

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 513/2023**

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

Mr. Rafi Ullah, Constable No.7596, Posted at Seraie Naurang, P.P  
Manjiwala, Bannu, Range, District Lakki Marwat.

... (Appellant)

**VERSUS**

1. Additional IGP/Commandant, Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent of Police, Frontier Reserve Police, District Bannu.

... (Respondents)

Mr. Afrasiab Khan Wazir  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

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Date of Institution.....07.03.2023  
Date of Hearing.....05.03.2024  
Date of Decision.....05.03.2024

**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 instant service appeal of the appellant the impugned order dated 17.07.2018 may very kindly be set aside and the respondents may further please be directed to treat the total absence/out of service period with pay, with all back benefits. Any other remedy which this August Tribunal deems fit that may also be awarded in favor of the appellant.”**


2. Brief facts of the case, as given in the memorandum of appeal, are that appellant is serving Police Department as Constable and was performing his duty with zeal and zest; that the appellant was dismissed from service on the basis that he failed to combat terrorist when attacked on their check post, against which the appellant and his colleagues filed service appeal before this Tribunal, which was allowed vide judgment dated 16.04.2018 with direction to respondents to conduct de-novo inquiry. In compliance of judgment, respondents after conducting de-novo inquiry, reinstated the appellant into service and the absence period was treated as leave without pay. Feeling aggrieved, they again filed service appeal before this Tribunal, which was allowed vide order dated 26.07.2021. The appellant, being similarly placed employee, feeling aggrieved from the impugned order dated 17.07.2018, preferred departmental appeal which was not responded, 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 appellant argued that appellant has not been treated in accordance with law and rules. He further argued that the impugned orders passed by the respondents are against the law, facts, norms of natural justice and materials on record, hence not tenable and liable to be set aside. He further argued that absence of the appellant was not on his part but because of the illegal and unlawful suspension and dismissal from service by the respondents. He requested that appellant being similarly placed employee is entitled for the same benefits of judgment dated 27.06.2021 passed in favor of his colleagues, therefore, same be also extended to the appellant. He further argued that appellant was not found guilty during de-novo inquiry; he is entitled to all back benefits.

5. Conversely learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules. He further contended that respondents reinstated the appellant into service for the purpose of de-novo inquiry, hence proper inquiry was conducted. After completion of inquiry appellant was reinstated in service and his absence period was treated as leave without pay as he is legally not entitled for back benefits. He further contended that leave without pay does not fall in the ambit of any penalty as per police rules, 1975 and he is not entitled for back benefits on the principle of no work no pay.


6. Perusal of record reveals that the only issue, which needs to be resolved, whether the period, during which the appellant did not perform any  
 duty, could legally be considered as leave without pay, when the appellant has

not been found guilty during the de-novo inquiry. A perusal of the record would show that in wake of the unfortunate incident, occurring on the night falling between 4-11-2013 at 23:15hrs, disciplinary action was initiated against the appellant, which resulted in his dismissal from service vide order dated 06.01.2014, passed by the competent authority. The Service Appeal of the appellant was, however accepted by the Service Tribunal vide judgment dated 16.04.2018 and it was ordered that de-novo inquiry may be conducted into the matter. During the de-novo inquiry, the appellant was not found guilty of any charges leveled against him.

7. It is thus clear that the appellant remained absent from duty on account of his suspension and subsequent wrongful dismissal from service as a result of the previous inquiry. The absence of the appellant from duty was not due to any fault of the appellant, therefore, he shall be considered to have remained on duty during the period of his absence on account of his suspension and wrongful dismissal, as the appellant did not remained gainfully employed during the period of his absence.

8. In light of the above discussion, the appeal in hand is allowed as prayed and the appellant is held entitled to all back benefits. Costs shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 5<sup>th</sup> day of March, 2024.*


  
(Fareeha Paul)  
Member (E)

  
(Rashida Bano)  
Member (J)


**ORDER**

05.03.2024

1. Learned counsel for the appellant present. Mr. Asif Masaood Ali Shah, learned Deputy District Attorney alongwith Ihsan Ullah SI, for respondents present.
2. Vide our detailed judgment of today placed on file, the appeal in hand is allowed as prayed and the appellant is held entitled to all back benefits. 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 5<sup>th</sup> day of March, 2024.*



**(Fareeha Parul)**  
Member (E)



**(Rashida Bano)**  
Member (J)