

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.505/2023

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

Mr. Sultan Badshah S/o Muhammad Akram, Ex-Inspector P-220, Police
Department, District Nowshera, R/o Gara Nizampur, District Nowshera.

.... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Establishment Department, Khyber Pakhtunkhwa, Central Police Office, Peshawar.
3. Deputy Inspector General of Police Mardan Region, Mardan.

.... (Respondents)

Mr. Muhammad Arif Jan
Advocate ... For appellant

Mr. Muhammad Jan
District Attorney ... For respondents

Date of Institution.....24.08.2020

Date of Hearing.....15.04.2024

Date of Decision.....15.04.2024

**SCANNED
KPST
Peshawar**

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been
instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act
1974 with the prayer copied as below:

**“That on the acceptance of the instant appeal, the
impugned order dated 24.07.2020 may graciously be declared
as illegal, unlawful, without lawful authority, void ab-initio and
to be set-aside and the appellant may graciously be allowed to**

keep and continue his service on his previous position and designation.”

2. Brief facts of the instant case are that the appellant was appointed as Constable in Police Department vide order dated 19.09.1984 and was promoted to the rank of Inspector. The appellant filed an application on 12.06.2020 for premature retirement before respondent No.1, which was accepted and he was retired w.c.f. 16.07.2020. On 13.07.2020, he filed another application for cancellation of order dated 08.07.2020 for restoration of his service which was not responded, hence the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments. We have heard learned counsel for the appellant and learned District Attorney for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Learned counsel for the appellant argued that the impugned order was against law, facts and norms of natural justice; that the impugned order passed by respondent is illegal, unlawful, without lawful authority and of no legal effect, hence liable to be set aside; that appellant filed the application for his retirement in the compelling reason which was beyond his control and thereafter he filed application for restoration of his service; that appellant has served the department for more than 36 years of service and has not received any pensionary benefits, therefore, he requested for acceptance of the instant service appeal.

5. As against that, District Attorney argued that the impugned order was issued according to law, facts and norms of principle of justice; that the appellant willingly retired from service on his written application upon which his retirement order was



issued; that no gratuity or pensionary benefits have been received by the appellant but he got retired willingly upon his application and the appellant did not file any application for cancellation of his retirement. Therefore, learned District Attorney requested for acceptance of the instant service appeal.

6. Perusal of record reveals that appellant was appointed in the police department as Constable on 19.09.1984, and was promoted to the rank of Inspector. The appellant filed an application on 12.06.2020 for pre-mature retirement before respondent No.1. The respondent No.1 accepted the application vide order dated 08.07.2020 and appellant was retired w.e.f. 16.07.2020. That the appellant again filed an application dated 13.07.2020 for cancellation of the office letter dated 08.07.2020 for restoration of his service.


7. Appellant was told on 13.08.2020 that his application was rejected vide order dated 24.07.2020. He requested for provision of copy the order dated 24.07.2020, but the same was not provided to him by the respondents. Respondents in their reply admitted the order dated 24.07.2020 as correct, but did not annex it with their reply, upon which they were asked to provide it. Their in-charge of record section gave written statement that despite search, the same was not traced and was missing in their record. The factum of filing application dated 13.07.2020 for withdrawal of resignation and order dated 24.07.2020 passed on that application is admitted on record but the same is not traced in the respondent department, therefore it will be in the interest of justice for deciding the matter in accordance with law & rules. Let the respondents decide the application dated 13.07.2020 afresh at their own end in accordance with law.

8. For what has been discussed above, we are unison to remit the matter to respondents with direction to decide afresh the application dated 13.07.2020 strictly in accordance with law and decide it within one month after receipt of copy of this judgment. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of April, 2024.*

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)

Kaleemullah


ORDER

15.04.2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, learned District Attorney alongwith Suleman, S.I for the respondents present.
2. Vide our detailed judgment of today placed on file, we are unison to accept appeal in hand. Costs shall follow the event. Consign.
3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of April, 2024.*



(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)

SCANNED
K-15T
Peshawar