

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, BANNU

Service Appeal No. 2073/2023

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

Muhammad Zeeshan Khan son of Muhammad Shah Nawaz Khan Sikandari resident of village Faiz Talab Abbas P.S Mandan Tehsil and District Bannu. Ex-Consable No. 2417 of Special Security Unit (SSU)CPEC, Bannu.(Appellant)

Versus

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Commandant Special Security Unit (CPEC) Khyber Pakhtunkhwa Police, Peshawar Cantt.
3. Deputy Commandant Special Security Unit (CPEC) Khyber Pakhtunkhwa Police Peshawar Cantt.
4. Superintendent of Police, Admin & Minority Special Security Unit (CPEC) Khyber Pakhtunkhwa Peshawar Cantt.
5. District Police Officer, District Bannu.(Respondents)

Mr. Muhammad Shah Nawaz Khan Sikandari,
Advocate ... For appellant

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

Date of Institution..... 16.10.2023

Date of Hearing..... 23.05.2024

Date of Decision..... 23.05.2024

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 17.08.2023 of respondent No. 4 whereby the appellant was dismissed from service and against the order dated 20.09.2023, whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set



aside by reinstating the appellant into service with full back benefits with retrospective effect.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable (BPS- 07) vide order dated 30.12.2019, issued by the District Police Officer Bannu. He was deputed to CPFC and its Unit was functioning at Bannu, whereas on 08.03.2023, the same was transferred to Lower Kohistan and the appellant accordingly started his duty at Kohistan, but because of the climate change and atmospheric allergy, he got kidney problems and submitted medical certificate to his immediate boss. On 09.05.2023, he received a statement of allegations with regard to his absence, which was accordingly replied by him. On 12.07.2023, he received final show cause notice which was also replied by him on 19.07.2023. He was dismissed from service vide impugned order dated 17.08.2023. Feeling aggrieved, he preferred departmental appeal on 29.08.2023, but the same was also rejected vide order dated 20.09.2023; 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 both the impugned orders were illegal, against the law and principle of natural justice and hence, liable to be set aside. He argued that appellant's sickness was due to climate change, drinking water and



atmospheric allergy which was beyond his control and the medical prescriptions were not taken into consideration by the departmental authorities. He further argued that the appellant had more than 03 years service at his credit and a harsh view was taken against him. 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, while posted at Lower Kohistan, absented himself from his lawful duties w.c.f. 22.03.2023 to 04.07.2023 (104 days) and once again from 06.07.2023 to 01.08.2023 (26 days), for a total period of 130 days, without any sanctioned leave or intimation to his highups. He argued that departmental proceedings were initiated against him. Charge sheet and summary of allegations were issued to him and Mr. Muhammad Saeed Khan, DSP Hazara Region SSU (CPI:C) was nominated as Inquiry officer who conducted the inquiry and after completion of all codal formalities, he submitted his findings report and recommended the appellant for suitable punishment and accordingly the appellant was dismissed from service by the competent authority. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant was dismissed from service on the charge of absence from duty. While posted at Lower Kohistan, the appellant absented himself from his lawful duty from 22.03.2023 to 04.07.2023 and 06.07.2023 to 01.08.2023, thus making a total absence of 130 days, without getting any leave sanctioned or informing his highups. Departmental proceedings were

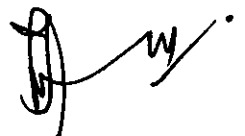


initiated against him and after doing the needful, major penalty of dismissal from service was imposed upon him.

7. When confronted, learned counsel for the appellant admitted the absence. When asked whether any application seeking leave was submitted at any stage to the competent authority during the 130 days when he remained away from his lawful duty, he frankly stated that no such application was submitted. As stated by the learned counsel for the appellant, he became seriously ill after he was posted at Lower Kohistan. Two medical prescriptions of a private clinic in Bannu were produced before us. One of the prescriptions was of 13.03.2023 which reflected complete rest for 21 days. The learned counsel himself stated before us that the appellant reported for duty at Lower Kohistan on 19.03.2023. If he was so ill at that time, why he did not bring it to the notice of his highups? When asked, the learned counsel for the appellant could not respond.


8. The appellant was a civil servant and a member of the disciplined police force of the province. His services were governed by a set of rules and under those rules, he was obligated to inform his highups and not only get his leave sanctioned but also seek proper permission to leave the station where he was posted. A clear admission on the part of learned counsel for the appellant regarding absence from duty was enough to prove that the appellant was guilty of misconduct and hence rightly proceeded against departmentally.

9. In view of the above discussion, the service appeal is dismissed being devoid of merit; however while maintaining the major penalty, we,



instead, convert it into removal from service. Cost shall follow the event.
Consign.

10. *Pronounced in open court in Peshawar and given under our hands
and seal of the Tribunal this 23rd day of May, 2024.*


(FAREEHA PAUL)
Member (I)
Camp Court, Bannu


(RASHIDA BANO)
Member(J)
Camp Court, Bannu


FazleSubhan P.S

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23rd May, 2024 01. Mr. Muhammad Shah Nawaz Khan Sikandari, 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 05 pages, the service appeal is dismissed being devoid of merits, however while maintaining the major penalty, we, instead, convert it into removal from service. Cost shall follow the event. Consign.

03. *Pronounced in open court in Camp Court, Bannu and given under our hands and seal of the Tribunal on this 23rd day of May, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court, Bannu


(RASHIDA BANO)
Member(J)
Camp court, Bannu

Fazal Subhan PS