

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1774/2023

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

Zia-ur-Rehman S/O Fazal-ur-Rehman R/O Ali Sherzai, Village Sharif Central Kurram, District Kurram, Ex-Constable (Personal No. 00669169) of District Police Kurram.(Appellant)

Versus

1. District Police Officer, Kurram.
2. Deputy Superintendent of Police, Investigation, District Kurram.
3. Deputy Inspector General of Police Kohat Region, Kohat.
4. Regional Police Officer, Kohat Region, Kohat.(Respondents)

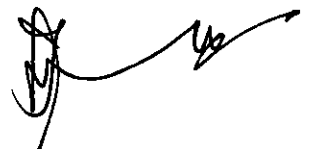
Mr. Farhanullah Shabanzai,
Advocate ... For appellant

Mr. Muhammad Jan,
District Attorney ... For respondents

Date of Institution..... 04.09.2023
Date of Hearing..... 29.05.2024
Date of Decision..... 29.05.2024

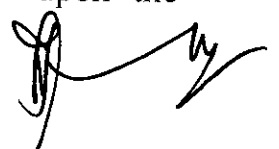
JUDGEMENT

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 08.08.2023 of respondent No. 4 whereby departmental appeal of the appellant against the order dated 12.07.2021 was dismissed, whereby major penalty of dismissal from service was imposed upon the appellant by respondent No. 1. It has been prayed that on acceptance of the appeal both the impugned orders dated 08.08.2023 and 12.07.2023 might be set aside and the appellant might be considered as retired on the basis of incapacitation from service in the light of report of Standing Medical Board



and accordingly all the pension benefits be extended to him, 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 Khassadar in Kurram Khassadar Force on 07.03.2011. After merger of Kurram Agency into Khyber Pakhtunkhwa, he, vide notification dated 14.02.2020, was absorbed as Constable in the Police Department and continued his duty under the supervision of respondent No. 1, the District Police Officer, Kurram. He performed his duty for 10 years and 03 months regularly. On 06.02.2021, he was referred for training at District Swabi, where the appellant remained for 32 days, but during training, both the shoulders were dislocated and due to that, he was unable to perform his duties as he was unable to lift the weapon. On 17.06.2021, he filed an application to the DPO Kurram for constitution of Standing Medical Board to examine him because of health issues. Accordingly DPO Kurram vide letter dated 30.06.2021, referred the matter to the Medical Superintendent, District Headquarter Teaching Hospital, Kohat for constitution of Standing Medical Board to ascertain the fitness of the appellant. On 25.05.2021, a charge sheet was issued by the DPO, Kurram but neither the appellant was informed about initiation of any departmental proceedings/inquiry nor was he provided any opportunity of personal hearing. A final report was prepared by respondent No. 2 on 01.07.2021 and forwarded to the DPO Kurram. Neither any proper service was effected upon the appellant nor any show cause notice was issued to him and on the basis of final report of respondent No. 2, the DPO Kurram imposed major penalty of dismissal from service with immediate effect upon the



appellant vide order dated 12.07.2021. The appellant came into the knowledge on 05.08.2021 about his dismissal from service and he immediately filed departmental appeal on 10.08.2021. After his personal hearing, the appellate authority, vide letter dated 16.03.2022, inquired about the fate of the letter dated 30.06.2021 and progress regarding constitution of Standing Medical Board, which was previously referred by the DPO Kurram. The matter was further referred by Medical Superintendent, DHQT Hospital (KDA) Kohat to the Director General Health, Khyber Pakhtunkhwa Peshawar for constitution of Sanding Medical Board regarding appellant's fitness vide letter dated 24.03.2023. Vide letter dated 11.05.2023, Standing Medical Board declared the appellant unfit for the job, which was sent to the Departmental Appellate Authority by Medical Superintendent DHQ Hospital, Parachinar. After going through the said documents, the appellate authority refused to accept the plea of the appellant and his departmental appeal was rejected vide order dated 08.08.2023; 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 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 departmental inquiry proceedings were not initiated in accordance with proper procedure and the entire proceedings were completed in a haphazard manner. Neither any charge sheet was served upon the appellant nor any show cause notice was issued to him, and hence he was condemned



unheard which was violation of the principle of natural justice and had no sanctity in the eyes of law. He further argued that health problems faced by the appellant were not considered by the respondents. As far as the allegation of absence from duty was concerned, the appellant brought the matter into the knowledge of his highups which was clear from the letter dated 17.06.2021 but that fact had been ignored by the respondents. He further argued that the Standing Medical Board furnished their opinion on 11.05.2023 whereby the appellant was declared unfit for the job, hence the respondents were required to dispense with the services of the appellant due to incapacitation and declare him as retired from service, which was not done by them. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant filed an application for constitution of Standing Medical Board to examine him properly and requested for retirement from Police service. The DPO, Kurram, vide letter dated 30.06.2021, referred the matter to the Medical Superintendent DIIQT Hospital Kohat to ascertain the fitness of the appellant whether he could perform his duty in the Police Department. Learned District Attorney further argued that the appellant absented himself from Police Training Centre Swabi w.e.f. 13.02.2021 to 28.03.2021 (45 days) for which a charge sheet was issued to him on the allegation of absence on 25.05.2021. Proper departmental inquiry proceedings were initiated against him and after fulfilling codal formalities, the inquiry officer submitted his findings, wherein he reported that the appellant was contacted time and again to appear before him and was given opportunities



to defend himself, but he did not bother to appear which showed that he was no more interested in police service and hence the competent authority rightly dismissed him from service. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant absented himself from the training at District Swabi and hence was proceeded against departmentally. While posted at Central Kurram, the appellant was referred for training at District Swabi from where he absented himself with effect from 13.02.2021. In his service appeal, the appellant himself admitted that he was referred for training on 06.02.2021 and from there he absented himself due to some illness and later on through an application dated 17.06.2021, he requested for constitution of a medical board. When asked whether he submitted any application before leaving his training or informed his highups, learned counsel for the appellant frankly admitted that no such application was available on record neither the highups were informed by the appellant. He, however, insisted that the appellant was not well and was not in a position to continue his training and therefore, he requested for constitution of medical board to determine whether he was fit for continuing his service or otherwise.


7. From simple perusal of record, it is clear that the appellant was absent from the training without informing his highups and the same fact has also been admitted by his learned counsel before us. One must keep in view that the appellant was a member of the provincial police which was a disciplined force, bound by certain laws and rules in order to maintain that discipline. He did not stick to the rules governing his service and that breach rendered him liable to



be proceeded against departmentally. In view of the misconduct on his part in the form of absence from duty, his request for constitution of medical board after almost four months of his absence became secondary and of no importance. It would have been appropriate for him to immediately inform his highups about his illness, if there was any, get his leave sanctioned and then proceed accordingly, but record and clear admission of absence by his learned counsel showed that the appellant miserably failed to do so.

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

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 29th day of May, 2024.*


(FARZEETA PAUL)
Member (I)


(RASHIDA BANO)
Member(J)

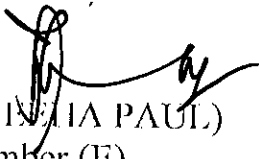
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29th May, 2024 01. Mr. Farhanullah Shabanzai, Advocate for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 06 pages, the appeal in hand 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 29th day of May, 2024.*


(FARISCHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS