

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 516/2017

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

Mr. Muhammad Jilani (Warder BPS- 5) presently working at District Jail, Haripur..... (*Appellant*)

Versus

1. Secretary Home and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar.
3. Superintendent Head Quarters Prison, Peshawar. (*Respondents*)

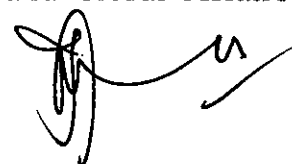
Mr. Inayat Ullah Khan,
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution..... 24.05.2017
Date of Hearing..... 18.07.2023
Date of Decision..... 18.07.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant appeal as well as connected (i) Service Appeal No. 517/2017 titled “Asmatullah Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others” (ii) Service Appeal No. 518/2017 titled Hameed Ullah Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others”, (iii) Service Appeal No. 519/2017 titled “Sami Ullah Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others” (iv) Service Appeal No. 520/2017 titled “Sher Ahmad Vs. Secretary Homes and Tribal Affairs



Department, Khyber Pakhtunkhwa, Peshawar and others”, (v) Service Appeal No. 521/2017 titled “Gul Shah Wali Shah Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others”, (vi) Service Appeal No. 522/2017 titled “Barkat Ali Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others” (vii) Service Appeal No. 523/2017 titled “Yaseen Ullah Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others” (viii) Service Appeal No. 524/2017 titled “Taj Ali Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others” (ix) Service Appeal No. 525/2017 titled “Hafeez Ullah Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others” (x) Service Appeal No. 526/2017 titled “Manzoor Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others”, (xi) Service Appeal No. 548/2017 titled “Ghulam Shabir Shah Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others”, (xii) Service Appeal No. 549/2017 titled “Shahid Ullah Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others”,(xiii) Service Appeal No. 550/2017 titled “Muhammad Shakeel Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others”, (xiv) Service Appeal No. 551/2017 titled “Saadullah Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others” and (xv) Service Appeal No. 683/2017 titled “Muhammad Rauf Vs. Secretary Homes and Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar and others” as in all the appeals common questions of law and facts are involved.



2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for grant of back benefits/arrears of pay in the light of a consolidated judgment dated 18.12.2015 whereby the appellant was reinstated into service by the respondent No. 2 without granting back benefits/arrears of pay. The appellant has prayed that he might be granted back benefits from 12.01.2011 to 18.12.2015 and the intervening period be treated as leave of the kind due.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was reinstated in service vide order dated 26.01.2017 by respondent No. 2 in the light of a consolidated judgment dated 18.05.2015 passed by the Service Tribunal. The appellant preferred service appeal No. 406/2011 before the Provincial Service Tribunal which was allowed vide judgment dated 18.12.2015 and the punishment of dismissal was set aside and it was converted into stoppage of three increments for two years. The appellant was reinstated in service by the department vide order dated 26.01.2017, without grant of back benefits/arrears of pay from the date of dismissal i.e. 12.01.2011 to 18.12.2015 which was 4 years, 11 months and 6 days. Feeling aggrieved, he preferred departmental appeal on 22.02.2017 for grant of back benefits/arrears of pay to the respondent No. 1 but the same had not been responded despite lapse of statutory period of ninety days, hence this appeal.

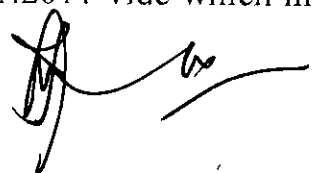
4. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.



5. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order dated 12.01.2011 was set aside by the Tribunal, therefore, the appellant was entitled to full back benefits/arrears of pay from 12.01.2011 to 18.12.2015. He further argued that during the period of dismissal from service, the appellant did not join any profitable service anywhere, therefore, the intervening period from the date of dismissal from service i.e. 12.01.2011 to the date of reinstatement i.e. 18.12.2015 should be treated as leave of the kind due. He further argued that the appellant was reinstated in service by respondent No. 2 without grant of back benefits which was a violation of various rulings of the August Supreme Court of Pakistan. He requested that the appeal might be accepted as prayed for.

6. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that though the Tribunal vide judgment dated 18.12.2015 granted relief to the appellant by reducing the imposed penalties against him, however, the judgment was silent about the back benefits. The department had complied with the judgment and reinstated the appellant in service but due to non-performing of duties, his intervening period was treated leave without pay on the principle of no work no pay. He requested that the appeal might be dismissed.

7. Through the instant service appeal, the appellant has prayed for grant of back benefits and arrears of pay after his reinstatement in service by the respondent department in the light of judgment of this Tribunal announced on 18.12.2015. Perusal of that judgment indicates that the Tribunal had not set aside the impugned orders dated 12.01.2011 and 21.01.2011 vide which major



penalty of dismissal from service was imposed upon the appellant, rather they modified that penalty and converted it into stoppage of three increments for two years. As far as granting back benefits is concerned, it was requested by the appellant at that time in his prayer but the same was not allowed by the Tribunal in its judgment under reference. The stance taken by the appellant before us at this moment that as the impugned order dated 12.1.2011 was set aside and the appellant was reinstated in service, therefore, he is entitled to all back benefits and arrears of pay from 12.01.2011 to 18.12.2015 does not hold ground. All the judgments that he has referred clearly mention that a civil servant is entitled to back benefits in case if he is exonerated of the charges leveled against him. In this case we have observed that the appellant was never exonerated of the charges leveled against him, rather his penalty was converted from dismissal to stoppage of increments by this Tribunal on the grounds that dismissal seemed harsh as compared to the penalties imposed on other officials of the respondent department in the same incident.

8. In view of the above discussion, the appeal in hand as well as connected appeals are dismissed with cost. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of July, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)