

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1505/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KHAN ... MEMBER (E)

**Afsar Kamal S/O Malik Zoomar Jan R/O Dak Banda, Shanwa Ghundi Khel, Tehsil
Tehti-e-Nasrati District Karak.**

... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent of Police, FRP, Kohat Region, Kohat.
4. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber
Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Syed Roman Shah
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution..... 19.10.2022

Date of Hearing.....14.11.2023

Date of Decision.....14.11.2023

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance this service appeal, the impugned order dated 19.07.2022 by respondent No. 3 and order 27.09.2022 passed by respondent No.2 may graciously be set aside by declaring it unlawful, without authority, based on malafide, void ab-initio and thus not sustainable in the eyes of law and appellant may please be reinstated in service with all back benefits.”

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2. Brief facts of the case, as given in the memorandum of appeal are that appellant was enlisted as constable in police department and performing his duty with zeal and zest. During service appellant was diagnose kidney problem. Appellant was referred to Standing Medical Board for physical examination at DHQ Hospital Kohat. The Standing Medical Board advised/recommended the appellant for light work, despite recommendation of Standing Medical Board, respondent No. 3 issued retirement order of the appellant on 19.07.2022. Feeling aggrieved, appellant filed departmental appeal, which was rejected vide order dated 29.09.2022, hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel appearing on behalf of appellant argued that the impugned orders passed by the respondents are illegal, unlawful, without authority and against the natural justice, hence the same are liable to be set aside. He further argued that both the impugned orders passed by respondents are not in conformity with the recommendation of the Standing Medical Board. He further contended that SMB gave the same opinion as the two other employees who are on duty and appellant was discriminated. He further argued that no opportunity of hearing was provided to the appellant before passing impugned orders, which is unwarranted and unsustainable in the eyes of law.

5. Conversely, learned District Attorney argued that appellant has been treated in accordance with law and rules. He further contended that appellant alongwith others referred to Standing Medial Board by the Competent authority. He was physically examined by the board and recommended that he is not fit for active duty of police department for the rest of his life and in light of recommendation of Standing Medical



Board, therefore, he was retired from service on the recommendation standing medical ground.

6. Perusal of record reveals that appellant was performing his duties as constable in respondent department who during his service faced some medical issue in his one kidney but appellant was able to perform duties of light nature, which he was performing accordingly. Appellant along with other were referred to Standing Medical Board for physical examination at District Headquarter Hospital, Kohat wherein they were examined on 15.02.2022. Standing medical Board opined about the appellant after his examination that he has not fit for active duty for the rest of his life can be adjusted on light duty for the rest of his service or boarded out on medical ground as not fit for active duty. Respondent on the basis of Standing Medical Board opinion issued invalidated retirement order of the appellant on 19.07.2022 by giving effect it from 15.02.2022. Appellant challenged said order in his departmental appeal, which too was rejected on 22.09.2022 hence the appeal in hand. Appellant performed his duties till passing of impugned order of his invalidated retirement by respondent on 19.07.2022 which is evident from Daily Diary No. 7 dated 15.07.2022 D.D No. 3 date 09.07.2022, D.D No. 6 dated 01.07.2022 and D.D No. 3 dated 11.07.2022 of the office of 20/FPR Karak but effect to his invalidated retirement was given from the date of standing medical board opinion i.e 15.02.2022, which is injustice with the appellant, who performed duties for five months after Standing Medical Board but was deprived of his regular salaries by passing the impugned order. Standing Medical Board in his opinion also opined that appellant can perform light duties and can be assign to him but this portion of Standing Medical Board was ignored by the respondents knowing the fact that appellant due to his illness unable to get employment or able to do some other work of heavy nature. There are so many duties in respondent department, which are of light nature and respondent department can accommodate him if they are desire so.

7. It is also pertinent to mention here that appellant stated at the bar that now he regain his health and respondent department might be directed to refer him for fresh medical examination as now he regain his health and if medical board found him fit then appellant's invalidated retirement order may kindly be withdrawn by reinstating him into service with all back benefits. This plea of the appellant have covered under Rules 519 of Civil Service Regulation which says:

“There is no bar to the re-employment of a Government servant who has regained health after obtaining invalid pension, or if a government servant is invalidated has being incapacitated for employment in a particular branch of the service to his re-employment in some other branch of the service. The rules in such a case as to refunding gratuity drawing pension and counting service are the same as in the case of re-employment after compensation of pension.”

Similarly, Police Rules 12.25 also states that under the orders contained in Article 511 to 519, Civil Service Regulations, a police officer who has been discharged with a compensation of invalid gratuity or pension may be re-employed in the police service up to the age of 55 subject to the following conditions:

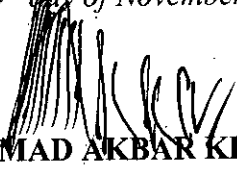
- a. He may either refund the gratuity or cease to draw pension, in which case he may count his former service for future pension, or he may retain his gratuity or pension in which case he cannot count his former service towards future pension.
- b. He shall be re-examined by the Civil Surgeon of the district in which he has been re-employed and certified as medically fit for service, and shall produce a discharge certificate showing that his previous service was classed as not lower than “good”.


9. For what has been discussed above, we are unanimous to set aside the impugned order and direct the respondent to sent the appellant for fresh medical board and decide the fate of appellant after receiving opinion of medical board, if appellant

regained his health then he will be reinstated/re-employed with all back benefits subject to repayment of pension/gratuity amount received by him. Costs shall follow the event. Consign.

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10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 14th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

*Kaleemullah