

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

Service Appeal No. 7873/2021

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

Adil Hussain, Ex-Constable No. 1937, Capital City Police Peshawar, resident of Mohallah Hassan Khel, Surezai, Bala, Tehsil & District Peshawar.....(*Appellant*)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. Capital City Police Officer at Police Line, Peshawar.
3. Superintendent of Police, Headquarters, Peshawar...(*Respondents*)


Present:-

SAGHIR IQBAL GULBELA,
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....10.12.2021
Date of Hearing..... 15.11.2023
Date of Decision..... 15.11.2023

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;

“That on acceptance of the instant Service Appeal, the impugned dismissal order No. 2429-34/PA/SP bearing OB No. 1785 dated 29.06.2021 of the office of Superintendent of Police Peshawar, may kindly be declared as illegal, unlawful and void ab-initio, and by doing so, the impugned above dismissal order may kindly be set aside and the appellant be reinstated into

service with all back benefits. Any other relief not specifically asked for may also graciously be extended in favor of the appellant in the circumstances of the case.”

02. Brief facts of the case are that, the appellant while performing his duty at Peshawar High Court, Peshawar came to know that his brother was charged in a criminal case vide FIR No. 47 dated 20.01.2021 U/S 302 PPC/7 ATA of Police Station, Shah Qabool Peshawar; that the appellant was dismissed from service vide impugned order dated 29.06.2021 on the allegation of absence from duty w.e.f. 10.02.2021. Feeling aggrieved from the impugned order dated 29.02.2021, the appellant filed departmental appeal 29.07.2021 which was not responded, hence preferred the instant service appeal on 10.12.2021.

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 Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order dated 29.07.2021 was passed without fulfilling the codal formalities and without following due process of law, hence not maintainable in the eyes of law; that the brother of the appellant was charged in a criminal case, hence the family of the appellant was having threat, therefore, the appellant went to hiding in order to save his own life and for that reasons he was unable to join his duty. The absence was therefore, not willful and deliberate but circumstances were beyond his control. 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, coram-non-judice hence not sustainable in the eye of law.

05. Learned Deputy 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 remained willfully absent from duty w.e.f. 10.02.2021 without prior permission or leave from the competent authority which was unbecoming of a personnel of disciplined force. He further argued that proper charge sheet and summary of allegations were issued to the appellant and proper inquiry was conducted into the allegations against the appellant through SDPO Regi. He was also provided ample opportunity of self defense but he failed to prove his innocence. Moreover, final Show Cause Notice was also issued to the appellant. Since all the codal formalities were fulfilled before passing the impugned order, the appeal in hand may therefore, be dismissed, he concluded.

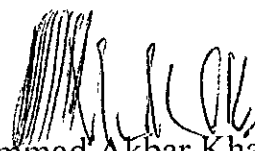
06. It is evident from record that the appellant has more than 10 years service to his credit. It is admitted fact that brother of the appellant was involve^d/charged in a murder case in his home village. FIR under Section 302 PPC/7 ATA was registered against him on 20.01.2021. The appellant and his

family were facing life threat and, therefore, went to hiding. It is evident from the inquiry report that the appellant was in contact with his higher ups through his cell phone and the higher ups were well aware of the situation that hampered the appellant to attend his duty and put appearance before the inquiry officer. The appellant was able only to come out of hiding after murder of his brother in Punjab on 22.12.2022. Placed on record is the document of compromise between the appellant and the other party which was agreed after murder of the appellant's brother. The circumstances that led to the absence of the appellant from duty transpire that the absence was not willful and deliberate rather the appellant was hostage to the situation on ground in which his life was at high risk. In such like circumstances, which were beyond the control of the appellant, proceedings ex-parte against the appellant culminating in major punishment of dismissal from service does not seem just. We are therefore, constrained to set aside the impugned order as prayed for. The period from 10.02.202 to the date of judgment shall be treated as leave of extra ordinary without pay. 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 15th day of November, 2023.



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

ORDER

15.11.2023

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 (04) pages, we are therefore, constrained to set aside the impugned order as prayed for. The period from 10.02.202 to the date of judgment shall be treated as leave extra ordinary without pay. 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 15th day of November, 2023.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)