

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1127/2022

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

Falak Zaib Ex-Constable No. 2187, at Police Station Mattani Peshawar.
..... (*Appellant*)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Police HQrs, Khyber Pakhtunkhwa, Peshawar.
3. Capital City Police Office, Peshawar.(*Respondents*)

Mr. Zartaj Anwar,
Advocate

...

For appellant

Mr. Muhammad Jan
District Attorney

...

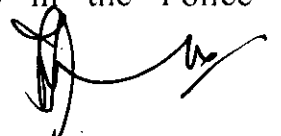
For respondents

Date of Institution.....	29.06.2022
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 31.03.2021, whereby the appellant was awarded major penalty of dismissal from service, against which his departmental appeal dated 18.05.2021 was rejected on 09.09.2021. His revision petition was also rejected vide order dated 02.06.2022. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant might be reinstated in service with all back benefits, alongwith any other remedy which the Tribunal deemed fit and appropriate.

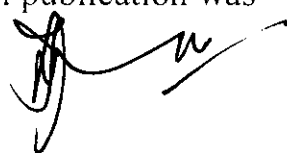
2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially enlisted as Constable in the Police



Department on 04.04.2011. While performing his duties at the Police Station Mattani, his wife became seriously sick and was admitted in the hospital. Her condition became worse and a dead child was born. There was no one to take care of her, except the appellant. The appellant was informed that he was dismissed from service on the ground of absence vide impugned order dated 31.03.2021. Aggrieved from the impugned order, he submitted his departmental appeal which was rejected vide order dated 09.09.2021. He then submitted revision petition under Rule 11-A of the Khyber Pakhtunkhwa Police Rules, 1975, which was also rejected vide order dated 02.06.2022; 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 no proper procedure was followed before awarding the major punishment to the appellant. He was not served with any charge sheet or statement of allegations, no proper inquiry was conducted nor he was ever associated with the inquiry proceedings. The learned counsel argued that statements of witnesses were not taken in his presence, thus the whole proceedings were defective in the eyes of law and orders based on such defective proceedings were liable to be set aside. He further argued that under Section 9 of the E&D Rules, the competent authority was under obligation to publish a notice, at least, in two leading newspapers directing the appellant to resume duty within fifteen days, but no such publication was



made in the instant case. According to him no opportunity of personal hearing was afforded to the appellant and he was condemned unheard. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant had not a clean service record and there were 15 bad entries at his credit, including eight minor and two major punishments on different occasions, during his service. He further argued that the appellant, while posted at Police Station Mattani, Peshawar, willfully absented himself from his lawful duty w.e.f 29.09.2020 to 31.02.2021 (06 months and 02 days) without taking any leave/permission. He was issued charge sheet alongwith statement of allegations and SDPO Badaber conducted the inquiry. After completion of the inquiry proceedings, the appellant was issued final show cause notice. The learned District Attorney informed that he was summoned and also contacted on his cell phone with the direction to appear before the Inquiry Officer but he did not bother to attend the inquiry proceedings, and hence the Inquiry Officer finalized the inquiry and submitted his findings, wherein the allegations of willful absence were proved against the appellant. Final show cause notice was issued to him but he deliberately avoided to appear and defend himself. He further argued that after observing all the codal formalities, the appellant was awarded major punishment of dismissal from service. Learned District Attorney further argued that the departmental appeal preferred by the appellant was time barred. He was heard in person by the appellate authority but he failed to defend himself with plausible and justifiable grounds. His blood sample was sent to KMC for screening test as well, wherein it was



found that the appellant was positive for tetrahydro cannabinol. His revision petition was also rejected after due consideration. He requested that the appeal might be dismissed.

6. Arguments and record presented before us shows that the appellant, while serving as Constable in the provincial police, absented himself from lawful duty from 29.09.2020 till such time when the order of dismissal from service was issued on 31.03.2021, thus making a total absence of six months and two days. Disciplinary proceedings were initiated against him by issuing charge sheet and statement of allegations, and he was directed to appear before the Inquiry Officer, but he failed in doing so. Final show cause notice was issued to him and he was contacted on his cell phone also but he did not pay any heed to all such calls. After fulfilling all the formalities, the order of dismissal was issued, against which the appellant preferred his departmental appeal on 18.05.2021, which was rejected on the grounds that he had no plausible explanation to offer in defence and that his appeal was barred by time also. The rejection order further mentions use of some contraband/drug by the appellant, based on his blood test report. His revision petition was also rejected by the competent authority after giving him an opportunity of personal hearing by the Appellate Board. Learned counsel has raised an observation that the appellant was not associated in the inquiry proceedings and thus the entire process was not sustainable in the eyes of law as it was against his fundamental rights, which does not hold ground on the fact that he was called to present himself before the Inquiry Officer, but he avoided the inquiry proceedings and his non-participation in the inquiry proceedings does not make the entire proceedings to be declared as violation of his



fundamental rights or the principle of natural justice, unless some prejudice was caused to the appellant. When confronted on the question of absence, and that too without informing his superiors, the learned counsel admitted frankly that the appellant was absent and that no application seeking leave from his superiors was available on record. When further confronted on the past behavior of the appellant and his two major punishments on willful absence, the learned counsel showed his ignorance despite the fact that a document about Bio-data of the appellant was annexed with the service appeal, indicating the bad entries and major/minor punishments.

7. From the above discussion, we arrive at a conclusion that the appellant was an employee in the provincial police, which is a disciplined establishment. He was bound under a set of rules governing his service and under those rules he was obligated to inform his superior/competent authority and seek his permission to proceed on leave, in which he miserably failed and hence was rightly proceeded against.

8. In view of the foregoing, the appeal in hand is dismissed. Costs shall follow the event. Consign.

9. *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

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18th Oct. 2023 01. Mr. Zartaj Anwar, 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 05 pages, the
appeal in hand is dismissed. Costs shall follow the event.
Consign. .

03. *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)

Fazal Subhan PS