

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1962/2023

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Hazrat Bilal S/O Fanos Khan (Ex-Constable 1513 FRP) R/O Kotak
Tehsil Shabqadar, District Charsadda.(Appellant)

Versus

1. Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. The State through the learned A.G Khyber Pakhtunkhwa, Peshawar.
.....(Respondents)

Mr. Shabir Hussain Gigyani,
Advocate ... For appellant

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

Date of Institution.....	26.09.2023
Date of Hearing.....	04.06.2024
Date of Decision.....	04.06.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 25.11.2021 of the Deputy Commandant FRP, Peshawar whereby the appellant was dismissed from service and against the order dated 14.09.2023 of the Commandant FRP, Peshawar whereby departmental appeal of the appellant was rejected. It has been prayed that on acceptance of the appeal, both the impugned orders might be set aside and the appellant might be reinstated into



service with all back benefits alongwith any other relief which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant, alongwith his father and two brothers, was falsely implicated by his uncle/cousins in a case vide FIR No. 114 dated 09.05.2020 u/s 302/324/34 PPC at P.S Battagram, District Charsadda. He surrendered before the court of law on 22.06.2020 by preferring his BBA and after facing a protracted trial for three years, he was acquitted of the entire charges vide judgment dated 18.07.2023 of Additional Sessions Judge, Shabqadar, Charsadda. During his confinement at Central Prison, Mardan, he was served a show cause notice dated 23.08.2021, to which he submitted detailed reply, wherein he not only confessed his innocence but also requested for postponement of departmental inquiry till the final decision of the trial. Respondent No. 2, without taking the appellant on board and affording him the opportunity of personal hearing, dismissed him from service vide order dated 25.11.2021, however no copy was communicated to him on his postal address or through the jail authorities. Feeling aggrieved, he submitted his departmental appeal on 07.03.2023 which was rejected on 14.09.2023; hence the instant service appeal.

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



4. Learned counsel for the appellant, after presenting the case in detail, argued that both the impugned orders were illegal, without justification and without lawful authority, hence not tenable. He argued that the appellant was not served with any charge sheet and summary of allegations and when show cause notice was served upon him, he responded to it promptly. He argued that despite having the knowledge regarding the detention of the appellant in judicial lock-up, the respondents did not afford opportunity of hearing to him nor communicated the impugned order to him and all the proceedings were conducted ex-parte in utter disregard to the principles of justice. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was involved in criminal case and was placed under suspension vide order dated 13.05.2020. Departmental proceedings were initiated against him. He was issued charge sheet dated 13.05.2020 alongwith summary of allegations and DSP FRP HQrs was nominated as Enquiry Officer. The appellant submitted reply to the charge sheet which was found unsatisfactory. He further argued that the appellant remained absent from his lawful duty w.e.f. 10.05.2020 to 22.06.2020 (43 days) without any leave or prior permission of the competent authority which was recommended by the Enquiry Officer as leave without pay. Final show cause notice was served upon him which was duly replied but his reply was found unsatisfactory by the competent authority and after fulfillment



of all codal formalities, he was awarded major punishment of dismissal from service. He requested that the appeal might be dismissed.

6. Arguments and record presented before us show that the appellant was involved in FIR No. 114 dated 09.05.2020 u/s 302/324/34 PPC. He surrendered before law on 22.06.2020, meaning thereby that he remained an absconder from 09.05.2020 to 21.06.2020. After trial, he was acquitted from the charges leveled against him vide judgment dated 18.07.2023 of the learned Addl. Sessions Judge, Shabqadar, Charsadda. During the time, he was behind the bar, a showcause notice dated 23.08.2021 was served upon him with the allegation as follows:-

“You constable Hazrat Bilal No. 1513 of FRP HQrs: being involved in case FIR No. 114 u/s 302/34 at P.S Battagram District Charsadda dated 09.05.2020 and remained in judicial lockup w.e.f. 03.09.2020 till date. You have not been released from jail after spending almost a year in jail.”


7. The appellant responded to it but the competent authority awarded major penalty of dismissal from service. It has been noted that the appellant was dismissed from service on the sole ground of FIR. After he was acquitted, the said ground subsequently disappeared and he emerged as a fit and proper person entitled to continue his service. In this respect guidance has been sought from 1988 PLC(CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court 695.

8. In view of the above discussion, the service appeal is allowed and appellant is reinstated into service with all back benefits, by setting aside



the impugned orders. However the period he remained an absconder from 09.05.2020 to 21.06.2020 is treated as leave without pay. Cost shall follow the event. Consign.

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


(FARZEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman


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04th June, 2024 01. Mr. Shabir Hussain Gigyani, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 05 pages, the service appeal is allowed and the appellant is reinstated into service with all back benefits, by setting aside the impugned orders. However the period he remained an absconder from 09.05.2020 to 21.06.2020 is treated as leave without pay. Cost shall follow the event. Consign.

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


(FARZHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS