

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7504/2021

Date of Institution ... 30.08.2021

Date of Decision... 13.06.2023

Kashif Muhammad, Ex-Constable No. 935, District Police, Nowshera.
... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

MR. YASIR SALEEM
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

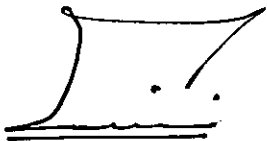
--- For respondents.

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 departmental action was taken against the appellant on the allegations that he while posted at Police Station Misri Banda District Nowshera had remained absent from duty with effect from 06.06.2020 till the issuance of charge sheet as well as statement of allegations on 28.07.2020. On conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service vide O.B No. 176 dated 16.02.2021 passed by District Police Officer Nowshera. The appellant preferred departmental appeal on 31.03.2021, which was rejected on 21.06.2021. The revision petition of the appellant was also declined vide order dated 29.07.2021 on the



ground that the same was time barred, hence the instant service appeal.


2. On receipt of the appeal and its admission to full hearing, respondents were summoned, who appeared through their representatives and contested the appeal by filing written replies raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that the absence of the appellant from duty was not willful rather the same was due to illness of the appellant as well as his mother; that the inquiry proceedings were conducted at the back of the appellant without providing him an opportunity of personal hearing or self defence; that no show-cause notice as well as charge sheet and statement of allegations were ever served upon the appellant and the appellant was awarded major penalty without any regular inquiry in the matter, therefore, the impugned orders are nullity in the eye of law, hence liable to be set-aside.

4. On the other hand, learned Assistant Advocate General while controverting the arguments advanced by learned counsel for the appellant, contended that the appellant remained absent from duty for considerable long period without seeking any leave or permission of the competent Authority; that regular inquiry was conducted in the matter by issuing charge sheet as well as statement of allegations to the appellant and he was contacted telephonically as well as through other sources but he even did not bother to join the inquiry proceedings; that final show-cause notice was personally served upon

the appellant on 04.02.2021 but he did not bother to file reply of the same or to appear for personal hearing before the competent Authority; that the allegations of willful absence from duty against the appellant were proved in the inquiry, therefore, he has rightly been dismissed from service; that the service record of the appellant would show that he was in habit of remaining absent from duty without seeking any leave of permission of the competent Authority and was awarded minor penalties on so many occasions but he did not mend his way.

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 that he while posted at Police Station Misri Banda District Nowshera, had remained absent from duty with effect from 06.06.2020. Charge sheet as well as statement of allegations were issued to the appellant on 28.07.2020 and DSP Pabbi was nominated as inquiry officer. The inquiry officer has mentioned in the inquiry report that the appellant was contacted several times on his cell phone as well as through other sources but he did not join the inquiry proceedings. Available on the record is copy of Daily Diary dated 29.09.2020 of Police Station Pabbi, wherein the detail of the efforts made for associating the appellant in the inquiry proceedings has been mentioned. It is thus evident that the appellant was well aware of the inquiry proceedings but he deliberately avoided to join the same. The inquiry officer thus submitted his report to the competent Authority recommending ex-parte action against the


appellant as well as awarding him major punishment. The competent Authority then issued final show-cause notice No. 31/PA dated 28.01.2021 to the appellant, copy of which is available on the record and over half of the same is signature of the appellant as an endorsement that he had personally received the final show-cause notice on 04.02.2021.


7. The appellant had admittedly remained absent from duty without any sanctioned leave or permission of the competent Authority, therefore, he was required to have put forward any justified reason for his absence. The departmental appeal of the appellant would show that he has not put forward any reason, which could justify his absence from duty. Moreover, according to the record annexed by the respondent alongwith their comments, the appellant had previously too remained absent from duty on various occasions and he was awarded minor penalties. The service history of the appellant is depicting a grim picture of his amenability to service discipline, therefore, he is not entitled to any leniency in quantum of penalty awarded to him.

8. Consequent upon the above discussion, the appeal in hand being without any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

13.06.2023


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)