

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR AT CAMP COURT ABBOTTABAD

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
SALAH-UD-DIN ... MEMBER (Judicial)

Service Appeal No. 7545/2021

Tariq Mehmood Head Constable No. 451, District Police Haripur.
(Appellant)

Versus

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 03
others. (Respondents)

Present:

Mohammad Aslam Tanoli, AdvocateFor Appellant
Mr. Asad Ali Khan, Assistant Advocate GeneralFor respondents

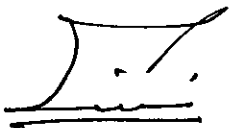
.....

Date of presentation of Appeal.....06.10.2021
Date of Hearing.....29.02.2024
Date of Decision.....29.02.2024

JUDGMENT

SALAH-UD-DIN, MEMBER: Brief facts forming the background of instant appeal are that departmental action was taken against the appellant on the allegations of absence from duty. On conclusion of the inquiry, appellant was awarded minor punishment of stoppage of one annual increment with cumulative effect vide order dated 16.07.2009 passed by Superintendent of Police (FRP) Hazara Region Abbottabad. The punishment so awarded to the appellant was challenged by him through filing of departmental appeal on 05.07.2021, which was declined vide order dated 21.08.2021 passed by Regional Police Officer Hazara Region Abbottabad, hence the instant appeal.

2. On receipt of the appeal and its admission to regular hearing, respondents were summoned, who put appearance



through their representative and contested the appeal by way of filing para-wise comments raising therein numerous legal as well as factual objections.

3. Learned counsel for the appellant argued that the absence of the appellant from duty was not deliberate rather the same was on account of militancy and imposition of curfew in District Swat. He next argued that the mandatory provisions of Police Rules, 1975 were not complied with and even show-cause notice was not issued to the appellant. He further argued that the rights of the appellant as guaranteed under Articles 4 & 25 of the Constitution of Islamic Republic of Pakistan were violated. He next contended that the impugned order of stoppage of one annual increment with cumulative effect being wrong and illegal is not sustainable in the eye of law. He further contended that the impugned penalty is one of financial nature creating recurring cause of action in favour of the appellant and is, therefore, not hit by the bar of limitation. In the last he requested that the impugned orders may be set-aside and the appeal in hand may be allowed as prayed for.

4. On the other hand, learned Assistant Advocate General for the respondents argued that the appellant had filed departmental appeal after a lapse of about twelve years, which was badly time barred, therefore, the appeal in hand is not maintainable. He next argued that the appellant remained absent from duty with effect from 29.03.2009 to 07.04.2009 and 14.05.2009 to 23.05.2009 as well as 31.05.2009 to 09.06.2009, which amounted to gross

misconduct. He further argued that the appellant was deployed for emergency duty but he blatantly disobeyed the order of competent Authority and deliberately remained absent from duty without even submitting any application for obtaining leave. He next contended that a regular inquiry was conducted in the matter and the appellant was afforded opportunity of personal hearing as well as self defence but he failed to show any justified reason for his absence from duty. He further contended that the appellant had deliberately remained absent from duty but even then a lenient view was taken and he has been awarded only minor penalty of stoppage of one annual increment with cumulative effect. In the last he requested that the impugned orders may be kept intact and the appeal in hand may be dismissed with cost.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. A perusal of the record would show that the appellant was issued charge sheet as well as statement of allegations on 08.06.2009 and Mr. Nasir Munir, the then DSP Headquarter FRP Hazara Region at Abbottabad was appointed as inquiry officer in the matter. According to the inquiry report, the appellant had remained absent from duty for 30 days. The appellant was associated with the inquiry proceedings and in his reply to the charge sheet, the appellant has not denied his absence from duty, however he has alleged that his absence was on account of death of his brother in law as well as precarious law and order situation in District Swat. Nothing is, however available on the

record which could show that the appellant had even submitted any application for obtaining leave from the competent Authority. The appellant is a member of disciplined force and his absence from duty without obtaining any leave or permission of the competent Authority amount to misconduct. The competent Authority has already taken lenient view by awarding minor punishment to the appellant and we are not persuaded to interfere with the same.

7. In view of the above discussion, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.02.2024



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad



(Salah-Ud-Din)
Member (Judicial)
Camp Court Abbottabad

Naeem Amin

ORDER
29.02.2024

Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.02.2024



(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad



(Salah-Ud-Din)
Member (Judicial)
Camp Court Abbottabad