

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 11467/2020**

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

**Mr. Tasbih Ullah Ex-Head Constable (BPS-7) Police District Swabi.**  
**.... (Appellant)**

**VERSUS**

1. The Regional Police Officer, Mardan, Central Police Lines, District Mardan, Khyber Pakhtunkhwa.
  2. The District Police Officer Swabi, District Head Quarter of Police Swabi, Khyber Pakhtunkhwa.
- .... (Respondents)**

Mr. Zia ud Din Khan  
Advocate ... For appellant

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

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Date of Institution.....16.09.2020  
Date of Hearing.....25.06.2024  
Date of Decision.....25.06.2024

**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:

**“(i) On acceptance of this Appeal, the impugned Office Order No.2063-68/PA, Dated Swabi, The 25.09.2019 of the respondent No.3/ the District Police Officer (DPO) regarding the appellant dismissal from service is illegal and unlawful may please be set-aside and the appellant shall be reinstated to service with all back benefits.**



**ii) On acceptance of the appeal in hand, the inquiry proceedings conducted by the respondents against the appellant in Ex-Parte shall be declared null and void as the same against the Law and Principles of Natural Justice and the case of the appellant shall be referred for a 'De-novo Inquiry.**

**iii) Any other relief deems proper in the circumstances of this case may also be granted in favor of the appellant."**

2. Brief facts of the case are that appellant was appointed as Constable in respondent department in the year 2007 and was performing his duty with zeal and zest. Later on he was promoted to the rank of Head Constable. On the basis of absence, respondents dismissed the appellant from service vide impugned order dated 24.09.2019. Feeling aggrieved, appellant filed departmental appeal, which was dismissed vide order dated 24.08.2020, hence the instant 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).

6. Perusal of record reveals that appellant was initially appointed/recruited as a Constable (BPS-05) in the Khyber Pakhtunkhwa Police in 2007 at his dwelling District Mardan, where he rendered his services, with honesty, zeal



and zest to the entire satisfaction of his superiors. Later on, the appellant was promoted as Head Constable (BPS-7).

7. Appellant absented himself from his duty place on 08.04.2019 without any application and prior approval of his high ups. On the basis of which authority first issued show cause notice which was not responded by the appellant, therefore appellant was issued charge sheet and statement of allegation on 20.05.2015 with the allegation which is reproduced here;

***“It is alleged that HC Tasbih Ullah No.615, while posted to Police Post Azam Abad, absented himself from duty with effect from 08.04.2019 till date, he was issued with show cause notice and directed to receive but the directions fell on deaf ears and he did not bother to receive. His this act highly is against the discipline and amounts to gross mis-conduct, hence summary of allegation.”***

8. Appellant three notices upon unit address of the appellant was sent by inquiry officer, which return back with the note that appellant is still absent. Efforts were made to contact appellant upon cell phone but same was also switched off. Then inquiry officer submitted his report with remarks that appellant absented himself willfully and switched off his cell phone intentionally, so he may not be contacted by any police official about his duty and departmental inquiry found him guilty. Inquiry officer recommended for major punishment. The Authority after receipt of inquiry report issued final show cause notice which was served upon as same was received by the one Muhammad Nouman S/o Anwar Sher brother of the appellant which is evident from Daily Diary No.6 dated 06.09.2019, is

written by Kifayat Khan ASI to whom notice for service upon the appellant was marked. Proof of receipt of show cause notice and its receiving i.e. served upon brother of the appellant, who signed the same as a token of its receipt.

9. Appellant did not deny from the fact that Muhammad Noman is his brother. Both are residing in same place as address upon notice is one & same of the both i.e. appellant and his brother. Appellant contended that he was patient of T.B and was unable to move but in our humble view T.B is not such a disease due to which one cannot even through a cell phone call informed his immediate boss or any other colleague about his illness and to ask for leave or submit application for medical leave. Medical prescription annexed with the appeal reveals that appellant visited doctor on 04.04.2019 and attended his office after it as his absence is from 08.04.2019, if he infact was ill having T.B then he had opportunity to informed his high ups by submitting proper leave application for on medical grounds, but he had not done so, for the reason best known to him.

10. Appellant was not admitted in any hospital rather annexed prescription, which shows that he visited doctor on monthly basis, which show that he can move and can easily filed application at time of his monthly doctor visit by visiting his office. Appellant was a civil servant serving in a disciplinary force and he was under obligation to follow the service discipline, rules and regulation i.e. to obtain leave by submitting leave application but he failed to do so which disentitled him for any relief.



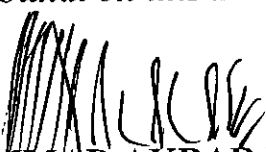
11. The Impugned order was passed on 24.09.2019 and appellant filed his departmental appeal on 10.07.2020 which was dismissed on the ground of limitation too, which reads as;

*“It is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwar ul Haq v. 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.”*

12. It is also important to note that appellate authority in his order mentioned that earlier too appellant was dismissed from service due to his absence who was re-instated vide order dated 22.12.2017, which show that he is habitual and willful absentee.

13. For what has been discussed above, we are unison to dismiss the service appeal in hand. Cost shall follow the events. Consign.

14. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 25<sup>th</sup> day of June, 2024.*

  
(MUHAMMAD AKBAR KHAN)  
Member (E)

  
(RASHIDA BANO)  
Member (J)

13<sup>th</sup> June, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Being not prepared, learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 25.06.2024 before the D.B. Parcha Peshi given to the parties.



(Muhammad Akbar Khan)  
Member (Executive)



(Kalim Arshad Khan)  
Chairman

\*Naeem Amin\*

**ORDER**

25.06.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Fazle Subhan, H.C, for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to dismiss the service appeal in hand. Cost shall follow the events. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 25<sup>th</sup> day of June, 2024.*



(MUHAMMAD AKBAR KHAN)  
Member (E)



(RASHIDA BANO)  
Member (J)

\*M.Khan