

04.04.2024

01. Counsel for the appellant present. Mr. Arshad Azam, Assistant A.G alongwith Sohrab Khan, Law Officer for the respondents present.

02. Reply/comments on behalf of the respondents not submitted. Representative of the respondents requested for some time. Granted. To come up for written reply/comments on 08.05.2024 before the S.B. PP given to the appellant.


(Fareeha Paul)
Member(E)

Fazle Subhan, P.S

8th May. 2024

1. Learned counsel for the appellant and Mr. Arshad Azam, Assistant Advocate General for the respondents present.

2. Reply has been submitted through office. Copy of the same was handed over to the appellant's counsel. To come up for arguments on 15.07.2024 before D.B. P.P given to the parties.


(Kalim Arshad Khan)
Chairman

*Mutazem Shah *

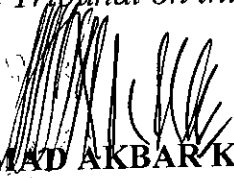
ORDER


15.07.2024 1

Learned counsel for the appellant present. Mr. Muhammad Jan, Learned District Attorney and Sohrab Khan, Law Officer for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to set aside the impugned orders, direct the respondent to reinstate the appellant into service and the absence period be treated as leave without pay. Costs shall follow the event. Consign.


3. *Pronounced in open court at Peshawar and given our hands and seal of the Tribunal on this 15th day of July, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)
Camp Court Swat


(RASHIDA BANO)
Member (J)
Camp Court Swat

11. We are unison to set aside the impugned order to extent of removal from service and respondents are directed to reinstate the appellant into service. Costs shall follow the even.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 15th day of July, 2024.*


(MUHAMMAD AKBAR KHAN)
Member (E)


(RASHIDA BANO)
Member (J)

prescription is dated 22.06.2023; while when again appellant went to that hospital on 05.07.2023, he advised again two weeks rest. Inquiry officer termed this prescription as fabricated due to over writing/printing of prescription which according to him was photocopy. If inquiry officer had some sort of doubts into genuineness of prescription and illness of appellant, he should have sent the same for verification to the District Head Quarter Teaching Hospital, but he instead of doing so straight away disbelieved it, which is not mandate and spirit of law and rules.

9. The most important factor in the instant appeal is that respondent/department was in knowledge of fact of illness and even nature of illness i.e. stones in kidneys, because upon doctor advised and rest prescribed after checked up of the appellant, who was taken to hospital from his duty place by Muharrir of Jail and he was granted leave, then in such a situation passing of impugned order appear to be harsh or removal from service is unjustified. The other factor is that appellant after recovery joined his duties and was regularly performing his duties when he was issued charge sheet and statement of allegation.

10. It is important to note that respondent being employers are like parents of the Civil Servant. Therefore, they must took into consideration facts of illness of the appellant sympathetically, otherwise of sickness to be overlooked and a civil servant be denied leave on medical grounds. As appellant had not applied for medical leave therefore, he is not entitled for back benefits of the absence period.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that appellant was serving in respondent/department as Wardan, when 19.06.2023, he felt severe pain in his belly and he was taken to the hospital by the Muharrir of Sub Jail Meeran Shah, where after check up, stone in kidneys were diagnosed and he was advised three days bed rest, upon which he was granted leave and he went to his home, his condition was not stable that he went to his Jail/duty place and informed his high ups about his illness's condition who permitted him.

7. Appellant remained under treatment when he received notice for resumption of duties issued by Superintendent Circle Headquarters Prison, D.I.Khan dated 27.07.2023, upon which appellant rejoined his duties on 05.08.2023 and submitted his medical prescription on proof of his illness but respondent issued charge sheet and statement of allegations on 23.08.2023 on the ground of willful absence from duty from 22.06.2023 till 04.08.2023 total 43 days, as he resumed his duty on 05.08.2023. Mr. Atiq ur Rehman, Assistant Superintendent Central Prison, D.I.Khan was appointed as inquiry officer, who conducted inquiry, wherein appellant also stated that he had stones in his both kidneys and was in severe pain and went to different Doctors and hospital for his treatment due to which he was unable to attend his duties. Appellant also produced medical prescriptions, which annexed with the appeal.


8. Inquiry officer, in his inquiry, mentioned that appellant was advised two weeks rest by the medical officer of that hospital MTI Bannu, that



2. Brief facts of the case are that appellant was appointed as Warder on 22.01.2015 and since then he performed his official duty up to the entire satisfaction of his superiors. During service the appellant felt pain in kidney and was taken to CMC Hospital, Miranshah during duty hours and then on 18.06.2023 was again examined and three days medical leave was suggested to him. Similarly on 22.06.2023, 05.07.2023, 24.07.2023 and 02.08.2023 was examined in the hospital and two weeks and ten days respectively bed rest was given to him. During this period 29.06.2023, 30.06.2023 and 02.07.2023, he was taken to hospital by RESCUE 1122 to CMC Hospital, Miranshah and then to DHQ Hospital Bannu. On 27.07.2023, notice for resumption of duty was issued to the appellant to resume duty, otherwise he will be removed from service. On 06.10.2023 appellant was removed from service by respondent No. 1 retrospectively. Feeling aggrieved, he filed departmental appeal on 11.10.2023, which was rejected on 22.01.2024, hence the present service appeal.

3. On receipt of the appeal and its admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeal by filing written reply raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellant.

4. We have heard learned counsel for the appellants and learned District

 Attorney for the respondents.

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.281/2024

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

**Arman Ullah S/O Muhammad Ali Jan, R/O Serdi Khel Baka Khel,
District Bannu, Ex-Warder, Sub-Jail Miran Shah.**

.... (*Appellant*)

VERSUS

1. Superintendent Circle Headquarter, Prison D.I.Khan.
2. Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.

.... (*Respondents*)

Arbab Saiful Kamal
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....16.02.2024
Date of Hearing.....15.07.2024
Date of Decision.....15.07.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of this appeal, the impugned orders dated 06.10.2022 and 22.01.2024 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.”

