

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 854/2017

BEFORE: **MRS RASHIDA BANO** ... **MEMBER (J)**
MISS FAREEHA PAUL ... **MEMBER (E)**

Wajid Ali Shah S/O Abdur Rahman (Ex-Constable No. 2905 District Mardan)
resident of Mohallah Sharif Abad, Bughdada, Mardan. (*Appellant*)

Versus

1. The Secretary, Home Department, Khyber Pakhtunkhwa, Peshawar.
2. The District Police Officer, Mardan.
3. The Regional Police Officer, Mardan Region-I, Mardan.....(Respondents)

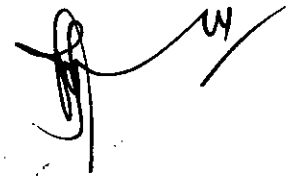
Mr. Adam Khan,
Advocate ... For appellant

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

Date of Institution.....	15.08.2017
Date of Hearing.....	26.06.2023
Date of Decision.....	26.06.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 15.05.2014 of the DPO/respondent No. 2, whereby the appellant was dismissed from service and the period of alleged absence was treated as leave without pay and the departmental appeal there-against was rejected by the RPO/respondent No. 3 vide order dated 23.06.2017. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might be reinstated into service with back service benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was employed as Constable in Mardan Police on 04.09.2009. While posted at Police Station Shergarh, Mardan, he was arrested on 03.03.2014, in connection with a case registered vide FIR No. 130 dated 04.03.2014 u/s 395/109 PPC P.S Yar Hussain, District Swabi and he remained in judicial lock up till his acquittal on 11.04.2017. On acquittal, the appellant attended the office of the DPO Mardan to resume duty where he learnt that he was dismissed from service. He procured the copy of impugned order dated 15.05.2014 from the office of the DPO Mardan on 02.05.2017 and represented there-against before the RPO/respondent No. 3, there and then. The appeal was rejected by the RPO vide order dated 23.06.2017, which was also not conveyed to the appellant, while the copy of the same was issued to him on his request on 13.07.2017; hence the present appeal.

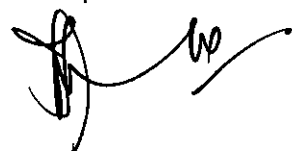
3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, contended that the appellant never absented himself from the duty willfully nor he committed any criminal act. In fact, he was falsely dragged therein. Being in police custody since 03.03.2014 and thereafter in the judicial lockup, it was not possible for him to perform his duty. He further argued that arrest and detention of the appellant in judicial lockup was in the knowledge of the DPO



and under the law he might have kept the departmental proceedings pending till the adjudication of the criminal case under the law. He further argued that while in judicial lockup, an ASI of Police, visited the appellant in the District Jail, Swabi and produced the copy of the charge sheet to him. The said ASI wrote-down the defence reply thereto of his own accord and compelled the appellant to sign the same. He further argued the appellant was not allowed to obtain copies of the show cause nor he was provided the right of defence properly and thus he was condemned unheard. He further argued that the departmental enquiry was conducted wherein the appellant was not provided the chance of participation nor the enquiry officer visited him in the jail in connection with the enquiry proceedings. According to him the point of suspension of the appellant from service although was mentioned by the DPO in the impugned order, yet the same was neither conveyed to him nor he was paid the suspension allowance; even he was not paid the salary for the period he remained on duty during the month of March 2014. He requested that the appeal might be accepted.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was involved in the criminal case which was proved through recovery made from him and to that effect Section 411 PPC was added during investigation of the case. He further argued that the appellant had deliberately absented himself from official duty for four days as reported vide Daily Diary No. 33 dated 02.03.2014 before lodging of FIR on 04.03.2014 which meant that he had smelled some legal consequences against him. He further argued that the appellant was provided



all opportunities of defence, required under the law and rules. Charge sheet & statement of allegations were duly served upon him which was evident from the thumb impression on the back of those documents. His statement was recorded by ASI Mudassir Khan at District Jail Swabi, duly attested by the Assistant Superintendent Jail. The learned Deputy District Attorney informed that the appellant was called upon and heard in person by the appellate authority on 24.05.2017 in orderly room but he failed to prove his innocence and had rightly been dismissed from service. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant while serving as Constable at P.S Shergarh Mardan was nominated in FIR dated 04.03.2014 u/s 395/109 PPC at P.S Yar Hussain Swabi. He was arrested, prior to the registration of FIR, on 03.03.2014, and remained in judicial lockup till his acquittal on 11.04.2017 by the court of Additional Sessions Judge, Lahor, Swabi. The DPO Mardan, when came to know about the event, placed the appellant under suspension vide order dated 10.03.2014. Without waiting for the outcome of the trial, the DPO Mardan vide his order dated 14.05.2014 dismissed the appellant from service with further order of counting his absence period as leave without pay. Before passing that order, he initiated disciplinary proceedings by issuing charge sheet and statement of allegations on 20.03.2014. Mr. Niaz Khan, DSP Katlang Mardan was appointed as Inquiry Officer. The inquiry report available with the reply of respondents indicates that the Inquiry Officer never visited the appellant, rather he deputed an ASI to get the statement of the appellant while he was in the judicial lock up. He




further based his inquiry on a Roznamcha by the SHO P.S Shergarh. The entire enquiry revolved around his absence and the order of dismissal was also passed on the same ground.


7. From the perusal of record, it is evident that the DPO Mardan was aware of the fact that an FIR had been lodged in which, among others, the appellant had also been nominated and that he was behind the bar, therefore, he rightly placed him under suspension. Instead of waiting for the outcome of the trial in the court of law, the DPO Mardan, strangely became impatient and initiated departmental proceedings against the appellant on his absence, knowing that he was behind the bar. Record further indicates that the appellant was acquitted of all the charges and as maintained by the August Supreme Court of Pakistan "every acquittal is honourable". As far as absence of the appellant is concerned, it was not deliberate, rather it was beyond his control. This fact was known to his competent authority also.

8. In view of above the appeal in hand is allowed as prayed for and the impugned orders dated 15.05.2014 and 23.06.2017 are set aside and the appellant is reinstated into service with all back benefits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 26th day of June, 2023.*


(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S


(RASHIDA BANO)
Member (J)