

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.712/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER(J)  
MR. MUHAMMAD AKBAR KHAN ... MEMBER(E)

Muhammad Shahid Ex-Constable No. 1299/FRP S/O Taj Ali Khan R/O P.O  
Risalpur, Kalanjer Tehsil & District Nowshera.

... (Appellant)

**VERSUS**

1. The Superintendent of Police, FRP, Kohat Range Kohat.
2. The Commandant, FRP, Khyber Pakhtunkhwa, Peshawar.
3. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
4. The Deputy Commandant, FRP, HQrs; Peshawar.

... (Respondents)

Mr. Rizwanullah  
Advocate

... For Appellant

Mr. Syed Asif Ali Shah  
Deputy District Attorney

... For Respondents

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Date of Institution.....29.03.2023  
Date of Hearing.....01.11.2023  
Date of Decision.....01.11.2023

**JUDGMENT**

**RASHIDA BANO, MEMBER (J):**The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

**“On acceptance of this appeal, the impugned orders dated 12.05.2022 and 07.11.2022 passed by respondent No. 1 and 2 may very graciously be set aside and the appellant be reinstated into service full back wages and benefits.”**

2. Brief facts of the case are that the appellant was serving the respondent department as constable. During service father of the appellant fell ill and was confined to bed for a long time. There was no other person to look after



him except appellant. He submitted an application for grant of leave but leave was not sanctioned and he was transferred from FRP HQr Peshawar to FRP line Kohat on the pretext of complaint vide order dated 26.01.2022. Disciplinary proceedings were initiated against the appellant and after fulfillment of codal formalities he was removed from service vide order dated 16.02.2022. Feeling aggrieved, he filed departmental appeal, which was rejected, hence the instant service appeal.

2. Respondents were put on notice who submitted written replies/comments on the appeal. We have 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.

3. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules and respondents violated Article 4 of the Constitution of Islamic Republic of Pakistan 1973. He further argued that no charge sheet and statement of allegations were served upon the appellant. He contended that no show cause notice was issued to appellant before imposition of major penalty therefore, the impugned order is not tenable in the eyes of law. Lastly, he submitted the no opportunity of personal hearing was afforded to the appellant and he was condemned unheard, therefore, he requested that instant appeal might be accepted. Reliance is placed on 2000 SCMR 1743, 1984, 2006 SCMR1641 and 1989 SCMR 1690.

4. Conversely, learned Deputy District Attorney contended that appellant was treated in accordance with law and rules. He further contended that appellant was deliberately failed to submit his arrival report at his new place of posting i.e FRP Kohat Range and remained absent from his lawful duty without any leave or prior permission of the competent authority. On the



allegation of willful absence he was proceeded against departmentally and after fulfillment of all codal formalities he was awarded major punishment of removal from service.


6. Perusal of record reveals that appellant was serving in police department as constable when disciplinary proceeding was initiated against him by the respondent on 24.03.2022 by issuing charge sheet and statement of allegation with the allegation "That as reported vide D.D No. 13 dated 16.02.2020 you while transferred from FRP HQrs Peshawar on complaint basis vide Deputy Commandant FRP order No. 156-59/PA dated 26.01.2022 and have to report your arrival at FRP Kohat on 16.02.2022 but you failed to do so and deliberately absented yourself from same date and have not reported back till date". Mr. Khalid Mehmood SI/PC was appointed as enquiry officer who after completion inquiry, submitted report on 07.04.2022 wherein he concluded that there was no good entry in the service book of the appellant and he is habitual absence and not interested in duty. Therefore, despite so many notices he doesn't not attend the inquiry proceeding for the purpose of receiving charge sheet and absent from 16.02.2022. It is admitted from the inquiry report that no charge sheet and statement of allegation was served upon the appellant and provide him opportunity of fair trial but in the instant case only two daily diary report bearing No. 7 dated 10.03.2022 and D.D N0. 13 dated 14.03.2022 was annexed for the purpose of showing service and knowledge of the appellant about inquiry proceeding which is not sufficient because it is duty of the inquiry officer to sent charge sheet along with statement of allegation upon the home address of the appellant



for fulfillment of requirement of a fair trial. Record reveals that total period of absent of the appellant was 87 days. Appellant contended that his absence was not willful rather it was due to illness of his father's and he filed proper application for medical leave to the authority for four months due to his father illness but the same was not accepted and appellant was transferred upon a baseless complaint.

7. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of Audi Alteram Partem was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

7. So it is established on record that appellant was not provided with an opportunity of self-defense, and personal hearing which is foremost requirement of a fair trial. Competent authority treated absence period of 87 days pay without leave. The competent authority itself had regulate




the absent period of the appellant by treating the same as leave without pay, so the very basis upon which appellant was proceeded vanished away. Reliance is placed on 2006 SCMR 434 and 2012 TDC (Served) 348.

8. Appellant seek condonation of delay in filing departmental appeal which was filed on 13.09.2022 after obtaining copy of impugned order dated 12.05.2022 on 24.08.2022. Appellant contention is that, the impugned order was not communicated to him by the respondent. Respondent when asked failed to brought the proof of communication delivery or even dispatch no of impugned order dated 12.05.2022 to the appellant. Moreover, departmental/appellate authority dismissed the departmental appeal of the appellant on merit and not on the basis of limitation. Therefore, we condone limitation by accepting his application.

9. In view of the above discussion, penalty awarded to the appellant is too harsh and does not commensurate with misconduct. Therefore, we convert the impugned punishment of removal from service into minor punishment of stoppage of three annual increments for a period of two years. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 1<sup>st</sup> day of November, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)


**ORDER**


01.12.20231. Appellant alongwith his counsel present. Mr. Muhammad Jan,

District Attorney Mr. Ihsan Ullah, ASI for the respondents present.

2. Vide our detailed judgement of today placed on file, penalty awarded to the appellant is too harsh and does not commensurate with misconduct. Therefore, we convert the impugned punishment of removal from service into minor punishment of stoppage of three annual increments for a period of two years. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 1<sup>st</sup> day of November, 2023.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)