

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 801/2018

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

Liaqat Ali Shah S/O Syed Ghafoor Shah R/O Mohalah Saidan Village Akbar
Pura District Nowshera.

.... (Appellant)

VERSUS

1. Superintendent of Police Capital City Police Khyber Pakhtunkhwa Peshawar.
2. Capital City Police Officer, Khyber Pakhtunkhwa Peshawar.
3. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.

.... (Respondents)

Mr. Sheraz Hussain
Advocate

...

For appellant

Mr. Muhammad Jan
District Attorney

...

For respondents

Date of Institution.....14.06.2018
Date of Hearing.....31.07.2023
Date of Decision.....09.08.2023

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 this appeal, the impugned order dated 14.07.2008 of respondent No.1 and appellate order dated 18.10.2008 of respondent No. 2 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits according to his seniority.”



2. Brief facts of the case, as given in the memorandum of appeal are, that appellant was appointed as Constable in Police Department vide order dated 01.07.1985. During service appellant was confronted with criminals and as a result of exchange of firing seriously injured due to which he was hospitalized advised by the doctors for a bed rest. Appellant was recovered from his injuries and attended his duties regularly, but unfortunately in the 2007 his leg was broken and he was also suffering from typhoid due to which Doctor advised bed rest to the appellant, therefore, the appellant moved an application for leave on 08.10.2007, which was allowed by the respondent No. 1. Appellant was under treatment, while respondent No.1 without adopting procedure dismissed the appellant from service vide impugned order dated 14.07.2008. the whole proceedings was taken by the respondent No. 1 against the appellant was ex-parte, despite the fact that appellant actively pursuing his case. Feeling aggrieved appellant filed departmental appeal which was turn down vide order dated 18.10.2008, 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that orders passed by the respondents are illegal, against law and facts. He contended that absence of the appellant is not willful but due to illness which was in the knowledge of the respondent department. He further contended that no regular inquiry was conducted and the appellant was condemned unheard. He submitted that punishment awarded to the appellant is too harsh and does not commensurate



with the guilt of appellant. He, therefore, requested for acceptance of instant service appeal.

5. The learned District Attorney contended that the appellant was a habitual absentee and not interested in lawful duty, as he earned in his service 37 bad entries and 06 minor punishments. He further contended that he while posted to P.S Daudzai absented himself from his lawful duty w.e.f 20.07.2007 to 14.07.2008. In this regard he was issued charge sheet and statement of allegations. SDPO Saddar Circle was appointed as Enquiry Officer. The Enquiry officer summoned him time and again but he did not turn up. After fulfillment of all codal formalities he was awarded major punishment of dismissed from service. Lastly, he submitted that appeal of the appellant is badly time barred. He, therefore, requested that instant may kindly be dismissed.


6. Perusal of record reveals that appellant was serving in the respondent department when he got himself absented from his lawful duties on 20.07.2007 and remained absent till 14.07.2008 for a period of 11 months and 24 days. Competent Authority issued charge sheet and statement of allegations on 07.04.2008 by appointing Aziz Ur Rehman, SDPO Sadar Circle as Enquiry Officer, who summoned appellant but he did not put his appearance before Enquiry officer. Enquiry officer after fulfilling codal formalities submitted his report on 17.06.2008 by founding appellant guilty of willful absence and suggested ex-parte action against him. Competent authority after receiving inquiry report issued final show cause notice on 05.07.2008 and finally he was dismissed from service vide order dated 14.07.2008. Appellant challenged his dismissal order from service in departmental appeal on 01.08.2008 which was dismissed vide order dated

18.10.2008. Appellant filed instant service appeal on 14.06.2018, in accordance with section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974, which he was required to file within 30 days of passing of final order by the appellate authority. The appellant filed instant service appeal with considerable delay of almost eleven years.

7. We are of considered view that the instant appeal has been filed after delay of almost eleven years, which is badly time barred. Reasons given for condonation of delay are not plausible and devoid of justification of eleven years long period.

8. In view of the above discussion, departmental appeal as well as service appeal is barred by time, hence dismissed. Costs shall follow the event. Consign.

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


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)