

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 5724/2021

Date of Institution ... 26.05.2021

Date of Decision... 05.06.2023

Muhammad Sajid S/O Spin Badshah (Jail Warder) R/O Village Asot
Kala P/O Ahmad Abad Tehsil & District Takhti Nasrati District Karak.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil
Secretariat, Peshawar and four others.

... (Respondents)

MR. MEHER GUL,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MS. FAREEHA PAUL

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

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise averments as raised by
the appellant in his appeal are that he was appointed as Warder
(BPS-05) in the Khyber Pakhtunkhwa Prison Department vide order
dated 04.10.2019; that in the month of July 2020, he suffered from
acute pain in his kidney and despite continuous treatment, he was
unable to perform his duty; that one day appellant managed to approach
his place of duty in miserable and painful condition, where he was
handed over the order of his removal from service and the appellant
thus came to know that he has been removed from service on

17.02.2021 through an ex-parte action; that feeling aggrieved of the order dated 17.02.2021, the appellant challenged the same through filing of departmental appeal on 22.02.2021, which was not responded within the statutory period, hence the instant service appeal.


2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing joint para-wise comments 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 neither any show-cause notice nor any charge sheet or statement of allegations were served upon the appellant and whole of the proceedings were conducted at his back; that the appellant has been awarded major penalty of removal from service through an ex-parte action, which is not warranted under the law/rules; that the absence of the appellant was not willful rather the same was on account of his illness; that the appellant was suffering from Kidney disease and remained hospitalized for medical treatment; that the impugned orders being wrong and illegal are liable to be set-aside and the appellant is entitled to be reinstated in service with all back benefits.

4. On the other hand, learned Deputy District Attorney, while controverting the arguments of learned counsel for the appellant contended that the appellant remained absent from duty without any leave or permission of the competent Authority; that a proper inquiry

was conducted in the matter and absence notice was also published in daily "*Express*" as well as daily "*Mashriq*" but the appellant failed to appear before the inquiry officer for joining the inquiry proceedings; that the inquiry officer had telephonically contacted the appellant in order to associate him in the inquiry proceedings but in vain; that the allegations against the appellant stood proved in a regular inquiry, therefore, the penalty awarded to him may be kept intact and the appeal in hand may be dismissed with cost.

5. We have heard the arguments of learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and have gone through the available record.



6. The competent Authority had initially issued final show-cause notice to the appellant on 22.04.2020 on the allegations that he had remained absent from duty with effect from 28.03.2020 to 11.04.2020 (14 days). It was mentioned in the said show-cause notice that there was no need of holding any further inquiry. Similarly, another final show-cause notice was issued to the appellant on 03.06.2020 on the allegations that he had remained absent from duty with effect from 23.05.2020 to 29.05.2020 (7 days). In the said show-cause notice too, it was mentioned that there was no need of holding further inquiry. According to the available record, no further proceedings were then carried out on the aforementioned final show-cause notice and the appellant was performing his duty. In the meanwhile, the appellant was granted 03 days medical leave on 24.07.2020, however he did not report back for duty and a notice was then issued to him on 21.04.2020

to resume his duty, however the appellant did not resume his duty. The competent Authority had though previously dispensed with regular inquiry, however on 09.12.2020, charge sheet as well as statement of allegations were issued to the appellant for conducting of regular inquiry against the appellant regarding previous absence as well as absence from duty with effect from 29.07.2020. Charge sheet as well as statement of allegations would show that the appellant was proceeded against on the charge of habitual absence, however a show-cause notice was then issued to the appellant by publication in daily "*Mashriq*" dated 31.01.2021 and daily "*Express*" dated 01.02.2021 with the direction to the appellant to report to the Superintendent Headquarters Prison Peshawar, which procedure is prescribed for proceedings against a civil servant in case of willful absence. The charge sheet as well as statement of allegations would show that the appellant was proceeded against for habitual absence, however the impugned order dated 17.02.2021 passed by the competent Authority would show as if the appellant was proceeded against on the allegations of willful absence from duty. Nothing is available on the record, which could show that the charge sheet or statement of allegations were personally served upon the appellant. In these circumstances, the competent Authority was not justified in taking ex-parte action against the appellant. Moreover, whole of the proceedings were conducted in a haphazard manner.

7. The appellant had taken specific plea in his departmental appeal that his absence was not willful rather the same was on account of

operation of his kidney, however order dated 17.03.2021 issued from the office of Inspector General of Prison Khyber Pakhtunkhwa would show that not a single word regarding the genuineness or otherwise of plea of the appellant has been mentioned therein.

8. In view of the foregoing discussion, the appeal in hand is allowed by setting aside the impugned orders dated 17.02.2021 as well as 17.03.2021 and the appellant is reinstated in service for the purpose of de-novo inquiry with the directions to the competent Authority to conduct de-novo inquiry strictly in accordance with relevant law/rules within 60 days of receipt of copy of this judgment. Needless to mention that the appellant has to be associated in the inquiry proceedings by providing him fair opportunity of personal hearing as well as self defence. The issue of back benefits shall be subject to outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
05.06.2023



(FARIEHA PAUL)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)