


SA 1730/2019

18th Mar. 2024 01. Mr. Muhammad Irshad Mohmand, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Ihsanullah, ASI for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, we are unison in referring this case to the departmental authority with the directions to reinstate the appellant in service for the purpose of conducting a fresh inquiry under the rules. They are further directed to fully associate the appellant in the inquiry proceedings and complete the process within sixty days of the receipt of the judgment. The issue of back benefit is subject to the outcome of inquiry proceedings. Cost shall follow the event. Consign.

03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th day of March, 2024.*



(FARNEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

record, rather the departmental representative produced an order dated 29.02.2024 according to which the Inquiry file of the appellant was missing.

7. In such a scenario when no record of any inquiry has been produced by the respondent department before us, it is extremely difficult to arrive at an informed decision. In view of the foregoing, we are unison in referring this case to the departmental authority with the directions to reinstate the appellant in service for the purpose of conducting a fresh inquiry under the rules. They are further directed to fully associate the appellant in the inquiry proceedings and complete the process within sixty days of the receipt of this judgment. The issue of back benefit is subject to the outcome of inquiry proceedings. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 18th day of March, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

FazleSubhan P.S

regarding the alleged accident and the medical certificates annexed with the appeal were presented by him after his removal. He further argued that as per available record, the appellant had neither submitted leave application nor he was granted any leave. On the allegations of willful absence, he was dealt under the rules by holding a proper enquiry and after fulfillment of all codal formalities he was awarded major punishment of removal from service. He further argued that departmental appeal submitted by the appellant was thoroughly examined and rejected being barred by law of limitation as the order of removal from service was passed in the year 2012 and after lapse of more than 07 years he preferred departmental appeal. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant was removed from service on the charge of absence from duty for 57 days without getting leave/permission from his competent authority. From the removal order dated 25.02.2012, it appears that some inquiry was conducted into the matter and as a result of that, the appellant was awarded major punishment of removal from service. Learned counsel for the appellant totally denied that any inquiry was ever conducted. According to him, if any such inquiry was conducted, the appellant was not associated with it. Neither any charge sheet and statement of allegations nor any show cause notice was served upon him. When the learned Deputy District Attorney, as well as the departmental representative present before us, were asked to produce the Inquiry Report and confirm whether the charge sheet and statement of allegations was served upon the appellant, they could not produce any such



4. Learned counsel for the appellant, after presenting the case in detail, argued that no proper inquiry was conducted in case of the appellant; even show cause notice and statement of allegations were not issued to him and all the proceedings were carried out at the back of the appellant. He argued that the order of removal from service was also not conveyed to him. He further argued that absence of the appellant was not intentional but due to serious illness and injury and the same fact was properly conveyed to the authority through application for leave but the respondents did not bother to inquire about the accident and treatment of the appellant and straightaway removed him from service. He argued that no information was given to the appellant regarding the inquiry nor the inquiry officer summoned him for appearance or asked him to face the charges leveled against him, hence he was condemned unheard. No final show cause notice was served upon him and he was removed from service through ex-parte proceedings. He further argued that departmental appeal and revision petition were rejected without providing him proper opportunity of defence. He 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 appellant was a habitual absentee and did not take interest in his official duty. He deliberately failed to make his arrival report at his new place of posting and remained absent from lawful duty w.e.f. 09.01.2011 to 07.03.2011 (57 days) without any leave or prior permission of the competent authority. The plea taken by the appellant regarding his illness was a propounded story as he never informed his seniors



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Frontier Reserve Police Khyber Pakhtunkhwa Peshawar as Constable vide order dated 04.12.2009. He was transferred from Peshawar to Kohat but while travelling to Kohat, he met with a road accident and was hospitalized, and therefore was unable to make his arrival and take charge in Kohat. He, accordingly, contacted and informed his concerned officer regarding the accident being severe in nature and that he was badly injured. Due to extreme injuries he was hospitalized and was unable to make his presence and hence filed an application to his concerned officer for grant of leave and one month leave was granted to him. After expiry of leave, he requested the concerned officer for grant of more leave due to injuries. He was informed that the concerned authorities had recommended leave to him and was advised to continue his treatment. When he recovered from illness and reported for duty, he was informed that while he was absent from duty, he had been removed from service vide order dated 25.02.2012, passed by respondent No. 3. Feeling aggrieved, he preferred departmental appeal before respondent No. 2, which was dismissed vide order dated 17.10.2019, being barred by time. Then he filed revision petition before respondent No. 1 and the same was also dismissed on 07.11.2019, being barred by time; 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.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1730/2019

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

Sami Ullah (Belt No. 1885) S/O Murtaza Khan R/O Mohallah Kandari Regi
Aftize P/O Khas Tehsil and District Peshawar.(Appellant)

Versus

1. Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. Commandant Frontier Reserve Police, Police Lines, Peshawar.
3. Deputy Commandant, Frontier Reserve Police, Police Lines Peshawar.
.....(Respondents)

Mr. Muhammad Irshad Mohmand,
Advocate ... For appellant

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

Date of Institution.....	03.12.2019
Date of Hearing.....	18.03.2024
Date of Decision.....	18.03.2024

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 revision & appellate order dated 07.11.2019 and 17.10.2019 of respondents No. 1 & 2 whereby the revision petition & departmental appeal of the appellant were dismissed and the original order of his removal from service dated 25.02.2012, passed by the respondent No. 3, was maintained. It has been prayed that the orders dated 07.11.2019, 17.10.2019 and 25.02.2012 be set aside and the appellant be reinstated into service with all back benefits, alongwith any other remedy which the Tribunal deemed appropriate.

