

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**  
**M.AKBAR KHAN ...MEMBER (Executive)**

*Service Appeal No.7670/2021*

Date of presentation of appeal.....26.10.2021  
Dates of Hearing.....14.09.2023  
Date of Decision.....14.09.2023

**Zardad Khan, Ex-FC No. 5114, S/O Masil Khan R/O Mirabad  
Rajer, Tehsil and District Charsadda.....(Appellant)**

Versus

1. **Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.**
2. **Capital City Police Officer, Peshawar.**
3. **Superintendent of Police Headquarters, Peshawar.**
4. **DSP/HQrs Peshawar.**

.....(Respondents)

Present:

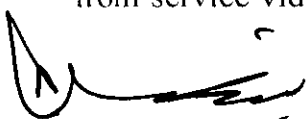
Mr. Javed Ali Muhammadzai, Advocate.....For appellant.

Mr. Muhammad Jan, District Attorney.....For respondents

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**APPEAL UNDER SECTION 4 OF THE KHYBER  
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST  
THE ORDER DATED 09.09.2021 WHEREBY THE APPELLATE  
AUTHORITY REJECTED THE DEPARTMENTAL APPEAL  
OF THE APPELLANT AGAINST ORIGINAL DISMISSAL  
FROM SERVICE ORDER DATED 24.05.2021.**

**JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Brief facts gathered from the memo and grounds of appeal are that the appellant was appointed as Constable in the respondent/department in the year 2010; that the appellant was suffering from different diseases for which he was hospitalized; that after treatment, when the appellant approached the department for joining his duties, was informed that he was dismissed from service vide impugned order dated 24.05.2021 w.e.f the date of his absence i.e.



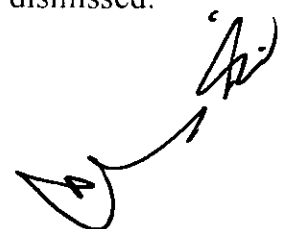
29.04.2021; that feeling aggrieved, the appellant preferred departmental appeal on 21.06.2021, which was rejected on 09.09.2021, communicated to him on 11.10.2021, hence, the instant service appeal on 26.10.2022.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defence setup was a total denial of the claim of the appellant.

3. We have heard learned counsel for the appellant and learned District Attorney for the respondents.

4. Learned counsel for the appellant contended that the impugned order dated 24.05.2021 was against law, facts, Constitution and principles of natural justice, hence, *void ab-initio*; that no charge sheet alongwith statement of allegations had been issued which were mandatory under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 and the appellant had been condemned unheard as no opportunity of personal hearing or defense was provided to him either by Inquiry Officer or the Competent Authority, hence the whole proceedings were liable to be set aside. He requested that the appeal might be accepted.

5. As against that, learned District Attorney argued that the impugned order had been issued in accordance with law and no violation had been made; that proper inquiry was held against the appellant after fulfilling of all codal formalities; that fair opportunity of defense had been provided to him, however, he failed to produce any pro and contra evidence in his favor to defend his stance. He further argued that the appellant was given the chance of personal hearing but he failed to defend himself against the allegations. He concluded that the appeal might be dismissed.



6. The appellant has annexed medical prescriptions but stance of the appellant regarding his illness, has not been considered by the respondents as there is no mention regarding his illness. Although, an enquiry was shown to have been conducted, charge sheet and final show cause notice, are also alleged to be given but the stance of the appellant that he was hospitalized, and was not associated with any proceedings. Similarly, he denies to have been heard in person.

7. Therefore, while accepting this appeal, we set aside both the impugned orders and remit the matter back to the authorities to conduct proper de-novo enquiry under the rules within a period of sixty (60) days after receipt of copy of this judgment/order. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Date of receipt of copy of the judgment shall be acknowledged in writing to the Registrar of this Tribunal. Costs shall follow the events. Consign.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 14<sup>th</sup> day of September, 2023.*



**KALIM ARSHAD KHAN**  
Chairman



**MUHAMMAD AKBAR KHAN**  
Member (Executive)

\*Adnan Shah, PA\*

**ORDER**


14<sup>th</sup> Sept, 2023

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.

2. Vide our detailed judgement of today placed on file, while accepting this appeal, we set aside both the impugned orders and remit the matter back to the authorities to conduct proper de-novo enquiry under the rules within a period of sixty (60) days after receipt of copy of this judgment/order. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Date of receipt of copy of the judgment shall be acknowledged in writing to the Registrar of this Tribunal. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 14<sup>th</sup> day of September, 2023.*

  
(Mr. Akbar Khan)  
Member(Executive)

  
(Kalim Arshad Khan)  
Chairman

\*Adnan Shah, P.A\*