


ORDER

27.06.2024 1 Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, learned Deputy District Attorney alongwith Mr. Malik Jan, Inspector (Legal), for respondents present.

2. For what has been discussed above, we are unison to dismiss the instant appeal. 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 27th day of June, 2024.*


(MUHAMMAD AKBAR KAHN)
Member (M)



(RASHIDA BANO)
Member (J)

*Kalecmullah

be incompetent. In this regard reference can be made to cases titled Anwar ul Haq vs. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

11. For what has been discussed above we are unison to dismiss the instant appeal. Costs shall follow the event. Consign.

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


(MUHAMMAD AKBAR KAHN)
Member (M)


(RASHIDA BANO)
Member (J)

*Kaleemullah

and other circumstance, major penalty of compulsory retirement was imposed upon appellant vide order dated 12.04.2021.

8. It is an admitted fact that appellant himself was not ill and he being a member of disciplinary force and educated civil servant having a sufficient length of service is bound to maintain service discipline by obeying orders of his superiors which he had not done. So, under the rules he was required to file leave application duly supported by medical documents of his father, but he did not bother to do so for the reason best known to him, failed to satisfy the inquiry officer about his father illness genuineness and to show that his absence was not willful.

9. He was afforded opportunity of defense by respondents and was dealt with in accordance with law and rules. Departmental appeal and revision petition of the appellant were dismissed on the ground of limitation being time barred, which factum of time barred departmental appeal is evident from ground (G) of his departmental appeal which read as;

“(g). That since the date of compulsory retirement, the appellant was an extreme distress and anguish due to parent’s long illness and treatment. The appellant’s mother has recently been passed away, therefore, was unable to prefer an appeal to the appellate authority within due course of time.

10. It is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would



6. Perusal of record reveals that appellant was appointed as constable in respondent department vide order dated 12.02.2022 was performing his duties with devotion. Appellant due to some urgency applied for leave on 17.09.2020 and 21.09.2020. Appellant was issued with charge sheet and statement of allegations which are given below;

“You LHC Fazal Rabi transferred from the Special Branch to this district Police vide the W/Inspector General of Police Khyber Pakhtunkhwa Peshawar order dated 25.09.2020 but you LHC Fazal Rabi failed to report at your new place of posting and absented yourself from lawful duty w.e.f. 09.10.2020 to till date without any leave or prior permission. Your pay has been stopped to this effect. This state of affair is quite adverse on your part and shows your negligence, carelessness and irresponsibility in the discharge of your official obligations. This act on your part is against service discipline and amounts to gross misconduct.”

7. DSP Head Quarter Karrak was appointed inquiry officer who summon the appellant, appellant appeared before him and produce medical documents of his father's illness as justification for his absence. Inquiry officer mentioned in his report that appellant make excuse of his father's illness to cover his willful absence by arranging medical prescription of his father form private doctors and recommended major punishment of compulsory retirement, after receipt of report authority passed impugned order keeping in view his length of service



“On acceptance of this instant service appeal of the appellant the impugned orders dated 12.04.2021 & 23.11.2022 may very kindly be set aside and respondents may please be directed to reinstate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.”

2. Brief facts of the case are that the appellant was appointed as Constable in Police Department vide order dated 12.02.2002. The appellant submitted an application on 17.09.2020 and 21.09.2020 to the respondents for grant of leave due to death of his mother and ailment of his father. On 12.04.2020 respondents issued impugned order whereby major penalty of compulsory retirement from service was awarded. Feeling aggrieved, he filed departmental appeal, which was rejected, 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 Deputy District Attorney for the respondents.

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



BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1901/2022

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

**Mr. Fazal Rabi, Ex-LHC No.838, Village Asat Khel, Korona City, Karak,
Post Office, Tehsil & District Karak.**

.... (*Appellant*)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Kohat Region.
3. The District Police Officer, Karak.
4. The Accountant General of Khyber Pakhtunkhwa, Peshawar.
5. The District Account Officer, District Karak.

.... (*Respondents*)

Mr. Afrasiab Khan
Advocate ... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney ... For respondents

Date of Institution.....22.12.2022
Date of Hearing.....27.06.2024
Date of Decision.....27.06.2024

JUDGMENT

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

below:

