

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1273/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MR. MUHAMMAD AKBAR KIHAN ... MEMBER (E)

Ahmad Nawaz, No. 161, Police Lines, Hangu.

.... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Kohat Region, Khyber Pakhtunkhwa.
4. District Police Officer, Hangu, Khyber Pakhtunkhwa.

.... (Respondents)

Mr. Syed Roman Shah
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution	02.06.2023
Date of Hearing	29.01.2024
Date of Decision	29.01.2024

JUDGMENT

Rashida Bano, Member (J): The instant appeal instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance this service appeal, the impugned orders dated 30.01.2023 and order dated 18.05.2023 may graciously be set-aside by declaring it illegal, unlawful,

without authority, based on malafide, void ab-inatio and thus not sustainable in the eyes of law and appellant is entitled for reinstatement in service with all back benefits of pay and service.

2. Brief facts of the case are that appellant was appointed as Constable in Police Department in the year 2008 and was performing his duty up to the entire satisfaction of his superiors. Respondent No.4 vide letter dated 17.05.2022 requested the Medical Superintendent KDA, Headquarter Hospital Kohat to arrange Standing Medical Board for examination of the appellant, but instead of arranging SMB and waiting for the opinion of SMB, departmental proceedings were initiated against the appellant and was dismissed from service vide order dated 30.01.2023. Feeling aggrieved, he filed departmental appeal which was accepted and the punishment was modified from major punishment of dismissal from service into major punishment of compulsory retirement from service, 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 Assistant Advocate General and perused the case file with connected documents minutely and thoroughly.

4. Learned counsel for the appellant argued that appellant has not been treated in accordance with law and rules. He further argued that orders passed by the respondents are illegal, unlawful, without authority, based on malafide intention, against the natural justice, violative of Constitution and Service Law and equally without jurisdiction, hence liable to be set aside. He further argued that before passing the impugned order, respondents have not properly



evaluated the facts and evidence as the appellant was seriously ill and was under treatment which is against the law. He further argued that during enquiry proceedings neither the appellant was associated in the proceedings nor anyone was cross examined similarly no opportunity of personal hearing was afforded to the appellant and he was condemned unheard.

5. Conversely Deputy District Attorney argued that the appellant has been treated in accordance with law and rules. He further contended that respondent No.4 addressed the hospital authority for constitution of the medical board but the hospital authority did not furnish reply within the appropriate time and the competent authority had to initiate departmental proceedings against the appellant which does not amount to malafide on the part of the respondents. He submitted that the appellant was associated with the inquiry and he was afforded opportunity to defend himself during the inquiry, he therefore, requested that instant appeal might be dismissed.

6. Perusal of record reveals that appellant was serving in the respondent/department as constable when he fell ill upon which respondent No 3 requested Medical Superintendent Kohat Development Authority Head Quarter Hospital Kohat for arrangement of standard Medical for examination of the appellant vide order 13.05.2022. Respondent during this period respondent also initiated disciplinary proceeding against the appellant by issuing charge sheet and statement of allegation on 01.09.2022 on ground of absence from duty and after issuance of final show cause notice on 22.12.2022, respondent finally dismissed appellant from service vide order dated 26.01.2023. Appellant

filed departmental appeal wherein appellate authority converted order of dismissal from service of the appellant into his compulsory retirement vide order dated 18.05.2023. It is also pertinent to mention here the factum of illness of the appellant is also in the notice of the respondent No 4 as he vide order dated 07.05.2022 requested Superintendent KDA DHQ hospital Kohat for constitution of medical board for check-up of the appellant. It was incumbent upon respondent No 4 to grant leave to appellant on medical ground which can't be discard to him under Rules 13 of revised leave Rules 1981. It is injustice to proceed against the appellant despite having full knowledge of nature of illness and issuance of order of Medical board of the appellant. Appellant admittedly attended his duties with interval which means that he performed his duties even during his treatment and illness. Now appellant is declared fit by Doctor for performance of his duties i.e. MODHQ Hospital Karak on 25.10.2020 and Dr. Asif Nawaz in the circumstances it will be more appropriate and just that appellant be get examined by the medical board and if will found fit then to reinstate him, if not declare fit for performance of his duties then too retire him on medical ground.

7. For what has been discussed above we are unison to set aside the impugned order dated 18.05.2023 and reinstate appellant into service with all back benefits. However respondent are at liberty to check the medical condition of the appellant by sending him to the standing

medical board if he is not medically fit then to retire him on invalid ground. Cost shall follow the event. Consign.

8. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 29th day of January, 2024.*



(MUHAMMAD AKBAR KHAN)
Member (E)



(RASHIDA BANO)
Member (J)

M.Khan

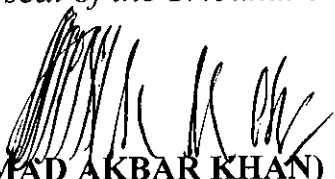
ORDER
29.01.2024


1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney alongwith Mr. Falak Nawaz DSP legal present on behalf of the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned order dated 18.05.2023 and reinstate appellant into service with all back benefits. However respondents are at liberty to check the medical condition of the appellant by sending him to the standing medical board if he is not medically fit then to retire him on invalid ground. Cost shall follow the event.

Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 29th day of January, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

M.Khan