

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
AT CAMP COURT ABBOTTABAD

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No. 1721/2022

Date of presentation of Appeal.....30.11.2022
Date of Hearing.....29.05.2024
Date of Decision.....29.05.2024

Hashmat Khan Ex-Constable No. 795 District Police Haripur R/o Village & Post Office Kundi, Tehsil Ghazi, District Haripur.....(**Appellant**)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Haripur.].....(**Respondents**)

MUHAMMAD ASLAM TANOLI,
Advocate

--- For appellant.

ASIF MASOOD ALI SHAH,
Deputy District Attorney

--- 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;

"On acceptance of instant service appeal both the orders dated 23.08.2022 and 22.11.2022 of the respondents may graciously be set aside and appellant be reinstated in his service from the date of dismissal with all consequential service back benefits on rendition of accounts."

02. Brief facts of the case are that the appellant was appointed as Constable in the police department. During the course of his service, he was

proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 23.08.2022, against which he filed departmental appeal on 01.09.2022, which was rejected vide order dated 22.11.2022, hence preferred the instant service appeal on 30.11.2022.

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, learned Deputy District Attorney for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, rule and policy on the subject and acted in violation of Article-4 of the Constitution and the appellant has been dismissed from service without adhering to the legal process as prescribed by law; that absence of the appellant was not willful but was due to compelling reason of his illness and such stance has already been taken by the appellant in his departmental appeal, but the respondents did not take into consideration the reason of his illness and in this regard the appellant had also submitted medical prescriptions. Neither Show Cause Notice was issued to the appellant nor any regular enquiry was conducted into the matter and the appellant was also not provided opportunity of personal hearing therefore, the appellant was condemned unheard; that the impugned orders passed by the respondents are illegal and liable to be set aside.

05. Learned District Attorney for the respondents contended that the appellant was dismissed from service vide order 23.08.2022 on the allegation of absence from lawful duty without permission of the competent

authority; that the appellant was issued charge sheet and statement of allegations which was duly replied by the appellant but his reply was found unsatisfactory; that proper inquiry was conducted and he was given chance for personal hearing and self defense but he did not prove him innocent; that the impugned order was passed after observing all the legal and codal formalities, therefore, the appeal in hand may be dismissed with cost.

06. Record reveals that the appellant was dismissed from service on the allegation of absence from duty vide impugned order dated 23.08.2022. The appellant in response to charge sheet/statement of allegations had submitted his reply reiterating the stance that absence of the appellant was not willful but was due to his illness and also submitted his medical prescriptions, but the respondents neither termed it fake nor sent it for verification but reiterated that the appellant was supposed to inform the authorities well in time about such illness, hence his absence amounts to misconduct, which deserve to be awarded with major punishment. The stance of the respondents is not well founded given the fact that he had submitted his medical prescriptions through registered dak well before initiation of disciplinary proceedings against him and even mentioned/annexed with his reply to the charge sheet too, however, this fact was neither taken into consideration by the inquiry officer nor the competent authority. Civil servants leave rules clearly provide that leave on medical ground cannot ordinarily be rejected without verification or opinion of authorized medical practitioner/medical board. Therefore, we set aside the impugned orders dated 23.08.2022 & 22.11.2022 by reinstating the appellant into service and remit the case back to the respondents to get the medical documents verified and if the same were

found valid/correct the department may consider his leave on medical grounds. Costs shall follow the event. Consign.

07. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal on this 29th day of May, 2024.*



(KALIM ARSHAD KHAN)
Chairman
Camp Court Abbottabad



(MUHAMMAD AKBAR KHAN)
MEMBER (E)
Camp Court Abbottabad

ORDER

- 29th May, 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, we set aside the impugned orders dated 23.08.2022 & 22.11.2022 by reinstating the appellant into service and remit the case back to the respondents to get the medical documents verified and if the same were found valid/correct the department may consider his leave on medical grounds. Costs shall follow the event. Consign.
 3. *Pronounced in open court at camp court Abbottabad and given under our hands and seal of the Tribunal on this 29th day of May, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN
Camp Court Abbottabad



(MUHAMMAD AKBAR KHAN)
MEMBER (E)
Camp Court Abbottabad