

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

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

Service Appeal No. 2544/2023

Date of presentation of Appeal.....21.11.2023
Date of Hearing.....27.06.2024
Date of Decision.....27.06.2024

Shaukat Bahadar, Ex-Constable No. 480, District Police Swat.
.....(Appellant)

VERSUS

1. The Regional Police Officer, Malakand at Saidu Sharif, Swat.
2. District Police Officer, Swat.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
.....(Respondents)

FAZAL SHAH MOHMAND,
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 the impugned order dated 03.10.2023 and order dated 22.03.2023, may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits."

02. Brief facts of the case are that the appellant was appointed as Constable in the year 2008. Departmental proceedings were initiated against the appellant and vide impugned order 22.03.2023 he was dismissed from service

on the allegation of absence from his lawful duty without prior permission or leave from the competent authority. Feeling aggrieved from the impugned order dated 22.03.2023, the appellant filed departmental appeal on 03.07.2023 which was filed vide order dated 03.10.2023, hence preferred the instant service appeal on 27.11.2023.

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 the impugned orders dated 22.03.2023 and 03.10.2023 are against the law, illegal, unlawful, without lawful authority and void ab-initio; that the mandatory provisions of law and rules have been badly violated by the respondents and the appellant has not been treated in accordance with law, rules and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan; that the appellant has been dismissed from service on the basis of absence from duty while the appellant duly informed his incharge regarding illness of his brother and with permission to his incharge he was proceeded to his home; that no charge sheet and statement of allegation has been issued to the appellant before issuing the impugned order; that neither Show Cause Notice has been issued to the appellant nor opportunity of personal hearing was afforded to the appellant; 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 22.03.2023 and 03.10.2023 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 all the codal formalities were fulfilled before issuing the impugned order. He further contended that opportunities of personal hearing and self-defense were provided to the appellant during departmental probe and after proper departmental inquiry he was awarded major penalty of dismissal from service as per law/rules.

06. Perusal of record reveal that the appellant was proceeded against on the ground of absence for the mentioned period, however the authority has treated the mentioned period as leave without pay. The stance taken by the appellant in his departmental appeal that his brother was ill and with permission ^{from} to his incharge he proceeded to his home, but the respondents proceeded the appellant in absentia and did not take into consideration his contention. Moreover, regular inquiry is must before imposition of major penalty of dismissal from service. The appellant was not treated as per law, as in case of willful absence, the appellant was required to be proceeded against under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, but the respondents acted in arbitrary manner and dismissed the appellant. Record further reveals that the appellant was proceeded against in absentia and nothing is available on record to suggest that charge sheet/statement of allegation was served upon the appellant. Similarly, no regular inquiry was conducted against the appellant; hence, the appellant was kept deprived of the opportunity to defend his cause. Moreover, the regular inquiry is required before imposition of major


penalty of dismissal from service, which however was not done in case of the appellant.

07. We also observe that charge against the appellant was not so grave as to impose the penalty of dismissal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. The appellant has served the respondent department for 14 years. He admitted his absence but such absence was not willful, which does not constitute gross misconduct entailing major penalty of dismissal from service. The appellant was not guilty of charges of gross misconduct or corruption, therefore extreme penalty of dismissal from service for the charge of absence is on higher side, hence, quantum of the punishment needs to be reduced. The competent authority had jurisdiction to award any of the punishments mentioned in law to the government employee but for the purpose of safe administration of justice such punishment should be awarded which commensurate with the magnitude of the guilt otherwise the law dealing with the subject would lose its efficacy.

08. In view of the foregoing discussion, the instant appeal is partially accepted. The penalty of removal from service is converted into minor penalty of stoppage of three annual increments for two years and the intervening period is treated as leave without pay.

09. *Pronounced in open 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)

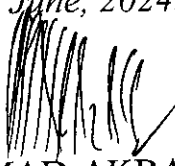
ORDER

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, the instant appeal is partially accepted. The penalty of removal from service is converted into minor penalty of stoppage of three annual increments for two years and the intervening period is treated as leave without pay.

3. *Pronounced in open 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)