

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: SALAH-UD-DIN ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 1465/2022

Imtiaz Ullah S/O Muqarab Khan, Constable FRP Range No. 5906.
R/O Sarat Khel, Karak. *(Appellant)*

Versus

Provincial Police Officer/Inspector General of Police, Khyber
Pakhtunkhwa, Peshawar and 03 others. *(Respondents)*

Present:

Mr. Shahid Qayum Khattak, Advocate.....For the appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents

Date of presentation of Appeal.....11.10.2022
Date of Hearing.....08.01.2024
Date of Decision.....09.01.2024

JUDGMENT

SALAH-UD-DIN, MEMBER: Precise averments as per memorandum of appeal are that the appellant was enlisted as Constable in Police Department on 01.01.2011. He while performing his official duty had met an accident in which he sustained major spinal injury as well as other minor injuries. The appellant alongwith other police officials were referred to Standing Medical Board for medical examination at DHQ Hospital Kohat. The Standing Medical Board opined in its report that the appellant could be adjusted on light duty but despite that he was retired from service vide the impugned order bearing OB No. 389 dated 19.07.2022. The appellant challenged the same by way of



filing departmental appeal before the Commandant Frontier Reserve Police Khyber Pakhtunkhwa Peshawar, which was rejected vide order dated 27.09.2022, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance through their representative and contested the appeal by way of filing written reply raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his appeal. On the other hand, learned Assistant Advocate General for respondents has controverted the arguments of learned counsel for the appellant and have supported the comments submitted by the respondents.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that vide letter No. 272/PO.HC dated 03.02.2022, Superintendent of Police, FRP Kohat Range, Kohat had requested the Medical Superintendent District Headquarter & Teaching Hospital Kohat for constituting of Standing Medical Board for examination of the appellant as well as certain other police officials. Standing Medical Board was thus constituted and it examined the appellant as well as other police officials on 15.02.2022 and proceedings of the same were sent by Medical Superintendent DHQ Hospital KDA Kohat to the Superintendent of Police FRP Kohat Range Kohat vide letter No. 742/SMB dated 21.02.2022, copy of which is available on the

record. The remarks of Standing Medical Board regarding the appellant are reproduced as below:-

*“Road Traffic Accident on 28.11.2008.
Hx of spine injury
X-Ray D/L Spine (AP Lat)
Implants in spine
He may not be able to do actively duty for the rest of his life. Can be adjusted on light duty or boarded out on medical ground as not fit for active duty.”*

6. The above reproduced remarks of Standing Medical Board would show that the appellant was declared as physically capable of performing light duty. Moreover, one other Police Constable namely Sibghatullah was also examined by the same Standing Medical Board on the same day and remarks of Standing Medical Board regarding him were as below:-

*“Left cubitus varus with stiffness
Ulnar Neuropathy
X-Ray Left Elbow Joint (AP/Lat)
Permanent disability in left upper limb.
Cannot do active duty for the rest of his tenure.
Can be adjusted in light duty or boarded out on medical grounds as not fit for active service.*


7. It is the contention of learned counsel for the appellant that as per report of the Standing Medical Board, the above-mentioned Constable Sibghatullah No. 5643 was having permanent disability in left upper limb but even then he was adjusted by assigning him light duty, while the appellant was retired from service and was thus discriminated. The respondents have admitted in their comments that Constable Sibghatullah had not been retired, however they have tried to distinguish the case of Constable Sibghatullah on the ground that he had sustained injury in Police encounter/combat. The respondents have, however failed to produce any rule or law

supporting their plea of distinguishing of case of Constable Sibghatullah from that of the appellant. We are thus of the view that the appellant is similarly placed employee and deserve to be treated alike Constable Sibghatullah.

8. Consequently, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.01.2024


(FAREEHA PAUL)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)


Naeem Amin


ORDER
09.01.2024

Appellant alongwith his counsel present. Mr. Ihsanullah, ASI alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
09.01.2024


(Fateeha Paul)
Member (Executive)


(Salah-Ud-Din)
Member (Judicial)