

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

**Service Appeal No. 7202/2021**

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

**Kamran Khan S/O Hakeem Khan, Ex-Warder Constable (Prisons) R/O House No. 45988, Mohallah Timargarhi P/O Ramdas Bana Mari, Tehsil and District Peshawar. .... (Appellant)**

Versus

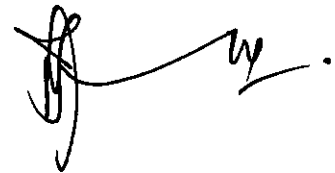
1. **Inspector General of Prisons Khyber Pakhtunkhwa, Peshawar.**
  2. **Superintendent, Headquarters Prison, Mardan.**
- .....(Respondents)

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

Date of Institution..... 02.08.2021  
Date of Hearing..... 18.12.2023  
Date of Decision..... 18.12.2023

**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 impugned order dated 28.01.2020, whereby the appellant was removed from service on the basis of willful absence w.e.f 21.10.2019 to 28.01.2020 and against the order dated 15.06.2021, whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned orders dated 28.01.2020 and 15.06.2021 might be set aside and the appellant be reinstated into service with all back benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Warder Constable in the respondent department on 03.05.2009. During the Covid-19 pandemic, his father fell serious ill. The appellant was the only one who could look after his father due to which he was unable to attend the office from 21.10.2019 to 24.10.2019. Later, the appellant got severely injured due to a motorbike accident and as a result of backbone injury, remained on bed rest for almost 15 months. He was also affected by Tuberculosis. After recovery from the aforesaid problems, when he was about to join his service, the respondent department intimated about the order of removal from service. After receiving the impugned order in the year 2021, he filed departmental appeal/mercy petition to the competent authority which was rejected vide impugned order dated 15.06.2021; hence the service appeal.

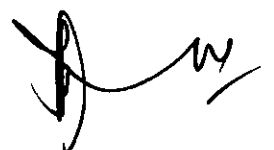
3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that absence of the appellant was not willful but due to illness and that it was not possible for the appellant to attend the office. He further argued that neither show cause notice was served upon him nor any inquiry was conducted and he was removed from service with a single stroke of pen. He requested that the appeal might be accepted.



5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant admitted himself that due to illness of his father, he remained absent from duty w.e.f 21.10.2019 to 28.01.2020 without any application. He invited attention to Rule 1083 and 1096 of Khyber Pakhtunkhwa Prison Rules 2018, according to which Superintendent of the Jail was competent to grant medical leave on production of medical certificate but no such certificate was produced by the appellant. Learned IDDA further argued that the appellant was removed from service as per Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011. According to him, absence notice dated 05.12.2019 was served upon him at his home address but he failed to report for duty, after which, absence notice was published in daily "Express" Peshawar on 10.01.2021 and daily Aaj Peshawar on 11.01.2020 but the appellant failed to report for duty. Thus as required under the aforesaid rules, ex-parte action was taken against him by the competent authority vide order dated 28.01.2021. He further argued that departmental appeal of the appellant before the Inspector General of Prisons was rejected as it was time barred. He requested that the appeal might be dismissed.

6. The instant service appeal has been preferred by the appellant against an order vide which he has been removed from service on the ground of willful absence. Arguments and record presented before us shows that the appellant remained absent w.e.f. 21.10.2019 to 28.01.2020, when the impugned order was passed. The appellant, in his service appeal, himself admits that he remained absent w.e.f. 21.10.2019 to 24.10.2019 because of illness of his father and later on for another 15 months because of his injury




in an accident and tuberculosis. During the course of hearing, learned counsel for the appellant was confronted whether any application for leave was submitted, to which he frankly admitted that no such application was submitted by the appellant to his competent authority. Here attention is invited to the Khyber Pakhtunkhwa Prison Rules 2018. Rule 1083 of the said rules is extremely clear when it states that whenever any subordinate officer is prevented by sudden illness or any other unavoidable cause and he is not able to attend to his prison duties, he shall give a notice to the Superintendent of that prison by stating the reasons of absence. The superintendent then makes the necessary arrangements accordingly. In case of medical leave, Rule 1096 is clear and elaborative when it states that leave, other than casual leave, in case of staff not mentioned in its sub rule (1) is to be sanctioned by the Superintendent. In this case, the appellant failed to give due regard to the Prison Rules and thus rendered himself to be proceeded against. Record annexed by the respondents with their reply provides the service history and punishments awarded to the appellant. Perusal of that document shows that the service history of the appellant is tainted with several punishments of different nature.

7. Coming to the recent punishment of removal from service on the ground of willful absence, it has been noted that required procedure under Rule 9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011 was duly observed, i.e. absence notice was issued at his home address. When it was not responded, notice was issued in two dailies also and when he failed report, an ex-parte action was taken against the appellant.



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

9. *Pronounced in open court in Peshawar and given under our hands  
and seal of the Tribunal this 18<sup>th</sup> day of December, 2023.*

  
(FARESHHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)


*\*Fazle Subhan, P.S\**

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18<sup>th</sup> Dec. 2023 01. Mr. Taimur Ali Khan, 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 18<sup>th</sup> day of December, 2023.*

  
(FARIHA PAUL)  
Member (I)

  
(RASHIDA BANO)  
Member (J)

\*Fazal Subhan PS\*