

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR

Service Appeal No. 809/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER(J)  
MISS FAREEHA PAUL ... MEMBER(E)

Muhammad Sajid Ali s/o Umar Gul R/O Wadpaga, Tehsil and District Peshawar. .... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Mines and Minerals, Civil Secretariat, Peshawar.
2. Director General Mines and Minerals, Directorate of Mines and Mineral HQ, Khyber Road, Peshawar. .... (Respondents)

Mr. Muhammad Ayub Khan Shinwari,  
Advocate ... For appellant

Mr. Muhammad Jan,  
District Attorney ... For respondents

Date of Institution.....	19.05.2022
Date of Hearing.....	27.02.2024
Date of Decision.....	27.02.2024

JUDGEMENT

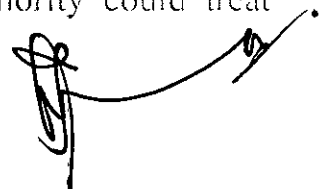
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 09.03.2022 and 21.04.2022 of the appellate authority on departmental appeal of the appellant. It has been prayed that on acceptance of the appeal, the impugned order dated 09.03.2022 of respondent No. 2 and appellate order dated 21.04.2022 might be set aside and intervening period of absence of appellant from 01.08.2020 to 09.03.2022 be treated as on duty or at least leave of the kind due, with all back wages and benefits.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Mineral Guard in the Mines & Minerals Department vide order dated 29.05.2013. During the course of employment, he was implicated in a criminal case u/s 324/427/34 PPC vide FIR No. 821 dated 13.05.2020 registered at P.S Chamkani, Peshawar. Due to threats of life and property, he was unable to perform duties. On 07.08.2021, the complainant gave statement before the competent court of law that he had implicated the appellant mistakenly in the said FIR, in consequence whereof he was acquitted of the charges by the competent court of law. On 09.08.2021, he appeared and submitted arrival report in the department. He was reinstated into service vide order dated 09.03.2022, the suspension period from 03.05.2020 to 10.08.2020 was treated as spent on duty while the period of abscondance from 11.08.2020 to 07.03.2022 was treated as leave without pay. Feeling aggrieved, he filed departmental appeal which was rejected on 21.04.2022; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the act of the respondents to stop salary of the appellant was against the law, facts and material available on record. He further argued that the respondents violated Article 4, 9, 11 and 25 of the Constitution of Islamic Republic of Pakistan. He drew attention to Rule 54 of the Fundamental Rules and request that the competent authority could treat



absence of the appellant as spent on duty. He further argued that absence of the appellant was not willful but due to compelling circumstances faced by him. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the augments of learned counsel for the appellant, argued that on acquittal from criminal charge on the basis of compromise, the appellant submitted his arrival report and was reinstated into service vide order dated 09.03.2022. His suspension period was treated as spent on duty while his willful absence and the period he remained absconder was treated as leave without pay under Rule 6 (5) of the E&D Rules, 2011. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was nominated in FIR u/s 324/34 PPC dated 13.05.2020 and from that date he absconded and could not attend to his official duties as Mineral Guard in the respondent department. Impugned order dated 09.03.2022 shows that he was placed under suspension from 03.05.2020 to 10.08.2020. The appellant surrendered and appeared before the court of law where his Bail Before Arrest (BBA) was confirmed by the Additional Sessions Judge-XII, Peshawar on 07.08.2021 and he was later acquitted on 13.11.2021. He submitted his arrival report before the departmental authority on 09.08.2021. Through the impugned order, the respondents accepted his arrival on duty w.e.f 09.03.2022, instead of 09.08.2021. There is no second opinion on the fact that the official is a civil servant who was obligated under the rules to inform his competent authority about the FIR, which was not done by him. He was further bound under the law to surrender and present himself for arrest but instead he preferred to remain an




absconder from 13.05.2020 to 07.08.2021. His departmental authority rightly placed him under suspension, but the suspension was not extended after expiry of three months. The impugned order shows that the competent authority did not take into consideration his arrival dated 09.08.2021 and reinstated him from the date the order was passed, i.e 09.03.2022.

7. After going through all the details of the case, we arrive at a conclusion that suspension period expired on 10.08.2020. The appellant remained absconder during that period till his appearance before the Additional Sessions Judge-XII, Peshawar on 07.08.2021, when his BBA was also confirmed and after that, he reported for duty on 09.08.2021. The competent authority should have taken into account his arrival report on 09.08.2021, but instead they treated the entire period after expiry of suspension period till passing the impugned order as leave without pay, which is not justified.

8. In view of the above discussion, the appeal in hand is partially allowed and the Director General Mines & Mineral is directed to modify the order dated 09.03.2022 to the extent of reinstating the appellant w.c.f. 09.08.2021 and treating the period from 11.08.2020 to 08.08.2021 as leave without pay, instead of 11.08.2020 to 09.03.2022. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27<sup>th</sup> day of February, 2024.*

  
(FAZLEEHA PAUL)  
Member (E)

*\*FazleSubhan, P.S\**


  
(RASHIDA BANO)  
Member (J)

SA 809/2022

27<sup>th</sup> Feb. 2024 01. Mr. Muhammad Ayub Khan Shinwari, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Sajid Anwar, Assistant for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal in hand is partially allowed and the Director General Mines & Mineral is directed to modify the order dated 09.03.2022 to the extent of reinstating the appellant w.e.f. 09.08.2021 and treating the period from 11.08.2020 to 08.08.2021 as leave without pay, instead of 11.08.2020 to 09.03.2022. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27<sup>th</sup> day of February, 2024.*

  
(FARAHIA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*