

the punishment provided under the Police Rules, 1975 but for the purpose of safe administration of justice, such punishment should be awarded which commensurate with the gravity of the ground on the basis of which penalty was awarded to an accused. Keeping in view the facts and circumstance of the case, we are of the opinion that the penalty awarded to the appellant was too harsh, therefore, for safe administration of justice. We convert the impugned penalty into minor penalty of stoppage of two annual increments with cumulative effect and intervening period of dismissal from service till his reinstatement order be consider as extra ordinary leave for bridging up his service gap.

8. In view of the above discussion, the appeal in hand is partially allowed by setting aside the impugned orders and the major penalty of dismissal from service is converted into minor penalty of stoppage of two annual increments with cumulative effect. The appellant is reinstated in service and the period of his absence as well as the intervening shall be treated as extra ordinary leave for bridging up service gap. 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 26th day of July, 2023.*



(SALAH UD DIN)
Member (J)
Camp Court, Abbottabad

*Kaleemullah




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

appellant and he was condemned unheard which is against the principle of natural justice. Lastly, he submitted that absence of the appellant neither intentional nor availed leave without permission of his highups. He, therefore, requested for acceptance of instant service appeal.

5. Conversely, learned Assistant Advocate argued that the appellant has been treated in accordance with law and rules. He further contended that appellant deliberately absented himself from duty due to which departmental proceedings were initiated against him and after fulfillment of all codal formalities, he was dismissed from service.

6. Perusal of record reveals that appellant was serving as constable when served with a charge sheet dated 27.02.2021 alongwith statement of allegations due to his absence from duty without obtaining any leave from competent authority. He replied said charge sheet by mentioning that his absence from duty was not willful and was due to illness of his mother as he is the only male member of the family. So appellant admitted his absence from the duty for which he will have to obtained permission by submitting leave application.

7. No doubt absence of the appellant is admitted but it will have to be seen that whether major penalty of dismissal from service awarded to the appellant commensurate with the gravity of charge, or was too harsh. Appellant frankly stated that medical receipts of his mother was missing and he cannot produce it. Father of the appellant martyred police official and he is the only male member who will have to take care of his ailing mother. No

 doubt the competent authority had jurisdiction to award to an accused any of

respondents may graciously be set aside and appellant be reinstated in service from the date of dismissal with all consequential service back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable at District Torghar. During service, his mother fell ill, therefore, informed his Incharge and took permission for leave because he is only male member of the family. The appellant was charge sheeted on 27.07.2021 by the District Police Officer Torghar which was replied on 08.08.2021 explaining all the facts and allegations were denied. Thereafter, a final show cause notice was issued on 04.09.2021 which was also replied and without conduction proper departmental enquiry appellant was condemned unheard and District Police Officer Torghar dismissed appellant vide order dated 04.11.2021. Feeling aggrieved, the appellant filed departmental appeal on 19.11.2021, which was rejected on 13.01.2022, hence, the instant 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 Assistant Advocate General 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. He contended that the impugned orders of the respondent are unlawful, against the law and principle of natural justice hence, liable to be set aside. He next contended that neither proper inquiry was conducted nor opportunity of person hearing was afforded to the

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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

Service Appeal No. 174/2022

BEFORE: MR. SALAH UD DIN ... MEMBER (Judicial)
MRS. RASHIDA BANO ... MEMBER (Judicial)

Muhammad Naeem S/O Chanzeb (Ex-Constable No. 36) District
Police Office Torghar, R/O Mohall Nainrin, Village Khwari, Tehsil &
District Mansehra.

.... (Appellant)

VERSUS

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

.... (Respondents)

Mr. Muhammad Aslam Tanoli
Advocate ... For appellant

Mr. Asad Ali Khan
Assistant Advocate General ... For respondents

Date of Institution.....09.02.2022
Date of Hearing.....26.07.2023
Date of Decision.....26.07.2023

JUDGMENT

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 instant appeal both the impugned

orders dated 04.11.2021 and 13.01.2022 of the

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