

3

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR...

Service Appeal No. 4282/2020

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

Waseem Khan LHC No. 618, District Police Bannu. (Appellant)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. Regional Police Officer, Bannu Region Bannu.
3. District Police Officer Bannu.(Respondents)

Ms. Naila Jan
Advocate ... For appellant

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

Date of Institution.....05.05.2020
Date of Hearing.....10.07.2023
Date of Decision.....10.07.2023

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:

“That on acceptance of this service appeal the impugned orders dated 23.05.2018, 02.08.2018 and 12.02.2018 may kindly be set aside and increment of the appellant may kindly be restored with all back benefits.”


2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was enlisted as constable in police department vide order dated



31.05.2007. He was performing his duties with great zeal and zest and to the entire satisfaction of his superiors. During service he became ill and was deported towards Police Hospital and then he referred to DHQ Hospital Takht-e-Nasrati, where Doctor advised him two month bed rest w.e.f 23.01.2018 to 23.03.2018. The appellant was issued a charge sheet alongwith statement of allegations which was properly replied however, thereafter a fact finding inquiry was conducted and final show cause notice was issued and appellant was awarded minor punishment of stoppage of one increment with accumulative effect and six days period was treated as without pay vide order dated 23.05.2018. Against which the appellant filed departmental appeal, which was rejected vide order dated 02.08.2018. Feeling aggrieved the appellant filed revision petition, which was also rejected on 12.09.2019, 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 impugned orders are against law and rules and principle of natural justice hence, void ab-initio. He submitted that neither statement of any witness has been recorded nor opportunity of cross examination was afforded to the appellant and he was condemned unheard. He contended that the appellant was not treated in accordance with law and rules and respondents acted in violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Lastly, he submitted that the appellant has been subjected to double jeopardy as the appellant was awarded minor punishment of forfeiture of one increment as well as the absence period was treated as leave without pay.



5. Conversely, learned Assistant Advocate General contended that the appellant is habitual absentee having a colorful service record. He further contended that appellant was absented himself from official duty vide DD NO. 36 dated 13.02.2018 up to 19.02.2018, moreover, the appellant managed and got himself referred to Tehsil Type-C hospital instead of DHQ Hospital and obtained 60 days medical rest, which has not been approved by the competent authority. Proper charge sheet alongwith statement of allegation was issued to the appellant and proper opportunity of personal hearing was provided to the him but he failed to rebut the allegations leveled against him. Resultantly, he was awarded minor punishment was and was absent from duty has been treated in accordance with law and rules. He further contended that appellant being member of discipline force, committed gross misconduct and after fulfillment of all codal formalities he was dismissed from service. He submitted that criminal and departmental proceedings are distinct in nature, can run side by side and order of one authority is not binding on the other. He submitted that appellant was issued charge sheet alongwith statement of allegation and detailed departmental inquiry was conducted as per law/rules and was also provided full opportunity of defense, but he failed to defend himself and he rightly dismissed from service.


6. Perusal of record would reveal that appellant has challenged order dated 23.05.2018 passed by District Police Office Bannu vide which minor punishment of stoppage of one increment with cumulative effect was imposed upon the appellant and six days absence period was treated as leave without pay. Appellant challenged this order dated 23.05.2018 in a departmental appeal which was rejected by the respondent No.2 vide order dated 02.08.2018. Appellant impugned the order dated 02.08.2018 passed by appellate authority in a revision petition on 23.01.2019 to Regional Police Officer, Bannu which was also rejected on 12.02.2019. The appellant was required to file service appeal within 30 days of



passing of impugned order dated 12.02.2019 but instead of filing service appeal, the appellant approached inspector General of Police Khyber Pakhtunkhwa for redressal of his grievance by filing mercy petition, which was dismissed and appellant filed instant service appeal on 05.05.2020. No provision is available Police Rules 1975, whereby an order passed by Inspector General of Police could be challenged through filing of mercy petition. It seems that mercy petition was filed with an intention to enlarge limitation time for filing of service appeal. The revision petition of the appellant was rejected on 12.02.2019 while he filed the instant service appeal on 05.05.2020 which is badly barred by time. So far application for condonation of delay is concern, no plausible reason is shown, therefore, the same is also dismissed.

7. For what has been discussed above, the appeal in hand stands dismissed being time barred. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 10th day of July, 2023.*


(SALAH UD DIN)
Member (J)


(RASHIDA BANO)
Member (J)

*Kaleemullah