

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 643/2019

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

Irfan Ullah S/O Muhammad Yousaf, R/O Kechi Kemar, Lakki Marwar,
Ex. Constable No. 288, Police Campus, Peace Corps, University Campus
Peshawar.

.... (Appellant)

VERSUS

1. Commandant Campus Peace Corps, University Campus, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.

.... (Respondents)

Mr. Arbab Saiful Kamal
Advocate

.... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution.....16.05.2019
Date of Hearing..... 06.02.2024
Date of Decision..... 06.02.2024

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 the appeal, order dated 30.01.2017, 30,03,2017 and 03.05.2019 of the respondents be set aside appellant be reinstated in service with all back benefits.”

1. Brief facts of the case as given in the memorandum of appeal are that the appellant was enlisted as Constable in Police Department vide order dated , 09.12.2011. During service the appellant fell ill and was diagnosed to be

suffering from Hepatitis-C. That vide impugned order dated 30.01.2017, the appellant was dismissed from service on account of willful absence from duty w.e.f 19.06.2016. Then appellant filed service appeal No. 382/2017 before this Tribunal which was decided on 26.02.2019 with direction that appeal is remanded back to the departmental appellate authority for passing speaking order on his departmental appeal dated 20.03.2017. The judgment was remitted to CCPO, Peshawar on 01.03.2019 for compliance which was decided on 03.05.2019, 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 Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for the appellant argued that appellant was effected by chronic disease as he has submitted whole record of the physicians to the department but no heed was paid to him. He further argued that before passing impugned order the authority was legally bound to verify the same from the concerned quarter but he do not so and passed the same with closed eyes. He submitted that neither any enquiry was conducted nor any notice was issued to the appellant and whole proceedings were conducted at the back of the appellant.

5. Conversely, learned District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that appellant was habitual leave and remained absent for 361 days in the entire service in addition to some departmental enquiries as well. He further contended that the appellant remained absent from duty without permission/leave from his high ups against which departmental proceedings was initiated against him and after fulfillment of all codal formalities the appellant was dismissed from



service. Lastly he submitted that the plea of appellant regarding his illness, could not prove during course of departmental enquiry and there is not malafide on the part of respondents and due to his irresponsible/non-serious attitude major was imposed upon him.


6. Perusal of record reveals that appellant was enlisted as constable in respondent department on 09.12.2011 who was performing his duty. The appellant became seriously ill who was allowed by his in charge of police station for treatment. Appellant was diagnosed with Hepatitis C. He was issued charge sheet and statement of allegation and after inquiry he was dismissed from service. Departmental appeal of the appellant was rejected by respondents on 30.03.2017 being time barred. Appellant filed service bearing No. 382/2017 wherein validity of order dated 30.03.2017 was challenged, which was partially accepted vide order dated 26.02.2019 wherein, it was held that departmental appeal of the appellant is not barred by time and matter was remanded back to the departmental authority with direction to get verified the plea of illness of the appellant for passing speaking order on departmental appeal of the appellant within period of sixty days. Respondent department after receipt of judgment of this Tribunal, conducted meeting of appellate board on 26.02.2019 and again decide the appeal by holding it time barred without getting verified the plea of the appellant's illness, which is violation of the court order dated 26.02.2019, therefore, in our humble view impugned order dated 03.05.2019 is not in accordance with direction given by this court hence not sustainable in the eyes of law.


7. For what has been discussed above, we are unison to set aside the impugned order 03.05.2019 and appellant is reinstated into service for the purpose of denovo inquiry with direction to the respondents to get verified the pleas of illness of the appellant and its prescriptions from quarter



concerned and then decide the fate of the appellant on merit without considering question of limitation as in earlier judgment of this Tribunal dated 26.02.2019 the question of limitation was settled. Respondents are further directed to conduct denovo inquiry within 90 days after receipt of copy of this order. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)


*Kaleemullah

ORDER

06.02.2024 1 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgement of today placed on file, we are unison to set aside the impugned order 03.05.2019 and appellant is reinstated into service for the purpose of denovo inquiry with direction to the respondents to get verified the plea of illness of the appellant and its prescriptions from quarter concerned and then decide the fate of the appellant on merit without considering question of limitation as in earlier judgment of this Tribunal dated 26.02.2019 the question of limitation was settled. Respondents are further directed to conduct denovo inquiry within 90 days after receipt of copy of this order. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 6th day of February, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)