

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**CAMP COURT, D.I.KHAN**

Service Appeal No. 5734/2021

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

Muhammad Sajjad son of Mumtaz Khan caste Kundi, R/O Village Pai Tehsil and District Tank. Ex-Constable No. 8306-FRP Dera Ismail Khan.  
..... (Appellant)

Versus

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent of Police, FRP, D.I.Khan Range, Dera Ismail Khan.  
..... (Respondents)

Sheikh Ifikhar-ul-Haq  
Advocate

... For appellant

Mr. Habib Anwar  
Additional Advocate General

... For respondents

Date of Institution.....	31.05.2021
Date of Hearing.....	15.01.2024
Date of Decision.....	15.01.2024

**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 17.10.2018 vide which major punishment of removal from service from the date of absence was awarded to the appellant and against the order dated 17.09.2020 vide which departmental appeal/revision petition of the appellant was rejected. It has been prayed that on acceptance of the appeal, the impugned order dated 17.10.2018 and 17.09.2020 might be set aside and the appellant be reinstated/restored with all back benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable in Frontier Reserve Police in August, 2015. During performance of his duties, he submitted an application to higher authority for admission in M.Sc (Physics) in Gomal University, D.I.Khan and one month leave was granted to him. Later on, for proper study leave, an application was submitted for grant of 19 months leave from 11.03.2018 to 31.12.2019 which was accepted by the authority as the appellant was assured and permitted to continue his study. Later on, he was served with charge sheet and statement of allegations on 04.09.2018. The appellant requested to submit detailed reply which was not allowed. He appeared before one, Zahoor Khan, DSP, and explained his position and was allowed to continue his study and study leave. Show cause notice was issued to the appellant but not properly served upon him. After completing the M.Sc, it came to his knowledge that he was removed from service vide order dated 17.10.2018 and his absence period from 10.03.2018 to 07.09.2018 (181 days) and 10.09.2018 till passing of the impugned order dated 17.10.2018 was treated as without pay. Feeling aggrieved, he submitted departmental appeal/representation on 22.07.2020 to the Commandant FRP Khyber Pakhtunkhwa, Peshawar. Thereafter, due to COVID-19, offices remained closed and when the appellant approached the concerned authority on 20.05.2021, he was told that his departmental appeal had already been filed/rejected vide order dated 17.09.2020; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant



as well as the learned Additional Advocate General 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 both the impugned orders were against the law, facts, natural justice and void ab initio. He further argued that neither any show cause notice was served upon the appellant nor proper enquiry was conducted. He further argued that the appellant was not absent from duty but was on study leave after fulfilling all the departmental requirements, hence the impugned orders were not sustainable in the eyes of law and were liable to be set aside. He requested that the appeal might be accepted as prayed for.

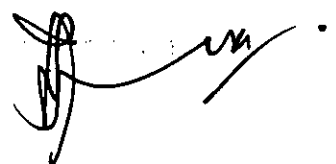
5. Learned Additional Advocate General, while rebutting the arguments of learned counsel for the appellant, argued that on 08.02.2018, the appellant proceeded on 30 days earned leave and after expiry of that leave, he failed to report and remained absent from his lawful duty w.e.f. 10.03.2018. On the allegations of willful absence, he was issued show cause notice and one, Constable Irfan, was deputed to serve the show cause notice upon the appellant at his home address, but he refused to receive the same. He further argued that Zahoor-ud-Din, DSP was nominated as Enquiry Officer to conduct the enquiry into the matter. Charge sheet was served upon the appellant through special messenger at his home address and his signature was obtained as a token of receipt but he, deliberately, did not submit his reply. The learned AAG informed that during the course of enquiry, he was summoned time and again but he failed to appear in time and later on, on the directions of the enquiry officer he appeared, but failed to present any cogent justification of his



absence. He further argued that the departmental appeal submitted by the appellant was examined and rejected being badly barred by time. Subsequently, the appellant submitted revision petition which was also rejected vide order dated 17.09.2020. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant, while serving as Constable in the Frontier Reserve Police, Dera Ismail Khan, absented himself from lawful duty for which he was proceeded against departmentally and major punishment of removal from service was awarded to him. The appellant was appointed as Constable on 13.08.2015. Through an application dated 02.02.2018, he applied for 120 days earned leave for construction of his house, and he was granted leave for 30 days. In his service appeal, the appellant mis-stated this fact by stating that he was granted one month leave for processing of admission in M.Sc Physics in Gomal University, D.I.Khan. When confronted, learned counsel for the appellant admitted that the said leave was not applied for processing of his admission. When further confronted whether the study leave applied by the appellant was sanctioned by the competent authority, learned counsel frankly stated that it was not sanctioned. While drawing his attention to the leave rules, he was asked to clarify whether the appellant fulfilled the criteria, learned counsel had no hesitation in saying that the appellant did not fulfill the criteria for study leave.

7. The appellant was appointed in August 2015 and he absented himself from March 2018 and as stated by him, he went for higher studies and completing his M.Sc from the Gomal University, D.I.Khan. It is worth to note





that no sanction for study leave is available with the service appeal and it has been admitted by the learned counsel for the appellant that no such sanction is available altogether. As per leave rules of the provincial government, qualifying service for study leave is five years, a criteria which the appellant did not fulfill. The plea of the appellant that he was not given any opportunity of personal hearing is not acceptable as his written statement before the Inquiry Officer is a clear evidence that an opportunity was given to him and that he admitted his absence and studying in the Gomal University without any approval from his competent authority.

8. Being a civil servant and member of a disciplined force, under the rules, the appellant was bound to obtain the No Objection Certificate before taking admission in the university, and then get the study leave sanctioned under the relevant rules, which in this case has not been done. It is, therefore, a clear misconduct on the part of the appellant.

9. In view of the above facts, the appeal in hand is dismissed. Cost shall follow the event. Consign.

10. *Pronounced in open court at Camp Court, D.I.Khan and given under our hands and seal of the Tribunal on this 15<sup>th</sup> day of January, 2024.*

  
(FARIEHA PAUL)  
Member (I)  
Camp Court D.I.Khan


  
(RASHIDA BANO)  
Member (J)  
Camp Court D.I.Khan


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15<sup>th</sup> Jan, 2024 01. Sheikh Ifikhar-ul-Haq, Advocate for the appellant present. Mr. Habib Anwar, Additional Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the appeal in hand is dismissed. Cost shall follow the event. Consign.

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

  
(FARZEEN PAUL)  
Member (E)  
Camp Court, D.I.Khan

  
(RASHIDA BANO)  
Chairman  
Camp Court, D.I.Khan

\*Fazal Subhan PS\*