

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

Service Appeal No. 7295/2021

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)  
MISS FAREEHA PAUL ... MEMBER (E)

Asif Khan S/O Hashim Khan R/O Lakki, Saeed Khel, District Lakki Marwat. .... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Bannu Region, Bannu.
4. District Police Officer, Lakki Marwat. ....(respondents)

Mr. Asad Jan Durrani, ... For appellant

Mr. Asif Masood Ali Shah, ... For respondents  
Deputy District Attorney

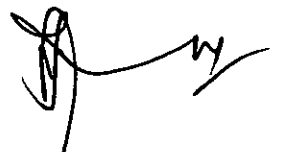
Date of Institution..... 11.08.2021

Date of Hearing..... 22.12.2023

Date of Decision..... 22.12.2023

**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 12.07.2021 of respondent No. 2, communicated to the appellant telephonically on 06.08.2021 by the Police Line Officials, Lakki Marwat, whereby the order of dismissal dated 12.11.2019 and the order of dismissal of departmental appeal dated 23.01.2020 of the appellant were modified/converted into forfeiture of one year of approved service and the intervening period was treated as without pay. It has been prayed that on acceptance of the appeal, the impugned



orders might be set aside and one year forfeited service of the appellant might be restored and intervening period be treated as leave with pay with all back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was enlisted as Constable in the District Police Lakki Marwat w.e.f. 27.5.2008. He sustained fire arm injury on 15.02.2011 in an incident and an FIR No. 68 dated 15.02.2011, under section 324/34 PPC, was lodged in the Police Station Lakki. Due to pain, the appellant visited the City Hospital Lakki Marwat on 02.09.2019 where he was thoroughly examined by the Medical Officer and was advised 03 weeks bed rest. Those documents were sent by the appellant to the office of DPO Lakki Marwat for accord of sanction but no action was taken on it. He again visited the DIQ Hospital Lakki Marwat and was advised bed rest for 08 weeks as per medical certificate which was also sent to DPO Office Lakki Marwat for sanction but the same was not approved. Ultimately he was treated as absent and a show cause notice was issued to him, but the respondent No. 4 did not wait for the reply and without adopting proper departmental proceedings, dismissed the appellant from service vide order dated 12.11.2019. Feeling aggrieved, the appellant filed the departmental appeal which was rejected by respondent No. 3 vide order dated 23.01.2020. Thereafter, he filed the revision petition to respondent No. 2 which was disposed of vide order dated 12.07.2021 and the punishment of dismissal from service was converted into forfeiture of one year of approved service and the intervening period was treated as without pay; hence the present 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 Deputy 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 orders were illegal as no explanation, show cause or final show cause notice were served upon him and no opportunity of personal hearing was provided to him. He further argued that the appellant had never committed any offence or acts which could be termed as misconduct and he was dismissed from service without conducting proper departmental inquiry. He further argued that medical certificates issued by the authorised Medical Officer were not considered by the respondents which showed malafide on their part. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant while performing his official duties in Police Station, Tajori, Lakki Marwat deliberately absented himself from duty without sanction of leave and prior permission of his superiors, vide Daily Diary No. 27 dated 03.09.2019 and No. 10 dated 07.11.2019. After issuance of charge sheet and conducting of departmental inquiry, he was dismissed from service vide order dated 12.11.2019. He further argued that against the punishment of dismissal from service, he filed departmental appeal before the Regional Police Officer, Bannu which was rejected on 23.01.2020. He then filed revision petition before the



Inspector General of Police and the Appellate Board, after affording opportunity of personal hearing to the appellant, decided to reinstate him into service and his penalty of dismissal from service was converted into forfeiture of one year of approved service. However, the intervening period including period of absence was treated as without pay. He stated that already a lenient view had been taken against the appellant and requested that the appeal might be dismissed.

6. Through this service appeal, the appellant has impugned three orders; first the order of his dismissal from service on the ground of absence from lawful duty, second, an order through which his departmental appeal was filed and third, the order vide which his penalty of dismissal from service was converted into forfeiture of one year of approved service and the intervening period including the period of absence from duty was treated as without pay. From the arguments and record presented before us, it transpires that the appellant, while serving as Constable in the District Police Lakki Marwat, absented himself from lawful duty. According to the learned counsel for the appellant, he sustained serious injury as a result of an accident and was advised bed rest, first for three weeks and later for eight weeks. When asked whether he informed his high ups and got any medical leave sanctioned from them, learned counsel stated that no application or sanction of medical leave was available on record as no such application had been forwarded by the appellant to his competent authority but he stated that the appellant sent the medical certificates to the District Police Officer, Lakki Marwat, but for that also, he could not provide any documentary evidence that those documents were sent and received in the office of DPO.




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22<sup>nd</sup> Dec. 2023 01. Mr. Asad Jan Durrani, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the service appeal in hand is dismissed. Cost shall follow the events. Consign. .

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 22<sup>nd</sup> day of December, 2023.*

  
(FARIHA PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member (J)

\*Fazal Subhan PS\*

Moreover mere sending of the medical documents is not enough. The appellant, being a civil servant, was obligated to inform his competent authority through a proper application seeking leave on medical grounds, but he failed to do so and hence, was proceeded against departmentally. The DPO Lakki Mawal awarded him the punishment of dismissal from service, which was upheld by the Regional Police Officer, Bannu Region. His Revision Petition was, however, considered by the Appellate Board and keeping in view his illness and service of eight years and five months, he was reinstated into service. As far as his period of absence and the period from his dismissal to reinstatement was concerned, it was treated as without pay. We are of the view, that a lenient view has already been taken by the competent authority of the appellant whereby he has been reinstated into service. As far as his absence period is concerned, as already stated above, he was under obligation to inform his competent authority and get his leave sanctioned, which he failed to do. As regards the period between his dismissal from service till his reinstatement, he was out of service and did not perform any duty, hence he is not entitled to any emoluments of that period.

7. In view of the above discussion, the service appeal in hand is dismissed. Cost shall follow the events. Consign.

8. Pronounced in open court in Peshawar and given under our hands

and seal of the Tribunal this 22<sup>nd</sup> day of December, 2023.

(FARSHIA PARI)  
Member (E)

(RASHIDA BANO)  
Member (J)