

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 7403/2021

Hashim S/O Wali Muhammad, R/O Mohallah Dagn Khel Pirano Dag,
Tehsil & District Mardan. (Appellant)

Versus

District Police Officer, Mardan and 02 others. (Respondents)

Present:

Ms. Roeeda Khan, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents

Date of presentation of Appeal.....06.09.2021
Date of Hearing.....04.12.2023
Date of Decision.....05.12.2023

JUDGMENT


SALAH-UD-DIN, MEMBER: Brief facts leading to the instant appeal are that the appellant while posted at Police Post Garyala, Mardan, was proceeded against departmentally on the allegations of absence from duty with effect from 04.10.2016. On conclusion of the inquiry, he was awarded major punishment of dismissal from service vide order dated 13.03.2017 passed by District Police Officer Mardan. The punishment so awarded to the appellant was challenged by him through filing of departmental appeal, however the same was rejected vide order dated 10.04.2017. His revision petition under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 was also rejected vide order dated 01.08.2017, where-after he filed Service Appeal No. 1049/2017

before this Tribunal, which was allowed vide judgment dated 09.05.2019, whereby the appellant was reinstated in service and it was held that the respondents may proceed against him through a proper/regular inquiry to be concluded within a period of 90 days. Vide order dated 03.07.2019, the appellant was reinstated in service for the purpose of de-novo inquiry and it was held that the issue of back benefits shall be subject to final outcome of de-novo inquiry. On conclusion of the de-novo inquiry, the appellant was awarded minor punishment of forfeiture of 02 years approved service vide order dated 18.10.2019. Feeling aggrieved from the said order, the appellant filed departmental appeal, which was disposed of vide order dated 20.01.2020 by modifying the order dated 18.10.2019 to the extent of treating of the intervening as well as absence period as leave without pay. The appellant then filed revision petition, however the same was rejected vide order bearing No. 4128/ES dated 06.08.2021, hence the instant service appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant contended that absence of the appellant from duty was not intentional rather the same was due to his severe illness as well as illness of his father. He next contended that while allowing previous service appeal of the appellant, this Tribunal had directed that a regular inquiry be

conducted in the matter but even then no proper regular inquiry was conducted. He further contended that neither charge sheet nor statement of allegations or final show-cause notice was issued to the appellant and the inquiry proceedings were conducted in violation of mandatory provisions of Police Rules, 1975. He next argued that plea of illness of the appellant stood proved in the de-novo inquiry, therefore, the competent Authority was not justified in awarding him punishment. He further argued that the inquiry officer had not at all opined that the absence of the appellant was deliberate, therefore, he had only recommended that absence period may be treated as without pay.

 4. On the other hand, learned Assistant Advocate General for the respondents contended that the appellant had remained absent from duty without any leave or permission of the competent Authority, therefore, he was awarded major penalty of dismissal from service. He further contended that the appellant had filed service appeal before this Tribunal, which was allowed with the direction to conduct proper inquiry in the matter and in compliance of the judgment dated 09.05.2019 de-novo inquiry was conducted into the matter in accordance with relevant rules and he was rightly awarded minor punishment of forfeiture of two years approved service. He further contended that the appellant was in the habit of absenteeism and was previously too awarded major punishment of dismissal from service but he was later on reinstated in service vide order dated 13.03.2015 passed by Inspector General of Police Khyber

Pakhtunkhwa, Peshawar, however he did not mend his ways, therefore, the appeal in hand is liable to be dismissed.

5. Arguments have already been heard and record perused.

6. A perusal of the record would show that the previous Service Appeal of the appellant bearing No. 1049/2017 was allowed by this Tribunal in the following terms:-

“7. As a result of the above the appeal in hand is allowed. Impugned order dated 13.03.2017 is set-aside alongwith other orders on the appeal/review petition of the appellant. The respondents may proceed against the appellant through a proper/regular enquiry to be concluded within ninety days from the date of receipt of copy of instant judgment. The appellant shall be provided fair opportunity of participation in the proceedings and offering his defence in accordance with law. The issue of back benefits in favour of the appellant shall follow the result of departmental proceedings.”

7. In compliance of the judgment of this Tribunal, the appellant was though reinstated in service for the purpose of de-novo inquiry, however the available record does not show that charge sheet as well as statement of allegations were issued to the appellant. This fact has created material dent in the de-novo inquiry proceedings. The Superintendent of Police Operations & Headquarters Mardan was the inquiry officer, who submitted his findings to the District Police Officer Mardan vide letter No. 315/PA(Ops) dated 04.07.2019, copy of which is available on the record. The conclusion drawn by the inquiry officer as well as his recommendations are reproduced as below:-

Conclusion:-

“From perusal of available record, statement and pleading of the official, it transpires that vide DD No. 14 dated 04.10.2016 to DD No. 20 dated 18.12.2016 the defaulter

official remained absence without taking leave or permission from the competent Authority upon which he was subjected to a proper departmental action. Consequently vide Order bearing OB No. 671 dated 13.03.2017 he was awarded Major punishment of Dismissal from service.

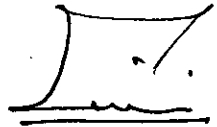
To this effect the defaulter official presented medical documents and pleaded that he got seriously ill and remained under treatment due to which he was unable to sought prior permission. He further submitted that due to serious illness and poor health condition he sent relevant medical documents to concerned quarter but same were not considered and he was marked absent. Upon questioning the official he pleaded for a chance and showed resolution to remain careful and performing duty competently/efficiently. (Emphasis supplied).

Recommendations:-

Foregoing in view of the above and pleadings of the defaulter official it is therefore submitted that ex-constable Hashim No. 2264 (now police lines Mardan) may be re-instated in service and the intervening and absence period may very kindly be treated as without pay."


8. While going through the conclusion recorded by the inquiry officer in his report, it is crystal clear that he had not given any findings that absence of the appellant from duty was deliberate or willful. Similarly, the plea of serious illness as raised by the appellant before the inquiry officer and sending of relevant documents to the concerned quarter was not declared as false. The inquiry officer has not opined in his report that the allegations against the appellant stood proved during the inquiry. The charge of deliberate absence of the appellant from duty was not proved during the inquiry, therefore, the competent Authority was not justified in awarding him minor punishment of forfeiture of his 02 years approved service.


9. Consequently, the appeal in hand is allowed. The impugned orders are modified and the minor penalty of forfeiture of two years approved service awarded to the appellant is set aside. The absence



period of the appellant may be treated as leave without pay, while the intervening period may be treated as on duty with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
05.12.2023


(FARZEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

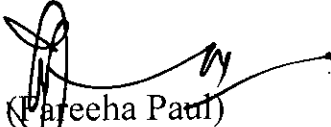
Naeem Amin


ORDER
05.12.2023

Learned counsel for the appellant present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed. The impugned orders are modified and the minor penalty of forfeiture of two years approved service awarded to the appellant is set aside. The absence period of the appellant may be treated as leave without pay, while the intervening period may be treated as on duty with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
05.12.2023


(Pareeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)