

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 75/2019

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

Muhammad Hussain, Ex-Constable No. 2198 R/O Ganjai Hospital, Tehsil
Takhtbhai, District Mardan. (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Malakand Region, Saidu Shairf, Swat.
3. District Police Officer, Swat. (Respondents)

Mr. Asalam Khattak
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....16.01.2019
Date of Hearing.....30.11.2023
Date of Decision.....30.11.2023

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 of this appeal, the impugned order dated 15.06.2016 may be set aside and the appellant shall be reinstated in service with full back benefits.”

2. Brief facts of the case are that appellant was enlisted in Police Department as Constable vide order dated 21.08.2008 and was performing duty upto the entire satisfaction of his superiors. During service mother of the appellant became seriously ill and appellant was permitted by his superiors to look after his mother. Illness of the appellant's mother prolonged and during that period respondents removed the appellant from service vide order dated 15.06.2016. Feeling aggrieved, appellant filed departmental appeal on 11.10.2018, which was not responded, 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 for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that the impugned order dated 15.06.2016 has given retrospective effect, which is an illegal order, so the same may be set aside. He further argued that the charges of absence from duty is a petty misconduct and the removal from service on the basis of such is extreme harsh punishment which is not permissible under the law. He submitted that neither show cause notice was served upon the appellant nor opportunity of personal hearing was afforded to him thus he was condemned unheard.

5. Conversely, learned District Attorney on behalf of respondents contended that appellant has been treated in accordance with law and rules. He further contended that appellant was a habitual absentee and was awarded 14 minor punishments. He further contended that appellant has neither moved any application to his high-ups regarding leave/permission nor he was permitted to go to his home and he willfully absented himself from lawful duty w.e.f 03.03.2016. He further contended that the charges leveled against him were proved and after fulfillment of all codal formalities, he was removed from service.

6. Perusal of record reveals that appellant was serving in police department as constable when his mother fell ill and with the permission of his superiors/high-ups, he went to look after his ill mother but during this period appellant was removed from service vide impugned order dated 15.06.2016.

Appellant alleged that he with the approval of his high-ups went to his native village to look after her ill mother but no leave application or permission is





annexed with the appeal or even any medical prescription of his mother illness where from his contention could be established. On the other hand respondent annexed report of Sami Ullah, DFC who went to deliver the show cause notice to the appellant's home address i.e Ganji Hospital wherein it is specially mentioned by the brother of the appellant namely Salah Ud Din, that appellant has been proceeded abroad and they had no contact with him. Notice was duly signed and received by his brother, so from it can safely be held that appellant willfully absent himself from duty. Moreover, appellant received copy of impugned order of his removal from service on 30.10.2017 by submitting written application, while he filed departmental appeal on 11.10.2018, which is time barred. As per superior court verdicts when departmental appeal is time barred, appeal will incompetent.

7. It is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwar Ul Haq v. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

8. For what has been discussed above, the appeal in hand is dismissed. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (M)



(RASHIDA BANO)
Member (J)


ORDER

30.11.2023 1 Learned counsel for the appellant present. Mr. Mohammad Jan
learned District Attorney for the respondents present..

2. Vide our detailed judgement of today placed on file, the appeal in
hand is dismissed. Cost shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands
and seal of the Tribunal on this 30th day of November, 2023.*


(MUHAMMAD AKBAR KHAN)
Member (M)


(RASHIDA BANO)
Member (J)

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