

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 46/2022

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

Muhammad Zeeshan, Ex-Constable No. 2413, District Police Mardan.
.....(*Appellant*)

Versus

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer/Deputy Inspector General of Police, Mardan.
3. District Police Officer, Mardan.(*Respondents*)

Mr. Muhammad Tariq,
Advocate ... For appellant

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

Date of Institution..... 28.12.2021
Date of Hearing..... 24.04.2024
Date of Decision..... 24.04.2024

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 05.08.2020 of respondent No. 3 vide which appellant was awarded major punishment of dismissal from service against which his departmental appeal was rejected vide order dated 31.05.2021. The appellant also filed mercy petition to respondent No. 1 on 06.09.2021 but till filing of the appeal, no order was communicated to him. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant 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 was appointed as Constable vide order dated 15.12.2008. He was issued charge sheet and statement of allegations on 10.02.2020 by respondent No. 3 with the allegations that he remained absent from duty for 74 days at different intervals. A departmental enquiry was initiated against him and Mr. Sher Nawaz R.O Police Lines Mardan was appointed as Enquiry Officer. The appellant submitted detailed and comprehensive reply to the charge sheet. During the enquiry proceedings, the appellant disclosed that he was ill due to chronic pain of back and left leg, duly supported by medical prescriptions. The Enquiry Officer recommended that his absence of 30 days might be counted as Medical leave and the rest of absence of 44 days be counted as leave without pay. On 04.04.2020, he made his arrival at PS SMT and performed his duty till 12.07.2020. He was then transferred to PS Par Hoti Mardan but due to continuous disease, he did not make his arrival there and went to his village for further treatment. The appellant was marked absent vide DD No. 34 dated 13.07.2020. He was not served any charge sheet and show cause notice and without conducting departmental inquiry, he was dismissed from service vide impugned order dated 05.08.2020. Feeling aggrieved, he filed departmental appeal to respondent No. 2 which was rejected on 31.05.2021. The appellant also filed mercy petition before respondent No. 1 which was not decided till filing of the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise 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.

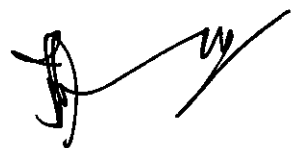
4. Learned counsel for the appellant, after presenting the case in detail, argued that the respondents had not treated the appellant in accordance with law and rules on the subject and unlawfully dismissed him from service. He argued that charge of absence from service was ill-founded and not based on facts. He further argued that the appellant was not aware of any other enquiry proceedings in that regard as neither any charge sheet nor any show cause notice was issued or served to him and no opportunity of personal hearing was afforded to him which was mandatory under the law. 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, while posted at Police Station Sheikh Maltoon, remained absent from duty without any leave and permission of the competent authority. Being a member of the disciplined force, he was bound to bring his illness into the notice of the senior officers but he failed to do so. He was issued charge sheet with statement of allegations. Proper departmental enquiry was initiated and entrusted to Mr. Sher Nawaz R.I Police Lines Mardan. He further argued that both the periods of absence were clearly mentioned in the dismissal order. According to him, he was called for Orderly Room on 08.07.2020, 15.07.2020, 22.07.2020, 29.07.2020 and 05.08.2020, on the ground of absence but he did not appear before the competent authority despite receiving and personally signing the notices, hence he was awarded major punishment of dismissal from service and 74 days

absence period was treated as leave without pay. He argued that his departmental appeal was decided on merit because he was called in Orderly Room on 26.05.2021 but he failed to produce any cogent justification in his defence. He requested that the appeal might be dismissed.

6. Arguments and record presented before us show that the appellant was dismissed from service on the ground of willful absence. While posted at P.S Sheikh Maltoon, he absented himself from lawful duty for 74 days. Departmental proceedings were initiated against him by issuing charge sheet and statement of allegations to which he responded. On submission of Inquiry report to the competent authority, he was called for personal hearing in the orderly room through several notices, which, according to the record produced by the respondents, were duly received by him, but he did not pay any heed to them and never appeared before the District Police Officer, Mardan. He was awarded major punishment of dismissal from service vide order dated 05.08.2020 and the period of absence was treated as leave without pay. His departmental appeal dated 24.03.2021 was rejected being time barred. The mercy petition submitted on 06.09.2021 was also rejected on 02.06.2022 after doing the needful.


7. Perusal of record shows that the appellant did not submit any application seeking leave from his competent authority, and the same was admitted by his learned counsel during arguments before us. Learned counsel for the appellant did not deny the bad entries in his service record of ten years as well as absence of 324 days at different occasions. A fact to be kept in view is that the appellant was a civil servant and member of a disciplined force. His services were



governed under a set of rules and he was under obligation to submit an application seeking permission of leave from his competent authority. The admission, of non-submission of any such application, on the part of his learned counsel is enough evidence that the appellant remained absent from his lawful duty which is a misconduct on the part of a civil servant. The department rightly proceeded against him. Impugned order of dismissal from service shows that he was called several times but he did not present himself before his competent authority for personal hearing which is not an acceptable behavior and tantamounts to disobedience.

8. In view of the above discussion, we do not see any merit in this service appeal, hence, the same is dismissed. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 24th day of April, 2024.*


(FARZEEN PAUL)
Member (I)

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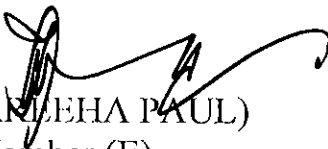

(RASHIDA BANO)
Member(J)

SA 46/2022

24th Apr. 2024 01. Mr. Muhammad Tariq, 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, we do not see any merit in this service appeal, hence, the same is dismissed. 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 24th day of April, 2024.*


(FARZEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS