

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 447/2022

BEFORE: MR. SALAH-UD-DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Naeem, Ex-Constable No. 246, S/O Noor Ul Haq R/O Kazi Kali District Peshawar. (Appellant)

Versus

1. The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent of Police Headquarters, Peshawar.
..... (Respondents)

Mr. Hamad Hussain,
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

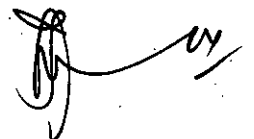
... For respondents

Date of Institution.....	29.03.2022
Date of Hearing.....	11.10.2023
Date of Decision.....	11.10.2023

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 10.05.2017 whereby the appellant was awarded major penalty of dismissal from service. It has been prayed that on acceptance of the appeal, the impugned order dated 10.05.2017 might be set aside and appellant might be reinstated in service with all back benefits, alongwith any other remedy which the Tribunal deemed fit and appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable in Police Department and



rendered 10 years service with the police force and performed his duty to the satisfaction of his officers. On 10.05.2017, he was dismissed from service by the Superintendent of Police Headquarters, Peshawar. Feeling aggrieved the appellant filed departmental appeal on 23.12.2021 before respondent No. 2, through registered post, which was not decided within the stipulated period, hence the instant appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

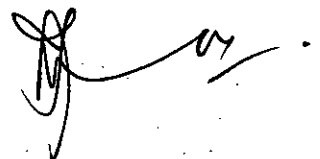
4. Learned counsel for the appellant, after presenting the case in detail, argued that absence of the appellant was not willful but his father, who was a cardiac patient, was seriously ill and needed special care, and therefore, he could not leave him alone. He further argued that the appellant was not provided fair opportunity of defending himself which was against the principle of natural justice that no one should be condemned unheard. Learned counsel for the appellant contended that no opportunity of personal hearing was afforded to him and hence the impugned order was void ab-initio, arbitrary and not sustainable in the eyes of law. He further contended that the punishment of dismissal from service was not commensurate with the guilt of the appellant. He requested that the appeal might be accepted as prayed.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that performance of the appellant



was not upto the mark and there were charges of willful absence from duty on different occasions during his short service which showed that the appellant was a habitual absentee and was not interested in his official duty. He further argued that the appellant absented himself from official and lawful duty with effect from 30.03.2016 to 29.09.2016 and 02.10.2016 to 04.05.2017, which was 13 months and 06 days, without prior permission or leave from the competent authority. He was issued charge sheet alongwith statement of allegations and SDPO Badaber Peshawar was appointed as enquiry officer. The learned DDA argued that during the course of enquiry, appellant was summoned time and again, but he did not turn up. After receipt of the findings, final show cause notice was issued to him and sent to him at his home address through local Police, which was received by his father, but the appellant avoided to appear and defend himself. The learned DDA stated that after observing all codal formalities, he was awarded major punishment of dismissal from service by the competent authority. He further argued that the appellant preferred departmental appeal after inordinate delay of about 04 years 06 months and 26 days, showing his disinterest in his job, and that appeal was filed/rejected on the grounds of facts and limitation. He requested that the appeal might be dismissed.

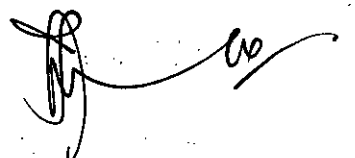
6. Arguments and record presented before us show that the appellant, while serving as Constable in the provincial police at P.S Mattani, Peshawar, absented himself from lawful duty from 30.03.2016 to 29.09.2016 and 02.10.2016 to 10.05.2017. Disciplinary proceedings were initiated against him and charge sheet alongwith statement of allegations



dated 06.01.2017 was issued to him. An inquiry report annexed with the reply of respondents indicates that the Inquiry Officer summoned the appellant, through Police Station Mattani, through a written Parwana to attend his office on 13.01.2017 but he did not comply with those orders. The Inquiry Officer submitted his report on 10.04.2017 by stating therein that the appellant did not show up till that date and hence the inquiry proceedings were concluded ex-parte. Resultantly a show cause notice was first issued and delivered at his home address, followed by the impugned order of dismissal from service on 10.05.2017. Departmental appeal annexed with the service appeal bears the date 23.12.2021.

7. When confronted on the point of absence from duty, the learned counsel for the appellant admitted that he was absent because his father, being a cardiac patient, was not well. The learned counsel further admitted that the appellant did not submit any application seeking leave from his competent authority. When further confronted with the much delayed submission of departmental appeal against the impugned order, the learned counsel had no solid grounds to defend his case.

8. From the above discussion, a point that is extremely evident is that the appellant was a member of a disciplined police force of the province and he was bound under a set of rules, which he had to adhere to in any case. Absence from lawful duty, without any intimation to his seniors, is not an acceptable behavior for which he was rightly proceeded against. He failed to present himself, first, before the Inquiry Officer and then before his



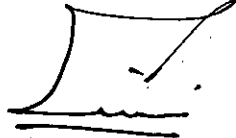
competent authorities and lost all the chances provided to him to defend himself.

9. In view of the foregoing, the appeal in hand is dismissed being groundless. Costs shall follow the events. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of October 2023.*


(FAREEHA PAUL)
Member (E)

Fazle Subhan, P.S


(SALAH-UD-DIN)
Member (J)

S.A 447/2021

11th Oct. 2023

01. Mr. Hamad Hussain, Advocate for the appellant present.
Mr. Asif Masood Ali Shah, Deputy District Attorney for the
respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the
appeal in hand is dismissed being groundless. Costs shall follow
the event. Consign.

03. *Pronounced in open court in Peshawar and given under
our hands and seal of the Tribunal this 11th day of October, 2023.*


(FARREHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S