

*the impugned order of respondent No. 4 and 15 dated 25.10.2021; has been rejected against dismissal from service may kindly be reversed and resultantly the dismissal/discharge from service order of appellant issued by respondent dated 25.10.2021 may kindly be set aside and the appellant may be reinstated in service with all back benefits."*

02. Brief facts of the case are that appellant was serving as Naib Qasid in the Police Department; that on 05.09.2021, he fell ill and upon the advice of doctor for bed rest, remained unable to attend the duties; that on 23.09.2021, the appellant was issued Show Cause Notice which was replied by him on 27.09.2021; that on 07.10.2021, charge sheet was issued to him which was also replied by the appellant; that subsequently, vide order dated 25.10.2021, he was discharged from service. Feeling aggrieved from the impugned order dated 25.10.2021, the appellant filed mercy petition followed by departmental appeal on 06.12.2021, which was rejected vide order dated 21.02.2022, hence preferred the instant service appeal on 08.03.2022.

03. Notices were issued to the respondents, who submit 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 Assistant Advocate General and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order was illegal, unlawful, without authority and based on malafide. He submitted that no inquiry had been conducted; that the appellant had been awarded with

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

**Service Appeal No. 342/2022**

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

Muhammad Noman Khan S/O Farman Ullah, (Ex-Naib Qasid of Telecommunication and Transport, KPK) R/o Mohallah Javed Abad Achar Road Peshawar, District Peshawar..... (*Appellant*)

**VERSUS**

1. Government of Khyber Pakhtunkhwa, through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. AIG Establishment for Inspector General of Police, Khyber Pakhtunkhwa. Peshawar.
4. Assistant Inspector General of Police, Telecommunication and Transport, Khyber Pakhtunkhwa, Peshawar.
5. Deputy Inspector General of Police, Telecommunication and Transport, Khyber Pakhtunkhwa, Peshawar..... (*Respondents*)

**Present:-**

HASEEN ULLAH GAMARYANI,  
Advocate

--- For Appellant

ASAD ALI KHAN,  
Assistant Advocate General

--- For respondents.


Date of Institution.....08.03.2022  
Date of Hearing..... 30.01.2024  
Date of Decision.....30.01.2024

**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;

*“On acceptance of this appeal the order of respondent No. 3 dated 21.02.2022 whereby the appeal of the appellant against*

consulted doctor at Naseerullah Khan Babar Memorial Hospital, Kohat Road Peshawar. The doctor examined him and prescribed medicine for his treatment as outdoor patient. The time period which the appellant remained indisposed was the peak period of COVID-19 which had created a scare around the world including Pakistan. On 23.09.2021 the appellant was served with a Show Cause Notice which the appellant replied on 27.09.2021 and he was charge sheeted on 17.10.2021. The main reason for not accepting the medical leave of the appellant was verification of medical prescriptions from the hospital where the appellant consulted medical doctor. The Hospital authorities verified that the appellant remained as outdoor patient in the hospital but he was not advised bed rest by the doctor concerned which was written on the back of the medical prescriptions. However, the illness of the appellant remained proved and verified under the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981. Rule 13 of the said rules is reproduced below;



*Leave on Medical Certificate.--Leave applied for on medical certificate shall not be refused. The authority competent to sanction leave may, however, at its discretion, secure a second medical opinion by requesting the Civil Surgeon or the Medical Board to have the applicant medically examined. The existing provisions contained in Supplementary Rules 212, 213 and Rule 220 to 231 for the grant of leave on medical grounds will continue to apply*

Although we also find that Mr. Saeed Khan, DSP Telecommunication & Transport, Peshawar was nominated as inquiry officer by the competent authority in order to conduct inquiry and reference to this inquiry is made in the impugned

maximum punishment and the authority had not fulfilled the legal requirements; that the impugned order was not in accordance with the allegations leveled against him and the same was harsh. He further submitted that no opportunity of hearing had been given to the appellant. Lastly, he submitted that the respondents have violated the Government Servants (Efficiency & Discipline) Rules, 2011 by not giving chance of defense in the inquiry proceedings and the same conduct was also against the fundamental rights enshrined in the Constitution of Islamic Republic of Pakistan. He, therefore, requested for acceptance of the instant service appeal.

05. As against that, learned Assistant Advocate General argued that the respondents acted in accordance with law/rules and order of discharge from service was passed after observing all the codal formalities as per law/rules; that proper inquiry was initiated against the appellant and the codal formalities fulfilled including issuance of Show Cause Notice alongwith statement of allegations and affording opportunity of defense. He further argued that the appellant was a habitual absentee and was not interested in performing his duty. Lastly, he submitted that proper opportunity of cross examination was also given to the appellant but he failed to avail the same, therefore, was rightly dismissed from service.

06. Scrutiny of record reveal that the appellant was appointed as Naib Qasid on 31.10.2019 and posted in Telecommunication & Transport, Khyber Pakhtunkhwa, Peshawar. Later on he was transferred and posted at Wireless Control D.I.Khan. The appellant while on station leave during weekend proceeded to his home city Peshawar and on 05.09.2021 he fell ill and

order dated 25.10.2021 but no inquiry report is available on record nor annexed with the reply of the respondents nor the same was submitted during the course of arguments which makes the entire disciplinary proceedings doubtful denying the appellant opportunity of defense and personal hearing by the inquiry officer.

07. Foregoing in view we set aside the impugned orders dated 25.10.2021 & 21.02.2022 reinstate the appellant into service. The period from 25.10.2021 till the date of announcement of the judgment shall be treated as leave without pay. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 30<sup>th</sup> day of January, 2024.*



(Rashida Bano)  
Member (J)



(Muhammad Akbar Khan)  
Member (E)

\*Kamranullah\*

ORDER

30.01.2024 1. Learned counsel for the appellant present. Mr. Asad Ali Khan,  
Assistant Advocate General for the respondents present

2. Vide our detailed judgment of today separately placed on file,  
we set aside the impugned orders dated 25.10.2021 & 21.02.2022  
reinstate the appellant into service. The period from 25.10.2021 till  
the date of announcement of the judgment shall be treated as leave  
without pay. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our  
hands and seal of the Tribunal on this 30<sup>th</sup> day of January, 2024.*



(Rashida Bano)  
Member (J)



(Muhammad Akbar Khan)  
Member (E)

\*Kamranullah\*