

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 110/2016

Date of Institution... 28.01.2016

Date of Decision... 16.06.2023

Muhammad Suhail, Ex-Constable No. 4538, Police Station, Town, Peshawar.

... (Appellant)

VERSUS

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

... (Respondents)

MR. ASAD MEHMOOD,
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:- Brief facts giving rise to filing of the instant appeal are that the appellant was appointed as Constable in the year 2009. During the course of his posting at Police Station Town, departmental action was taken against him on the allegations of his absence from duty with effect from 17.02.2012, which culminated in his dismissal from service vide order bearing O.B No. 1041 dated 18.03.2013. The penalty so awarded to the appellant was challenged by him through filing



of departmental appeal on 04.11.2015, which was rejected/filed vide order dated 01.01.2016, hence the instant service appeal.

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

3. Learned counsel for the appellant argued that no show-cause notice, charge sheet or statement of allegations were issued to the appellant and the appellant was awarded major penalty without any regular inquiry. He further argued that the appellant was not provided any opportunity of personal hearing as well as self defence and he was condemned unheard. He next contended that the mandatory provisions of Police Rules, 1975 were not complied with, therefore, the impugned orders are having no legal sanctity in the eye of law. He also argued that as the appellant was to look-after his ailing mother, therefore, he could not attend his duty and his absence thus could not be considered as willful. He next argued that as the impugned penalty of dismissal from service was passed with retrospective effect i.e 17.02.2012, therefore, the very order of dismissal of the appellant is void ab-initio and not sustainable in the eye of law.

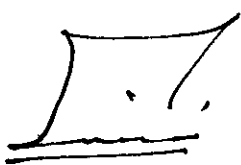
4. On the other hand, learned Deputy District Attorney while controverting the arguments advanced by learned counsel

for the appellant, argued that the appellant was appointed as Constable in the year 2009 and it was initial period of his service but he remained absent for more than one year without availing any leave or permission of the competent Authority. He further argued that the appellant being a member of disciplined force was supposed to act with responsibility but he remained absent from duty without even giving any intimation to his high-ups. He next argued that charge sheet as well as statement of allegations were issued to the appellant and every possible effort was made to associate him in the inquiry proceedings but he deliberately avoided joining of the inquiry proceedings. He also argued that the conduct of the appellant clearly depicted that he was not at all interested in police service. He further argued that a proper inquiry was conducted in the matter by complying all legal and codal formalities. He further argued that the appellant was dismissed from service vide order dated 18.03.2013 and even after his dismissal, the appellant remained in deep slumber and filed departmental appeal on 04.11.2015 i.e after a delay of more than 02 years, which was badly time barred and his service appeal is liable to be dismissed on this score alone.

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 Town, had remained absent from duty with effect from 17.02.2012. Charge sheet as well as statement of allegations were issued to the appellant on 06.06.2012 and ASP Town was appointed as inquiry officer in the matter. The inquiry officer informed the appellant through SHO Police Station Town to appear before him for joining the inquiry proceedings but the appellant did not join the inquiry proceedings. On submission of the inquiry report by the inquiry officer, the competent Authority issued final show-cause notice to the appellant on 27.09.2012, which as per copy of the notice as available on the record, was personally served on the appellant but even then he did not bother to appear before the competent Authority.



7. The appellant had remained absent from duty for considerable period without any leave or permission of the competent Authority and was dismissed from service vide order dated 18.03.2013. The appellant even after his dismissal from service had remained in deep slumber and filed departmental appeal on 04.11.2015 i.e after a delay of more than 02 years. The absence of the appellant from duty is an admitted fact and he was thus required to have put forward any plausible reason, which could justify his absence from duty. However, while going through the departmental appeal of the appellant, it can be observed that he has not put forward any specific reason for his unauthorized absence from duty. In his

service appeal, the appellant has though taken the plea that he was to look-after his ailing mother, however no document has been annexed with the appeal to support his afore-mentioned plea. The appellant being appointed as Constable in the year 2009, was in the initial phase of his service and his long standing absence from duty was an act of misconduct on his part.


8. The contention of learned counsel for the appellant that as the appellant was awarded punishment with retrospective effect, therefore, the impugned order dated 18.03.2013 is void, is misconceived. Although punishment could not be awarded with retrospective effect, however where a civil servant is proceeded against departmentally on the ground of his absence from duty, then punishment could be awarded to him retrospectively from the date of his absence and the same is an exception to the general rule that punishment could not be imposed with retrospective effect. The impugned order dated 18.03.2013 thus could not be considered as void merely on the ground that the same was passed with retrospective effect. Worthy, apex court in its judgment reported as 2022 PLC (C.S.) 1177 has observed as below:-


"8. We find that the impugned judgment has totally ignored the record and facts of this case. The department has also been totally negligent in pursuing this matter and has allowed the Respondent to remain

absent from duty for so long. On the issue of retrospective effect, we find that admittedly, the respondent has been absent from duty w.e.f. 01.09.2003, hence no illegality is made out by considering his dismissal from there as he has not worked with the department since the given date. (Emphasis provided)."

9. As a sequel to the above discussion, the appeal in hand stands dismissed being without any merit. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.06.2023


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)