

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 4754/2021

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Muhammad Ishaq S/o Eid Gul Khase-dar/Constable, Home and Tribal Affairs Dept; Khurram P.No. 00664758 Caste Massozai R/o Manray Chena, Khurram.....(*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Inspector General of Police, Peshawar.
2. District Police Officer, District Khurram.
3. Regional Police Officer, Kohat.
4. DSP, central Khurram.....(*Respondents*)

Present:-

ABID AYUB,
Advocate --- For Appellant

MUHAMMAD JAN,
District Attorney --- For respondents.

Date of Institution.....01.03.2021
Date of Hearing..... 31.10.2023
Date of Decision..... 31.10.2023

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

“To set aside the impugned order dated 22/06/2020 and to reinstate the appellant with all back benefits. Any other consequential relief/remedy which this Hon’ble Tribunal may

deem fit and proper under the circumstance of the instant appeal may also be awarded in favour of the appellant.”

02. Brief facts of the case are that, the appellant was initially appointed as Khasadar force vide order dated 01.01.2012 and was serving in the Khasadar force before the merger of erstwhile FATA into Khyber Pakhtunkhwa. On the merger of former FATA in Khyber Pakhtunkhwa, the Khasadar Force was also merged in the Khyber Pakhtunkhwa Police Department; that respondent No. 2 issued public notice in Urdu newspaper “Daily Mashirq” on 12.06.2020 to 54 Constables regarding their absence from duties. The appellant alongwith his other colleagues were dismissed from service on the allegation of absence from duty vide impugned order dated 22.06.2020. Feeling aggrieved, the appellant filed departmental appeal on 13.07.2020, 16.07.2020 and 04.11.2020 which was not responded, hence preferred the instant service appeal on 01.03.2021.


03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order dated 22.06.2020 is against the law, facts norms of natural justice, hence not tenable, therefore liable to be set aside; that the Incharge of “Naika Ziyarat Check Post, Central Khurram” namely Abid Gul and others had given their statements/ affidavit that the appellant was performing his duty with them

since long; that respondent No. 2 has ignored the special report of respondent No. 3 stating that the appellant was performing his duty at Naika Ziyarat Check Post, Central Khurram; that the appellant has not been treated in accordance with law and rules and as such respondents violated Article 4 & 25 of the Constitution of Islamic Republic of Pakistan. Learned counsel for the appellant further contended that proper charge sheet/statement of allegations was not issued to the appellant. No Show Cause Notice was issued to the appellant and no chance of personal hearing was provided to the appellant. He has, therefore, been condemned unheard. He submitted that no regular inquiry has been conducted in the matter which is mandatory obligation on the part of competent authority. In the last, learned counsel for the appellant prayed that the impugned dismissal from service order is unlawful, illegal void ab-initio and not sustainable in the eye of law.

05. Learned District Attorney for the respondents controverted the assertions made in the service appeal as well as arguments of the learned counsel for appellant and contended that the appellant was treated in accordance with law and rules; that the appellant alongwith other absented himself from lawful duty, therefore, a show cause notice was published in daily Urdu Newspaper "Mashriq" dated 12.06.2020 to resume duty but the appellant failed to resume his duty. He further contended that the appellant never performed his duty and remained absent from duty as mentioned in the impugned order. Since all the codal formalities were fulfilled before passing the impugned order, the appeal in hand may therefore, be dismissed, he concluded.

06. Scrutiny of record reveals that the appellant was initially appointed as Khasadar on 01.01.2012. After promulgation of 25th Constitutional Amendment the services of the appellant were absorbed in Khyber Pakhtunkhwa Police newly merged District Kurram in accordance with Khyber Pakhtunkhwa Khasadar Force Act, 2019 and rules made thereunder. On 12.06.2020 an absence notice of 54 Ex-Khasadar/Levies including the appellant in the merged District Police Kurram was published in the daily newspaper by the District Police Officer, District Kurram. On 22.06.2020 the respondent No. 2 issued the impugned order whereby services of 09 constables including the appellant were summarily dismissed from service. Record reveals that no Show Cause Notice was issued to the appellant at his official/residential address regarding allegation of his absence from duty. Similarly, no period of absence is mentioned in the notice published in the newspapers nor that period of absence is mentioned in the impugned order.

 On the other hand record submitted by the appellant substantiate that he was actively performing his duty assigned to him at Naika Ziyarat Check Post District Kurram. A special report from the DSP central Kurran submitted to the respondent No. 2 with reference to the notice of absence issued in the newspaper states that the appellant was performing his duty at Naika Ziyarat Check Post Central Kurran, therefore, departmental proceedings may not be initiated against him. Proof of daily attendance of the appellant at the station of his duty for the month of May and June are also available on record. The respondents have not contradicted these evidence through their written reply nor denied the same during the course of arguments. As the allegation of absence of the appellant stands disproved, therefore, we are constrained to

allow the appeal by setting aside the impugned order dated 22.06.2020 and reinstate the appellant with all back benefits. Costs shall follow the event. Consign.

07. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 31st day of October, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

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ORDER

31.10.2023 01. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (05) pages, we are constrained to allow the appeal by setting aside the impugned order dated 22.06.2020 and reinstate the appellant with all back benefits. Costs shall follow the event. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 31st day of October, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)