

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No.1643/2022

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

Nihar Ullah, Ex Class-IV, R/O Bahader Kaley Achar Garhi, Qamar Dain, Peshawar.

.... (Appellant)

**VERSUS**

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police Telecommunication & Transport Khyber Pakhtunkhwa, Peshawar.
3. The Assistant Inspector General of Police Telecommunication & Transport Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Taimur Ali Khan  
Advocate .... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney .... For respondents

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Date of Institution.....10.11.2022  
Date of Hearing.....18.04.2024  
Date of Decision.....18.04.2024

**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:

**“On acceptance of this appeal, order dated 25.04.2022 and 13.10.2022 may kindly be set aside and the appellant may be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.”**

2. Brief facts of the case as given in the memorandum of appeal are that the appellant was appointed as Class IV in the respondent department and was

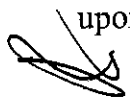


performing his duty up to the entire satisfaction of his superiors. During service he fell ill and doctor recommended him two week bed rest. On recovery when he went to join his duty an explanation was called from him on 04.01.2022 which was replied. After performing duty for more than two months, charge sheet alongwith statement of allegations was issued on 08.03.2022 which was also replied by him. Thereafter, on the basis of absence he was removed from service vide order dated 25.04.2022. Feeling aggrieved, he filed departmental appeal on 10.05.2022 and on 13.06.2022 he filed revision petition which was rejected on 13.10.2022, 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 the appellant argued that the impugned orders are against the law, fact and norms of justice and material on record, therefore, not tenable and liable to be set aside; that appellant was not intentionally absent from duty rather it was due to illness and the penalty imposed upon him is not tenable under the law and is liable to be set aside; that no regular inquiry was conducted against him to DIG out the reality about the absence of the appellant and even the inquiry report was not provided to the appellant which is violation of law and rules and as such the impugned order are liable to be set aside.

5. Conversely, learned Deputy District Attorney contended that appellant was not treated in accordance with law and rules; he further contended that he while posted at Police Telecommunication D.I.Khan absented himself from lawful duty w.e.f 21.12.2021 to 27.12.2021 and 29.12.2021 to 04.01.2022. To probe his willful absence he was served with an explanation dated 04.01.2022 upon which he has produced two medical prescriptions for complete bed rest for



two weeks by a private doctor. Appellant being a government employee was supposed to submit prescriptions from the government hospital however he did not do so which was not acceptable as per rules. Departmental proceedings were initiated against him by issuing charge sheet alongwith statement of allegation reply of which was received which was found unsatisfactory and after fulfillment of all codal formalities major penalty of removal from service was imposed upon him.


6. Perusal of record reveals that the appellant was appointed as Class-IV in the respondent department and was performing his duty when during service he fell ill and doctor recommended him two week bed rest. On recovery, when he went to his office to join his duty, authority called explanation from the appellant on 04.01.2024 and also transferred him to D.I.Khan on that very day without waiting for his reply of explanation, which speaks volume the something was wrong behind the curtains, otherwise absence of 14 days, that too on medical grounds, duly supported by Doctor's prescription, is not such a grave and serious crime/misconduct which resulted into very harsh step by the authority by posting him who is resident of Peshawar to D.I.Khan. If authority is not convinced with the medical prescription of the doctor, then he must have ordered for medical examination of his physical health/condition of appellant. Inquiry officer was also in haste and conducted the inquiry in a manner in which too no such measures or recording statement of all concerned were taken by him which means that no opportunity of cross examination and defense was given to the appellant. It is also very strange that appellant was awarded major penalty of removal from service on absence of only 14 days only that too on medical grounds which show the ill will and arbitrariness of the authority.

7. In our view, inquiry was just a formality, otherwise respondent department on 04.01.2022 removed the appellant from service when he was posted to D.I Khan where he served till his removal. Moreover, awarding of

major punishment is not warranted by law having regard to the facts and circumstances of the case. Therefore, it is held that appellant was not treated fairly in accordance with settled norms of justice 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 18<sup>th</sup> of April, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

24.01.2024

Appellant alongwith his counsel present. Mr. Muhammad Saeed, DSP (Telecom & Transportation) alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Learned counsel for the appellant sought further time for preparation of brief. Adjourned. To come up for arguments on 18.04.2024 before the D.B. Parcha Peshi given to the parties.

SCANNED  
KPST  
Peshawar

\*Naeem Amin\*

(Fareeha Paul)  
Member (E)

(Salah-ud-Din)  
Member (J)

**ORDER**

18.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.
2. Vide our detailed judgement 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 18<sup>th</sup> of April, 2024.*

(FAREEHA PAUL)  
Member (E)

(RASHIDA BANO)  
Member (J)

\*Kaleemullah