

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

BEFORE: **RASHIDA BANO** ... MEMBER (J)
MUHAMMAD AKBAR KHAN ... MEMBER (E)

Service Appeal No. 1137/2022

Date of presentation of Appeal.....21.07.2022
Date of Hearing.....27.06.2024
Date of Decision.....27.06.2024

Muhammad Rasheed Khan, S/o Gul Badshah, R/o Aba Khel, Lakki Marwat.
Ex-Constable No. 521. Police Station, Dadiwala, Lakki Marwat.
.....(Appellant)

VERSUS

1. District Police Officer, Lakki Marwat.
2. The Regional Police Officer, Bannu Region Bannu.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.....(Respondents)

ARBAB SAIFUL KAMAL,
Advocate

--- For appellant.

MUHAMMAD JAN,
District Attorney

--- For respondents

JUDGMENT

MUHAMMAD AKBAR KHAN, MEMBER (E):- The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as under;

"On acceptance of this appeal, order dated 12.07.2021, 23.09.2021 and 26.01.2022 of the respondents be set aside and appellant be reinstated in service with all consequential benefits, with such other relief as may be deemed proper and just in circumstances of the case."

02. Brief facts of the case are that the appellant was appointed as Constable vide

order dated 13.07.2009. The appellant was awarded major penalty of dismissal from service on the allegation of absence from duty vide impugned order dated 12.07.2021. Feeling aggrieved from the impugned order dated 12.07.2021, the appellant filed departmental appeal on 15.07.2021 which was rejected vide order dated 23.09.2021. Thereafter he filed Revision Petition which was filed vide order dated 26.01.2022, hence preferred the instant service appeal on 21.07.2022.

03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant, learned District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that it is evident from Daily Diary dated 22.03.2021, Madad Moharir of Police Station Dadiwala disclosed mental dis-ability of appellant to the respondents, so they were well in knowledge about the illness of appellant who was admitted in Mind Case Rehab Centre, Islamabad; that in the charge sheet/statement of allegations and final show cause notice, the appellant was attributed beating of Line Officer, followed by referring him to Standing Medical Board but he was never informed about the appearance before the Board/Standing Invalidation Committee; that neither statement of any witnesses have been recorded nor the appellant was provided opportunity of cross examination; that even absence from service, if any, was neither willful nor intentional but at the same time, he was ill and admitted in Hospital at Islamabad, so the punishment was not in line with the charges; that the entire proceedings were carried out at the back of the appellant and he has been condemned unheard. He submitted that no regular inquiry has been conducted in the matter which is mandatory obligation on the part of competent authority.

05. On the other hand, learned District Attorney contended that the impugned orders dated are legal, lawful and have been passed in accordance with law, rules and justice, therefore, appeal of the appellant is liable to be dismissed; that the appellant was granted 07 days Casual Leave for the purpose of medical treatment but he did not report his arrival back to duty and absented himself from duty; that the proper charge sheet/statement of allegations as well as Show Cause Notice was served on the appellant and after conducting proper departmental inquiry the appellant was dismissed from service; that proper chance of personal hearing was given to the appellant but he failed to justify his position. He further submitted that all the codal formalities were fulfilled before issuing the impugned order.


06. Perusal of record reveals that the appellant was granted 07 days leave for the purpose of medical treatment but he did not report after expiry of his leave and he was marked absent from duty vide D.D No. 31 dated 18.03.2021 and was dismissed from service on the allegation of absence from duty vide impugned order dated 12.07.2021. The appellant in response to charge sheet/statement of allegations and final show cause notice had submitted his reply reiterating the stance that absence of the appellant was not willful but was due to his illness and also submitted his medical prescriptions, but the respondents neither termed it fake nor sent it for verification but reiterated that the appellant was supposed to inform the authorities well in time about such illness, hence his absence amounts to misconduct, which deserve to be awarded with major punishment. It is a well-settled legal proposition that leave on medical grounds even without permission of the competent authority does not constitute gross misconduct entailing major penalty of dismissal from service. Reliance is placed on 2008 SCMR 214. The inquiry officer was supposed to take a lenient view, instead he recommended him

for major punishment, which appears to be harsh. Mr. Abdul Muneem Khan, ASHO also submitted admission slip of the appellant to the official concerned which is evident from the D.D No. 25 dated 22.03.2021 whereby the appellant was shown admitted in the Mind Care Rehab Centre Ghouri Town Phase 5/4B Islamabad w.e.f 11.03.2021 to 30.06.2021. Record further reveals that the appellant is a psyche patient, hence his case was referred to Standing Medical Board, but he was never informed about appearance before the Medical Board. The appellant was granted leave on medical grounds, but after expiry of such leave, the appellant neither resumed his duty nor requested for extension of leave. However, the said proceedings did not culminate into its logical end and the penalty of dismissal was awarded only on the ground of absence from duty.

07. In view of the above, we remit the instant appeal back to the respondent department to arrange medical board for verification of claim of the appellant on medical ground and then proceed in accordance with the law. Costs shall follow the event. Consign.

08. *Pronounced in open court at camp court at Peshawar Swat and given under our hands and seal of the Tribunal on this 27th day of June, 2024.*


(RASHIDA BANO)
Member (E)



(MUHAMMAD AKBAR KHAN)
Member (E)


ORDER

27th June, 2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today, separately placed on file, we remit the instant appeal back to the respondent department to arrange medical board for verification of claim of the appellant on medical ground and then proceed in accordance with the law. Costs shall follow the event. Consign.

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


(RASHIDA BANO)
Member (J)


(MUHAMMAD AKBAR KHAN)
Member (E)