

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7470/2021

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

Saleem Khan, Ex-Constable No. 6728 SSU (CPEC) CCP, Peshawar.
.....(Appellant)

Versus

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Operation & SSU (CPEC) Khyber Pakhtunkhwa, Peshawar.
3. Superintendent of Police Admin/HQrs, SSU (CPEC), Khyber Pakhtunkhwa, Peshawar.
4. Superintendent of Police HQrs, Capital City Police Peshawar.
.....(Respondents)

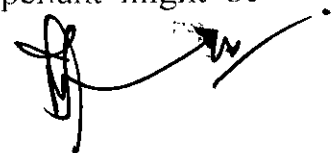
Miss. Roceda Khan,
Advocate ... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

Date of Institution.....	27.09.2021
Date of Hearing.....	19.03.2024
Date of Decision.....	19.03.2024

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 01.01.2021 whereby the appellant was awarded major punishment of dismissal from service and against which his departmental appeal dated 28.01.2021 was rejected on 27.05.2021. It has been prayed that on acceptance of the appeal, both the impugned orders dated 01.01.2021 and 27.05.2021 might be set aside and the appellant might be



reinstated into service with all back 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 appointed as Constable on 31.12.2019. While performing his duty, he become ill and was unable to perform his duty, on the basis of which the respondent department issued a charge sheet which was properly replied by him that his absence was not deliberate or intentional but due to his severe illness. On 01.01.2021 the appellant was dismissed from service on the ground of absence from duty but without fulfilling the codal formalities. Feeling aggrieved, he submitted departmental appeal on 28.01.2021 which was rejected on 27.05.2021. He then submitted a revision petition on 24.06.2021, which was not decided within the statutory period; 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 Deputy 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 both the original and appellate order were void ab-initio because they were passed without fulfilling the codal formalities and the fact had been admitted by the respondents in letter dated 14.07.2021 of respondent No. 1, addressed to respondent No. 3, during the pendency of the Revision Petition. She further argued that neither statements of witnesses were recorded in the presence of the appellant nor opportunity of personal hearing was provided to



him. She further argued that other colleagues of the appellant, having same issue, were awarded minor penalties, while the appellant had been discriminated. She requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant, vide D.D Report No. 15 dated 06.05.2020, willfully absented himself from lawful duty w.e.f. 06.05.2020 to 14.12.2020 (222 days) without taking any leave or prior permission of the competent authority. He was served with charge sheet alongwith summary of allegations, upon which he submitted reply which was found unsatisfactory. He was dismissed from service vide order dated 01.01.2021 but on his departmental appeal to respondent No. 2, Assistant Inspector General of Police, Operations was appointed as enquiry officer to conduct denovo enquiry. The appellant was summoned, who submitted his reply before the enquiry officer. He was also heard in person and afforded an opportunity to produce evidence in his support but he failed to satisfy the enquiry officer. On the recommendation of the enquiry officer, respondent No. 2 kept the punishment of dismissal intact vide order dated 27.05.2021. He further argued that service of the appellant was less than 03 years and during the probation period, he remained absent for 222 days which showed his disinterest in service and his revision petition was rightly rejected by the appellate board. He requested that the appeal might be dismissed.

6. Record presented before us shows that the appellant was appointed as Constable in the respondent department vide an order dated 31.12.2019. He absented himself from lawful duty w.e.f. 06.05.2020 to 14.12.2020, for a period




of 222 days for which he was proceeded against and dismissed from service. As stated by the learned counsel for the appellant, he fell seriously ill due to which he could not attend to his official duties. When asked whether any application was forwarded by him to his high ups, she simply stated that no application was submitted by the appellant but medical reports were provided by him, after his dismissal, with the departmental appeal. No medical reports were attached with the appeal but three documents were provided by the learned counsel during hearing which were prescriptions of a doctor of some private clinic dated 06.05.2020 and 05.09.2020 and a medical test report dated 06.05.2020. Despite the fact that the appellant was in probation period when he absented himself from his lawful duty and the department was fully empowered under the rules to discharge him from service, an inquiry was conducted in which he was fully associated, a fact which has not been denied by the learned counsel for the appellant also.

7. There is no second opinion that the appellant was appointed in a uniformed and disciplined force. He was bound by a set of rules governing his service which required him to inform his high ups about his absence. He was under obligation to submit a proper application seeking leave from his competent authority. A clear admission on the part of learned counsel for the appellant that no such application was submitted by him is enough to prove his guilt. The department provided him an opportunity to present his case and defend himself before the Inquiry Officer. Record shows that he failed to produce any documentary evidence to prove his illness and the same was provided with his departmental appeal preferred by him against his dismissal order, at a belated stage.



8. In view of the above discussion, the appeal in hand is dismissed, being groundless. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 19th day of March, 2024.*


(FARHEHA PAUL)
Member (I)


(RASHIDA BANO)
Member(J)

FazleSubhan P.S


SA 7470/2021

19th Mar. 2024 01. Miss Roecda Khan, Advocate for the appellant present.

Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of ⁰⁵~~06~~ pages, the appeal in hand is dismissed, being groundless. 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 19th day of March, 2024.*


(FARZEHA PAUL)
Member (E)


(RASHIIDA BANO)
Member(J)

Fazal Subhan PS