

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 706/2019

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

Shoaib Khan S/O Khan Baig R/O Mandawa Post office Mandawa, District Karak.(Appellant)

Versus

1. The Commandant, F.R.P Khyber Pakhtunkhwa, Peshawar.
2. The Superintendent of Police, FRP Kohat Range, Kohat.

.....(Respondents)

Mr. Ashraf Ali Khattak,
Advocate

... For appellant

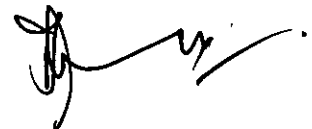
Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution.....	28.03.2019
Date of Hearing.....	13.05.2024
Date of Decision.....	13.05.2024

JUDGEMENT

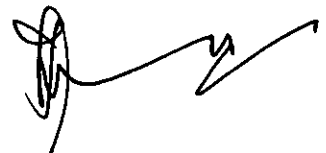
FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned final order dated 07.03.2019 passed on the departmental appeal filed against the original order dated 03.01.2012 through which the appellant was removed from service. It has been prayed that on acceptance of the appeal, the impugned orders dated 03.01.2012 and 07.03.2019 might be set aside and the appellant be reinstated into service with all back 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 initially appointed as Sepoy in FRP and after completion of necessary training, joined his duties at Kohat. During the course of his service, a fake and concocted FIR was lodged against him at the Police Station Domail, District Bannu. He was unable to perform his duties and therefore, he intimated his authority in respect of the criminal case registered against him. He was marked as absent and ex-parte proceedings were initiated against him, which culminated into his removal from service. The authority was required to communicate the departmental disciplinary proceedings initiated against him and the impugned order dated 03.01.2012 but no such communication was made by the respondents. Appellant surrendered himself before the law and faced trial, which resulted into his acquittal from all the charges on 23.01.2019 by the Special Judge/Anti-Terrorism Court, Bannu. After the decision of the learned Judge Anti-Terrorism Court Bannu, the appellant filed application for rejoining his service but that was considered as departmental appeal against the impugned order dated 03.01.2012 and was dismissed by respondent No. 1 vide impugned order dated 07.03.2019; hence 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, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan 1973. The respondents were under legal obligation to suspend his services after receiving information regarding criminal charges against him in the shape of FIR but instead of doing that, they initiated departmental proceedings against him which culminated into his removal from service. On that score the impugned order was coram non-judice and was liable to be set aside. He further argued that all the departmental proceedings were initiated in the absence of the appellant and he was never served with any charge sheet or statement of allegations nor the inquiry officer bothered to record statement of material witnesses during the course of inquiry proceedings. The appellant was condemned unheard. He further argued that criminal charges against him were baseless and concocted and he was honourably acquitted by the competent court of law and as per verdict of the august Supreme Court of Pakistan was entitled to be reinstated into service with all back benefits. 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 remained absent from lawful duty with effect from 15.09.2011 and in the meanwhile he was found involved in a criminal case vide FIR No. 274, dated 19.09.2011 u/s 365-A PPC, Police Station Domel, District Bannu. Due to his involvement in the criminal case, he was declared as proclaimed offender and was placed under suspension vide order dated 05.10.2011. He further argued that before involvement in criminal case, the appellant remained absent from lawful duty



w.e.f. 15.09.2011 till the date of removal from service, without any leave or prior permission of the competent authority. He was proceeded against departmentally and was issued charge sheet alongwith summary of allegations. Enquiry officer was nominated to conduct proper enquiry into the matter and after fulfillment of all codal formalities, he was awarded major penalty of removal from service. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant was involved in a criminal case vide FIR No. 274 dated 19.09.2011 u/s 365 A PPC P.S Domel, District Bannu. As stated by his learned counsel, he intimated his competent authority about the FIR. Documents annexed with the reply of respondents show that he was placed under suspension vide an order dated 05.10.2011, and the same order mentions about an inquiry initiated against him. Another document shows that after registration of the FIR, he was an absconder. He, later on, got bail before arrest. The learned Special Judge Anti Terrorism Court Bannu acquitted him of the criminal charges vide order dated 23.01.2012. During that time, departmental proceedings had already been initiated against him and ultimately he had been removed from service from the date of absence which was 15.09.2011, four days before the FIR was lodged against him, vide order dated 03.01.2012.


7. Two points are worth to note in the departmental proceedings; one, as the appellant was absconder from law, he did not get associated in the inquiry proceedings and secondly the proceedings were initiated under the NWFP Removal from Service (Special Powers) Ordinance 2000. Charge sheet was issued on 01.11.2011 under the RSO 2000, whereas the Ordinance had been



repealed on 15.09.2011. When the Ordinance was repealed and no more in the field, then how could any proceedings be initiated under that? Any proceedings after 15.09.2011 had to be taken under the Police Rules 1975, but it was not done.

8. In view of the above discussion the appeal is partially allowed and the appellant is reinstated into service for the purpose of inquiry under the proper rules by fully associating him in the entire proceedings. The issue of back benefits is subject to the outcome of inquiry. The inquiry shall be completed within sixty days of the receipt of this judgment. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 13th day of May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)


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13th May, 2024 01. Mr. Ashraf Ali Khattak, 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 partially allowed and the appellant is reinstated into service for the purpose of inquiry under the proper rules by fully associating him in the entire proceedings. The issue of back benefits is subject to the outcome of inquiry. The inquiry shall be completed within sixty days of the receipt of this judgment. 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 13th day of May, 2024.*


(FAREEHHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS