

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No. 1828/2023

Date of presentation of Appeal.....11.09.2023
Date of Hearing.....10.07.2024
Date of Decision.....10.07.2024

Rehan Ullah Khan S/o Raees Khan, R/o Bada Meer Abbas Khan,
Dalo Khel Tehsil and District Bannu.*Appellant*

Versus

1. The Superintendent of Frontier Reserve Police (FRP) District Bannu.
2. The Commandant Frontier Reserve Police Khyber Pakhtunkhwa,
Peshawar.(*Respondents*)

Present:

Mr. Afrasiab Wazir, Advocate.....For appellant
Mr. Riaz Ahmad Paindakhel, Additional Advocate General ...For respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The appellant Rehan Ullah Khan Ex-Constable, was proceeded against departmentally on the allegation of absence from duty without any leave or permission from the competent Authority. On conclusion of the inquiry, the appellant was awarded major punishment of dismissal from service vide impugned order dated 13.04.2023 passed by Superintendent of Police, FRP, Bannu. Feeling aggrieved from the impugned order dated 13.04.2023, the appellant filed departmental appeal, which was rejected vide impugned order dated 17.08.2023 by Commandant Frontier Reserve

10/07/2024

Police, Khyber Pakhtunkhwa, Peshawar. The appellant has now approached this Tribunal through filing of instant service appeal for redressal of his grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective para-wise comments.

3. Arguments heard and case file perused.

4. The learned counsel for the appellant contended that the appellant had properly got permission from the group Commander, who allowed leave to the appellant, therefore, the charge of willful absence against the appellant is illegal and unlawful. He next contended that no charge sheet or statement of allegations was served upon the appellant and whole of the inquiry proceedings were conducted at his back. He further contended that the appellant was not provided any opportunity of personal hearing or self defense and he was treated with discrimination. He also contended that the rights of the appellant as enshrined in Articles 4, 8, 10A, 25 & 27 of the constitution of Islamic Republic of Pakistan were badly violated. In the last he requested that the impugned orders are wrong and illegal, therefore, the same may be set-aside and the appellant may be reinstated in service with all back benefits.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant remained absent from duty for considerable long period, without any sanctioned leave or permission of the competent Authority. He next contended that charge sheet as well as statement of allegations was issued to the appellant and the same were

10/07/2024

served upon and the appellant also replied the same, however, his reply was found unsatisfactory. He further contended that a regular inquiry was conducted in the matter by complying the relevant provisions of Police Rules, 1975 and there exist no material dents in the inquiry proceedings. He also contended that the proceedings were conducted against the appellant in accordance with relevant rules by complying all legal and codal formalities. In the last he requested that the appellant was in the habit of absenteeism and was previously too awarded punishments on so many occasions, however he did not mend his way, therefore, the appeal in hand is liable to be dismissed.

6. The perusal of the record reveals that departmental proceedings were initiated against the appellant on the allegations that he remained absent from duty without any leave or prior permission of the competent authority. The appellant was issued charge sheet alongwith summery of allegations. There is nothing on the record, which could show that any absence notice was issued to the appellant regarding his alleged absence. Furthermore, no regular inquiry was conducted in the matter and thus the appellant was not provided a chance of personal hearing, violating the principles of natural justice and depriving the appellant of a fair opportunity to present his case, as mandated by Article 10-A of the constitution of Islamic Republic of Pakistan. Moreover, the manner in which the disciplinary proceeding were conducted infringes on the appellant fundamental rights under Articles 4 (due process and lawful treatment), 8 (protection of fundamental rights), 25 (equality before law) and 27 (protection against discrimination in service). Therefore, the


10/07/2024


Service Appeal No.1828/2023 titled "Rehan Ullah Khan versus The Superintendent of Frontier Reserve Police (FRP) District Bannu and others", decided on 10.07.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Mrs. Rashida Bano, Member Judicial Khyber Pakhtunkhwa Service Tribunal, Peshawar.

disciplinary proceedings against the appellant were fundamentally flawed and conducted in violation of the appellant constitutional rights, hence the proceedings lack legal validity.

7. In view of the above, the impugned orders dated 13.04.2023 and 11.08.2023 are set-aside, the appellant is reinstated in service and the matter is remitted back to the competent Authority for conducting of de-novo inquiry in accordance with relevant law/rules within a period of 90 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings by providing him opportunity of self defence as well as personal hearing. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10 day of July, 2024.*


AURANGZEB KHATTAK *07*
Member (Judicial) *10*
2024.


RASHIDA BANO
Member (Judicial)

Naeem Amin



ORDER

10th July, 2024

1. Learned counsel for the appellant present. Mr. Riaz Ahmad Paindakhel, Additional Advocate General alongwith Mr. Saddique Khan, Head Constable for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the impugned orders dated 13.04.2023 and 11.08.2023 are set-aside, the appellant is reinstated in service and the matter is remitted back to the competent Authority for conducting of de-novo inquiry in accordance with relevant law/rules within a period of 90 days of receipt of copy of this judgment. Needless to mention that the appellant shall be associated with the inquiry proceedings by providing him opportunity of self defence as well as personal hearing. The issue of back benefits shall be subject to outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 10 day of July, 2024.*

(Rashida Bano)
Member (Judicial)

(Aurangzeb Khattak)
Member (Judicial)
10.07
2024