

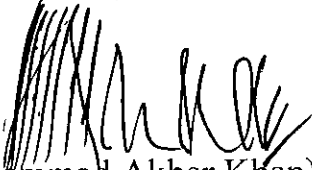
ORDER

08.03.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard.

2. Vide our detailed judgment of today separately placed on file, we are constrained to set aside the impugned order dated 14.02.2023, reinstate the appellant into service and remit the case to the respondents to conduct denovo inquiry in accordance with the law within a period of 60 days after receipt of the judgment. Costs shall follow the event. Consign.

3. *Pronounced in open Court at Peshawar under our hands and seal of the Tribunal on this 08<sup>th</sup> day of March, 2024.*

  
(Rashida Bano)  
Member (J)

  
(Muhammad Akbar Khan)  
Member (E)


after conducting inquiry free from biases and keeping in view the findings of the inquiry.

07. Legal scrutiny of record also reveals that the authority competent to initiate disciplinary proceedings against the appellant was respondent No. 3. However, in the case in hand the respondent No. 2 who is appellate authority assumed the powers of competent authority which does not fall under his jurisdiction as per hierarchy of authorities indicated in schedule-1 of Police Rules, 1975 (amended in 2014).

08. In view of above discussion we are constrained to set aside the impugned order dated 14.02.2023, reinstate the appellant into service and remit the case to the respondents to conduct denovo inquiry in accordance with the law within a period of 60 days after receipt of the judgment. Costs shall follow the event. Consign.

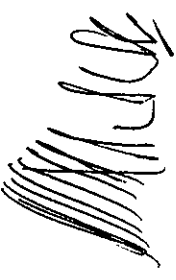
09. *Pronounced in open Court at Peshawar under our hands and seal of the Tribunal on this 08<sup>th</sup> day of March, 2024.*

  
(Rashida Bano)  
Member (J)

  
(Muhammad Akbar Khan)  
Member (E)

Khyber Pakhtunkhwa Police Rules, 1975 (amended-2014) dismissed the appellant from service for his gross misconduct. Moreover, the service appeal of the appellant is time barred and is liable to be dismissed with costs.

06. Scrutiny of record reveals that the appellant has served in the respondent department for about 15 years. While posted in District Police Lakki Marwat he submitted application for 120 days earned leave for treatment of his ailing father suffering from paralytic attack. The Regional Police Officer Bannu (respondent No. 4) allowed 10 days leave and communicated to DPO Lakki Marwat (respondent No. 3). However, the Madad Muharriar entered 120 days leave in the diary and conveyed to the appellant the relevant page of the diary through Whatsapp message. The appellant accordingly proceeded on leave. Upon preliminary inquiry, in which the appellant remained associated, it came to surface that actually the appellant was allowed 10 days leave and the letter dated 23.08.2022 communicating the same from respondent No. 4 to respondent No. 3 had been tempered with. Since 60 days had elapsed after proceeding of the appellant on leave, the inquiry officer of the preliminary inquiry recommended for consideration of the 46 days spent by the appellant on earned leave as leave without pay. However, respondent No. 2 initiated disciplinary proceedings against the appellant by appointing inquiry officer and issuing charge sheet and statement of allegations. The contents of charge sheet reveals that the authority issuing the charge sheet had already determined the major penalty which makes the inquiry devoid of impartiality and against the principles of natural justice. Justice requires that the penalty against a Government Servant can only be indicated in the Show Cause Notice by the competent authority



have heard arguments of learned counsel for the appellant and learned Deputy 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 order dated 14.02.2023 is against the law, rules, facts and norms of natural justice, therefore, not tenable and liable to be set aside; that the appellant has not been treated in accordance with law and rules; that the inquiry proceedings conducted against the appellant was not according to the prescribed procedure as neither statements were recorded in the presence of appellant nor opportunity of cross-examination has been provided to the appellant which is violation of law/rules and as such the impugned order is liable to be set aside; that respondent No. 2 (Regional Police Officer, Bannu) has dismissed the appellant from service which is not competent authority to dismiss the appellant from service and as such the impugned order is coram-non-judice and void and on this ground alone the impugned order is liable to be set aside.

05. As against that, learned Deputy District Attorney argued that the appellant was treated according to law, rules and principle of justice; that the inquiry conducted against the appellant was according to the prescribed procedure and statement of officials were duly recorded; that departmental enquiry, statement of Moharrir Ali Khan and MM Jamshaid Khan and MM Abdul Rashid were recorded and they stated that the appellant was guilty of tempering and forgery. Moreover, the appellant was heard in person in the office of RPO dated 09.02.2023 but his plea was found unsatisfactory; that the competent authority i.e. RPO, Bannu under power vested in him through

02. Brief facts of the case are that appellant was appointed as Constable in Police Department in District Bannu in the year 2007 and he has passed lower School Course from PTC Hangu in the year 2017; that father of the appellant was suffering from paralytic attack, therefore, appellant submitted application for 04 months leave to respondent No. 2 but respondent No. 2 allowed 10 days leave. However, the Madad Moharrir Jamshaid Khan inadvertently mentioned 120 days in the daily diary instead of 10 days; that a preliminary inquiry was conducted on the basis of tempering in which inquiry officer mentioned that due to mistake of Moharrir staff the appellant went on 120 days leave; that charge sheet/statement of allegations were issued to the appellant which was duly replied by the appellant and clearly mentioned that he Madad Moharrir Jamshaid Khan has informed him that 120 days leave has been sanctioned and send the relevant page of daily diary through whatsapp and he had no concern about the tempering; that another inquiry was conducted on the tempering of the letter dated 23.08.2022, a show cause notice was issued to the appellant which was duly replied by the appellant and denied the allegations leveled against him but despite that respondent No. 2 (Regional Police Officer, Bannu) dismissed the appellant from service vide impugned order dated 14.03.2023. Feeling aggrieved from the impugned order dated 14.02.2023, the appellant filed departmental appeal on 06.03.2023 which was not responded with the statutory period, hence preferred the instant service appeal on 14.07.2023.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We

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

**Service Appeal No. 1491/2023**

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

Mr. Bakht Zeb Khan, Ex-LHC No. 238, District Police  
Bannu.....(*Appellant*)

**VERSUS**

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Bannu Region, Bannu.
3. The District Police Officer, Lakki Marwat.
4. The District Police Officer, Bannu.....(*Respondents*)

**Present:-**

TAIMUR ALI KHAN,  
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,  
Deputy District Attorney --- For respondents.

Date of Institution.....14.07.2023

Date of Hearing..... 08.03.2024

Date of Decision..... 08.03.2024

**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;

*“That on acceptance of this appeal, the order dated 14.02.2023 may kindly be set aside and appellant may be reinstated into his service with all back and consequential benefits. Any other remedy, which this Honorable deems fit and appropriate that, may also be awarded in favour of appellant.”*