

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1293/2017

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

Mutahir Khan Ex-Consable No. 1335 Capital City Police Office, Peshawar.
..... (Appellant)

Versus

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

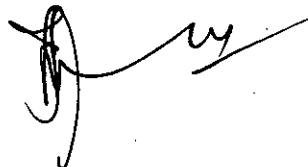
Mr. Fazal Shah Mohmand,
Advocate ... For appellant

Mr. Muhammad Jan, ... For respondents
District Attorney

Date of Institution.....	17.11.2017
Date of Hearing.....	21.11.2023
Date of Decision.....	21.11.2023

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 20.10.2017 passed by respondent No. 1, whereby departmental appeal of the appellant for re-employment was filed. It has been prayed that on acceptance of the appeal, the impugned order dated 20.10.2017 of respondent No. 1 might be set aside and the appellant might be ordered to be re-employed in service with effect from 14.09.2016 with all back benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the respondent department as Constable on 08.10.1988. He, while posted at Legal Branch CCP Peshawar, submitted an application for retirement due to some domestic problems and was accordingly retired w.e.f. 01.02.2016, vide order dated 29.01.2016. After some time, when the circumstances turned into normal, he filed an appeal for re-employment on 14.09.2016 which was filed vide order dated 20.10.2017; hence the instant service 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 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 order was illegal and void abinitio. He further argued that mandatory provisions of law and rules were badly violated by the respondents and referred to Rule 12.25 of Police Rules according to which the appellant was entitled to be re-employed. He further argued that he, being an experienced police official, besides having about 27 years of service with unblemished service record, was entitled to be reemployed. 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 on qualifying service of 27 years, 03 months and 04 days the appellant tendered application for retirement before



the competent authority, which was accepted under the law and thus he was retired from service at his own request. He further argued that at present having no vacancy, the appellant had legally no right to be re-employed. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpires that the appellant, while serving in the provincial police as constable, preferred an application for retirement due to some domestic issues and based on his request, he was retired from service w.e.f. 01.02.2016 vide an order dated 29.01.2016. At the time of retirement, he had rendered service of 27 years, 03 months and 04 days. In September 2016, he filed another application before the competent authority for his reemployment, which was not accepted and hence the service appeal in hand was preferred.

7. Learned counsel for the appellant referred to Rule 12.25 of Police Rules, 1934 which is reproduced as follows:-


“12.25 (1) Re-enactment of police pensioners: Under the orders contained in Article 511 to 519 of Civil Service Regulations, a police officer who has been discharged with a compensation or invalid gratuity or pension may be re-employed in the police service up to the age of 55-----”

A bare perusal of the above mentioned rule shows that it is for reemployment of police personal who have been discharged with a compensation or invalid gratuity or pension and the age has been restricted to 55 years. In case of the appellant, he does not fulfill any of the conditions mentioned in Rule 12.21. He himself applied for retirement on the ground of


domestic problems and his application was accepted, which clearly indicates that he was not discharged from service on any of the grounds mentioned in the Rule 12.21 rather it was a willful act on his part. Moreover, as of now, he has crossed the age of 55 years, according to a copy of CNIC produced by him with his appeal, which shows his date of birth as 02.05.1967.

8. In view of the above discussion, the service appeal in hand is dismissed, being groundless. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 21st day of November, 2023.*


(FARIHA PAUL)
Member (E)

Fazle Subhan, P.S


(SALAH-UD-DIN)
Member (J)

S.A 1293/2017

21st Nov. 2023 01. Mr. Fazal Shah Mohmand, 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 in hand is dismissed being groundless. Cost shall follow the

event. Consign.

03. *Pronounced in open court in Peshawar and given under*

our hands and seal of the Tribunal this 21st day of November,

2023.


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazle Subhan, P.S