

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7922/2021

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

Muhammad Ismail Ex. Constable District Khyber Police S/O Attaullah Jan
Koki Khel, R/O Koki Khel Qala Ghundi Tehsil Jamrud District Khyber.
.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home Department, Peshawar.
2. Inspector of Police Khyber Pakhtunkhwa, Peshawar.
3. Capital Police Officer, Peshawar.
4. District Police Officer, District Khyber at Jamrud.

.... (Respondents)

Mr. Abdur Rauf Afridi
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....09.12.2021
Date of Hearing.....11.01.2024
Date of Decision.....11.01.2024

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 order/notification of the respondents be set aside to the extent of denial of benefits for the period the appellant remained out of service and the appellant may please be allowed the salaries and all the consequential benefits for the period he remained out of service.”


2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Khasidar in Khyber Khasidar Force in the year 2007 and promoted to the rank of Naib Subedar vide order dated 24.01.2013. After the merger

of levies force into the police force of the province, the appellant was designated as Sub-Inspector and was posted as incharge Takhtabaig vide order dated 03.07.2019. Appellant was suspended from service and his salary was stopped. Departmental proceedings were initiated against him, which culminated into dismissal of service vide order dated 20.01.2021. He filed departmental appeal, which was partially allowed by reinstating the appellant into service and the period of absence was treated as leave of kind due, hence, the instant service 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 District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that the appellant has not been treated in accordance with law and rules. He further argued that absence of the appellant was neither intentional rather it was due cardiac disease. He further argued that during period of absence he was under treatment at Armed Force Institute of Cardiology, Rawalpindi. He submitted that no charge sheet and statement of allegation was service upon the appellant, hence the impugned order might be set aside.

5. Conversely, learned District Attorney for the respondent contended that appellant remained absent from lawful duty for more than one year and called time and again but he failed to complied with the orders. He further contended that the appellant was suspended with stoppage of salary and closed to District Police Lines Shakas Khyber on the ground of absence from lawful duty; that proper departmental enquiry was initiated against him; in this regard charge sheet along with summary of allegation was issued which were not received deliberately; that on 31.12.2020 his statement was recorded with cross examination by the inquiry officer and he also submitted medical report before the enquiry officer but he failed to satisfy the enquiry officer, hence, dismissed. He further contended that lenient view has



already been taken by the respondents by accepting his departmental appeal and reinstating him into service.

6. Perusal of record reveals that appellant was appointed as Khasidar in Khyber Khasidar force in year 2007; was promoted to the rank of Naib Subedar on 24.01.2013. After merger of the Khasidar Force into the Police Force of Khyber Pakhtunkhwa, the appellant was designated as sub Inspector and was posted as In-charge Takhlabaig post vide order dated 03.07.2019. Appellant was suspended vide order dated 20.08.2020 and his salary was stopped. Appellant was departmentally proceeded against and was dismissed from service vide order dated 20.01.2023; appellant filed departmental appeal which was partially allowed vide order dated 21.10.2021 wherein appellant was reinstated into service by treating the period of absence as leave of kind due and no benefit was granted for the intervening period.

7. The appellant has impugned order dated 21.01.2021 to extent of non-granting benefits of the period during which he remained out of service. Appellate authority, in the impugned order, itself mentioned that appellant was absent due to cardiac disease, which fact was also confirmed by the DPO/respondent No.4, which means that appellant was compelled by the Cardiac Disease to be on bed and his absence was not voluntary or willful. In the Impugned order, there is no mention of intervening period i.e. from 20.01.2020 to 21.10.2021, which must have to be regularized, therefore, same may also be treated as leave of the kind due because during this period appellant was compelled to remain out of service by the dismissal order dated 20.01.2020 and not upon his own choice. Reliance is placed on 2013 SCMR 752.

8 Moreover appellant was suspended vide order dated 20.08.2020 but he was denied salary of this period which is also against law because during suspension civil servant is entitled for his salary except one or two allowances as per law and

Rules. Therefore, appellant is entitled for the salary of the suspension period i.e 20.08.2020 to 20.01.2021.

9. For what has been discussed above, the appeal in hand is partially allowed to the extent that respondents are directed to pay salary of suspension period i.e 20.08.2020 to 20.01.2021 with further direction to treat intervening period w.e.f 20.01.2021 to 21.10.2021 as leave of the kind due. Costs shall follow the event. Consign.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 11th day of January, 2024.*



(KALIM ARSHAD KHAN)
Chairman



(RASHIDA BANO)
Member (J)