

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR AT
CAMP COURT ABBOTTABAD

Service Appeal No. 5691/2020

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER(J)

Abbas Khan S/O Asmat Khan, LHC No. 354 District Police Torghar,
R/O Village Langra, Tehsil Havalilian, District Abbottabad.
.... (Appellant)

Versus

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Torghar. (Respondents)

Mr. Aslam Khan Tanoli
Advocate ... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution.....10.06.2020
Date of Hearing.....20.06.2023
Date of Decision.....20.06.2023

JUDGEMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:


“On acceptance of the instant service appeal both the impugned orders dated 18.09.2019 and 11.05.2020 of the respondents may graciously be set aside and the appellant be reinstated in service from the date of dismissal with all back benefits.”



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant has rendered about 12 years service in police department. He performed his duties with devotion, dedication and honesty and never provided a chance of reprimand. At the end of 2018 the appellant's wife and child fell seriously ill, which took a long course. As the appellant being the only male member of his family had himself to run for the medical treatment of his family. During that period he submitted applications for grant of leave. The leaves was not continuous and in one spell rather as and when required with different intervals. All earlier leaves were settled, however, last was not settled despite submitting applications and the appellant was marked absent without any reason. As a result District Police Officer Torghar dismissed the appellant vide order 18.09.2019. Feeling aggrieved he filed departmental appeal on 10.10.2019 which was dismissed vide order dated 11.05.2020, hence the present service 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules on the subject and department have acted in violation of Article 4 and 10-A of Constitution of Islamic Republic of Pakistan 1973, and unlawfully issued the impugned orders which are unjust and unfair hence not sustainable in the eyes of law. He contended that appellant had duly applied for leave with submission of documentary proof of illness of his wife and son, but the same were not taken into consideration. He further contended that no departmental inquiry was conducted. No charge sheet was issued to the appellant



nor he was afforded an opportunity of personal hearing, he therefore, requested for acceptance of instant service appeal.

5. The learned Deputy District Attorney argued that the appellant has not provided any proof of illness of wife and child nor he submitted any application for leave to the competent authority. He further contended that the appellant was habitual who absented himself from his official duties w.e.f 13.10.2018 to 16.11.2018, 10.12.2018 to 16.12.2018, 17.02.2019 to 22.02.2019, 14.03.2019 to 06.08.2019 and 08.08.2019 to 18.09.2019 (total 157 day) without permission of the competent authority. The appellant was issued charge sheet alongwith statement of allegation and Mr. Gul Zar Khan, DSP/Hqrs was deputed as Inquiry Officer who conducted departmental inquiry and submitted detailed report in which he held the appellant responsible of misconduct and recommended for major punishment. Consequently, final show cause notice was issued to the appellant and was called in orderly room, however, he failed to appear in orderly room. Moreover, the appellant has been dismissed for 2nd time which shows that the appellant is a habitual to get himself absent from duty. Lastly, he submitted that after fulfillment of all codal formalities he was rightly dismissed from service.

6. Admittedly the appellant had not performed his duties during alleged period of absence but his contention is that he had submitted applications to the respondents for grant of leave on the ground of illness of his son and wife but he failed to produce copy any such application duly received by his high ups or any authentic medical prescription about his illness of his son and wife. Appellant remained absent from the place of his duty for considerable period of 157 days that too, without obtaining leave or submitting any application. So, appellant failed to establish his contention of applying for leave on the ground of illness of his wife and son. While on the other hand proper inquiry, in accordance with rules, had already been conducted, wherein he was summoned upon his home address by

the inquiry officer, although the summon was not received by the appellant but his father and brother endorsed the same by mentioning that appellant had gone abroad in connection with earning of livelihood, which shows that plea taken by the appellant in respect of illness of his wife and son is not correct.

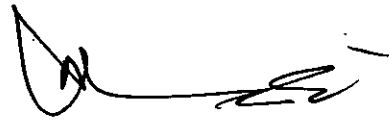
7. It is established on record that respondents conducted all the proceedings in accordance with rules/law and has properly informed the appellant through his father and brother upon his given home address but appellant failed to appear for performance of his duties and subsequently to defend himself. Absence from duty is seems to be deliberate on the part of the appellant as reportedly, he was abroad in connection with his livelihood. Beside as per record appellant is used to get himself absent from duty with different intervals. Final show cause was issued to the appellant and he submitted his written explanation/reply of the show cause notice, which means that he was provided opportunity of being heard but he failed to explain/justify legally his absence period from duty.

8. For what has been discussed above, the appeal in hand is dismissed. Costs shall follow the event. Consign.

9. *Pronounced in open court at Abbottabad and given under our hands and seal of the Tribunal on this 20th day of June, 2023.*



(RASHIDA BANO)
Member (J)
Camp Court, Abbottabad



(KALIM ARSHAD KHAN)
Chairman
Camp Court, Abbottaba