

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
FAREEHA PAUL ... **MEMBER (Executive)**

Service Appeal No. 340/2019

Date of presentation of Appeal.....07.03.2019
Date of Hearing.....04.06.2024
Date of Decision.....04.06.2024

Sheraz Khan, Constable No. 494, Police Line Haripur, District Haripur.*Appellants*

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Hazara Region at Abbottabad.
3. The District Police Officer, District Haripur.(*Respondents*)

Present:

Mr. Mehmood Jan, Advocate.....For the appellant
Mr. Asif Masood Ali Shah, Deputy District AttorneyFor respondents

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APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 28.06.2018 WHEREBY THE INTERVENING PEIROD i.e. WITH EFFECT FROM 06.03.2014 TILL 28.06.2018 HAS BEEN TREATED AS LEAVE WITHOUT PAY AND AGAINST THE APPELLATE ORDER DATED 13.12.2018 COMMUNICATED TO APPELLANT ON 15.02.2019 WHEREBY THE DEPARTMETNAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.

JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: According to the facts gathered from the record, departmental action was taken against the appellant on the allegations that he, while posted as Driver, with CO-III, Haripur, extracted Rs. 10000/-, 18000/- alongwith 02 Motorcycle from Kala Khan contractor and Irshad Khan Shop Keeper by threatening them that Shamraiz S/O Muhammad Zaman R/O Chajian

was involved in case FIR No. 358/13 U/S 411 PPC Police Station Srail Salah and alleged that the motorcycle was suspected of theft. On conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service vide order bearing OB No. 132 dated 06.03.2014. The appellant filed Service Appeal No. 913/2014 before this Tribunal, which was allowed vide judgment dated 18.01.2018 and the department was held at liberty to conduct de-novo proceedings in accordance with law within a period of ninety days of the receipt of copy of the judgment and it was also held that issue of back benefits etc should be subject to final outcome of de-novo proceedings and the rules on the subject. De-novo proceedings was conducted in the matter and the appellant was reinstated in service vide order bearing endorsement No. 3884-86 dated 28.06.2018, however, the period during which the appellant remained out of service was treated as leave without pay. The aforementioned order, dated 08.06.2014, to the extent of treating the absence period as leave without pay, was challenged by the appellant through filing of departmental appeal, which was rejected vide order dated 13.12.2018. The appellant has now approached this Tribunal through filing of instant service appeal for redressal of his grievances.

2. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance through their respective representative and contested the appeal by way of filing written reply, raising therein numerous legal as well as factual objections.

3. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the

learned Deputy District Attorney controverted the same by supporting the impugned order (s).

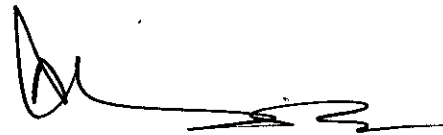
4. We have heard the arguments of learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and have perused the record.

5. Perusal of the record would show that the appellant was initially dismissed from service vide order bearing OB No. 132 dated 06.03.2014, however, his Service Appeal bearing No. 913/2014 was accepted vide judgment dated 18.01.2018 and the department was held at liberty to conduct de-novo proceedings in accordance with law within a period of ninety days of the receipt of copy of the judgment and it was also held that the issue of back benefits etc should be subject to final outcome of de-novo proceedings and the rules on the subject. De-novo inquiry proceeding was initiated by appointing Mr. Muhammad Sabir Khan, Deputy Superintendent of Police HQrs Haripur as inquiry officer, who conducted de-novo inquiry in the matter. The inquiry officer has given his findings that the appellant had already served his sentence of four years in the same inquiry as he was dismissed by the department and then reinstated by the court, for which the appellant's sentence was already sufficient. He further stated that the appellant and the complainants were residents of the same locality and recommended that the appellant be placed under surveillance for 01 year. Moreover, the inquiry officer has not uttered a single word in the de-novo inquiry that the allegations against the appellant were proved. After the de-novo inquiry proceedings, the District Police Officer, Haripur reinstated the appellant vide order bearing endorsement

No. 3884-86 dated 28.06.2018, however, the period during which the appellant remained out of service was treated as leave without pay. The competent Authority was not legally justified in treating the said period as leave without pay for the reason that the inquiry officer has not opined in the de-novo inquiry proceedings that the allegations against the appellant stood proved. Nothing is available on the record, which could show that the appellant had gainfully remained employed in any service during the period of his dismissal from service.

6. Consequently, the appeal in hand is partially allowed. The impugned order bearing endorsement No. 3884-86 dated 28.06.2018 is modified to the extent that the period during which the appellant remained out of service shall be treated as leave of the kind due.

7. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 04 day of June, 2024.*



KALIM ARSHAD KHAN
Chairman



FAREEHA PAUL
Member (Executive)

30th May, 2024

1. Appellant in person present. Mr. Umair Azam, Additional Advocate General for the respondents present.

2. Former made a request for adjournment as his counsel was not available today. Adjourned. This case pertains to the year 2019, therefore, it is adjourned to 04.06.2024 for hearing before D.B at the Principal Seat, Peshawar. P.P given to the parties.



(Muhammad Akbar Khan)
Member (E)



(Kalim Arshad Khan)
Chairman

Mutazem Shah

ORDER

04th June, 2024

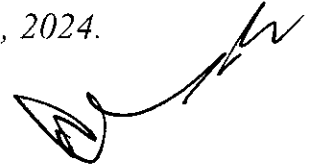
1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our judgment of today placed on file, the appeal in hand is partially allowed. The impugned order bearing endorsement No. 3884-86 dated 28.06.2018 is modified to the extent that the period during which the appellant remained out of service shall be treated as leave of the kind due.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 04th day of June, 2024.*



(Fareeha Paul)
Member (Executive)



(Kalim Arshad Khan)
Chairman

Naeem Amin