

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ...CHAIRMAN**
RASHIDA BANO ...MEMBER (Judicial)

Service Appeal No.213/2022

Date of presentation of appeal.....17.02.2022
Dates of Hearing.....20.09.2024
Date of Decision.....20.09.2024

Saeed Ullah No.635 (Ex-Constable District Police, Nowshera) S/O
Abdullah Jan R/O Khdrezi, Tehsil Pabbi, District Nowshera
.....(**Appellant**)

Versus

1. **District Police Officer, Nowshera.**
2. **Deputy Inspector General of Police, Mardan Region, District Mardan.**
3. **Inspector General of Police, Police Headquarters, Police Line, Peshawar.....(Respondents)**

Present:

Mr. Muhammad Arif Jan, Advocate.....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDERS DATED 02.07.2019 AND 24.11.2021 OF RESPONDENTS NO.1 & 2 RESPECTIVELY IN RESPECT OF THE DISMISSAL FROM SERVICE OF THE APPELLANT.

JUDGMENT



KALIM ARSHAD KHAN CHAIRMAN: Appellant's case as per memo and grounds of appeal are that he was appointed as Constable on 02.12.1996 and was serving in the Police Department; that FIR No. 158 dated 23.02.2019 U/S 302/324/34 PPC of Police Station Pabbi, District Nowshera; that due to the alleged threats from the opponents, the appellant sided himself

from the scene; that a pre arrest bail application, moved by the appellant before a Criminal Court was confirmed vide order dated 28.06.2021, where-after he approached his office, where he came to know that he had been dismissed from service on 02.07.2019; that feeling aggrieved of dismissal order, he filed departmental appeal on 13.07.2021 but that was rejected on 24.11.2021, therefore, he filed the instant service appeal.

02. 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.

03. We have heard learned counsel for the appellant and learned Deputy District Attorney for the respondents.

04. 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).

05. Perusal of record reveals that FIR was lodged against the appellant due to which he remained as absconded. Resultantly, he was dismissed from service on the ground of absence. After earning a pre-arrest bail in the year 2021 i.e. more than two years, he approached the respondent department, where he received his dismissal order dated 02.07.2019. The said order was assailed by



the appellant through a departmental representation, however, the same was regretted on the ground of being barred by time.

06. There are two issues involved in this appeal, firstly, the appellant remained absconded for more than two years, and secondly, his departmental appeal is barred by time. On the same very issue, this Tribunal vide its judgment passed by the a larger bench in Appeal No.7494/2021 titled "Muslim Khan Vs. Police Department" has held that:

"The point for determination in this appeal was that a civil servant, who after his involvement in a criminal case, became fugitive from law, could make his absconsion a reasonable ground to explain absence.

08. *Learned counsel for the appellant relied on 2003 SCMR 338 titled "Government of NWFP through Secretary, Finance, Excise and Taxation Department Peshawar and 2 others Versus Aurangzeb", 2006 SCMR 434 titled "Lahore Development Authority and others Versus Muhammad Nadeem Kachloo and another", 2012 SCMR 165 titled "Director General, Intelligence Bureau, Islamabad Versus Muhammad Javed and others" and 2024 SCMR 541 titled "Rahimullah Khan Versus Deputy Postmaster General, Southern Postal Region, Khyber Pakhtunkhwa and others". But none of the above judgments discussed the question of abscondance.*

09. On the contrary, learned District Attorney relied on 2017 SCMR 965 titled "Federation of Pakistan through Secretary Ministry of Defence and another Versus Bashir Ahmed, SBA in MES, Ministry of Defence, GE (Army), Nowshera". Para-04 of the said judgment is relevant, which is reproduced as under:

"4. It has come on the record that during the period of absence, no attempt was made on behalf of the respondent to apply for leave. The respondent's counsel himself stated before the Tribunal that the reason for his absence was that he went underground being involved in a murder case and it was only on the basis of a compromise with the victim's relatives that he was acquitted in September, 2012. Though the criminal case came to an end in September, 2012 and he was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the compromise was reached with the victim's family members. To seek condonation of absence during his absconsion would amount to putting premium on such act. If this is made a ground for condonation of absence, then in every case where the civil servant is involved in a criminal case and absconds, his absence from duty would have to be condoned. The act of absconsion or being a fugitive from law cannot be regarded as a reasonable ground to explain absence. Even where a person is innocent, absconsion amounts to showing mistrust in the judicial system. Learned counsel for the respondent was asked to show as to whether in any case, this Court has condoned the absconsion and the departmental action was set aside, he was unable to satisfy this Court on this point. In the circumstances, the case relied upon by the respondent's counsel is of no help to the case of the respondent as it has no relevant in the facts and circumstances of this case."

10. We may also refer to the judgment of the Federal Service Tribunal, reported as 1996 PLC (CS) 988 titled "Zarghunshah Versus Surgeon General, General Headquarter, A. G. Branch, MED DTE DMS 3(B), Rawalpindi and another" wherein, while dealing with the issue of absence of civil servant after his involvement in criminal case, found as under:

"5. We have heard the learned counsel for the parties and have also perused the record. It appears from the record that the appellant had remained absent from duty with effect from 5 5 1990 but, in spite of notices, he did not bother to submit any application for leave nor he tendered any explanation therefor. If the appellant's submission that he had submitted an application for one month's leave on 5 5 1990 is admitted even then he has no case because he was arrested on 17 4 1993 and was released on bail on 6 6 1993. He has failed to show any request for extensions of his leave after 5 6 1990. The appellant's contentions that no inquiry was conducted in his case and he was penalized without affording any opportunity are also of no avail to him as it is an admitted fact that, after committing murder, he had remained absent from 5 5 1990. This Tribunal has observed in several cases that a 'detailed enquiry is not necessary where the charge stands proved/established and a Government servant cannot insist that disciplinary proceedings should be initiated in a particular manner. The appellant's acquittal was effected through a compromise and he had never been confronted with any trial. Therefore, if he desired, he could have informed the department about his tragedy. In our view, the appellant had remained under custody for a short period, whereas he mainly remained absent from duty un-authorizedly and, therefore, the respondents were justified in taking action against him. The respondents have also alleged that earlier too the appellant was habitual of remaining absent without any permission for leave. The appellant was, therefore, rightly held guilty of the charge and was justifiably punished. The cases relied upon by,



the learned counsel for the appellant are distinguishable, and therefore, no credence is placed on them"

11. Relying on the above judgment, we find that the appellant has not reasonably explained his absence of more than 14 years, after his involvement in the criminal case and before surrendering. There is an application for condonation of delay, moved before the Tribunal, but that cannot be taken into consideration to condone the delay caused in filing of departmental representation. There is also no effort of the appellant stated in his memo and grounds of appeal to explain the absence of more than 14 years, after his involvement in the criminal case and after his arrest in the said case.

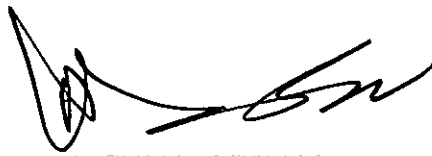
12. The departmental appeal of the appellant was barred by time as he did not file the same during the period of absconsion, nor moved any application for leave or for that matter, to inform his superiors therefore, the appeal in hand is not maintainable in view of the cases titled "Anwarul Haq v. Federation 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.

13. In view of the above, instant service appeal is dismissed with costs. Consign."

Service Appeal No.213/2022 titled "Saeed Ullah Vs. District Police Officer, Nowshera and others", decided on 20.09.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mrs. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

07. Being similar in nature with the case of the mentioned appeal, which was dismissed with cost by the larger bench of the Tribunal, instant service appeal is also dismissed with costs. Consign.

08. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 20th day of September, 2024.*



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah

S.A #.213/2022

ORDER


20th Sep. 2024


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

2. Vide our detailed judgment of today placed on file, instant service appeal is dismissed with costs. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 20th day of September,*

2024.


(Rashida Bano)
Member (J)


(Kalim Arshad Khan)
Chairman

Mutazem Shah