

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.718/2023

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

Mr. Atta Muhammad, ASI No.96/MR, Incharge Platoon No.7, (SSU) CEPEC
Headquarter, Peshawar.

... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant Special Security Unit (SSU) CEPEC, Khyber Pakhtunkhwa, Peshawar.
3. The Deputy Commandant Special Security Unit (SSU) CEPEC, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Mr. Mir Zaman Safi
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

..... For respondents

Date of Institution.....30.03.2023
Date of Hearing.....16.04.2024
Date of Decision.....16.04.2024

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 acceptance of this service appeal the impugned order dated 11.11.2022 may very kindly be set aside and the respondents be directed to release the annual increment of the appellant. Any other remedy which this Tribunal deems fit and appropriate that may also be awarded in favour of appellant.”

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant while posted as Incharge SSU CPEC Peshawar was transferred to Upper Kohistan vide order dated 24.08.2022 that in pursuance of the above mentioned order the appellant reported to SSU CPEC Upper Kohistan alongwith Platoon and started performing his duty. On 09.09.2022 appellant alongwith his platoon was transferred from upper Kohistan to Peshawar. In compliance of order the appellant alongwith his platoon reported to SSU CPEC Headquarter Peshawar. Respondent No.2 issued charge sheet alongwith statement of allegations on the ground of absent from duty at Kohistan, which was properly replied by negating the allegation. Thereafter, vide impugned order minor penalty of stoppage of annual increment was imposed upon the appellant. Feeling aggrieved, appellant filed departmental appeal, which was not responded to, hence the instant service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that the impugned order is against the law, facts and norms of justice hence, not tenable and liable to be set aside; that appellant in compliance of the orders of his high ups and as per



order dated 09.09.2022 the appellant reported to the SSU CPEC Headquarter, Peshawar, but inspite of that respondents punished the appellant without any lawful justification; the appellant has not been treated in accordance with law and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that no chance of personal hearing was provided to the appellant and he was condemned unheard which is against the principle of natural justice. He requested that instant appeal might be accepted.


5. Conversely learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that show cause notice was issued on the charges that he was transferred to Upper Kohistan as Incharge Platoon No.7 on complaint basis vide order dated 24.08.2022 but when platoon NO.7 was transferred to Peshawar vide order dated 09.09.2023, he was verbally directed by SP & DSP SSU, CPEC Hazara Region that he will remain & perform duty in Upper Kohistan till further order of high ups but he came to Peshawar alongwith Platoon No. 7 and absented himself from his lawful duties w.e.f 29.09.2022 till 11.11.2022. He further contended that proper departmental proceedings were initiated against him and after fulfillment of all codal formalities he was awarded minor punishment.

6. Perusal of charge sheet reveals that appellant was verbally directed by SP & DSP Hazara Region SSU that he will perform duty in Upper Kohistan till further order of high ups but he came to Peshawar alongwith his platoon No. 7 and remained absent from duty from 29.09.2022 till 11.11.2022 hence, he committed misconduct.

7. It is very astonishing that upon verbal direction, appellant was proceeded departmentally while as per written orders he, along with his platoon No. 7, was transferred to Peshawar. If service of the appellant was required at Kohistan then his high ups could easily issue written order of retention of appellant at Kohistan, but verbal direction gives smell of personal grudge, revenge and ill will as the appellant had filed complaint against his senior while posted at CPEC Mardan Region due to which he was once departmentally proceeded against. In law there is no concept of verbal direction/order in the presence of and in comparison to written orders. Therefore, departmental proceedings conducted for of non-compliance of verbal order have no worth in the eyes of law. It is also important to mention here that appellant was present at Peshawar where he was posted in written order and performed his duties, never remained absent from his duties as is alleged in the charge sheet therefore, impugned order is against the facts and penalty awarded to the appellant is result of some ill will which is not sustainable under rules and law.

8. For what has been discussed above, we are unison to accept the appeal as prayed for. 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 16th day of April, 2024.*


(Faraha Paul)
Member (E)


(Rashida Bano)
Member (J)

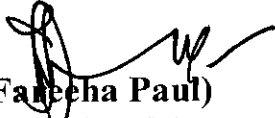
ORDER

16.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the appeal as prayed for. 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 16th day of April, 2024.*


(Farzeha Paul)
Member (E)


(Rashida Bano)
Member (J)