

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

Service Appeal No. 714/2019

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

Syed Tassadaq Shah S/o Syed Zahoor-ul-Hassana Shah R/o Phagla Post Office, Atter Shisha, Tehsil and District Mansehra, Ex-Constable No.225, District Police Mansehra.

.... (Appellant)

VERSUS

1. Inspector of Police Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Hazara Division, Abbottabad.
3. District Police Officer, Mansehra.
4. Arif Javed, Additional SP, Mansehra/Inquiry Officer.

.... (Respondents)

Mr. Dildar Ahmad Khan
Advocate

... For appellant

Mr. Syed Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution.....15.05.2019
Date of Hearing.....22.01.2024
Date of Decision.....22.01.2024

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 instant appeal, the impugned orders dated 28.10.2018, 31.01.2019 and 04.04.2019 passed by the respondent may please be set aside and the appellant may please be reinstated in service with all back benefits.”

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was inducted as Constable in Police Department vide order dated 27.07.2007 and was performing duties up to the entire satisfaction of his superiors. During service, the appellant fell ill and was unable to attend the office on the basis

of absence charge sheet was served upon the appellant which was duly replied by the appellant. Departmental proceedings was initiated against the appellant which were culminated into dismissal from service of the appellant vide order dated 31.10.2018. Feeling aggrieved, he filed departmental appeal on 26.11.2018, which was dismissed. Then he filed revision petition against the appellate order which also met the same fate, 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 the impugned orders passed by the respondents are wrong, illegal, against the law and facts, arbitrary hence, liable to be set aside. He further argued that absence of the appellant was not intentional rather it was due to his illness. He further submitted that respondents have wrongly imposed the major penalty of dismissal from service on the basis of absence from duty for about 27 days as the appellant had 12 years of service and he is entitled for 288 days leave. He further argued that no proper inquiry was conducted nor any opportunity was afforded to the appellant to defend himself which is against the norms of natural justice. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned Deputy District Attorney for the respondent contended that vide D.D No.6 dated 25.07.2018 PS Baffa, it has been report that the appellant was deployed for General Election duty at Polling station GGPS village Tanda in the jurisdiction of PS Baffa, but he deliberately absented himself from duty. Furthermore, he also absented himself from duty without any leave or permission on the several occasions. He further contended that enquiry was conducted impartially



and all the codal formalities were complied with, thereafter, major penalty of dismissal from service was imposed upon him.

6. Perusal of record reveals that appellant was enlisted as constable in respondent department on 27.07.2007. Appellant was issued with charge sheet and statement of allegation on 17.07.2018 by appointing Mr. Arif Javed Additional SP investigation with the charge of absented himself from duty without any leave or permission from the authority. Appellant replied charge sheet and refused allegation by taking plea of illness and submitted medical prescription with contention that he was ill and doctor advised him bed rest on the given date therefore he due to illness unable to attended the office on given dates. It is also pertinent to mention here that appellant's absence was not continuous rather it was with interval and in between he attended his duty place and performed his duties. When appellant submitted his medical prescription then the inquiry officer was under obligation to get confirm it from the concerned doctor/hospital to know about genuineness or otherwise his plea of illness but inquiry officer did not bother to know the genuineness of the appellant plea and simply mentioned that appellant failed to satisfy him and justify his absence which means that inquiry officer was bent upon to throw appellant without providing any opportunity of defense, hearing and cross examination upon all concerned who submitted his absence report because when appellant performed his duty during interval in between absence dates then his colleagues and immediate boss will in a better position to tell whether infact appellant was sick or not. On the basis of report of inquiry officer, appellant was awarded major penalty of dismissal from service by the authority vide impugned order dated 28.10.2018, which means that appellant was condemned unheard which is against the rules and justice.


7. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, 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 embedded 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.

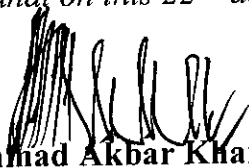
8. Appellant seek condonation of delay by filling appeal with the contention that appeal and revision was not decided within time and he was under impression that period of limitation will commence after decision of his departmental appeal and revision petition. Record reveals that appellant filed departmental appeal on 26.11.2018 against his dismissal from service order dated 28.10.2018 well within time. Although the same was decided on 30.01.2019 but copy of the same was not provided to appellant within time.


9. Appellant after getting knowledge of dismissal on 12.03.2019 filed revision petition which was dismissed being barred by time vide order 11.04.2019 sent to DPO Manshera on 11.04.2019 where from it was given to appellant because on record respondent had not proved the communication of both the orders i.e. appellate authority order dated 30.01.2019 and 04.04.2019 even in both the orders there is no mention of sending copy of it to the appellant. Authority after rejection just for fulfillment of codal requirement mentioned at the bottom of order that copy sent to official concerned but in case of appellant same formality was not complied with, therefore, limitation is condoned by accepting application.



10. For what has been discussed, we are unison to set aside impugned orders of dismissal from service passed by the appellate authority as well as revisional authority and by reinstating the appellant into service for the purpose of de-novo inquiry with direction to provide opportunity of defense, cross examination in accordance with law and rules. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

11. *Pronounced in camp court at Abbottabad and given under our hands and seal of the Tribunal on this 22ⁿ^d day of January, 2024.*


(Muhammad Akbar Khan)
Member (E)
Camp Court Abbottabad


(RASHIDA BANO)
Member (J)
Camp Court Abbottabad


ORDER


22.01.2024

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 impugned orders of dismissal from service passed by the appellate authority as well as revisional authority and by reinstating the appellant into service for the purpose of de-novo inquiry with direction to provide opportunity of defense, cross examination in accordance with law and rules. The issue of back benefits shall be decided subject to the outcome of de-novo inquiry. Costs shall follow the event. Consign.

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(Muhammad Akbar Khan)
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(RASHIDA BANO)
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