

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

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

Service Appeal No. 1495/2022

Date of presentation of Appeal.....13.10.2022
Date of Hearing.....26.06.2024
Date of Decision.....26.06.2024

Gohar Zaman Constable Driver No. 917 S/o Muhammad Yousaf R/o Moh:
Inayat Khel, Swabi, Tehsil & District Swabi.....(**Appellant**)

VERSUS

1. District Police Officer Swabi.
2. Regional Police Officer (RPO) Deputy Inspector General Mardan Region Mardan.
3. Inspector General of Police Peshawar.....(**Respondents**)

NAVEED JAN,
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;

"That on acceptance of appeal, both the impugned orders dated 16.08.2018 and 01.04.2019 may be set aside and the appellant may be reinstated in service with all back benefits."

02. Brief facts of the case are that the appellant was appointed as Driver Constable vide order dated 06.06.2018. The appellant while posted at Police

Lines, Swabi, absented himself for lawful duty without any leave/permission of the competent authority w.c.f. 12.07.2021. Disciplinary proceedings were initiated against the appellant on the allegation of willful absence from duty and he was dismissed from service vide order dated 17.12.2021. Feeling aggrieved from the impugned order dated 17.12.2021, the appellant filed departmental appeal on 17.08.2022 which was rejected vide order dated 03.10.2022, hence preferred the instant service appeal on 13.10.2022.

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 for the respondents and have gone through the record with their valuable assistance.

 04. Learned counsel for the appellant contended that the appellant never remained absent from duty rather was performing his duties with High Police Official since 2008; that neither notice regarding his absence was issued nor he was asked to stop performing duties with Police official or his family; that the dismissal order shocked the appellant who suffered from depression and remained under treatment till today. Learned counsel for the appellant further contended that proper charge sheet/statement of allegations was not issued to the appellant. No Show Cause Notice was issued to the appellant and no chance of personal hearing was provided to the appellant. He has, therefore, been condemned unheard.

05. Learned District Attorney on the other hand contended that the order of dismissal from service is strictly in accordance with law/rules; that after death of late DIG Muhammad Yamin Khan, appellant was directed to report in

police line, but he disobeyed the directions of respondent No. 1 and remained absent from duties which he could not justify; that the respondent No. 1 before passing the impugned order provided opportunity of defense/personal hearing, but due to disinterest he failed to appear for personal hearing despite service of notices hence the order dated 15.12.2021 is speaking in nature.

06. Perusal of record reveals that the appellant was proceeded against on the allegation of absence from duty w.e.f. 12.07.2021 and was dismissed from service vide impugned order dated 17.12.2021. Record of his medical prescriptions would suggest that the appellant is Psychiatric patient and remained under treatment, but the respondents have not taken into consideration his illness. The appellant himself admitted that his absence was due to his illness, which was not taken into consideration by both the competent and appellate authorities. Rule 13 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 provide as under:

Leave on Medical Certificate.---Leave applied for on medical certificate shall not be refused. The authority competent to sanction leave may, however, at its discretion, secure a second medical opinion by requesting the Civil Surgeon or the Medical Board to have the applicant medically examined. The existing provisions contained in Supplementary Rules 212, 213 and Rule 220 to 231 for the grant of leave on medical grounds will continue to apply

07. We also observe that the appellant was not afforded appropriate opportunity to defend his case and was proceeded against ex-parte without serving charge sheet/statement of allegations, nor any show cause was served upon him. The appellant was also not associated with proceedings of the departmental inquiry due to the reason that he did not turn up in spite of repeated calls. In a situation, it was expedient to follow general law relating to absence from duty as contained in Rule-9 of Khyber Pakhtunkhwa

Government Servants (Efficiency & Discipline) Rules, 2011, which however was not done in case of the appellant, which shows that the appellant was not treated in accordance with law.

08. In view of foregoing findings we are constrained to partially accept the instant appeal. The appellant is re-instated in service for the purpose of de-novo inquiry with direction to respondents to probe the absence period of illness of the appellant in accordance with law/rules. Costs shall follow the event. Consign.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26th day of June, 2024.*



(RASHIDA BANO)
MEMBER (J)



(MUHAMMAD AKBAR KHAN)
MEMBER (E)

ORDER

26.06.2024

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 are constrained to partially accept the instant appeal. The appellant is re-instated in service for the purpose of de-novo inquiry with direction to respondents to probe the absence period of illness of the appellant in accordance with law/rules. Costs shall follow the event. Consign.
3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 26th day of June, 2024.*


(RASHIDA BANO)
MEMBER (J)


(MUHAMMAD AKBAR KHAN)
MEMBER (E)