

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL**  
**PESHAWAR**

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

*Service Appeal No. 7495/2024*

Date of presentation of Appeal.....09.09.2021  
Date of Hearing.....29.04.2024  
Date of Decision.....29.04.2024

Mr. Sadat Khan, Ex-Constable No. 412/Traffic, Traffic Police Lines,  
Peshawar.....(Appellant)

**VERSUS**

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Capital City Police Officer, District Peshawar
3. The Chief Traffic Police Officer, District Peshawar.....(Respondents)

UZMA SYED,  
Advocate

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For appellant.

ASIF MASOOD ALI SHAH,  
Deputy District Attorney

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For respondents

**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 service appeal the impugned orders dated 29.06.2021 and 13.08.2021 may very kindly be set aside and the appellant be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be granted in favor of the appellant."*

02. Brief facts of the case are that the appellant was serving as Constable in Traffic Unit Peshawar; that during service, he feel ill and approached to the high ups for medical leave but the said request was refused by the authority. The appellant left his lawful duty without granting/permission of proper medical leave; that after recovery from the illness he approached the concerned quarter for rejoining his duty but he was handed over the impugned order dated 29.06.2021 whereby he was dismissed from service. Feeling aggrieved from the impugned order dated 29.06.2021, the appellant filed departmental appeal which was rejected on 13.08.2021, hence preferred the instant service appeal on 09.09.2021.

03. Notices were issued to the respondents, who submitted 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 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 orders 29.06.2021 & 13.08.2021 are against the law, fact, norms of natural justice hence liable to be set aside; that the appellant has not been treated in accordance with law, rules and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that neither Show Cause Notice has been issued to the appellant nor opportunity of personal hearing was afforded to the appellant; that the entire proceedings were carried out at the back of the appellant and he has been condemned unheard. He submitted that no

regular inquiry has been conducted in the matter which is mandatory obligation on the part of competent authority; that the illness of the appellant was in the knowledge of respondents but despite that respondent No. 2 issued the impugned order dated 29.06.2021 which is not tenable in the eyes of law.

05. On the other hand, learned Deputy District Attorney contended that the impugned orders of the respondents are based on fact, justice and are in accordance with law and rules; that the appellant was treated in accordance with law/rules and the respondents never infringed any provisions of the Constitution of Islamic Republic of Pakistan; that the appellant was tried to serve with charge sheet alongwith summary of allegations through cell phone but to the sheer disappointment of the enquiry officer, the appellant did not receive the telephone call, therefore, ex-parte action was taken against the appellant through order dated 29.06.2021; that the appellant did not follow proper departmental procedure to obtain leave from the competent authority; that the impugned order dated 29.06.2021 was passed in view of recommendation of the inquiry officer as well as the blemished service record of the appellant.

06. Perusal of record shows that the disciplinary proceedings were initiated against the appellant on the allegations that he was detailed for rigorous training at PTC Hangu but he remained absent from duty on 24.04.2021. Charge sheet and statement of allegations were issued to the appellant, however the available record shows that the same were not served upon the appellant. Moreover, the Supreme Court of

Pakistan has held in so many judgments that issuing of final Show Cause Notice is necessary prior to awarding of penalty to a civil servant. Nothing is available on the record, which could show that final Show Cause Notice was issued to the appellant prior to awarding of major penalty of dismissal from service to him.

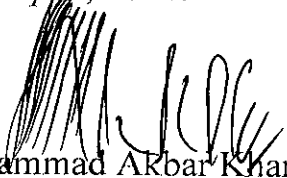
07. The appellant has categorically stated in his appeal that he joined the ongoing course at PTC Hangu on 09.06.2021. In this regard the appellant has also annexed copy of Mad No. 101 dated 09.06.2021 alongwith his appeal. In their comments, respondents have not specifically denied the reporting of the appellant for the course on 09.06.2021, however it is their assertions that he attended the course with a delay of 45 days. It is thus evident that during the pendency of inquiry proceedings, the appellant had already made arrival in PTC Hangu 09.06.2021 but the ex-parte proceedings regarding absence of the appellant remained continued and he was dismissed from service vide order dated 29.06.2021 passed by the competent authority. Furthermore, the appellant had taken the plea in his departmental appeal that his absence from duty was due to his illness, however the appellate authority has not given any finding in this respect in its order dated 13.08.2021 whereby departmental appeal of the appellant was rejected. Moreover, this Tribunal has already decided similar nature service appeal No. 7455/2022 titled "Haider Ali Versus Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others" vide judgment dated 17.06.2022. In these circumstances, conducting of de-

novo inquiry in the matter is necessary for reaching a just and right conclusion.

08. Foregoing in view the appeal in hand is allowed by setting aside the impugned orders dated 29.06.2021 & 13.08.2021 and the appellant is reinstated in service for the purpose of de-novo inquiry. The respondents shall conduct denovo inquiry strictly in accordance with relevant law/rules within a period of 60 days after receipt of the judgment by providing opportunity of hearing and self-defense to the appellant. Costs shall follow the event. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 29<sup>th</sup> day of April, 2024.*

  
(Rashida Bano)  
Member (J)

  
(Muhammad Akbar Khan)  
Member (E)

ORDER

29.04.2024

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

2. Vide our detailed judgment of today separately placed on file, the appeal in hand is allowed by setting aside the impugned orders dated 29.06.2021 & 13.08.2021 and the appellant is reinstated in service for the purpose of de-novo inquiry. The respondents shall conduct denovo inquiry strictly in accordance with relevant law/rules within a period of 60 days after receipt of the judgment by providing opportunity of hearing and self-defense to the appellant. 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 29<sup>th</sup> day of April, 2024.*



(Rashida Bano)  
Member (J)



(Muhammad Akbar Khan)  
Member (E)