

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1285/2023

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

Rashid Ahmad S/O Sher Zada, R/O Kukari Swat. Ex-Constable No. 2304
Police Line Swat.

.... (Appellant)

VERSUS

1. District Police Officer, Swat.
2. Regional Police Officer, Malakand at Saidu Sharif Swat.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

.... (Respondents)

Mr. Arbab Saif Ul Kamal
Advocate

.... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

.... For respondents

Date of Institution..... 07.06.2023
Date of Hearing..... 18.04.2024
Date of Decision..... 18.04.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

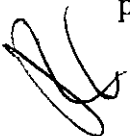
“On acceptance of this appeal, order dated 31.03.2023 and 16.05.2023 of the respondents be set aside and the appellant be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case.”



2. Brief facts of the case as given in the memorandum of appeal are that the appellant while serving as constable in police department, was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 21.02.2009. Feeling aggrieved, the appellant filed departmental appeal dated 20.03.2009, which was not responded. Subsequent appeal was submitted to respondent No.2 which was rejected vide order dated 12.03.2018, thereafter, appellant filed service appeal which was partially accepted and the major penalty of dismissal from service was converted into minor penalty of stoppage of increments for two years and intervening period was treated as leave without pay. Respondents were however at liberty to conduct de-novo inquiry as per law, if they so desire. On 17.01.2023 final show cause notice was issued to the appellant, which was replied by him. On 31.03.2023 major penalty of dismissal from service from the date of reinstatement was imposed on appellant by Respondent No.1. He filed representation before No. 2 which was rejected on 16.05.2023, hence the instant service appeal.

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

4. Learned counsel for the appellant argued that the appellant was not treated in accordance with law; that appellant was dismissed from service on the charges of absence as his absence was not intentional but was due to compelling reason of terrorism; that service appeal of the appellant was partially accepted and major penalty of dismissal from service was converted into minor penalty punishment but no heed was paid towards this aspect of the matter; that



retrospective effect was given to the impugned order which is against law and justice.

5. Conversely, learned Deputy District Attorney contended that appellant was treated in accordance with law and rules. He further contended that as per Khyber Pakhtunkhwa Police Act, 2017, it is the duty of police officer is to protect life, property and liberty of citizen. When militancy was at peak in Swat and the services of the appellant were direly needed by the department for the protection of public, he deliberately absented himself from lawful duty and showed cowardice. He further contended that in compliance of judgment of dated 24.01.2022, de-novo inquiry was conducted in the matter, wherein SP/Hqrs and DSP/Legal were deputed as inquiry officer and fulfillment of all codal formalities major penalty of dismissal from service was imposed upon the appellant.

6. Perusal of record reveals that was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 21.02.2009. Appellant filed departmental appeal on 20.03.2009, which was not responded. Subsequent appeal was submitted to respondent No.2 which was rejected vide order dated 12.03.2018, thereafter, appellant filed service appeal which was partially accepted and the major penalty of dismissal from service was converted into minor penalty of stoppage of increments for two years and intervening period was treated as leave without pay. Appeal No. 4981/2018 which decided vide order dated 24.01.2022 in these terms:

“In our humble view when impugned order major penalty of dismissal from service was converted into minor penalty of stoppage of increments for two years by treating intervening period as leave without pay”. Then mentioning of words “Respondents are at liberty to conduct denovo inquiry as per mandate of

law is just a typographical mistake and not order of this Tribunal, therefore, conducting denovo inquiry is not warranted under the law and rules and is without authority and no legal effect.”

7. Moreover, appellant was intentionally dismissed from service under removal from service (Special Power) Ordinance, 2000 which is evident from order dated 21.02.2009. Therefore, if respondent were bent upon to remove appellant from service then they will have to proceed him under Removal from Service Ordinance, 2000 and not in accordance with Rules 2(iii) of Police Rule, 1975. Although, Removal from Service Ordinance, 2000 was repealed vide Khyber Pakhtunkhwa Removal from Service (Special Power) Repeal Act, 2011 but in accordance with Section 2, all proceedings initiated under RSO, 2000 and pending immediately before commencement of Repeal Act, 2011 will be completed in accordance with and under the provision repealed RSO, 2000. So, the impugned order is liable to be set aside on this score alone. Moreover, no chance of cross examination was provided to the appellant and he was awarded with major penalty of dismissal from service which means he was condemned unheard.

8. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure,



resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of *audi alteram partem* was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483.

9. For what has been discussed above, we are unison to accept the instant appeal in the manner that his earlier dismissal order was set aside by this Tribunal vide order dated 24.01.2022 i.e converted major penalty of dismissal from service into minor penalty of stoppage of increments for two years and treat the intervening period from 21.02.2009 till 24.01.2022 as leave without pay while present intervening period from 31.03.2022 till his reinstatement with pay and he is also entitled for all other benefits of the second intervening period. Costs shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of April, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

ORDER


18.04.2024 1

Learned counsel for the appellant present. Mr. Asif Masood Ali

Shah learned Deputy District Attorney alongwith Hikmat Khan, H.C for the respondents present..

2. Vide our detailed judgement of today placed on file, we are unison to accept the instant appeal in the manner that his earlier dismissal order was set aside by this Tribunal vide order dated 24.01.2022 i.e converted major penalty of dismissal from service into minor penalty of stoppage of increments for two years and treat the intervening period from 21.02.2009 till 24.01.2022 as leave without pay while present intervening period from 31.03.2022 till his reinstatement with pay and he is also entitled for all other benefits of the second intervening period. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 18th day of April, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)