

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1432/2022

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Zabib Ur Rehman S/o Abdul Jabbar R/o Sadiq Abad Illaqa P.S Ghori Wala, District Bannu. (Ex-Sub Inspector BPS-14) District Police Department Bannu.....(*Appellant*)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar.
2. Regional Police Officer, Bannu.
3. District Police Officer, Bannu.
4. District Accounts Officer, District Bannu.....(*Respondents*)

Present:-

INAYAT ULLAH KHAN,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....05.10.2022
Date of Hearing.....27.09.2023
Date of Decision..... 27.09.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“On acceptance of this service appeal, the official respondents may kindly be directed to reinstate the appellant in service w.e.f 01.08.2018 with all back benefits. Any other relief to whom the appellant found entitled may also be granted.”

02. Brief facts of the case are that appellant was appointed as constable vide order dated 24.12.1985. He was promoted time and again and lastly he was promoted to the post of Sub-Inspector (BPS-14). That due to some domestic problems, the appellant applied for LPR, which was allowed vide Notification dated 30.07.2018 and the appellant was granted 365 days LPR w.e.f. 01.08.2018 until his retirement with effect from 01.08.2019; that the appellant preferred application on 14.12.2018 for withdrawal of LPR and his case was submitted by District Police Officers Bannu to the Regional Police Officer, Bannu Region, vide letter dated 23.04.2019 for legal opinion. The legal opinion was rendered by AIG/Legal for Provincial Police Officer, Khyber Pakhtunkhwa Peshawar to District Police Officer, Bannu vide letter dated 04.01.2019 that the matter be decided in accordance with the letter of Finance Department No. (SORS-II)/4-36/2018 dated 05.09.2018 which provides that the government servant may withdraw option of voluntary retirement before retirement mature. The appellant filed departmental appeal on 24.06.2019 to the Inspector General of Police Khyber Pakhtunkhwa, Peshawar for withdrawal/cancellation of his LPR which was not decided within the statutory period of ninety (90) days. Feeling aggrieved, the appellant filed Writ Petition No. 754-B/2019 which was dismissed on the ground of jurisdiction vide order dated 22.09.2022. However, the petitioner was left at liberty to approach the proper forum for the redressal of his grievances. The appellant filed the instant service appeal on 05.10.2022.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and

learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the inaction of the respondents is illegal and the respondents are bound to allow the application for cancellation/withdrawal of his LPR; that the appellant duly filed his application dated 14.12.2018 for cancellation/withdrawal of his LPR before the maturity of his retirement which has been mentioned in letter dated 23.04.2019, hence the option of withdrawal of LPR was well within time and in this regard that Notification dated 05.09.2018 issued by the Finance Department fully covers the request of appellant; that it is a well settled law that when the application for cancellation/withdrawal of LPR is filed before the maturity date of retirement, the same need to be accepted by the respondents; that the AIG (Legal) for Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar also recommended the case of the appellant for withdrawal of his LPR therefore, there is no legal hurdle involved in the way of appellant to reinstate him into service. Reliance is placed on 2000 SCMR 1964.

05. Learned District Attorney on the other hand contended that the inaction of the respondents is not illegal and was issued after receipt of legal opinion; that there is no such rules to join the duty once a person availed LPR; that the appellant has proceeded on pension from the respondent department w.e.f. 01.08.2019 vide Notification dated 30.07.2018, therefore, he cannot rejoin his duty; that according to Government Rules, Essential Service Maintenance Act, instruction in respect of LPR/Retirement, cannot be modified/changed.

06. The appellant joined Police service as Foot Constable in the year 1985. With the passage of time he got promotion in his cadre and lastly promoted to the rank of Sub-Inspector. After quality service of 25 years he opted for premature retirement and applied for LPR which was allowed by the District Police Officer, Bannu vide order dated 30.07.2018 indicating therein that the appellant after completion of the period of LPR will stand retired on pension with effect from 01.08.2019. In the meanwhile Finance department Government of Khyber Pakhtunkhwa vide circular Policy Instructions dated 05.09.2018 adopted Federal Government Policy regarding withdrawal of request of LPR/retirement. The policy instructions are crystal clear and reproduced below;

(i) He/She may withdraw his/her option of voluntary retirement before retirement mature;

(ii) It is binding on a government servant to return any amount of leave pay received by him/her, in lieu of encashment of LPR for that period;

(iii) Later on, on attaining the age of superannuation, if he/she again opts for 365 days leave encashment in lieu of 365 days LPR, such option on an individual may treated as a fresh case and he/she will be allowed encashment of LPR in toto.

On the strength of the above policy of the Provincial Government the appellant after four (04) months and thirteen (13) days of the commencement of his LPR and much before maturity of retiring pension applied for withdrawal of his request of LPR. His request for withdrawal was well within time and we find no legal justification to reject the same. The case of the appellant is duly covered by the policy of the Provincial

Government and we observe that inaction on the part of respondent has resulted in unnecessary litigation.

07. We therefore, allow the instant appeal as prayed for. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 27th day of September, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)