

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7876/2021

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

Muhammad Zaman, Ex-Constable No. 598, District Police, Lakki Marwat.
.....(*Appellant*)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Bannu Region, Bannu.
3. District Police Officer, Lakki Marwat.(*Respondents*)

Mr. Muhammad Zafar Tahirkheli,
Advocate ... For appellant

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

Date of Institution	16.12.2021
Date of Hearing	15.05.2024
Date of Decision	15.05.2024

JUDGEMENT

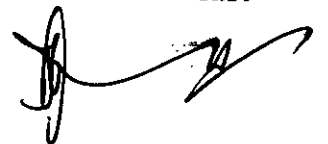
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 08.12.2021 whereby departmental appeal of the appellant dated 11.11.2021 was partially accepted. It has been prayed that on acceptance of the appeal, order dated 08.12.2021 be modified and the appellant's service period with effect from 18.10.2016 to 18.05.2020 and 09.04.2021 to 15.07.2021 be allowed as leave with full pay, 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 initially appointed as Constable on 27.05.2007. While



serving as Constable at Lakki Marwat, FIR No. 1207 dated 02.10.2016 P.S Bhana Marri Peshawar u/s 15/17AA was registered against him. Departmental proceedings were initiated against him, whereby after due process, his services were terminated vide order dated 25.01.2017. He preferred a departmental appeal followed by Service Appeal No. 284/2017 which was accepted vide order dated 21.05.2019 and he was reinstated into service. The respondent department approached Supreme Court of Pakistan through C.A No. 12/2021, which was disposed of vide order dated 12.04.2021 and the matter was remanded back to the competent authority to conduct a denovo inquiry on the charge sheet issued to the appellant on 19.10.2016. A denovo inquiry was interested to SP/Invst: Lakki Marwat vide office letter dated 17.05.2021 who submitted his final report dated 02.07.2021, wherein the allegations leveled against the appellant were not proved. He was given the opportunity of personal hearing on 16.07.2021 and upon satisfaction of the authority, he was reinstated into service vide impugned order dated 19.07.2021. However, the service period w.c.f 18.10.2016 to 18.05.2020 and 09.04.2021 to 15.07.2021 was treated as leave without pay. The appellant preferred departmental appeal on 11.11.2021 which was partially allowed vide impugned order dated 08.12.2021, converting 480 days period of leave without pay into 120 days leave on full pay and 360 days leave on half pay available on his credit/leave account with immediate effect; hence the instant service appeal.

3. Respondents were put on notice. Despite various opportunities including last opportunity, the respondents did not submit written reply/comments. On 14.11.2022, on the request of learned AAG last



opportunity was further extended on payment of cost of Rs. 2000/- and the case was adjourned to 05.12.2022 for submission of reply/comments. On 05.12.2022, neither reply/comments were submitted nor cost was paid, therefore, right of the respondents to submit reply/comments stood struck off. 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 acted in an arbitrary manner while partially accepting the appellant's departmental appeal, inspite of the fact that he came out clean in his departmental inquiry initiated by them. He argued that denovo enquiry was interested to SP/Investigation and during the enquiry, allegations leveled against the appellant were not proved. He was given opportunity of personal hearing on 16.07.2021 and upon satisfaction of the authority, he was reinstated into service vide impugned order dated 19.07.2021. He further argued that due to his illegal removal, his absence was beyond his control, thus treating only 120 days as leave on full pay and 360 days leave on half pay out of total 03 years, 10 months and 06 days, would be unjust. He requested that the appeal might be accepted as prayed.

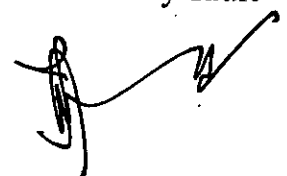
5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was removed from service and already a lenient view had been taken by the respondent department by reinstating him into service and the absence period of the



appellant was rightly treated by the respondents vide order dated 08.12.2021. He requested that the appeal might be dismissed.

6. From the arguments and record presented before us, it transpires that the appellant, while serving as Constable in the respondent department, was charged in FIR no.1207 dated 02.10.2010 P.S Bhana Marri Peshawar u/s 15/17AA. He was acquitted of the charges against him through a judgment of the Additional Sessions Judge-VIII Peshawar dated 15.11.2018. During that period, departmental proceedings were initiated against him and his services were terminated vide order dated 25.01.2017. His service appeal against the order was allowed on 21.05.2019 against which the department preferred appeal before the august Supreme Court of Pakistan and the same was disposed of vide order dated 12.04.2021 by directing the respondent department to conduct denovo inquiry. The denovo inquiry was conducted accordingly in which charges against him could not be proved and he was reinstated into service. In this entire process, the appellant remained out of service for 03 years, 10 months and 06 days. His period of absence of 480 days was first treated as leave without pay which was later converted as 120 days leave on full pay and 360 days on half pay vide order dated 08.12.2021, and the same has been impugned before us.

7. It is extremely clear from the entire case that the appellant was implicated in a false case. The false FIR was the main cause of termination of his service. When he was acquitted by the court of law and exonerated in the departmental proceedings also, then there is no reason to withhold his salary for the period he remained out of service as it was not on account of any fault



of his own, rather he was involved in some false FIR. As he was honourably acquitted, he was entitled to full pay even for the period he remained absent or out of duty. F.R. 54 is extremely clear in such case and is reproduced as follows:-

"F.R. 54—Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty—


- (a) if he is honourably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal/removal; or*
- (b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.*

In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.

In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising appellate authority so directs."

8. In view of the above discussion, the appeal is allowed 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 this 15th day of May, 2024.


(FARZEEN PAUL)
Member (E)

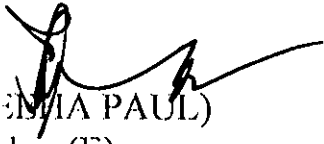

(RASHIDA BANO)
Member(J)


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15th May, 2024 01. Mr. Muhammad Zafar Tahirkheli, 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 appeal is allowed as prayed for. 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 15th day of May, 2024.*


(FAREEHIA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS