

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

**Service Appeal No. 836/2022**

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

Israr Hussain son of Rahdat Hussain Ex-Constable (Bugler) No. 2 R/O Topi  
Moh:Matona Tehsil Topi, District Swabi. .... (Appellant)

Versus

1. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. The Additional Inspector General of Police (Hqrs) Khyber Pakhtunkhwa,  
Peshawar.\
3. The Deputy Inspector General of Police Training Directorate, Khyber  
Pakhtunkhwa CPO Peshawar.
4. The Director Police Training School Sehno Mansehra..... (Respondents)

Mr. Sardar Hussain

Advocate

...

For appellant

Mr. Asif Masood Ali Shah,

Deputy District Attorney

...

For respondents

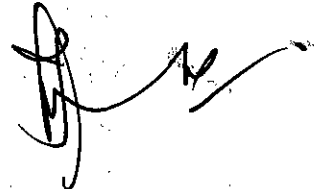
Date of Institution..... 13.05.2022

Date of Hearing..... 10.08.2023

Date of Decision..... 10.08.2023

**JUDGEMENT**

**FAREEHA PAUL, MEMBER (E):** The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 15.09.2020 whereby the appellant was dismissed from service by respondent No. 4, Director Police Training School, Mansehra. It has been prayed that on acceptance of the instant appeal, the impugned order dated 15.09.2020 might be set aside and the appellant might be reinstated in service with all back benefits alongwith any other remedy which the Tribunal deemed appropriate.

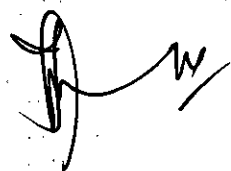


2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was absent for 14 days from duty, wherein he remained sick due to Covid 19 symptoms and was quarantined for 14 days. Sick leave was recommended by the Medical Officer of Category 'C' Hospital Topi District Swabi. Vide OB No. 37 dated 15.09.2020, the appellant was dismissed from service under the Police Rules 1975 by the respondent No. 4. Feeling aggrieved, he filed departmental appeal on 20.09.2020 to the respondent No. 3 which was rejected on 05.11.2020. The appellant then filed Revision Petition which was rejected on 14.04.2022; hence the instant service appeal.

3. 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 Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

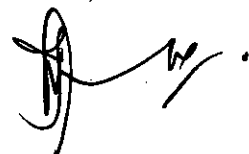
4. Learned counsel for the appellant, after presenting the case in detail, argued that no proper enquiry was conducted and proper procedure, as required under the rules, was not adopted. He further argued that the appellant was not provided fair opportunity for defending himself and was condemned unheard. He further argued that absence of the appellant was not willful but he was sick due to covid 19 and remained in quarantine for 14 days in Category C Hospital Topi District Swabi. He requested that the appeal might be accepted as prayed.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant sent a medical chit through fax wherein he intimated that he was sick and remained in



quarantine for 14 days for COVID treatment. To probe into the matter, disciplinary proceedings were initiated against the appellant in accordance with law and rules. DSP Admn, PTS Maschra, Samina Zafar, was appointed as Enquiry Officer who conducted the enquiry. When that medical chit was sent to Medical Superintendent of the said hospital it was found bogus. The appellant was a habitual absentee being found absent for 757 days. He was served with final show cause notice and was heard in orderly room on 15.09.2020 where he failed to advance plausible reasons in his defence. According to the learned DDA, after fulfillment of all codal formalities, the appellant was dismissed from service. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant, while serving as Constable in Police Training School Mansehra, absented himself from lawful duty and was resultantly dismissed from service. According to the learned counsel for the appellant, he got sick from Covid-19 and was quarantined for fourteen days vide a prescription dated 30.06.2020 of Category "C" Hospital, Topi District Swabi, attached with the appeal. When asked whether any application for leave on medical grounds was forwarded by him to his high ups, he simply referred to the medical prescription and admitted that no application was forwarded by him to his reporting officer. However, from the order dated 05.11.2020, it appears that during his absence, the appellant, on 13.07.2020, sent that medical prescription through fax to his place of duty. From the record provided by the respondents, it was found that the appellant absented himself from duty on 22.06.2020 to 21.07.2020 and then from 04.08.2020 to 10.09.2020, thus



making a total absence of 67 days. His previous record attached with the reply indicates that from 2012 to 2019, he remained absent for 728 days at different times and it was treated as without pay. His record is tainted with other punishments also including minor punishments of quarter guard, warning, extra drill, stoppage of increment and major punishment of dismissal from service in 2019 also, which was later on treated as without pay after his reinstatement.

7. In the instant case, even if we assume for a moment that he was sick with Covid-19 and remained absent in the months of June and July 2020, the question is where was he from 04.08.2020 to 10.09.2020? When confronted with this question, the appellant as well as his learned counsel could not respond. Learned counsel instead, admitted the absence of the appellant without any intimation to his high ups. Record presented before us indicates that no charge sheet and statement of allegations was issued, neither any formal inquiry was conducted by the department. An inquiry report annexed by the respondents indicates that it was conducted by a Deputy Superintendent of Police (Admn) Police Training School, Manshra on the orders of some higher level officer on the medical chit submitted by the appellant, which cannot be termed as a formal inquiry under the rules.

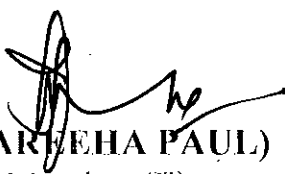
8. From the above discussion, it is evident that the procedure was not followed and no opportunity was given to the appellant to present and defend his case by conducting an inquiry under the Police Rules 1975. It is, therefore, felt that before awarding major punishment, the procedure could




have been adopted and the appellant could have been provided an opportunity of fair trial.

9. The appeal in hand is, therefore, partially allowed and the appellant is reinstated in service for the purpose of a proper inquiry under the rules. The respondents are directed to complete the procedure within sixty days of the receipt of this judgment. Back benefits are subject to the outcome of the inquiry. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 10<sup>th</sup> day of August, 2023.*

  
(FARZEHA PAUL)  
Member (E)

*\*Fazle Subhan, P.S.\**


  
(RASHIDA BANO)  
Member (J)


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10<sup>th</sup> Aug. 2023 01. Mr. Sardar Hussain, Advocate for the appellant present.  
Mr. Asif Masood Ali Shah, Deputy District Attorney for the  
respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the  
appeal in hand is partially allowed and the appellant is reinstated  
in service for the purpose of a proper inquiry under the rules. The  
respondents are directed to complete the procedure within sixty  
days of the receipt of this judgment. Back benefits are subject to  
the outcome of the inquiry. Costs shall follow the event.  
Consign.

03. *Pronounced in open court in Peshawar and given under  
our hands and seal of the Tribunal on this 10<sup>th</sup> day of August,  
2023.*

  
(FAREEHA PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member (J)

\*Fazle Subhan, P.S\*