

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 667/2022

Date of Institution ... 09.05.2022
Date of Decision... 10.10.2023

SCANNED
KPST
Peshawar

Waheed Ahmad S/o Jangrez Khan Ex-Constable No. 156, R/o Mohallah Par
Moli Manki Tehsil Lahore, District Swabi. ... (Appellant)

VERSUS

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

MR. MEHBOOB ALI KHAN DAGAI,
Advocate

--- For appellant.

MR. ASAD ALI KHAN,
Assistant Advocate General

--- For respondents.

SALAH-UD-DIN
FAREEHA PAUL

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

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant appeal are that departmental action was taken against the appellant on the allegations that he had willfully remained absent from duty with effect from 11.08.2021 to 23.08.2021 and 06.10.2021 till the date of his dismissal from service i.e 16.11.2021. The appellant challenged the punishment of his dismissal from service through filing of departmental appeal before the Regional Police Officer Mardan, which was rejected vide order dated 05.04.2022, 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 contended that whole of the inquiry proceedings were conducted at the back of the appellant and he was not provided any opportunity of personal hearing as well as self defence. He next contended that the appellant was to attend his ailing father, therefore, his absence could not be considered as willful. He further argued that the inquiry proceedings were conducted in derogation of mandatory provisions of Police Rules, 1975, therefore, the impugned orders are liable to be set-aside. He also argued that absence of the appellant was not misconduct of such grave nature to entail major punishment of dismissal from service. Reliance was placed on 2008 SCMR 214 as well as judgment dated 13.10.2020 passed by this Tribunal in Service Appeal No. 627/2017 titled "*Shujahat Ali Versus Provincial Police Officer Khyber Pakhtunkhwa Peshawar and 03 others*".

4. On the other hand, learned Assistant Advocate General for the respondents contended that proper charge sheet and summery of allegations were issued to the appellant, however he did not bother to associate himself in the inquiry proceedings. He next contended that the appellant was issued final show-cause notice but even then he remained absent from duty, therefore, he was rightly dismissed from service. He further contended that the allegations of absence from duty against the appellant stood proved in a proper

inquiry, therefore, the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.

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

6. The appellant was issued charge sheet as well as statement of allegations on 20.10.2021 and Mr. Noor-ul-Amin the then DSP H.Qrs Swabi was appointed as inquiry officer. Vide letter No. 457/HQrs dated 21.10.2021 and letter No. 467/HQrs dated 28.10.2021, the appellant was summoned by the inquiry officer, however he failed to appear and associate himself in the inquiry proceedings, therefore, ex-parte action was taken against him. Even otherwise too, the appellant has admitted his absence from duty, however his plea is that he was attending his ailing father. The same plea was also taken by the appellant in his departmental appeal, however the appellant did not annex any documentary proof alongwith his departmental appeal as well as service appeal in support of his afore-mentioned plea. 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,

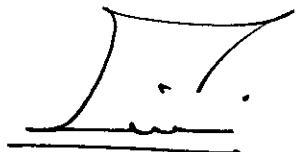
it being an act of disorder in the service, would certainly constitute misconduct and consequently, no exception can be taken to the opinion expressed by the Tribunal. However, in service matters, the penalty is always imposed in the light of nature of charge and in the present case the charge against the appellant was not so grave to propose major penalty of removal from service or compulsory retirement.

7. While seeking wisdom from the judgment referred to above, we are of the view that the punishment awarded to the appellant was too harsh and requires modification.

8. In view of the above discussion, the appeal in hand is partially allowed and the major punishment of dismissal from service is converted into minor punishment of stoppage of three increments for a period of three years. The appellant stands reinstated in service and the period of his absence as well as the intervening period with effect from the date of his dismissal till his reinstatement shall be treated as extra-ordinary leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
10.10.2023


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
10.10.2023


Appellant alongwith his counsel present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is partially allowed and the major punishment of dismissal from service is converted into minor punishment of stoppage of three increments for a period of three years. The appellant stands reinstated in service and the period of his absence as well as the intervening period with effect from the date of his dismissal till his reinstatement shall be treated as extraordinary leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

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10/10/2023
Faisalabad


(Fareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)