

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 801/2022

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

Abdus Salam, 5741, Ex-Constable Police Lines, Peshawar. R/O Quarter No. 89-C, Civil Quarters, Kohat Road, Peshawar.

..... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Inspector General of Police, Police Lines, Peshawar.
2. Revision Board through Additional Inspector General of Police, Headquarters, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent of Police, Headquarters, Peshawar.
4. Deputy Superintendent of Police, Complaints/Inquiries, Capital City Police, Peshawar.
5. Capital City Police Officer, Peshawar CCPO Office, Peshawar.
.....(Respondents)

Mr. Bilal Ahmad Kakaizai,
Advocate

... For appellant

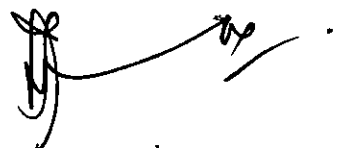
Mr. Muhammad Jan,
District Attorney

... For respondents

Date of Institution.....	11.05.2022
Date of Hearing.....	29.02.2024
Date of Decision.....	29.02.2024

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 impugned original order dated 03.02.2021, appellate order dated 09.09.2021 and revision order dated 13.04.2022. It has been prayed that on acceptance of the appeal the impugned orders might be set aside, being against the law, and the appellant might be reinstated into service with all back wages

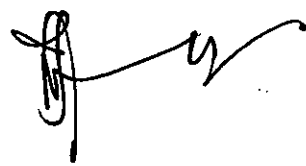


and benefits, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was the employee of the Police Force. An enquiry was conducted against him for his alleged absence from duty w.e.f 30.01.2020 to 11.07.2020. He appeared in the said proceedings and the Inquiry Officer recommended that he might be awarded minor punishment of censure and his absence period be treated as leave without pay. On 26.11.2020, final show cause notice was issued to him in which it was asked from him that why not the proposed penalty should be imposed upon him. The appellant replied to the said show cause notice. On 03.02.2021, impugned order of dismissal was passed against the appellant in which wrong data was quoted by the respondents. Feeling aggrieved, he preferred departmental appeal which was rejected on 09.09.2021. The appellant then preferred revision petition before the Appellate Board under Rule 11-A of the Khyber Pakhtunkhwa Police Rules, 1975 but he was not allowed to be heard in person. Vide order dated 13.04.2022, his revision petition was rejected; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as 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 respondent department badly failed to reflect the true and actual position of the case. He argued that absence of the appellant was not willful but



due to ailment of his son, duly supported by medical certificates but the Enquiry Officers and the competent authority did not bother to take a look at his requests. Learned counsel further argued that the respondent department introduced a new mode and reason for inflicting punishment, as before passing the appellate order, the competent authority ordered to submit medical report of being not addicted to any drugs. The appellant gave samples of his urine to the Laboratory in which he was found to be an addict of charas despite the fact that he never used any addictive drugs, except a pain killer for his back pain. He further argued that according to the impugned order dated 03.02.2021, the appellant had not submitted reply to the show cause notice which could be verified from the contents of appellate order dated 09.09.2021 which stated that he had submitted reply to the show cause notice. He requested that the appeal might be accepted.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was proceeded against departmentally on the charges that he while posted at DAR Peshawar absented himself from his official duty w.e.f. 30.03.2020 to 11.07.2020 and from 13.07.2020 to 03.02.2021, making a total of 12 months, without sanction of leave and prior permission of his seniors. He was issued charge sheet and statement of allegations, and two separate enquiries were conducted against him. Learned District Attorney stated that he was repeatedly summoned and was also contacted on his cell phone to attend the enquiry proceedings but he did not turn up and hence ex-parte proceedings were initiated against him, wherein the allegations of willful absence were proved against him. After



completion of the enquiry proceedings, the appellant was issued final show cause notice by the competent authority to which his reply was found unsatisfactory. He further argued that the appellant remained willfully absent from his lawful duty for a long period and had rightly been dismissed from service. He requested that the appeal might be dismissed.

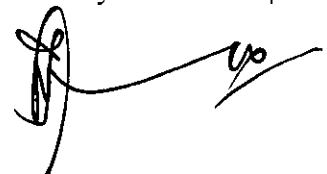
6. From the arguments and record presented before us, it transpires that the appellant, who was serving as Constable in the provincial police, was proceeded against departmentally on the charge of absence from duty and awarded major penalty of dismissal from service. The plea taken by the learned counsel for the appellant is that an inquiry was conducted against him by the Deputy Superintendent of Police, Complainant/Inquiry, CCP Peshawar, in which he appeared before the Inquiry Officer and presented his case of absence, from 30.01.2020 to 11.07.2020, in the light of charge sheet dated 18.11.2020, who recommended minor punishment of censure and treating the absence period as without pay. In pursuance of that, a final show cause notice was served upon him, to which he responded. As the response to show cause notice is not available with the appeal nor could it be produced by the learned counsel for the appellant during arguments, therefore we cannot say with certainty that the appellant responded to it.

7. On the other hand, the respondents are presenting an altogether different and conflicting picture in their reply as well as during arguments. According to the reply, two inquiries were conducted, one by Assistant Superintendent of Police Faqirabad Peshawar and the other by SIDPO Warsak. The one conducted by ASP Faqirabad was ordered on 14.01.2021 for the period of absence from



30.01.2020 to 11.07.2020 and its report was submitted by the I.O on 25.01.2021. The other inquiry conducted by SDPO Warsak was ordered on 28.10.2020, for the period from 13.07.2020 to the date when inquiry was ordered, i.e 28.10.2020, and its report was submitted by the I.O on 20.01.2021. Final show cause notice was issued on 25.01.2021 in the light of inquiry conducted by SDPO Warsak. The impugned order of dismissal from service dated 03.02.2021, was issued the light of inquiries conducted by ASP Faqirabad and SDPO Warsak. When confronted about the inquiry conducted by DSP Complaint/Inquiry, CCP, Peshawar, the departmental representative produced the statement of allegations dated 18.11.2020, vide which the DSP Coordination and complaints had been appointed as Inquiry Officer for inquiry of absence from 30.01.2020 to 11.07.2020, alongwith his Inquiry Report dated 26.11.2020. He also produced a copy of final show cause notice dated 26.11.2020, showing the receipt from the appellant that he had received it on 30.11.2020.


8. As regards the point raised by the learned counsel for the appellant that he was unaware of the two inquiries, conducted by ASP Faqirabad and SDPO Warsak, based on which he was dismissed from service by placing him ex-parte, the learned District Attorney as well as the departmental representative were asked to produce any record/evidence whether the charge sheet and statement of allegations in both the inquiries were served upon the appellant. No such record/evidence was produced before us. Moreover, it was noted that two inquiries of the same period of absence, i.e 30.01.2020 to 11.07.2020, were conducted. one by DSP complaint and the other by ASP Faqirabad.



Similarly, inquiry by ASP Faqirabad for the period from 30.01.2020 to 11.07.2020 was ordered at a later date i.e. 14.01.2021 as compared to the one ordered on 28.10.2020 for the period from 13.07.2020 to 28.10.2020.

9. In view of the conflicting stance taken by the respondents and not properly associating the appellant with the two inquiries conducted by them, in pursuance of which major punishment was awarded to him, it would be in the fitness of the matter that the case be referred back to the respondents for denovo inquiry. The appeal is partially allowed and the appellant is reinstated into service for the sake of denovo inquiry. Respondents are directed to conduct the inquiry by fully associating the appellant in the process and provide him full opportunity to present his case and fulfill all the necessities of a fair trial, under the relevant law and rules. The entire process of denovo inquiry shall be completed within sixty days of the receipt of copy of this judgment. The grant of back benefits is subject to the outcome of denovo inquiry. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29th day of February, 2024.*


(FARZEETA PAUL)
Member (I)


(RASHIDA BANO)
Member(J)


FazleSubhan P.S

SA 801/2022

29th Feb. 2024 01. Mr. Bilal Ahmad Kakaizai, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Qisro Khan, Inspector (Legal) for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal is partially allowed and the appellant is reinstated into service for the sake of denovo inquiry. Respondents are directed to conduct the inquiry by fully associating the appellant in the process and provide him full opportunity to present his case and fulfill all the necessities of a fair trial, under the relevant law and rules. The entire process of denovo inquiry shall be completed within sixty days of the receipt of copy of this judgment. The grant of back benefits is subject to the outcome of denovo inquiry. 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 29th day of February, 2024.*


(FARIHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)