

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 7566/2021

Date of Institution ... 08.10.2021

Date of Decision... 23.10.2023

Sher Bahadar, Ex-Constable No. 2289, Police Lines, Mardan.

... (Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 02 others.

... (Respondents)

MR. MIR ZAMAN SAFI.

Advocate

For appellant.

MR. ASAD ALI KHAN,

Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN

MR. MUHAMMAD AKBAR KHAN

MEMBER (JUDICIAL)

MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Brief facts giving rise to filing of

the instant appeal are that disciplinary action was taken against the

appellant on the allegations of his absence from duty with effect from

03.11.2019, which culminated into his dismissal from service vide the

impugned order bearing OB No. 928 dated 09.06.2020 passed by the

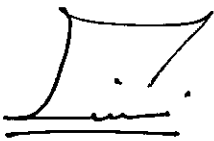
then District Police Officer Mardan. The appellant challenged the

punishment of his dismissal from service through filing of

departmental appeal before the Regional Police Officer

Mardan, which was rejected vide order dated 06.08.2020 and the

revision petition submitted by the appellant to the Inspector General of



Police Khyber Pakhtunkhwa Peshawar was also rejected vide order dated 08.06.2021, 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.

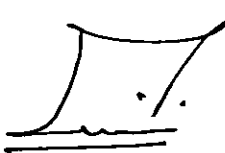
3. Learned counsel for the appellant argued that charge sheet, statement of allegations as well as show-cause notice were not served upon the appellant and the inquiry proceedings were conducted without associating the appellant with the same. He next argued that the appellant was condemned unheard as he was not provided any opportunity of personal hearing as well as self defence. He also argued that the rights of the appellant as guaranteed under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973 were violated.

He next contended that the absence of the appellant was not willful rather he was unable to attend his duty on account of severe illness. He further argued that absence of the appellant from duty even it admitted to be willful, was not an act of such grave misconduct to entail harsh punishment of dismissal from service. In the last he argued that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, learned Assistant Advocate General for the respondents contended that the appellant had willfully remained absent from duty for considerable long period and the allegations

against him stood proved in a regular inquiry. He next contended that the appellant was associated with the inquiry proceedings, however he did not join his duty despite taking of disciplinary action against him and failed to appear before the competent Authority for availing opportunity of personal hearing. He further argued that previously too, the appellant had remained absent from duty on various occasions and has been awarded minor punishments. In the last he requested that 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. A perusal of the record would show that the appellant was issued charge sheet as well as statement of allegations by the then District Police Officer Mardan on 26.11.2019. Copy of the charge sheet as available on the record would show that the same was personally received by the appellant on 28.01.2020 and he also filed reply of the same. The appellant had though taken the plea of illness in his reply, however the inquiry report would show that he had not produced any document to the inquiry officer regarding his illness. Moreover, in his departmental appeal too, the appellant had though taken the stance of his illness but he had not annexed any documentary proof regarding his illness. The appellant had remained absent from duty without seeking leave or permission of the competent Authority and was, therefore, liable for commission of misconduct. The question, however hounds the mind is whether the


penalty so awarded to the appellant commensurate with the gravity of the charge or was too harsh. No doubt the competent Authority had jurisdiction to award to an accused any of the punishment provided under the Police Rules, 1975 but for the purpose of safe administration of justice, such punishment should be awarded which commensurate with the gravity of the ground on the basis of which penalty was awarded to an accused. Keeping in view the facts and circumstances of the case, we are of the opinion that the penalty so awarded to the appellant was too harsh, therefore, for safe administration of justice we convert the impugned major penalty into minor penalty of stoppage of three annual increments for a period of three years.

7. In view of the above discussion, the appeal in hand is partially allowed by setting-aside the impugned orders and the major penalty of dismissal from service is converted into minor penalty of stoppage of three annual increments for a period of three years. The appellant is 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 leave without pay for bridging up his service gap. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
23.10.2023



(MUHAMMAD AKBAR KHAN)
MEMBER (EXECUTIVE)




(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
23.10.2023

Appellant alongwith his counsel present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith 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 by setting-aside the impugned orders and the major penalty of dismissal from service is converted into minor penalty of stoppage of three annual increments for a period of three years. The appellant is 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 leave without pay for bridging up his service gap. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
23.10.2023


(Muhammad Akbar Khan)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)