

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 787/2022

Date of Institution... 13.05.2022

Date of Decision... 14.07.2023

Ex-Constable Sami Ullah S/O Maqbal Khan, R/O Mohallah Tazi Khel P.O
Musazai District Peshawar.

... (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa Peshawar and 02 others.

... (Respondents)

MR. ZARTAJ ANWAR
Advocate

--- For appellant.

MR. FAZAL SHAH MOHMAND,
Additional Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MS. FAREEHA PAUL

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts leading to filing of the instant appeal are that the appellant, while posted at Police Lines Peshawar had absented himself from duty with effect from 21.01.2020 to 20.11.2020 without any leave or permission of the competent Authority. The appellant was proceeded against on the allegations of absence from duty and on conclusion of the inquiry, he was awarded major punishment of dismissed from service vide order dated 20.11.2020 passed by Superintendent of Police Headquarters, Peshawar. The appellant preferred departmental appeal/representation against the order of his

dismissal from service but the same was rejected vide order dated 15.04.2022. The appellant then submitted the instant service appeal for redressal of his grievance.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal and factual objections.

3. Learned counsel for the appellant has contended that the absence of the appellant was not willful rather the same was due to his false involvement and arrest in case FIR No. 15/20 dated 17.01.2020 under section 09-C CNSA-1997 Police Station Luddan District Vehari Punjab. He next contended that vide judgment dated 06.04.2021 passed by Additional Session Judge District Vehari Punjab, the appellant has already been acquitted in the concerned narcotics case and it was also directed in the judgment dated 06.04.2021 that the departmental proceedings may be conducted against the complainant of the case registered against the appellant. He further contended that the competent Authority was well aware of arrest of the appellant in a false and concocted case but no effort was made to associate the appellant in the inquiry proceedings. He also contended that charge sheet as well as statement of allegations and final show-cause notices were not served upon the appellant as he was behind the bar. He next argued that the inquiry proceedings were conducted at the back of the appellant without providing him any opportunity of personal hearing as well as self defence and the



respondents have thus violated Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan. He further argued that as the appellant has been condemned unheard, therefore, the impugned orders are liable to be set-aside and the appellant is entitled to be reinstated in service with all back benefits. Reliance was placed on 2013 SCMR 1053.

4. On the other hand, learned Additional Advocate General for the respondents has argued that the appellant had willfully remained absent from duty for about 10 months without availing any leave or permission of the competent Authority. He next argued that charge sheet as well as statement of allegations were issued to the appellant and his absence from duty stood proved in the regular inquiry conducted against the appellant. He further argued that the appellant was involved in smuggling of narcotics, who was arrested in case FIR No. 15/20 dated 17.01.2020 under section 09-C CNSA-1997 Police Station Luddan District Vehari Punjab but he failed to inform his high-ups about his arrest in the narcotics case. He also argued that as the departmental appeal of the appellant was barred by time, therefore, the appeal in hand is not maintainable.

5. Arguments have already been heard and record perused.


6. The appellant was proceeded against departmentally on the allegations of absence from duty with effect from 21.01.2020 to 20.11.2020. Nothing is available on the record, which could show that charge sheet as well as statement of allegations and final


show-cause notice were personally served upon the appellant as he was admittedly behind the bar due to his arrest in case FIR No. 15/20 dated 17.01.2020 under section 09-C CNSA-1997 Police Station Luddan District Vehari Punjab in which, he was ultimately acquitted vide judgment dated 06.04.2021 passed by Additional Session Judge District Vehari Punjab. Whole of the departmental proceedings against the appellant were conducted at his back and he was not provided any opportunity of personal hearing as well as self defence. The appellant was proceeded against only on the allegations of absence from duty, however the appellate Authority while rejecting the departmental appeal of the appellant has considered his involvement in case FIR No. 15/20 dated 17.01.2020 under section 09-C CNSA-1997 Police Station Luddan District Vehari Punjab as a ground for his dismissal from service, which approach was legally incorrect because the appellant was not at all proceeded against on the allegations of narcotics case. Keeping in view the facts and circumstances of the case, conducting of de-novo inquiry is necessary for just and right decision of the issue in question.

7. Consequently, the impugned orders are set-aside and the matter is remitted back to the competent Authority for conducting of de-novo inquiry in accordance with relevant law/rules within a period of 60 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings by providing him opportunity of self defence as well as

personal hearing. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
14.07.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Naeem Amin