

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

**Service Appeal No. 1467/2023**

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

Mr. Naseeb Zaman Ex-Constable No. 6328, FRP Bannu Range.

.....(Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Commandant, Frontier Reserve Police Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent of Police, Frontier Reserve Police Bannu.

.....(Respondents)

Mr. Taimur Ali Khan,  
Advocate

... For appellant

Mr. Asif Masood Ali Shah,  
Deputy District Attorney

... For respondents

Date of Institution..... 07.07.2023

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 14.03.2022, whereby the appellant was removed from service, against the order dated 15.07.2022, whereby his departmental appeal was rejected and against the order dated 12.06.2023, whereby his revision petition was rejected. It has been prayed that on acceptance of the appeal, the orders dated 14.03.2022, 15.07.2022 and 12.06.2023 might be set aside and appellant be reinstated into service with all back and consequential benefits, alongwith any other remedy 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 in the year 2007 in the respondent department. His mother became ill and he was engaged in her treatment and look after during her illness. He filed applications to his high ups for leave, but they did not take any action on his applications and due to engagement in the treatment and look after of his mother, he was compelled to remain absent from his duty. On the basis of that absence, inquiry was conducted, however, the appellant was not associated with the inquiry proceedings and ex-parte action was taken against him. When mother of the appellant recovered from illness, he went to join his duty, but he was informed that he had been removed from service on 14.03.2022 and was handed over his removal order on 05.05.2022. Feeling aggrieved, the appellant filed departmental appeal on 23.05.2022, which was rejected on 15.07.2022. He then filed revision petition on 22.07.2022, which was rejected on 12.06.2023; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise reply 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 impugned orders were against the law, facts, norms of justice and material on record, hence not tenable in the eyes of law and liable to be set aside. In the inquiry proceedings, the appellant was not associated and the whole action was taken against him on the basis of ex-parte proceedings. Even



the inquiry report was not provided to him. Charge sheet alongwith statement of allegations and show cause notice were not served upon him which were mandatory before awarding major penalty of removal from service. He argued that absence of the appellant was not willful but his mother was ill which compelled him to remain absent and a lenient view should have been taken against him. He further argued that absence period of the appellant was treated as leave without pay, therefore, there remained no ground to penalize him on that absence and as such the impugned orders were liable to be set aside. 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 service record of the appellant revealed that in the past, he was found absent from lawful duty on different occasions for a long period of 1127 days. He was awarded several punishments including two times dismissal from service. He again remained absent from duty w.e.f. 05.11.2021 till his removal from service i.e 14.03.2022 (04 months and 09 days) without any leave or prior permission of the competent authority. He was proceeded against departmentally and was served charge sheet alongwith summary of allegations and his thumb impression was obtained as a token of receipt and an Inquiry Officer was nominated to conduct enquiry into the matter. The appellant was contacted through his cell phone time and again but he did not bother to submit reply to the charge sheet or to appear before the Inquiry Officer to defend himself. He further argued that after fulfillment of all codal formalities, the appellant was awarded major penalty of removal from service. He requested that the appeal might be dismissed.




6. From the arguments and record presented before us, it transpires that the appellant was removed from service on the ground of absence from duty. The appellant absented himself from lawful duty from 05.11.2021 for which he was proceeded against departmentally. Charge sheet and statement of allegations dated 22.12.2021 was issued which was received by him on 20.01.2022. Record produced by respondent department shows that the appellant placed his thumb impression alongwith signature on the charge sheet as a token of receipt, but the same was not responded by him. He also failed to appear before the Inquiry Officer as well as his competent authority when called through the showcause notice. Record further shows that it was not the first time that the appellant absented himself from his lawful duty, rather his previous service was tainted with various punishments on account of his willful absence of 1127 days. As a member of the disciplined police force of the province, the appellant was bound to submit an application and get his leave sanctioned from his competent authority, but he miserably failed to do so and hence made himself liable to be proceeded against departmentally. Learned counsel for the appellant referred to certain judgments of this Tribunal where major penalties in case of absence were set aside, but in all those cases, the appellants themselves were ill and under treatment and because of that they could not submit leave applications and were proceeded against departmentally. In the case in hand, the appellant was perfectly fine but his mother was ill, as stated by him. Such an excuse is not acceptable from a civil servant and a member of police force. The rules governing his service demand discipline from him and make it obligatory to seek permission from his competent authority for any leave.



7. In view of the above discussion, the appeal in hand is dismissed being devoid of merit. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15<sup>th</sup> day of May, 2024.*

  
(FARISCHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

*\*FazleSubhan P.S\**

SA 1467/2023

15<sup>th</sup> May, 2024 01. Mr. Taimur Ali Khan, 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 in hand is dismissed being devoid of merit. 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 15<sup>th</sup> day of May, 2024.*

  
(FAREEHA PAUL)  
Member (E)

  
(RASHIDA BANO)  
Member(J)

\*Fazal Subhan PS\*