

7. In view of the foregoing, the instant appeal is accepted and the appellant is re-instated in service with all back benefits. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 6th day of July, 2023.*



KALIM ARSHAD KHAN

Chairman



RASHIDA BANO

Member (Judicial)

Muazzem Shah

by the appellant or for that matter the prescriptions and laboratory test reports ought to have been considered when the authority intended to proceed against the appellant. Grant of leave on medical grounds is not a discretion rather a sort of right of a civil servant under rule 13. The Supreme Court of Pakistan has dealt with almost similar situation in 2010 SCMR 1546 titled "*Mohammad Abdul Moeid versus Government of Pakistan, through Secretary, Ministry of Housing and Works etc.*" in the following manner:

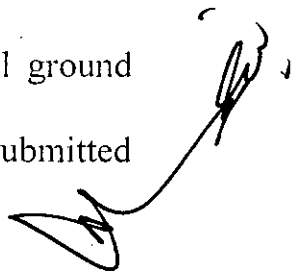
"8. In view of the allegations levelled against the appellant and several applications for leave on medical grounds as also medical certificates submitted by him before the Competent Authority in the Department and the realization of the Department itself that he needed to be examined by a board regarding his health, it was imperative and in the interest of justice that a regular enquiry should have been conducted."

While seeing the instant case in the light of the judgment of the Supreme Court, the applications of the appellant for grant of leave on medical ground are not specifically denied nor is his ailment denied. An enquiry was conducted but that was restricted to the absence of the appellant and despite knowledge of the department regarding ailment of the appellant, nothing was said in the enquiry report about the health condition of the appellant. Moreover, no statement of anyone was recorded by the enquiry officer during the course of enquiry proceedings, therefore, the exparte enquiry has no legs to stand upon.

reply. The reply is supported by an affidavit of Mr. Muhammad Farooq Khan, DSP, who was, though, authorized by the respondents to appear on behalf of the respondents and to submit and sign all documents yet he was not authorized to swear in any affidavit or to make any statement, therefore, the affidavit sworn in by Mr. Farooq Khan, DSP cannot be considered while that of the appellant would be given preference in support of non- submission of applications for seeking leave on medical ground. As against that the affidavit annexed with the appeal given by the appellant regarding all the averments including his making two applications for grant of medical leave would be considered. Leave on medical grounds cannot be refused to a Civil Servant. In this respect, reference is made to Rule-13 of the Khyber Pakhtunkhwa Civil Servants Revised Rules, 1981 which is reproduced as under:

"13. Leave on Medical Certificate.---*Leave applied for on medical certificate shall not be refused. The authority competent to sanction leave may, however, at its discretion, secure a second medical opinion by requesting the Civil Surgeon or the Medical Board to have the applicant medically examined. The existing provisions contained in Supplementary Rules 212, 213 and Rule 220 to 231 for the grant of leave on medical grounds will continue to apply."*

The medical prescriptions/documents are not disputed, rather admitted by the respondents and the main reason was his illness due to which he remained absent from duty. His absence is thus justified having been plausibly and through undisputed medical documentary evidence, explained and proved. As the ailment of the appellant was not at all disputed nor denied rather admitted there remained no need to conduct any enquiry into the factum of ailment. As aforesaid, the authority could not refuse leave sought on medical ground under rule 13 of the Revised Leave Rules, 1981, the applications submitted



DSP, several notices had been issued but the appellant had failed to response. He concluded that all the opportunities of defense/hearing had been provided to the appellant but he had failed to avail the same, therefore, he requested for dismissal of the instant service appeal.

6. Vide the impugned order dated 10.08.2016, the appellant was dismissed from service because of his absence from 13.05.2016. The dismissal was made on the basis of an inquiry conducted by DSP Cantt. Mr. Zahir Shah and according to the inquiry report, the appellant was summoned through various notices but he did not report back to his duty; that Moharrir, Police Lines was summoned, who had explained in his statement that the appellant was absent and the absence was recorded in daily diary No.84 dated 13.05.2016. The Inquiry Officer recommended that the appellant might be awarded appropriate punishment. The contention of the appellant is that he fell ill which fact was duly recorded in daily diary No.22 dated 12.05.2016. That he submitted applications for grant of four months medical leave. Copies of two applications of the appellant, one of 13.05.2016 and the other is of 26.05.2016, duly attested by the learned counsel, are placed on file. There is voluminous medical record comprising of prescription chits, laboratory reports, ultrasounds etc. All are showing the same and similar ailment of the appellant and regular and continuous medical treatment of the appellant. None of the above medical documents were denied or doubted nor verified by the respondents, rather the ailment of the appellant is admitted vide daily diary Nos.22 & 33 dated 12.05.2016 and 84 of 13.05.2016. The respondents, however, deny submission of applications for grant of medical leave in the

against the appellant on the charges of absence from duty without complying with the provisions of Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, hence, the impugned order was not sustainable. She submitted that the respondents had violated Article-10 of the Constitution of Islamic Republic of Pakistan, 1973 by not giving proper opportunity of defense to the appellant; that no regular inquiry had been conducted against the appellant to establish the charge of absence from duty w.e.f 13.05.2016. Further submitted that the impugned orders were also violative of Section 24-A of General Clauses Act as the competent authority and the appellate authority had failed to pass a speaking order with reasons and even no show cause notice had issued to the appellant; that no statement of allegations or any charges sheet had been communicated to the appellant which was mandatory. She concluded that no opportunity of personal hearing had been afforded to the appellant and the same was violation of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011. Reliance was placed on 2005 PLC (CS) 1095 Supreme Court; PLD 2003 SC 724 & 2000 SCMR 1743.

5. Conversely, learned Assistant Advocate General submitted that the orders issued by the respondents were quite legal, based on facts, justice and in accordance with law; that the appellant had willfully absented from duty as well as from inquiry proceedings and after establishing the charges, the punishment was awarded which was in accordance with law. He submitted that proper charge sheet with statement of allegations had been issued to the appellant and departmental inquiry had been conducted by the

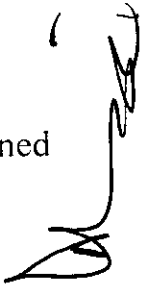
JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: The appellant's case in brief is that he was appointed as Constable on 09.06.2017 in the Police Department. During service, he fell ill and was accordingly admitted in Hospital. He requested the respondents for medical leave which factum was endorsed by Naqalmad/Daily Diary No.84 dated 13.05.2016 but no formal order was passed on the application filed by the appellant and subsequently, ex-parte proceedings were initiated against the appellant on the charges of absence. Consequently, the appellant was dismissed from service vide order dated 11.08.2016. Feeling aggrieved, the appellant filed departmental appeal on 18.08.2016, the appellant also filed mercy petition for his reinstatement but none of his pleas were accepted. Hence, the present service appeal.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned, who put appearance 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. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondents.

4. Learned counsel for the appellant submitted that the impugned orders were against law, facts and material available on record, hence, not tenable; that the respondent No.2 had passed the impugned original order with retrospective effect which is *void ab-initio* hence, no limitation ran against a void order; that the respondents initiated ex-parte proceedings



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.5199/2021

Date of presentation of Appeal.....28.04.2021
Date of Hearing.....06.07.2023
Date of Decision.....06.07.2023

Mr. Shah Dawlazz Khan son of Umar Khan Constable Belt No.1736
Khyber Pakhtunkhwa Police District Bannu R/O Jehangir, P.O Torka
Bazar, Lalozai, Tehsil and District Bannu.....*Appellant*

Versus

1. **Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.**
2. **Regional Police Officer, Bannu.**
3. **District Police Officer, Bannu.....(Respondents)**

Present:

Miss. Naila Jan, Advocate.....For appellant
Mr. Asad Ali Khan, Assistant Advocate General.....For respondents

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE IMPUGNED ORIGINAL ORDER NO.13573-79/SRC DATED 11.08.2016 AGAINST WHICH DEPARTMENTAL APPEAL DATED 18.08.2016 WAS FILED BEFORE RESPONDENT NO.2 WHICH WAS DECLINED AT A BELATED STAGE VIDE IMPUGNED FINAL ORDER DATED 08.04.2021 AGAINST WHICH THE INSTANT SERVICE FILES WITHIN STIPULATED PERIOD OF 30 DAYS, HENCE THE APPEAL IS WITHIN TIME. IT IS ALSO PERTINENT TO MENTION THAT THE APPELANT ALSO FILED MERCY PETITION BEFORE REPSONDENTNO.1 FOR REINSTATEMENT IN SERVICE BUT THE SAME WAS DECLINED VIDE IMPUGNED FINAL ORDER DATED 08.04.2021.

