

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR**  
**AT CAMP COURT D.I.KHAN**

Service Appeal No. 1459/2022

Date of Institution ... 10.10.2022

Date of Decision... 18.07.2023

Muhammad Imran Constable FRP, No. 8487 D.I.Khan, Range D.I.Khan. (S/O Sharif Hussain Village Dhakki Matwalah Shah Police Station Paharpur District D.I.Khan)

... (Appellant)

**VERSUS**

The Secretary to the Government of Khyber Pakhtunkhwa, Home and Tribal Affairs Department, Peshawar and 03 others.

... (Respondents)

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MR. MUHAMMAD ABDULLAH BALOCH,  
Advocate

--- For appellant.

MR. FARHAJ SIKANDAR,  
District Attorney

--- For respondents.

MR. KALIM ARSHAD KHAN  
MR. SALAH-UD-DIN

--- CHAIRMAN  
--- MEMBER (JUDICIAL)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Brief facts giving rise to filing of the instant appeal are that the appellant was appointed as Constable on 13.07.2007. During the course of his service, departmental action was taken against the appellant on the allegations of his absence from duty and he was removed from service vide order bearing O.B No. 176/FRP dated 07.03.2018. The appellant after availing remedy of departmental appeal, filed Service Appeal No. 843/2018, which was allowed by this Tribunal vide judgment dated 25.11.2021 and he was reinstated in service for the purpose of de-novo inquiry with the directions to the



competent Authority to conduct de-novo inquiry within a period of 90 days. In light of judgment of this Tribunal, de-novo inquiry was conducted in the matter and in consequence of the same, the appellant was reinstated in service vide order bearing O.B No. 247/FRP dated 10.03.2022 by treating absence period of 114 days as medical rest, while the absence period of 04 days as leave without pay. Similarly, the intervening period during which the appellant remained out of service with effect from 07.03.2018 to 28.01.2022 was also treated as without pay. The appellant being partially aggrieved of the order dated 10.03.2022 regarding treating the intervening period with effect from 07.03.2018 to 28.01.2022 as without pay, challenged the same by way of filing departmental appeal, however the same was rejected vide order bearing O.B No. 805 dated 10.08.2022, hence the instant service appeal.




2. On receipt of the appeal and its admission to regular hearing, respondents were summoned but they failed to submit reply/comments, therefore, vide order dated 17.01.2023 their right to file reply was struck off.

3. Learned counsel for the appellant argued that the medical documents regarding illness of the appellant were verified as genuine during the de-novo inquiry proceedings and his absence from duty was regularized by treating the absence period of 114 days as medical rest, while 04 days absence was treated as leave without pay. He next argued that as absence of the appellant from duty stood justified in the de-novo inquiry

proceedings, therefore, intervening period during which the appellant remained out of service on account of his wrongful removal from service was required to have been treated as on duty with all back benefits.

4. On the other hand, learned District Attorney for the respondents has argued that as the appellant did not perform any duty during the intervening period with effect from 07.03.2018 to 28.01.2022, therefore, the same has rightly been treated as without pay on the basis of principle of no work no pay. He also argued that the appellant has already been treated leniently by reinstating him, therefore, he is not entitled to any pay or benefits for the intervening period.



5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.


6. The appellant was proceeded against departmentally on the allegations that he had remained absent from duty with effect from 04.09.2017 to 08.09.2017 (14 days) & 12.11.2017 to 30.01.2018 (78 days), D.D Report No. 04 dated 12.11.2017 of District Police Lines D.I.Khan, D.D report No. 08 dated 26.02.2018 of Police Station Pahari Pur D.I.Khan, from 30.01.2018 to 26.02.2018 (26 days), total absence of the appellant from duty was 118 days. The de-novo inquiry report would show that the inquiry officer has opined therein that the medical documents submitted by the appellant accounted for 114 days absence, therefore, the


said period may be treated as medical rest, while 04 days absence remained unaccounted, therefore, the same may be treated as without pay. The competent Authority while passing the impugned order has agreed with the recommendations of the inquiry officer by treating the period of absence of 114 days as medical rest, while 04 days absence was treated as without pay. The absence of the appellant was thus regularized and he was reinstated in the service but the intervening period with effect from 07.03.2018 to 28.01.2022 i.e the period during which the appellant remained out of service on account of his removal from service was also treated as without pay. The impugned order to the extent of treating the intervening period from 07.03.2018 to 28.01.2022 as without pay was legally not legally sustainable for the reason that it was due to wrongful removal of the appellant from service that he was unable to perform his duty with effect from 07.03.2018 to 28.01.2022. The appellant could not be attributed any fault in not performing his duty with effect from 07.03.2018 to 28.01.2022. The competent Authority was thus not justified in treating the intervening period as leave without pay. Nothing is available on the record which could show that the appellant had remained gainfully employed during the period during which he remained out of service on account of his removal. In these circumstances, the appellant cannot be deprived of the benefits during the intervening period.

7. In view of the above discussion, the appeal in hand is allowed and it is directed that the appellant may be treated as on

duty with effect from 07.03.2018 to 28.01.2022 with all consequential and back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
18.07.2023

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)  
CAMP COURT D.I.KHAN

  
(KALIM ARSHAD KHAN)  
MEMBER (JUDICIAL)  
CAMP COURT D.I.KHAN