 05.03.2018. During the inquiry proceedings, the stance of the appellant was that he had though been granted 14 days leave, however the condition of his injuries deteriorated and he had to rush to Vietnam for availing medical treatment. It is an admitted fact that the appellant was critically injured due to attack of terrorists on Police Station City District Bannu. The aforementioned fact has even been admitted by the respondents in para-3 of reply of facts, which is reproduced as below:-

*“Correct to the extent that the appellant was seriously injured by the firing of terrorists and a case vide FIR No. 616 dated 19.06.2012 under sections 324/353/427/34 PPC ¼ ESA/7ATA PS City Bannu was registered. The appellant was shifted to DHQ Hospital Bannu and for proper treatment he was referred to Lady Reading Hospital Peshawar. For complete recovery of his physical health, the*


*appellant proceeded abroad i.e Vietnam, but he could not obtain proper procedure for obtaining ex-Pakistan leave."*


In his reply to the show-cause notice too, the appellant has taken categorical plea that he had to rush to Vietnam for medical treatment, which resulted in his absence from duty. The competent Authority, however did not bother to verify the genuineness or otherwise of the plea taken by the appellant in his defence for remaining absent from duty. Similarly, the appellate Authority also rejected the departmental appeal of the appellant in a cursory manner. Moreover, no charge was leveled against the appellant that he had proceeded abroad without obtaining NOC and ex-Pakistan leave, however the impugned order would show that the same has also been considered as a ground for awarding major penalty of dismissal from service to the appellant.

7. In view of the above discussion, the impugned orders are set-aside and the appellant is reinstated in service for the purpose of de-novo inquiry with directions to the competent Authority to conduct the same strictly in accordance with relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the inquiry officer shall also verify the genuineness or otherwise of the defense plea of the appellant regarding his medical treatment in Vietnam. Appellant shall be associated with the inquiry proceedings by giving him fair opportunity of defending

himself. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
17.05.2023

  
(MUHAMMAD AKBAR KHAN)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)