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REGISTERED
No. C.P.814/2019 - SCJ
SUPREME COURT OF PAKISTAN

Islamabad, dated 12/03/2023 2023

10 From The Registrar,
Supreme Court of Pakistan,
Islamabad.

To The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Subject: CIVIL PETITION NO. 814 OF 2019

Rahat Shah

Versus

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar & others

**On appeal from the Judgment/Order of the K.P.K. Service Tribunal,
Peshawar dated 23/01/2019 in S.A.1109/2017.**

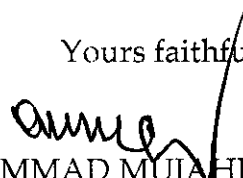
Dear Sir,

I am directed to enclose herewith a certified copy of the Order/Judgment of this Court dated 28/03/2022 dismissing the above cited case in the terms stated therein for information and further necessary action.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order/Judgment:

Yours faithfully,


(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial, CJ

Mrs. Justice Ayesha A. Malik

CIVIL PETITION NO.814 OF 2019

[Against the judgment dated 23.01.2019 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar, passed in Service Appeal No.1109 of 2017]

Rahat Shah, Driver FC Belt No.3759/618 of
Traffic Peshawar

...Petitioner(s)

Versus

The Provincial Police Officer, KPK and others

...Respondent(s)

For the Petitioner(s) : Mr. Muhammad Asif Yousafzai, ASC

Respondent(s) : N.R.

Date of Hearing : 28.03.2022.

JUDGMENT

AYESHA A. MALIK, J- This Civil Petition for Leave to Appeal under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, has arisen out of a judgment dated 23.01.2019, passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**the Tribunal**), whereby Service Appeal No.1109 of 2017, filed by the Petitioner, was dismissed.

2. The learned counsel for the Petitioner argued that the Petitioner was dismissed from service on 09.07.2015 on account of absence from duty. He states that neither a proper inquiry was held in the matter nor did the Tribunal consider the facts, which prompted his absence from duty. The learned

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Supreme Court of Pakistan

15/04/2022

counsel for the Petitioner further argued that the Petitioner was wrongfully named in a double murder case and on account of the same, he had to disappear. Ultimately, he was acquitted from the court of competent jurisdiction from any involvement in the murder cases vide judgment dated 20.03.2017 by the Court of Additional Sessions Judge VII, Peshawar. Therefore, the learned counsel submits that the Tribunal failed to consider the facts available on the record, particularly, with respect to the fact that the Petitioner was never informed of any inquiry hence, he did not participate in the proceedings. Further that the order of dismissal from service was never communicated to the Petitioner, hence, the delay attributed to the Petitioner for late filing of the appeal, by more than one year, required the Tribunal to look into the circumstances and ascertain from the record whether in fact the Petitioner was served with notice of dismissal from service.

3. The impugned judgment of the Tribunal concluded that the Petitioner was involved in a criminal case for committing two murders and on account of the same, he absconded and did not attend to his duties. Therefore, the case of wilful absence was made out. The department proceeded against him and dismissed him from service on 09.07.2015, whereas the departmental appeal was filed on 18.04.2017 by the Petitioner, after a delay of more than one year and eight months. Hence, the Tribunal concluded that the departmental appeal was barred by time and has dismissed the appeal.

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4. We have heard the learned counsel for the Petitioner at length and examined the record. The admitted position is that the Petitioner joined the police force as a constable, working as a driver in 2009. He was implicated in a double murder case through FIR No.650 dated 18.12.2014. He absconded from the criminal proceedings and was admittedly absent from duty from 18.12.2014 to 09.07.2015. The learned counsel admits that in April, 2015, the Petitioner surrendered and was in jail up till the judgment of acquittal dated 20.03.2017. Therefore, the allegation of absence from duty for the period from 18.12.2014 to 09.07.2015 being six months and 21 days is admitted and proven from the record. The Petitioner was issued a charge sheet on the grounds of being absent from duty and for absconding from the law for which he was required to provide a response. He failed to provide the response, the matter was inquired into and the inquiry committee concluded that he is involved in criminal case, in which, he was declared a proclaimed offender, consequently his conduct is unbecoming of a police official and further that he remained absent from duty without seeking any leave or permission. Ultimately, an order was passed on 09.07.2015 whereby he was dismissed from service on the basis of the recommendations of the inquiry officer *as well as his continuous and prolonged absence from service.*

5. While, the learned counsel has argued that the Petitioner had no knowledge of his order of dismissal from service dated 09.07.2015 as he was in jail from April, 2015, we

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note that prior to April, 2015, during the course of the disciplinary proceedings, the Petitioner did not respond or participate in the disciplinary proceedings nor did he make any effort to obtain leave or explain his position to the department. The Petitioner remained silent until the judgment by the trial court in which he was declared innocent from the charge of murder on 20.03.2017. He then filed an appeal against the order dated 09.07.2015 on 18.04.2017 in which he admits that he spent approximately eight months in jail. However, there is nothing in the said appeal wherein he has contested or challenged the order of 09.07.2015 on the ground that he had never been communicated the same. The chronology of events shows that the Petitioner waited for the order of acquittal after which he appealed against the dismissal order and sought reinstatement in service. The appeal was rejected on 02.08.2017 after which he filed a revision petition which was also rejected on 25.09.2017. The main grounds for rejecting the appeal and revision were his involvement in the criminal case and absence from duty. Both the orders in appeal and in revision have considered his record and have held that his involvement in the murder of two persons and having been declared a proclaimed offender as well as his wilful absence from duty necessitated his dismissal from service.

6. The impugned judgement, therefore, has duly considered the facts on the record and maintained the findings of the department, for the same reasons. Therefore, based on the merits of the case, his appeal has been dismissed for good X

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reason as the Petitioner works for a disciplinary force being the police who is required to be a highly disciplined individual, particularly, when it comes to the duties and responsibilities as a constable. In this regard, even when he was implicated in FIR No.650 with reference to two murders, instead of facing the charge he absconded and was declared a proclaimed offender. Even this, is a sufficient cause for his dismissal from service given that he works for a disciplinary force wherein if he felt he was innocent he was required to face the charges and has not been able to justify absconding from the law and having been declared a proclaimed offender.

7. Furthermore, the contentions of the Petitioner with respect to due process are not made out as wilful absence from duty is admitted and this Court has already held in the cases of Deputy Inspector General Investigation, Lahore v. Asghar Ali (2011 SCMR 1389), Hassan Raza v. Federal Board of Revenue through Chairman and others (2020 SCMR 994), National Bank of Pakistan and another v. Zahoor Ahmed Mengal (2021 SCMR 144) and Secretary elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Noor-ul-Amin (2021 SCMR 959) that in case of wilful absence from duty regular inquiry is not required. In this case, an inquiry was made and notwithstanding his own admission, his wilful absence from duty was established.

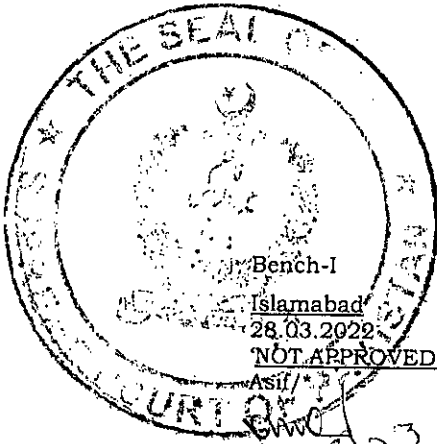
8. Under the circumstances, there is no merit in this Petition and no case is made out for grant of leave to appeal in X

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this matter. The Petition is accordingly dismissed and leave refused.

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sd/- - - - - - *5*



Bench-I
Islamabad
28.03.2022

NOT APPROVED FOR REPORTING

Asif
28/3/22

Certified to be True Copy

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