

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 11499/2020

BEFORE: MRS RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Muhammad Arshad Ex-Constable No. 5997 S/O Abdul Haleem R/O
Mohallah Ghari Meer Rehman P/O Khazana Payan Tehsil and District
Peshawar. (Appellant)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa.
2. Superintendent of Police Headquarter, at Police Lines, Peshawar.
3. Capital City Police Officer, Khyber Pakhtunkhwa at Police Lines,
Peshawar. (Respondents)

Mr. Saghir Iqbal Gulbela
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....	02.10.2020
Date of Hearing.....	18.10.2023
Date of Decision.....	18.10.2023

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 29.05.2017 of the Superintendent of Police Headquarter, Peshawar whereby the appellant was dismissed from service. It has been prayed that on acceptance of the appeal, the impugned order might be set side and the appellant might be reinstated in service with all back benefits alongwith any other remedy which the Tribunal deemed fit and appropriate.

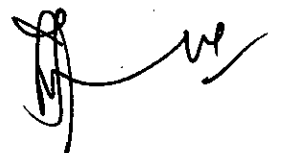
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant got inducted into Police Force as Constable. He, while



performing his duties in Police Lines, Peshawar, was kidnapped by some unknown persons from Police Lines Peshawar on 25.03.2017. His case was one of the missing persons as was evident from the record and the brother of the appellant moved many applications in that regard to the official concerned but in vain. Since his date of missing, the appellant was in illegal detention, but was dismissed from service vide impugned order dated 29.05.2017. Feeling aggrieved, he filed departmental appeal which was not decided despite the lapse of statutory period; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned 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 the impugned dismissal order was illegal, unwarranted, against the facts and circumstances and was liable to be set aside. He further argued that neither a charge sheet & statement of allegations was served upon him nor any proper inquiry was conducted in the presence of the appellant. He argued that no proper opportunity of defence was ever extended to him and he was condemned unheard. Even final show cause notice was not served upon him which was a mandatory provision of law. According to him the appellant was one of the missing persons and his whereabouts were not known and he remained in illegal confinement for almost three years. On



01.06.2020, he was released and reported to the Police Lines, Peshawar where he was informed about his dismissal from service.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant while posted at Police Lines Peshawar absented himself from official and lawful duty w.e.f 26.03.2017 till the date of dismissal from service i.e. 29.05.2017 without prior permission or leave from the competent authority. He was issued charge sheet alongwith statement of allegations. DSP HQrs was appointed as Inquiry Officer who finalized the inquiry and submitted findings report that the appellant had gone abroad to Afghanistan. He further argued that being a member of disciplined-force he should have sought leave and permission to proceed abroad but he avoided and deliberately absented himself from lawful duty. Final show cause notice was issued to him on his home address, but he avoided to appear and defend himself. The learned District Attorney argued that after observing all codal formalities, he was awarded major punishment of dismissal from service. He further stated that as per record, the appellant did not file departmental appeal before the appellate authority and hence the service appeal before the Tribunal was incompetent. He requested that the appeal might be dismissed.

6. The appellant was dismissed from service on the charge of absence from duty. As stated by the learned counsel for the appellant, he was kidnapped on 25.03.2017 by some unknown persons and kept in illegal custody till 01.06.2020. During that period, he was proceeded against departmentally and according to the record provided by the respondents,



charge sheet and statement of allegations was issued, inquiry was conducted and based on the findings of that, the appellant was dismissed from service. A roznamcha dated 27.03.2017 attached with the appeal shows that brother of the appellant approached the police station with an application on disappearance of the appellant. Later, the case was taken up with the Commission of Inquiry on Enforced Disappearances, Islamabad also. The Inquiry report attached with the reply of the respondents clearly shows that the appellant was not associated with the inquiry proceedings. It has further been stated that he had reportedly gone to Afghanistan. Based on the statement of the appellant in his appeal that he was kidnapped, we are of the view that an opportunity should be given to him to present and defend his stance.

7. In view of above, the appeal is partially allowed and the appellant is reinstated in service for the purpose of de novo inquiry with the directions to the respondents to associate him fully in the inquiry proceedings and give him full opportunity of hearing and cross-examination in order to fulfill the requirements of a fair trial. The respondents are further directed to complete the process within sixty days of the receipt of copy of this judgment. The question of back benefits is subject to the outcome of de novo inquiry. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of October, , 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)


SA 11499/2020

18th Oct. 2023 01. Mr. Saghir Iqbal Gulbela, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal is partially allowed and the appellant is reinstated in service for the purpose of de novo inquiry with the directions to the respondents to associate him fully in the inquiry proceedings and give him full opportunity of hearing and cross-examination in order to fulfill the requirements of a fair trial. The respondents are further directed to complete the process within sixty days of the receipt of copy of this judgment. The question of back benefits is subject to the outcome of de novo inquiry. Costs shall follow the event.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of October, 2023.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S