

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 627/2023

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

Muhammad Amir Khan S/O Noor Muhammad Khan Constable No.883
(Wireless Operator BPS-07) Control Bannu.

.... (Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. The Assistant Inspector General of Police (Telecommunication and Transport) Khyber Pakhtunkhwa, Peshawar.
3. Superintendent of Police (Telecommunication & Transport) Khyber Pakhtunkhwa, Peshawar

.... (Respondents)

Mr. Nazir Ahmad
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....22.03.2023
Date of Hearing.....13.12.2023
Date of Decision.....13.12.2023

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:

“To accept this appeal and set-aside the impugned order No.7496-7505/Tele/OASI dated 05.08.2020 of respondent No.2 declaring it void-ab-initio, illegal, discriminatory and against the principle of natural justice, including the charge sheet dated 06.02.2020 of the respondent No.2 and order No.445/23 dated Peshawar 20.02.2023 communicated to the appellant on 20.03.2023 of respondent No.1 whereby the departmental appeal of the appellant is rejected.



- A. Treat the absentee of the appellant during under treatment extra ordinary leave or at least remove the stigma of removal from service.**
- B. Reinstate him with all back benefits or allow him to tender resignation.”**

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was enlisted in police department as Wireless Operator BPS-07 in the year 2011. During service he fell ill and was unable to perform his official duty, therefore, he filed application for leave. Departmental proceedings were initiated against the appellant which culminated into removal from service of the appellant vide order dated 05.08.2020. Feeling aggrieved, appellant filed departmental, which was rejected, 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 absence of the appellant was not willful but due to his serious illness. He further argued that he doesn't deserve any charge sheet as brought it into the notice of authorities through application that he is under treatment so the impugned order of his removal from service is against the law, hence liable to be set aside. 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 which is against the principle of natural justice.

5. Conversely, learned District Attorney for the respondent contended that the appellant was a member of disciplined Police Force and did not fulfill the job obligation of discipline force department, willfully absented himself from recruit



course on account of absence, he was proceeded departmentally in accordance with law and rules. 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 removed from service. He requested that the appeal may be dismissed.

6. Perusal of record reveals that appelland was serving in Police Department as wireless Operator in BPS-07 from date of his appointment i.e. 14.02.2011. Appellant was posted at Bannu when he was selected for recruit course at Police Station, Kohat which will have to be start from 09.12.2019 during covid-19 period. Appellant being heart and diabetes patient had apprehension of contracted Covid-19 virus, therefore, he filed appeal for grant of leave due to his illness but same was not accepted. Respondent No.3 issued show cause notice dated 13.12.2019 to appellant which was duly replied by the appellant with request for grant of time till recovery but respondent without conducting proper inquiry and without providing chance of self-defense and hearing removed him from service vide order dated 05/08/2020. Appellant filed departmental appeal which was rejected and then service appeal bearing No.1641/2021 which upon oral assertion of reinstatement by respondent was withdrawn filed revision petition against said order on 15.01.2023, with request for setting-aside of impugned order but his revision petition despite commitment and assurance by Inspector General of Police, Khyber Pakhtunkhwa rejected vide order 20.02.2023 on the ground that there shall be only one appeal under 11(3) of Khyber Pakhtunkhwa Police Rules, 1975 and one appeal by the appellant was rejected earlier vide order dated 13.04.2022.

7. Appellant alleged medical ground for his absence and produce medical documents out of which some were sent by the department for verification which

according to respondent was not verified and fake one. Appellant also annexed medical prescription along with his appeal, perusal of which reveals that prescription sent by the inquiry officer and the one which was annexed by the appellant with his appeal have serial number of the OPD and Serial No. of the Hospital alongwith its date. The date of medical prescription i.e sent for verification and annexed with the appeal are the same but hospital and OPD slips numbers are totally different from each other sent are which are given as under:

Sent for verification				Annexed with the appeal			
S.No	Date	OPD Slip Sr. No.	Hospital OPD No.	S.No.	Date	OPD Slip Sr. No.	Hospital OPD No.
1.	01.01.2020	92403	34	1.	01.01.2020	219482	174
2.	06.02.2020	92402	2631	2.	06.02.2020	83413	6910
3.	27.02.2020	92401	5037	3.	27.02.2020	83457	13317

Appellant also annexed some other medical prescriptions alongwith the appeal different types of medical tests conducted upon advice of doctors to determine his nature of illness.

8. Inquiry officer was duty bound to send original for verification and not the one which on the face of record from OPD slip serial number i.e. 92403, 92402 and 92401 seems to be fake because how can with the interval of one month and 20 days no patient came to the hospital OPD and how it was in reverse order. Inquiry officer if received report from Additional Hospital Director then he will have to call him alongwith record pertaining to OPD of the relevant date and examine him in presence of appellant by providing chance of cross examination. Moreover, inquiry officer allegedly informed appellant through OI/C Tele Bannu who in response reported that appellant is running business of cloth with his brother and remain present in his shop every time and he on 14/03/2020 was also

present there at shop who despite all efforts did not want to resume his duties. Appellant was also not provided with an opportunity of cross examination upon OI/C Tele Bannu. Appellant was awarded major punishment of removal from service without providing chance of self-defense specially cross examination upon Hospital Director and OI/C Tele Bannu which means he was condemned unheard.

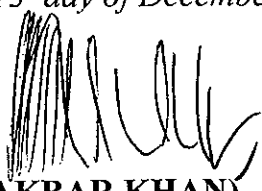
9. It is a well settled legal proposition that regular inquiry is must before imposition of major penalty of removal from service, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of '*audi alteram partem*' was always deemed to be imbedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

10. Now come towards issue of limitation, appellant admittedly filed earlier service appeal bearing No.16412/2020 within time and same was withdrawn upon commitment of respondent for appellant reinstatement which was not honored accordingly. Appellant withdrew first appeal with permission to file fresh one which was accordingly granted to him by this tribunal. Moreover revisional authority in his order dated 20/02/2023 mentioned that earlier

departmental appeal was rejected vide order dated 13/04/2022 but copy of the said order is not annexed with comments and same is not available on file which supports contention of the appellant that neither said order was passed nor communicated to him, however copy of earlier departmental appeal dated 31/08/2020 is available on file. Admittedly there is no provision of 2nd departmental appeal but there is provision of revision under Rule 11-A of Police Rules, 1975 which can be entertained by the I.G.P Khyber Pakhtunkhwa. As copy of order dated 13.04.2022 is not available therefore it could not be ascertained that whether it was passed upon departmental appeal or revision petition. Appellant contended that order dated 20.02.2023 was also not communicated to him which was given to him upon his request on 20.03.2023 and he filed the instant appeal on 22.03.2023 which is within time, because respondent failed to establish on record that order dated 20.02.2023 was communicated to the appellant well within time before 20.03.2023.

11. For what has been discussed, we are unison to set-aside impugned order and reinstate appellant into service for the purpose of de-novo inquiry with direction to provide chance of hearing specially cross examination which is foremost essential element/component of fair trial. Respondents are further directed to conclude inquiry within sixty days after receipt of copy of this order. Costs shall follow the events. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of December, 2023.*



(MUHAMMAD AKBAR KHAN)
Member (E)





(RASHIDA BANO)
Member (J)

ORDER

13.12.2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.
2. Vide our detailed judgement of today placed on file, we are unison to set-aside impugned order and reinstate appellant into service for the purpose of de-novo inquiry with direction to provide chance of hearing specially cross examination which is foremost essential element/component of fair trial. Respondents are further directed to conclude inquiry within sixty days after receipt of copy of this order. Costs shall follow the events. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 13th day of December, 2023.*


(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)