


S.A 7419/2021

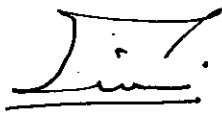
24th Jan, 2024 01. Mr. Muhammad Maaz Madni, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the service appeal is dismissed. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 24th day of January,*

2024.


(FARUKH PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Fazal Subhan PS

in the continuity of his service and he cannot claim any benefit of the intervening period, when he was not in service, before his re-employment. Had it been reinstatement, the appellant would have been entitled to continue his previous position held by him before he was declared invalid. From 01.01.1998 to 22.01.2001, the appellant was not in service and hence that period cannot be counted towards the service rendered by him for the purpose of calculation of his pension and other benefits. However, his previous service has been counted for future pension under the same rule, i.e. 12.25 (1) (a), as it has been confirmed by both the appellant as well as the respondents that he refunded the gratuity received by him.

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

09. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 24th day of January, 2024.*


(FAREEHA PAUL)
Member (E)


(SALAH-UD-DIN)
Member (J)

Charsadda. The appellant was re-employed vide an order dated 22.01.2001 under Police Rule 12.25, with the direction to deposit gratuity etc as provided under the rule. Later on, in the year 2020 he was retired from service w.e.f 24.02.2020, on superannuation, after completion of 40 years, 01 month and 10 days service. After his retirement, he submitted a request to District Police Officer, Charsadda for counting his service from 01.01.1998 to 22.01.2001 towards his pension and to treat that period as leave of the kind due. It was the period when he was declared invalid by the Standing Medical Board and was no more in service. At a later stage, when he was found medically fit, he was re-employed in service under Police Rules. Rule 12.25(1) is reproduced as follows:-

12.25(1) Re-enactment of police pensionrs.—*Under the orders contained in Article 511 to 519, Civil Service Regulations, a police officer who has been discharged with a compensation or invalid gratuity or pension may be re-employed in the police service up to the age of 55 subject to the following conditions:-*

(a) *He may either refund the gratuity or cease to draw pension, in which case he may count his former service for future pension, or he may retain his gratuity or pension in which case he cannot count his former service towards future pension.*

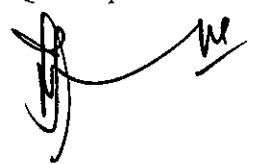
(b) *He shall be re-examined by the Civil Surgeon of the district in which he has been re-employed and certified as medically fit for service, and shall produce a discharge certificate showing that previous service was classed as not lower than "good".*

7. It is crystal clear that under the rules it is case of re-employment, which means that a person is employed afresh. It further clarifies that there is a break

due as per Rule-5 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules 1981 as he had sufficient leave at his credit but the same was also not honored. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the period between his first retirement on medical ground and re-employment could not be counted towards his service as re-employment denoted that a person was employed afresh. He referred to the judgment of the Federal Service Tribunal Islamabad reported as PLJ 1997 Tr.C (Services) 577. Learned DDA further informed that on the request of the appellant for inclusion and counting of his service towards his pension for the period during which he was out of service on medical ground i.e 01.01.1998 to 22.01.2001, opinion was sought from AIG of Police (Legal) who, in his advice made a reference to Police Rules 12.25 (a) (b) and Sub-Rule 2 and that those rules did not cover the plea of the appellant. According to him, the appellant was not reinstated but re-employed in service, therefore, the period he remained out of service could not be calculated towards his pension. He requested that the appeal might be dismissed.

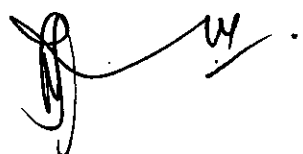
6. Arguments and record presented before us shows that the appellant, while serving in the police force of the province, was declared unfit by the Standing Medical Board, after rendering service for eighteen years, in December 1997. Later on, he submitted a mercy petition, based on a medical certificate issued to him by the Medical Superintendent, Civil Hospital, Peshawar, with a request for re-enrolment, which was accepted in the light of medical examination conducted by the Medical Superintendent DHQ Hospital



01.01.1998 to 22.01.2001 was neither included in the service nor calculated towards pension. Feeling aggrieved, he filed departmental appeal dated 20.07.2020 before respondent No. 2 which was forwarded to AIG (Legal) Peshawar for guidance vide letter dated 28.08.2020. The same was returned to respondent No.2 vide letter dated 03.09.2020. Request of the appellant was rejected by respondent on 14.01.2021. He filed revision petition dated 18.01.2021 before respondent No. 1, after which he filed application dated 07.09.2021 for receiving any order passed on the revision petition. He came to know that the same had been forwarded to respondent No. 1 vide letter dated 25.02.2021; hence the instant appeal.

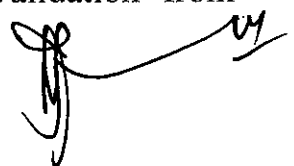
3. Respondents were put on notice, who submitted replies/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the act and omission of the respondents was against the law, facts, material available on record and norms of natural justice, hence not tenable in the eyes of law and was liable to be struck down. He further argued that at the time of re-employment, the appellant had refunded the gratuity already drawn at the time of invalidation on 31.12.1997 as per direction issued vide order dated 22.01.2001 but even then the period of invalidation and out of service was not counted towards pension which caused a great financial loss to him. Learned counsel argued that the appellant had also requested to treat the invalidated period from 01.01.1998 to 22.01.2001 towards leave of the kind



22.01.2001 towards pension and the appellant be paid the pensionary benefits for the period, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Constable, after fulfilling all the codal formalities required for the post, vide order dated 17.01.1980. After performing duty as Head Constable for a considerable time, he was declared medically unfit for further duty by standing medical board and was boarded out of service w.e.f 10.12.1997 vide order dated 02.01.1998. The appellant, after gaining health, forwarded a mercy petition before the competent authority for re-enrolment on his duty. He appeared before the Medical Superintendent of Civil Hospital Peshawar on 03.01.2000 and was declared mentally and physically fit. Accordingly the mercy petition was forwarded by Respondent No.1 to Deputy Inspector General of Police vide letter dated 08.01.2001. As directed, the appellant again appeared before the Medical Superintendent, District Headquarter Hospital, Charsadda on 15.01.2001, who again declared him fit, both physically and mentally, vide medical certificate dated 17.01.2001. Based on that opinion, the appellant was re-employed in service vide order dated 22.01.2001, with the condition that under Rule 12.25, he would deposit gratuity etc. He performed duty till he reached the age of superannuation on 24.02.2020 and accordingly was retired from service by respondent No. 2 vide order dated 28.02.2020 on completion of 40 years, 01 month and 10 days service as Head Constable. His retirement benefits were calculated and the period when the appellant was out of service due to invalidation from



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7419/2021

BEFORE: MR. SALAH UD DIN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER(E)

Mr. Mudasir Khan S/O Muzamil Khan, Head Constable No. 17 (Retired). o/o District Police Officer, District Charsadda.(Appellant)

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar. .
2. The District Police Officer, District Charsadda.....(Respondents)

Mr. Muhammad Maaz Mandi,
Advocate ... For appellant

Mr. Muhammad Jan,
District Attorney ... For respondents

Date of Institution..... 17.09.2021

Date of Hearing..... 24.01.2024

Date of Decision..... 24.01.2024

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 inaction of the respondents by not calculating the invalidated period i.e. 01.01.1998 to 22.01.2001 towards pension and pensionary benefits and against appellate order dated 25.02.2021, whereby revision petition of the appellant was regretted for no good grounds. It has been prayed that on acceptance of the appeal, the inaction of the respondents by not calculating the invalidated period from 01.01.1998 to 22.01.2001 towards pension and pensionary benefits might be declared illegal and the respondents be directed to re-calculate pension by calculating the invalidated period i.e. 01.01.1998 to

