

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 131/2024

BEFORE: KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Rizwan Khan Constable No. 2291, Police Post Mazanga, District Bannu.
.....(Appellant)

Versus

1. Province of Khyber Pakhtunkhwa through Inspector General of Police/Provincial Police Officer, Central Police Office, Peshawar.
2. Regional Police Officer, Bannu Region, Bannu.
3. District Police Officer, Bannu.(Respondents)

Mst. Hira Babar, ... For appellant.
Advocate

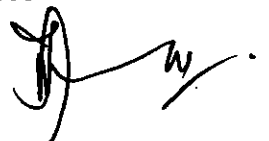
Mr. Muhammad Jan, ... For respondents
District Attorney

Date of Institution.....	04.01.2024
Date of Hearing.....	31.07.2024
Date of Decision.....	31.07.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 18.01.2023 passed by respondent No. 3, whereby the appellant was awarded major penalty of dismissal from service and his departmental appeal was rejected by respondent No. 2 vide order dated 20.04.2023 in disregard of the rules and principles of natural justice, with the prayer to set aside both the impugned orders and reinstate the appellant into service with all back benefits, alongwith any other relief which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined the Police Force as Constable on 01.03.2020. On



12.01.2023, he, while posted at Police Post Mazanga Haved Bannu became seriously ill and was unable to perform his duty for a single day. On 18.01.2023, respondent No.3 passed the impugned order and imposed major penalty of dismissal from service upon the appellant on the pretext of absence from duty. After the impugned order of dismissal from service dated 18.01.2023, a show cause notice dated 19.01.2023 was served upon the appellant, which was a blatant violation of the law, procedure and rules. Feeling aggrieved, the appellant filed his departmental appeal before respondent No. 2, the appellate authority, but he rejected his departmental appeal vide impugned order dated 20.04.2023; hence the instant service appeal.

3. Respondents were put on notice who submitted their reply/comments on the appeal. We heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that impugned orders were passed without following the due process of law and hence they were illegal and void. He further argued that the impugned order was passed on 18.01.2023 while the show cause notice was served upon the appellant on 19.01.2023, after issuance of the impugned order, thus making the entire proceedings illegal, void and unsustainable under the law. He further argued that before passing the impugned order, no proper inquiry was conducted to dig out the truth and that the order was passed in a haphazard manner. No chance of personal hearing was afforded to him and he was condemned unheard. According to



him, the impugned order was in violation of Article 10-A of the Constitution of Islamic Republic of Pakistan. Learned counsel for the appellant referred to a judgment dated 21.11.2023 passed by the Tribunal in Service Appeal No. 979/2023 titled "Sair Ullah Versus Province of Khyber Pakhtunkhwa through Inspector General of Police/Provincial Police Officer, Peshawar and others" in which the same order dated 18.01.2023 was impugned and the service appeal was allowed. He stated that the appellant was entitled to the same treatment as both the cases were of similar nature. He requested that the appeal might be accepted as prayed for.

5. Learned District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the Supervisory Officer (SDPO) Rural, Mr. Imran Ullah Khan, on 11.12.2023 at 11.00 PM to 5.00 AM visited the said PP Mazanga, checked the strength of police nafri and it was found that in total strength, 16 individuals were on leave and 05 officials were found absent, including the present appellant. Show cause notice was issued to him under Police Rules, 1975 to which his reply was found inconvincible and the punishment of dismissal from service was imposed upon him, after observing all the codal formalities. He argued that his departmental appeal was rejected being devoid of merit. He requested that the appeal might be dismissed.


6. Arguments and record presented before us show that the appellant was appointed as Constable in the Provincial Police on 01.03.2020. Through the impugned order dated 18.01.2023, he, alongwith five other constables, was dismissed from service on the charge of absence from duty



by the District Police Officer, Bannu. Later on, a show cause notice dated 19.01.2023 was issued to him, alongwith four other constables, under rules 5(3) of Police Rules 1975, and he was directed to submit reply within seven days of the receipt of that notice, failing which ex-parte action would be taken against him. It was noted that the DPO Banuu did not bother to give any heed to the rules under which he had to proceed against the appellant. He issued the order of dismissal first and later on, as an afterthought, issued a show cause notice on the next day. The rule to which he referred in the show cause notice, i.e Rule 5(3) of the Khyber Pakhtunkhwa Police Rules 1975, clearly mentioned that a reasonable opportunity of showing cause had to be given to the appellant before passing any order of punishment, which was not done in case of the appellant. It was further noted that the charge of absence was also not specified in the dismissal order.

7. From the above discussion, it transpires that the appellant had been dismissed from service without following the due process. He had been awarded a major punishment without giving him any opportunity of defence, which is highly against the spirit of fair trial. The service appeal in hand is, therefore, allowed as prayed for. Costs shall follow the event. Consign.

8. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 31st day of July, 2024.*


(FAREEHA PAUL)
Member (E)



(KALIM ARSHAD KHAN)
Chairman

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31st July, 2024 01. Mst. Hira Babar, Advocate for the appellant present.
Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, it transpires that the appellant had been dismissed from service without following the due process. He had been awarded a major punishment without giving him any opportunity of defence, which is highly against the spirit of fair trial. The service appeal in hand is, therefore, allowed as prayed for. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 31st day of July, 2024.*


(FAREEHA PAUL)
Member (E)


(KALIM ARSHAD KHAN)
Chairman

Fazal Subhan PS