

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7583/2021

Date of Institution ... 24.09.2021

Date of Decision... 11.10.2023

Mast Ali Khan S/O Malik Aslam Khan, Constable No. 1977, Police Line Kohat. ... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 02 others. ... (Respondents)

MR. KAMRAN KHAN AFRIDI,
Advocate

--- For appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- For respondents.

SALAH-UD-DIN
FAREEHA PAUL

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Brief facts of the case are that the appellant while posted at Police Lines Kohat, had remained absent from duty vide Daily Diary No. 6 dated 14.03.2020, therefore, disciplinary action was taken against him and he was dismissed from service vide order dated 18.05.2020. The departmental appeal of the appellant was rejected vide order dated 30.12.2020, however his revision petition was partially allowed and the punishment of dismissal from service was converted into stoppage of increment for one year, while the absence as well as intervening period was treated as without pay, hence the instant appeal.

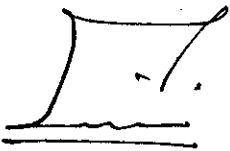
2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through

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 has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Deputy District Attorney for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

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

5. A perusal of the record would show that disciplinary action was taken against the appellant on the allegation of his absence from duty as reported vide Daily Diary No. 6 dated 14.03.2020. The appellant was issued show-cause notice on 15.04.2020 whereby the Authority had decided to proceed against him in General Police Proceedings without aid of an inquiry officer. The appellant though submitted reply to the show-cause notice, however he did not bother to appear before the competent Authority to defend himself. In his departmental appeal, the appellant has not only admitted his absence from duty but has also admitted his failure to appear before the competent Authority. It is also an admitted fact that the appellant remained absent from duty without any casual leave or permission of the competent Authority. The appellant was member of a disciplined force and his absence from duty without any casual leave or permission of the competent Authority was certainly an act constituting misconduct. Supreme



Court of Pakistan in its judgment reported as 2008 SCMR 214 has held as below:-

“The civil servant can avail earned leave in his own right but for grant of such right he must follow the proper procedure provided under the rules and is not supposed to avail any kind of leave entirely in his discretion and choice in departure to the rules and service discipline. The conduct of appellant was thus, unbecoming of a good officer and in the given circumstances, the absence of appellant from duty without leave even if was not willful, it being an act of disorder in the service, would certainly constitute misconduct and consequently, no exception can be taken to the opinion expressed by the Tribunal. However, in service matters, the penalty is always imposed in the light of nature of charge and in the present case the charge against the appellant was not so grave to propose major penalty of removal from service or compulsory retirement.”

6. We are of the view that the appellant has already been dealt with leniency by the departmental Authority by modifying the penalty of his dismissal from service into minor penalty of stoppage of one annual increment for one year by treating the absence as well as intervening period as without pay.

7. In view of the above discussion, the appeal in hand being without any merit stands dismissed. Parties are left to bear their own costs.

File be consigned to the record room.

ANNOUNCED

11.10.2023



(FAREEHA PAUL)
MEMBER (EXECUTIVE)



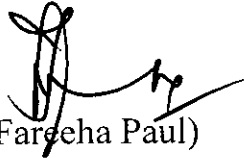
(SALAH-UD-DIN)
MEMBER (JUDICIAL)

ORDER
11.10.2023

Appellant alongwith his counsel present. 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 being without any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.10.2023



(Fareeha Paul)
Member (Executive)



(Salah-Ud-Din)
Member (Judicial)

Naeem Amin