

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 54/2022

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

Arif Ullah Ex-Warder (BPS-07), Moh; Khuaidad Khel, District Lakki Marwat.
..... (*Appellant*)

Versus

1. Inspector General of Prison Khyber Pakhtunkhwa, Peshawar.
2. Superintendent Circle HQs Prison D.I.Khan, KPK, Peshawar.
..... (*Respondents*)

Mr. Mansoor Salam
Advocate

... For appellant

Mr. Habib Anwar
Additional Advocate General

... For respondents

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|--------------------------|------------|
| Date of Institution..... | 06.01.2022 |
| Date of Hearing..... | 04.01.2024 |
| Date of Decision..... | 04.01.2024 |

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 impugned order dated 02.09.2021, whereby the appellant was removed from service and against the impugned order dated 26.05.2021 whereby departmental appeal of the appellant was turned down. It has been prayed that on acceptance of the appeal, both the impugned orders dated 02-09-2021 and 26.05.2021 might be declared as void ab initio, illegal and might be set aside and the appellant be reinstated with all back and consequential benefits alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant got inducted as Warder (BPS-7) in the year 2015. His father was suffering from illness (Backache) and being his elder son, appellant had to remain present for looking after him and could not attend to his official duty. After recovery of his father, the appellant joined for duty in Central Jail Bannu, whereby the Moharir of the prison informed that he had been removed from service vide order dated 26.05.2021 and his absence period had been treated as leave without pay. Feeling aggrieved, he filed the departmental appeal which was turned down vide order dated 02.09.2021; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Additional Advocate General 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 both the impugned orders were against the law, facts and norms of justice. The appellant has not been properly informed as no show cause notice had been served upon him. The absence period has already been declared as leave without pay, therefore there remained no ground to penalize the appellant twice for one and the same charge. The appellant was not willfully or intentionally absent from duty, rather his father was ill due to which he had to look after him. He requested that the appeal might be accepted as prayed for.



5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that it was not the first time that the appellant remained absent from duty. He informed that he was a habitual absentee and his past service was also tainted with major penalty of reduction to lowest stage in present time scale for two years vide an order dated 11.03.2021 for his absence w.e.f. 07.12.2020 to 07.03.2021. He further argued that the appellant did not bother to submit an application and inform his high ups about the illness of his father and get his leave sanctioned. The Superintendent Central Prison Bannu reported on 30.03.2021 about his absence, without any permission of the competent authority, for which he was proceeded against. He further argued that the competent authority had rightly treated his absence period as leave without pay as he had not performed any duty. According to him, the departmental appeal of the appellant was turned down being badly time barred. Moreover, as the absence was also admitted by the appellant, the learned AAG requested that the appeal might be dismissed.

6. The appellant has preferred this appeal against the order of his removal from service on account of absence from duty. Arguments and record presented before us shows that the appellant remained absent from 23.03.2021 to 24.05.2021, without informing his competent authority. Being an employee of the prison service and posted at Central Prison Bannu, he was bound to follow the Prison Rules according to which he had to seek leave from the Superintendent of Central Prison Bannu. There is no second opinion on the fact that prison is a highly sensitive area and the staff working there has to keep themselves strictly within the parameters defined in the Khyber Pakhtunkhwa



Prison Rules, 2018. Rule 1082 is extremely clear when it states that no subordinate officer is to be absent from prison premises, whether at day or night, without getting permission from the Deputy Superintendent or the Superintendent. The same rule goes to the extent that if the leave granted by Deputy Superintendent is exceeding four hours, it has to be got sanctioned by the Superintendent. Learned counsel for the appellant admitted that the appellant stayed away from his lawful duty without getting any leave sanctioned from his competent authority. This admission on his part is enough to prove the guilt of the appellant for which he has been rightly proceeded against under the rules. Previous record of the appellant is also tainted with major penalty of reduction to lowest stage and that too, on account of willful absence. This shows that the appellant failed to mend his ways and remained absent again, for which he was awarded punishment of removal from service.

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

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 04th day of January, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

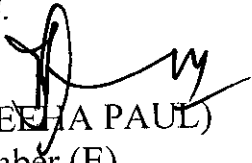
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04th Jan, 2024 01. Mr. Mansoor Salam, Advocate for the appellant present.
Mr. Habib Anwar, Additional Advocate General for the
respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the
appeal in hand is dismissed. Cost shall follow the event.
Consign.

03. *Pronounced in open court in Peshawar and given under
our hands and seal of the Tribunal on this 04th day of January,*

2024.


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
MEMBER(J)

Fazal Subhan PS