

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT D.I.KHAN

Service Appeal No. 508/2022

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

Muhammad Sohrab S/O Imam Bakhsh R/O Arra, Gomal University,
Tehsil & District D.I.Khan.

... (Appellant)

VERSUS

1. Inspector of Police Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer/Deputy Inspector General of Police, D.I.Khan.
3. District Police Officer, D.I.Khan.

.... (Respondents)

Mr. Umar Farooq Mohmand
Advocate

... For appellant

Mr. Habib Anwar
Additional Advocate General

... For respondents

Date of Institution.....01.04.2022
Date of Hearing.....15.01.2024
Date of Decision.....15.01.2024

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 instant appeal, the impugned orders No. 2251 dated 24.12.2019, order No. 9682/ES dated 11.11.2020 and order No.4862dated 15.12.2020 may graciously be set aside and appellant may very graciously 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 while posted at Police Station Band Korai, D.I.Khan became seriously ill and remained under treatment. A charge sheet was issued to him by respondent No. 3 with the allegations that he remained absent from duty from 24.04.2019 to 13.05.2019, 15.05.2019 to 16.06.2019 and 20.06.2019 onwards. One sided enquiry was conducted and he was dismissed from service by respondent No. 3 vide order dated 24.12.2019. Feeling aggrieved, he submitted departmental appeal which was rejected vide order dated 11.11.2020. Thereafter, he submitted revision petition before respondent No. 1 which was also rejected vide order dated 15.12.2020; hence the present 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 Assistant Advocate General and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that absence of the appellant was not willful but due to his serious illness. No proper enquiry was conducted into the matter wherein the appellant was not provided opportunity of defence nor cross-examination of witnesses. He further argued that no final show cause notice was served upon him nor afforded him opportunity of personal hearing and he was condemned unheard. He stated that the appellant had 15 years service at his credit and punishment of dismissal from service on the basis of alleged absence was too harsh and not commensurate with the guilt of the appellant.

5. Conversely, learned District Attorney for the respondent contended that the appellant was habitual absentee and remained absent from his lawful duty

for different period without any application and prior permission of the competent authority. A charge sheet alongwith statement of allegations was served upon him which was duly replied by him. He further contended that proper departmental enquiry was conducted wherein the charge of absence was established against him during the enquiry and has rightly been dismissed from service. He requested that the appeal may be dismissed.

6. Perusal of record reveals that the appellant was serving in the respondent department as Constable when on 24.04.2019 due to his illness he absented himself from performance or his official duty upon which he was issued with charge sheet and statement of allegations on 17.07.2019 with the allegation of absence from lawful duties without any leave/permission from his high-ups. Appellant submitted reply of the charge sheet on 19.07.2019 by contending therein that he was referred to medical board by the DPO wherein medical board after his chekup and examination recommended light duty for the appellant for six months and after that case may be re-assessed if needed vide its report dated 25.06.2019 and sent to respondent on 10.07.2019 by the Chairman DSMB D.I.Khan. Appellant has pain in his left knee/joint which he had from 2014 as per medical board report. Although appellant had pain in his left knee and joint but he was recommended for light duty by the medical board. He, instead of performance of his duty with a request to assign him some light duty, got himself absented from duty. If he had severe pain then he must have applied for medical leave because being a civil servant there are certain liabilities and obligations upon appellant and he has to obey the valid order of his high ups as it is part and parcel of service discipline but the appellant did not bother to file the same, even he did not inform his immediate





boss through Telephone, rather he switched off his cell phone which is not warranted and is against the service discipline.

7. Factum of absence is admitted by the appellant in his appeal and in accordance with law, a fact admitted needs not to be proved. Revision petition under 11-A filed by the appellant was dismissed vide order dated 11.11.2020 and appellant filed instant service appeal on 01.04.2022 which he would have to file within thirty days of passing of impugned order dated 11.11.2020 in accordance with Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974, which means that instant appeal is filed with a considerable delay of one year and four months. Although appellant filed application for condonation of delay but explanation given by him is not justifiable to cover delay of one year and four months because he will have to explain delay of each and every day and also to explain the reason of wait for a long period of one year and four months in order to obtain copy of decision of revision petition. He must be vigilant to pursue his service matter if he was interested in service. Reliance is placed on 2023 SCMR 29.

8. For what has been discussed above, the appeal in hand is dismissed being barred by time. Costs shall follow the events. Consign.

9. *Pronounced in open court at D.I.Khan and given under our hands and seal of the Tribunal on this 15th day of January, 2024.*


(FAREEHA PAUL)
Member (E)
Camp court, D.I.Khan


(RASHIDA BANO)
Member (J)
Camp court, D.I.Khan

20th Nov. 2023

1. Junior to counsel for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present.
2. Lawyers are on strike. Therefore, case is adjourned. To come up for arguments on 15.01.2024 before D.B at Camp Court, D.I.Khan.

P.P given to the parties.

SCANNED
KPST
Peshawar

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman
Camp Court, D.I.Khan

Mutazem Shah

ORDER

15.01.2024

1. Learned counsel for the appellant present. Mr. Habib Anwar learned Additional Advocate General for the respondents present.
2. Vide our detailed judgement of today placed on file, the appeal in hand is dismissed being barred by time. Costs shall follow the events. Consign.
3. *Pronounced in open court at D.I.Khan and given under our hands and seal of the Tribunal on this 15th day of January, 2024.*

(FAREEHA PAUL)
Member (E)
Camp court, D.I.Khan

(RASHIDA BANO)
Member (J)
Camp court, D.I.Khan

*Kaleemullah