

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.983/2023

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

Mr. Gul Noor, Constable No. 1779, Police Force Kohat.

.... (Appellant)

VERSUS

1. The Regional Police Officer, Kohat Region, Kohat.

2. The District Police Officer, Kohat.

... (Respondents)

Mr. Ashraf Ali Khattak
Advocate

...

For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

...

For respondents

Date of Institution.....14.03.2023
Date of Hearing.....27.03.2024
Date of Decision.....27.03.2024

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 appeal, this Hon’ble tribunal may graciously be pleased to:

1. **Declare the impugned order of the respondent No.1**
End: No.1807/EC, dated Kohat the 08.02.2023 and impugned



order of respondent No.2 vide OB No.566 dated 14.11.2022 as illegal, unlawful and without lawful authority;

2. Set aside both the impugned orders to the extent of reinstatement with immediate effect and treating the intervening period as un-authorized leave without pay.

3. Direct the respondents to re-instate the appellant with all back benefits by treating the intervening period between dismissal from service dated 19.09.2020 re-instatement order dated 14.11.2022 as no active duty.

4. Any other relief deemed appropriate in the circumstances of the case not specifically asked for may also be graciously granted."

2. Brief facts of the case, as given in the memorandum of appeal, are that appellant has long service at his credit. Earlier appellant was dismissed from service vide order dated 19.09.2020. He filed service appeal before this Tribunal which was allowed by reinstating him with all back benefits, leaving the departmental authority at liberty to conduct de-novo inquiry within sixty days. Appellant was reinstated into serving for the purpose of d-novo inquiry vide order dated 23.08.2022 and he resumed his duty on 25.08.2022. Fresh inquiry proceedings were initiated against him and on conclusion of inquiry the competent authority vide impugned order dated 14.11.2022 reinstated the appellant in service with immediate effect and the intervening period has been treated as unauthorized leave without pay. Feeling aggrieved, he filed departmental appeal, which was rejected, hence the present 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 and respondents violated Article 4 and 10-A of the Constitution of Pakistan, 1973; that inquiry was conducted at the back of the appellant as neither he was associated with the inquiry proceedings nor opportunity of cross examination was provided to him; that the inquiry officer has exonerated the appellant from all the charges, hence the impugned orders are liable to be set aside. He requested that appeal of the appellant might be accepted as prayed for.

5. Conversely learned Deputy District Attorney contended that appellant has been treated in accordance with law and rules; that respondents reinstated the appellant into service for the purpose of de-novo inquiry and after completion of inquiry appellant was reinstated in service and his absence period was treated as leave without pay because he was not entitled for back benefits; that leave without pay is 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 order dated 14.11.2022 reveals that after conducting de-novo inquiry earlier order was set aside and appellant was re-instated into service as he offered plausible reply of his explanation of misconduct which means that authority is satisfied form his reply and exonerated him from the charge that's why he was re-instated into service which means that he was compelled to remain out of service due to dismissal from service which is not



his fault. It has been held by worthy supreme court of Pakistan in 2013 SCMR 752 that;

“Once an employee is reinstated in service after his exoneration of the charges levelled against him, the period during which he remained either suspended or dismissed cannot be attributed as a fault on his part. His absence during this period was not voluntary on his part but it was due to order of the appellant that he was restrained not to attend his job/ duty because on the basis of charge sheets, he was suspended and later on dismissed. At the moment, his exoneration from the charges would mean that he shall stand restored in service, as if he was never out of service of the appellant. If the absence of the respondent or non-attending the work was not volunteer act on the part of the respondent and was due to steps taken by the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended nor dismissed”.

7. For what has been discussed above, the appeal in hand is allowed and appellant is held entitled for the back benefits for the period he remained out of service. Cost shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of March, 2024.*


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

06th Dec. 2023

01. Counsel for the appellant present. Mr. Asad Ali Khan, Assistant AG for the respondents present.

02. Reply/comments on behalf of the respondents received through office which is available on the file and a copy whereof handed over to learned counsel for the appellant. To come up for rejoinder, if any, and arguments on 27.03.2024 before the D.B. Parcha Peshi given to the parties.

RECEIVED
D.B. P
Peshawar


(FAREEHA PAUL)
Member (E)


Fazle Subhan, P.S

ORDER

27.03.2024 1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Mr. Arif Saleem, Stenographer for the respondents present.

2. Vide our detailed judgment of today placed on file, the appeal in hand is allowed and appellant is held entitled for the back benefits for the period he remained out of service. Cost shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 27th day of March, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)