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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.7449/2021

BEFORE:MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER(J)

Mr. Aftab Hussain S/O Fzal Khaliq (Technician) Central Prison Mardan.
... (Appellant)

VERSUS

1. Secretary Home & Tribal Affairs Department.
 2. The Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar.
- ... (Respondents)

Syed Noman Ali Bukhari
Advocate ... For appellant

Muhammad Jan
District Attorney ... For respondents

Date of Institution.....20.09.2021
Date of Hearing.....30.07.2024
Date of Decision.....30.07.2024

SCANNED,
KP ST
Peshawar

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 order passed by respondent No. 2 dated 17.12.2020 may please be set aside and the annual increment may be restored to appellant



and intervening period w.e.f 23.07.2011 to 12.03.2014 (date of judgment) and from 13.03.2014 to 08.06.2017 (date of reinstatement) may please be treated as full pay or leave of the kind due with all back and consequential benefits. Any other remedy which this august tribunal deems fit and appropriate that may also be awarded in favour of appellant.”

2. Brief of the case are that appellant was appointed as Dispenser in Prison Department on 04-11-2004; that on 19.4.2010 the appellant was transferred from Dassu (Kohistan) to Sub Jail Daggar Buner, where the appellant started his duty and on 08-06-2010, after two months transfer order of the appellant was cancelled and the appellant was relieved on 01.07.2010 from Sub Jail Daggar back to Dassu District, Kohistan. Due to medical problems, the appellant could not resume duty at Sub Jail Dassu. On 26-11-2010, a fresh transfer order from Sub Jail Dassu Kohistan to Sub Jail Daggar was issued, where the appellant joined his service. That after joining, so called inquiry proceedings were conducted by the jail Superintendent Swat, and Inquiry Officer recommended stoppage of 4 increments as well as the period of absence be treated as extra ordinary leave without pay. In spite of the fact that the punishment of dismissal was not recommended in the findings of the inquiry proceedings, the appellant was awarded major penalty of dismissal from service vide order dated 23.07.2011. Appellant filed departmental appeal on 16.08.2011, which was rejected by the appellate authority. Feeling aggrieved, he filed service appeal No: 941/2011, which was accepted vide judgment dated 12.03.2014, whereby the impugned orders were set-aside and

the appellant was re-instated in to service and the proceeding was remanded to the competent authority for an order a fresh. The appellant was re-instated into service vide order dated 08.06.2017, while the back benefit of the intervening period has been left on the decision of the CPLA/de-novo inquiry. Respondents issued impugned order dated 17.12.2020, against which he filed departmental appeal, which was not responded, 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 appellant and learned 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 District Attorney controverted the same by supporting the impugned order(s).

6. Perusal of record reveals that this is second round of litigation because earlier the appellant filed service appeal No.194/2011 wherein he had challenged his dismissal from service order dated 23.07.2011 said service appeal was decided vide order and judgment dated 12.03.2014 relevant para is reproduced for ready reference;

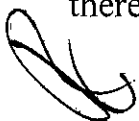
“Consequently, on the acceptance of the appeal, both the impugned orders of the competent authority dated 23.07.2011



and that of the appellate authority conveyed through memo dated 27.10.2011 are set aside, and the appellant is reinstated in service. The departmental proceedings are accordingly remanded to the competent authority for an order afresh strictly in accordance with law and the observations made above as early as possible within the period prescribed by the law. The grant or otherwise of back benefits to the appellant shall be subject to the outcome of back benefits to the appellant shall be subject to the outcome of departmental/inquiry proceedings. There shall, however, be no order as to costs."

7. Respondent after receipt of order of this Tribunal and upon filing of execution petition by the appellant conditionally reinstated him into service vide order dated 08.06.2017 subject to outcome of CP Bearing NO.287-P of 2014 was dismissed vide judgment dated 01.09.2020 by the august Supreme Court on the ground that Tribunal had remanded the matter back and the department is free to take action in accordance with impugned order. After which Inspector General of Prisons passed vide impugned order dated 17.12.2020, vide which minor penalty of withholding increments for period of one year was awarded and absence period from 01.07.2010 to 25.11.2020 and intervening period from date of dismissal from service to the date of reinstatement in service was treated as leave without pay. Appellant filed departmental appeal to seek his back benefits which was not decided.

8. Appellant was awarded minor punishment of stoppage of increments, therefore, he was not entitled for back benefits of period of absence as well as




of intervening period from dismissal till decision of appeal by this Tribunal i.e. 12.03.2014 but as this Tribunal order his reinstatement into service on 12.03.2014 but respondent did not comply it and keep it pending on the pretext of filing of CPLA in Supreme Court till 08.06.2017 and vide impugned order after dismissal of CPLA. Respondent were under obligation to reinstate the appellant into service after judgment of this Tribunal dated 12.03.2014 and conclude de-novo inquiry proceeding within 90 days but they accept the matter pending till impugned order dated 17.12.2017, wherein appellant was reinstated into service and minor penalty was imposed upon him. Legally speaking appellant was forced to remain out of service by the respondents during this period i.e. from judgment of this Tribunal 12.03.2014 to 17.12.2017 but without any fault at his part. Therefore, he is entitled for back benefits of the period from judgment of this Tribunal till passing of impugned order.

9. For what has been discussed above, we are unison to partially allowed appeal in hand to the extent of back benefits of period from 12.03.2014 till 17.12.2017 only. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 30th day of July, 2024.*


(KALIM ARSHAD KHAN)
Chairman


(RASHIDABANO)
Member (J)

*Kaleemullah

SCANNED
KPSY
Peshawar