

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 7572/2021

Date of Institution ... 11.10.2021

Date of Decision... 12.09.2023

Sami Ullah (Warder) S/O Sher Ali, R/O Khojuram P.O Mandori Pital Shah  
Tehsil & District Bannu.

... (Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa through Secretary Home, Civil  
Secretariat, Peshawar and 04 others.

... (Respondents)

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MR. ATTIQ-UR-REHMAN,  
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,  
Deputy District Attorney

--- For respondents.

SALAH-UD-DIN  
FAREEHA PAUL

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MEMBER (JUDICIAL)  
MEMBER (EXECUTIVE)

**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant appeal are that the appellant while attached as Warder to Internment Centre Lakki Marwat for pay and duty purpose was proceeded against departmentally on the allegations of absence from duty with effect from 30.03.2021 to 01.06.2021. The appellant was awarded major penalty of compulsory retirement from service vide order dated 23.06.2021 passed by Superintendent Circle HQs Prison D.I.Khan. The departmental appeal of the appellant was rejected vide order dated 27.08.2021 passed by Inspector General of



Prisons Khyber Pakhtunkhwa Peshawar, hence the instant service appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that absence of the appellant from duty was not willful rather the same was on account of his severe illness and he was advised bed rest by the Doctor; that the plea of illness was taken by the appellant before the competent Authority as well as in his departmental appeal, however the same was not at all taken into consideration; that no regular inquiry was conducted in the matter and the appellant was not provided any opportunity of personal hearing or self defence; that there are numerous verdicts of worthy apex court that major penalty could not be awarded to an employee without holding a regular inquiry. In the last, he requested that the impugned orders are wrong and illegal, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned Deputy District Attorney for the respondents contended that the appellant had remained absent from duty without any sanctioned leave or permission of the competent Authority and had committed misconduct; that absence of the appellant from duty was not denied by the

appellant, therefore, there was no need of holding any inquiry in the matter; that previously too, the appellant had remained absent from duty and was awarded various punishments. In the last, he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The appellant was proceeded against on the allegations of absence from duty with effect from 30.03.2021 to 01.06.2021. He was issued show-cause notice vide endorsement No.1644-45 dated 06.05.2021, whereby holding of an inquiry was dispensed with. It is the contention of the appellant that his absence from duty was not willful rather the same was on account of his severe illness. The plea of illness was specifically taken by the appellant in his departmental appeal, however its genuineness or otherwise was not determined by the appellate Authority through a speaking order. August Supreme Court of Pakistan in its judgment reported as 2004 SCMR 616 has held that in case of imposing of major penalty, the principle of natural justice requires that a regular inquiry be conducted in the matter and opportunity of personal hearing and defense be provided to the civil servant proceeded against. The impugned orders are thus not sustainable in the eye of law and are liable to be set-aside.

7. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders. The appellant is reinstated in service and the matter is remanded back to the

competent Authority for conducting of de-novo regular inquiry into the matter strictly in accordance with law and rules within a period of 90 days of receipt of copy of this judgment. The issue of back benefits shall follow the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

12.09.2023



(FAREEHA PAUL)  
MEMBER (EXECUTIVE)




(SALAH-UD-DIN)  
MEMBER (JUDICIAL)


ORDER  
12.09.2023

Appellant alongwith his counsel present. Mr. Suleman, Senior Instructor alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned orders. The appellant is reinstated in service and the matter is remanded back to the competent Authority for conducting of de-novo regular inquiry into the matter strictly in accordance with law and rules within a period of 90 days of receipt of copy of this judgment. The issue of back benefits shall follow the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
12.09.2023

  
(Fareeha Paul)  
Member (Executive)

  
(Salah-Ud-Din)  
Member (Judicial)