

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

**Service Appeal No. 5798/2021**

**BEFORE:** RASHIDA BANO --- MEMBER (J)  
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Ziad Ullah Ex-Constable No. 325, Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.....(**Appellant**)

**VERSUS**

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. Deputy Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
3. Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.....(**Respondents**)

**Present:-**

ROEEDA KHAN,  
Advocate --- For Appellant

MUHAMAD JAN,  
District Attorney --- For respondents

-----  
Date of Institution.....25.05.2021  
Date of Hearing.....15.12.2023  
Date of Decision.....15.12.2023

**JUDGMENT.**

**MUHAMMAD AKBAR KHAN, MEMBER(E):-** The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

*“That on acceptance o this appeal the impugned order dated 24.04.2021 of respondent No. 1 and order dated 12.08.2020 of respondent No. 2 with recovery of salary may kindly be set aside and respondent may kindly be directed to pay the appellant the salaries with effect from may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.”*

02. The appellant was enlisted as Constable in Frontier Reserve Police Khyber Pakhtunkhwa on 18.11.2011. He was transferred to Central Police Office on loan basis on 18.11.2019 and was posted in Guard Central Police Office. On 19.06.2020 he was informed from the FRP Control Room that he has been closed to FRP Lines and called by the Line Officer of CPO whereby he was inquired about his duty where upon the appellant replied that he was on duty in investigation office. That vide order dated 22.06.2020, the appellant alongwith six other police official were suspended and Line Officer of FRP vide Daily Diary No. 17 dated 25.06.2020, entered report/detailed of Constable regarding other police official including appellant. The appellant alongwith eight other police officials were proceeded on the same allegations an illegal inquiry was conducted wherein statement of appellant was recorded. That Show Cause Notice was issued to the appellant on 23.07.2020 which was replied by the appellant. That without considering the reply of the Show Cause Notice, he was awarded major penalty of dismissal from service with recovery of salary received by the appellant during the alleged absence period vide impugned order dated 12.08.2020. Feeling aggrieved from the impugned order dated 12.08.2020, the appellant filed departmental appeal which was rejected vide order dated 26.04.2021, hence preferred the instant service appeal on 25.05.2021.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned orders

dated 12.08.2020 & 26.04.2021 are illegal, unlawful and void ab-initio; that mandatory provisions of law and rules have been badly violated by the respondents and the appellant has not been treated in accordance with law; that no charge sheet was issued to the appellant, thus no charge was framed against the appellant; that no proper inquiry was conducted and no one was examined neither in support of the allegation nor in presence of the appellant. No opportunity of cross examination was provided to the appellant. He has therefore, been condemned unheard; that the appellant was proceeded on the ground of absence from duty which the appellant not only denied but during the said period he was posted at various station. That the appellant alongwith eight others were proceeded on the same allegations and upon appeal/revision of his colleagues/co-accused namely Sohail Khan Constable No. 2196 and Usman Constable No. 2020 were reinstated while the appellant was treated differently which is violation of Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that the appellant has more than 10 years of unblemished service record. That the allegations leveled against the appellant were never substantiated, as no evidence during the so called inquiry was collected. Learned counsel for the appellant relied on 2002 SCMR 71 & 2007 SCMR 410.

05. Learned District Attorney on the other hand contended that the impugned orders passed by the respondents are legally justified and in accordance with law/rules; that the appellant while posted at Security Guard at CPO Peshawar on 18.11.2019 absented himself from his duty with the consultation of Madad Muharrars of CPO Guard Peshawar, however, he continuously received his salary with effect from 18.11.2019 till the date of his dismissal from service; that the appellant was treated in accordance with

law/rules within the meaning of Article 4 of the Constitution by giving him sufficient and proper opportunities of defense at every level and the entire proceedings were carried out in accordance with existing laws and rules; that the appellant was proceeded under the Police Rules, 1975 Section 3 (a & b) amended in 2014, wherein charge sheet is not mandatory. Show Cause Notice was issued to the appellant, which he replied but his reply was found unsatisfactory; that proper inquiry was conducted and he was provided ample opportunity of self defense but failed to prove his innocence; that the allegations of willful absence has fully established against the appellant during the course of inquiry; that other officials were charged on the same allegations were awarded major punishment of dismissal from service but subsequently they were reinstated in service on their departmental appeal. However, their absence and intervening period were treated as leave without pay thus the respondents did not violated any article of the Constitution of Islamic Republic of Pakistan, 1973. That the appellant was found a habitual absentee as he remained absent from duty on different occasion for total period of 121 days without any leave or prior permission of seniors which he was awarded different punishment previously.

06. Perusal of record reveal that vide impugned order dated 12.08.2020, major punishment of dismissal was awarded to the appellant as well as his two other colleagues namely Mr. Sohail Khan and Mr. Usman on the basis of same allegation and findings of same inquiry report. Revision Petitions of all the three were placed before the forum of Appellate Board at different time. The Appellate Board vide order dated 18.12.2020 & 15.04.2021 accepted revision petition of other two colleagues of the appellant namely Mr. Sohail Khan & Mr. Usman by reinstating them into service. The ground

taken by the Appellate Board after accepting review petition of the two other colleagues of the appellant are that no charge sheet/statement of allegations were issued to them and no proper inquiry was conducted against them. However, strangely the Appellate Board rejected the review petition of the appellant vide order dated 26.04.2021. Record further reveals that the alleged absence period of Mr. Usman is two years and eleven months, while the total absence period in case of the appellant is eight months and twenty five days. We observe that the case of the appellant also deserve to be treated at par with his other two colleagues being involved in the same case, same allegations and same inquiry findings. We find that the appellant has been treated with discrimination in violation of fundamental principles of equality before law and equal protection of law to the equally placed persons guaranteed under the Constitution of Islamic Republic of Pakistan, 1973.

07. Foregoing in view, the appeal in hand is accepted. The impugned orders dated 12.08.2020 and 26.04.2021 are set aside and the appellant is reinstated into service. The intervening period during the appellant remained out of service till the announcement of judgment of this Tribunal shall be treated as leave without pay. Costs shall follow the events. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 15<sup>th</sup> day of December, 2023.*



(Rashida Bano)  
Member (J)



(Muhammad Akbar Khan)  
Member (E)

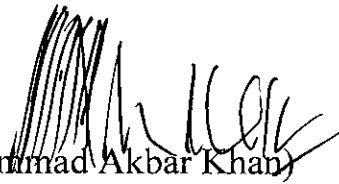
ORDER

15.12.2024 01. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment of today separately placed on file, consisting of (05) pages, the appeal in hand is accepted. The impugned orders dated 12.08.2020 and 26.04.2021 are set aside and the appellant is reinstated into service. The intervening period during the appellant remained out of service till the announcement of judgment of this Tribunal shall be treated as leave without pay. Costs shall follow the events. Consign.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 15<sup>th</sup> day of December, 2023.*

  
(Rashida Bano)  
Member (J)

  
(Muhammad Akbar Khan)  
Member (E)