

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 7397/2021

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

Faridullah S/O Asmatullah R/O Nar Raza Khan Adam Zai, Nourang,
Tehsil and District Lakki Marwat.(Appellant)

Versus ..

1. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent of Police, Elite Force, Bannu Region Bannu.
.....(Respondents)

Mian Afrasiab Gul Kakakhel,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution.....	06.09.2021
Date of Hearing.....	12.06.2024
Date of Decision.....	12.06.2024

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 order dated 20.06.2018, whereby the appellant was dismissed from service, order dated 05.08.2020 whereby his departmental appeal was rejected and against the order dated 06.08.2021, whereby his revision petition was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and appellant be allowed all the back benefits of absence/out of service period.



2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was a Constable in the Provincial Police. He was on earned leave for 60 days, from 13.02.2018 to 13.04.2018. During that time, he disappeared on 20.03.2018. His family looked everywhere but he was not traced. His brother registered daily diary report No. 19 dated 09.04.2018 in Police Station Naurang. In order to trace the appellant, the local police started investigation and in that respect, the District Police Officer Lakki Marwat wrote a letter dated 24.04.20-18 to the Regional Police Officer, Bannu Region, Bannu for providing CDR of the appellant's mobile phone number. When the appellant was not found anywhere, brother of the appellant Amanullah S/O Asmatullah, submitted applications to the Ministry of Interior, Government of Pakistan for recovery of his missing brother. The said applications were responded by the Ministry of Interior vide letter dated 07.09.2018 and 26.10.2018. He also submitted an application to respondent No. 1 for recovery of his brother, the appellant. Finally, the appellant was traced by the International Committee of the Red Cross (ICRC) and it was found that he was in a jail in Afghanistan. After hectic efforts of three and a half months, he was released and reached home on 08.07.2021. The appellant visited respondent department to join duty but he came to know that he had been dismissed from service vide impugned order dated 20.06.2018. Feeling aggrieved, he filed departmental appeal to respondent No. 2, which was rejected vide order dated 05.08.2018. He then filed revision petition before respondent No. 1, which was also rejected on 06.08.2021; hence the instant service appeal.



3. Respondents were put on notice who submitted written reply. 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 despite the fact that the appellant had all the evidence of his absence, the respondents did not consider the said evidence and passed the impugned order, which was illegal and against the law. He argued that in all the impugned orders, evidence had not been taken into consideration. He argued that the impugned action was violative of law laid down by the apex courts, wherein it had been categorically held that awarding major penalty must be based on some undeniable facts and strong evidence but in the instant case the whole process of inquiry was based on presumption. 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 was found involved in use of unfair means i.e use of cell phones, books and other cheating material during B-I examination conducted through ETEA and his answer paper was cancelled on the spot which was a great misconduct on his part. Charge sheet with summary of allegations was issued to the appellant on 19.03.2018 and SP, Elite Force, Bannu was appointed as Enquiry Officer but the appellant badly failed to appear before the enquiry officer, nor he submitted his written reply. Besides, he remained absent from duty without any leave or prior permission w.e.f. 13.04.2018 till the



date of his dismissal from service. His previous record also revealed that he was awarded major penalties i.e. dismissal from service and time scale. Enquiry Officer in his finding found him guilty. Final show cause notice was issued to him but he failed to submit reply nor reported for duty, therefore, he was dismissed from service by the competent authority vide order dated 20.06.2018. He further argued that the appellant went to Afghanistan without prior permission of competent authority where he was arrested. He badly failed to bring his departure in the notice of his competent authority and also absented himself from lawful duty prior to his departure to Afghanistan, therefore, he was treated in accordance with law/rules. The learned Deputy District Attorney further argued that the appellant was heard in a meeting of the Appellate Board on 15.07.2021, but he failed to submit solid evidence of his innocence and his appeal was rejected vide order dated 06.08.2021, being badly barred by time. He requested that the appeal might be dismissed.


6. Arguments and record presented before us show that the appellant was awarded major penalty of dismissal from service vide an order dated 20.06.2018 on the allegation of using unfair means during B-I examination conducted through ETEA. For that, he was issued charge sheet on 19.03.2018 and an inquiry was conducted but he did not appear before the Inquiry Officer. The same order dated 20.06.2018 further shows that another charge sheet dated 08.05.2018 was issued on absence from duty from 13.04.2018 till the date the order of dismissal from service was issued. The appellant did not appear before the Inquiry Officer in that case



also. Arguments presented by learned counsel for the appellant show that he was kidnapped and taken to Afghanistan, whereas the official respondents presented a different picture by stating in their reply that he was in the habit of absenting himself from his duty and that he went to Afghanistan without any permission or approval of his competent authority. There, he was arrested by the Afghan Police, placed behind the bar and released, later on. Perusal of record showed that his absence was from 13.04.2018 onwards and for that absence, extremely conflicting arguments were presented from both the sides before us, without providing any concrete documentary evidence.

7. In view of the above discussion, the matter is referred back to the respondent department for a proper departmental inquiry on the absence of the appellant by fully associating him in the process. The appellant is reinstated into service for the purpose of inquiry and respondents are directed to complete the process within ninety days of the receipt of the copy of this judgment. The issue of back benefits is subject to the outcome of inquiry. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12th day of June, 2024.*


(FARHATIA PAUL)
Member (B).



(RASHIDA BANO)
Member(J)

SA 7397/2021

12th June, 2024 01. Mr. Miamn Afrasiab Gul Kakakhel, 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 matter is referred back to the respondent department for a proper departmental inquiry on the absence of the appellant by fully associating him in the process. The appellant is reinstated into service for the purpose of inquiry and respondents are directed to complete the process within ninety days of the receipt of the copy of this judgment. The issue of back benefits is subject to the outcome of inquiry. 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 12th day of June, 2024.*


(FARMILIA PAUL)
Member (I)


(RASHIDA BANO)
Member(J)

Fazal Subhan PS