

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 7374/2021

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

Gul Bahar Khan, Constable No. 1612, Capital City Police,
Peshawar.....(*Appellant*)

VERSUS

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

Present:-

TAIMUR ALI KHAN,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....25.08.2021
Date of Hearing.....09.10.2023
Date of Decision..... 09.10.2023

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;


“That on acceptance of this appeal, the order dated 23.09.2020, 29.12.2020 and 30.06.2021 may kindly be set aside and the respondents may be directed to restore the stages of time scale of the appellant as were before the penalty order dated 23.09.2020 with all back and consequential benefits. Any other

remedy, which this august Tribunal deems fit and appropriate that may also, be awarded in favour of appellant."

02. Brief facts of the case are that appellant was appointed as constable in the respondent department in the year 1998. The appellant had passed A-I course and was eligible for B-I course. The respondent department conduct B-I course through ETEA. The appellant had applied for B-I examination, however he had inadvertently wrote his date of birth as 07.07.1977 instead of 07.07.1980 in ETEA form for B-I examination and the appellant was declared ineligible for B-I examination and was not allowed in examination; that charge sheet/statement of allegations were issued to the appellant which was duly replied stating that he had no knowledge about the age limit required for B-I examination and inadvertently wrote his date of birth as 07.07.1977 instead of 07.07.1980. Inquiry was conducted against the appellant and the inquiry officer recommended suitable punishment for appellant but the respondent No. 3 imposed major punishment of reduction to lower stage of time scale for the period of two years upon the appellant vide order dated 23.09.2020. Feeling aggrieved, the appellant filed departmental appeal which was rejected on 29.12.2020. Thereafter the appellant filed revision petition which was also rejected on 30.06.2021, hence preferred the instant service appeal on 25.08.2021.

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 impugned order dated 23.09.2020, 29.12.2020 and 30.06.2021 are against the law, facts, norms of justice, therefore, not tenable and liable to be set aside; that the appellant has already been declared ineligible for B-I examination due to age factor, therefore, there remain no grounds to penalize the appellant on the basis of writing wrong date of birth in the ETEA form for B-I examinations for which he was awarded major punishment of reduction to lower stage of time scale for the period of two years which is too harsh and not tenable in the eyes of law; that the appellant being a low paid employee is suffering badly for such a harsh punishment and if the impugned orders are not set aside, it will effect his current salary as well as his pension. Learned counsel for the appellant placed reliance on 2006 SCMR 1120, 2017 PLC (C.S) 214, 2017 PLC (C.S) 1073 & 2019 PLC (C.S) 87.



05. Learned District Attorney on the other hand contended that during the scrutiny of B-I examination form, the appellant was found over age as per requirement of ETEA. That the charges leveled against the appellant were proved, as he deliberately wrote his date of birth incorrect while filling online application of ETEA, hence he was awarded an appropriate punishment as per law/rules. The appellant has accepted his guilt which cannot be tolerated in police department. Furthermore, ignorance of law is no excuse as the appellant time and again states that he was unaware about age restriction therefore, after fulfillment of all the codal formalities, the appellant was awarded the major punishment in reduction to lower stage of time scale for a period of two years; that the appellant himself is responsible

for the situation by committing misconduct of cheating and awarded judicious punishment.


06. Perusal of record shows that the respondent department issued schedule dated 23.01.2020 to conduct B-1 examination of Police Constables through ETEA indicating therein the Web address of ETEA for online application. In the circular instructions issued vide ibid schedule there was no mention of eligibility criteria for the perspective candidates to apply for the said examination. Since the maximum age limit for the said examination was 40 years, the online system did not allow downloading of application form for the candidates whose date of birth was beyond 1980. The appellant entered his date of birth as 1980 instead of 1977 which was his actual date of birth and got the application form downloaded and applied for the exam. During checking of the list by the police authorities before the examination, it was found that the appellant had wrongly indicated his date of birth as 1980 instead of 1977. Accordingly he was dropped from the examination and disciplinary proceedings were initiated against him. It reveals from the record of the disciplinary proceedings that the appellant admitted this act of giving wrong information to the system and he was not in the knowledge that he had become overage to apply and appear in the said examination. The appellant conceded at the bar also that he has no knowledge of computer and the online application form was filled by his computer knowing nephew. It is also admitted fact that the act of giving wrong information to the system by the appellant has neither provided any benefits to the appellant nor affected any vested right of other candidates appearing in the said examination as he stood debarred from appearing in the said examination.

We hold that in the given scenario the major punishment of reduction to lower scale awarded to the appellant is too harsh and not commensurate with the magnitude of the guilt he has committed. Reliance is placed on 2006 SCMR 1120, 2017 PLC (C.S) 1073 & 2019 PLC (C.S) 87.

07. In view of the above discussion, we are constrained to convert the major punishment of reduction to lower stage of time scale for the period of two years into minor penalty of withholding of one increment for one year. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 09th day of October, 2023.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)