

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 599/2024

BEFORE: MR. AURANGZEB KHATTAK ... MEMBER (J)
MRS. RASHIDA BANO ... MEMBER (J)

Muhammad Yaseen, Head Warder, Central Prison, Mardan.
.... (Appellants)

VERSUS

1. The Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
 2. The Superintendent Circle, Headquarters Prison, Mardan.
- (Respondents)**

Muhammad Hamza Chamkani
Advocate` ... For appellant

Mr. Naseer ud Din Shah,
Assistant Advocate General ... For respondents

Date of Institution.....25.04.2024
Date of Hearing.....27.09.2024
Date of Decision.....27.09.2024

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 partial impugned order of respondent No.1 dated 26.03.2024 to the extent of “withholding of increments for three years and the intervening period of the appellant from the date of removal from service to the date of reinstatement in service was consider as leave without pay” may kindly be set aside and the salary of the intervening period i.e. from



the date of removal from service to the date of re-instatement in service may kindly be order to paid to the appellant.”

2. Brief facts of the case are that the appellant was enlisted as Wardar in Central Prison, Khyber Pakhtunkhwa on 19.04.2006 and was promoted as Head Wardar in 2022. During his posting at Central Prison Mardan, an inquiry was conducted, wherein the appellant was subjected to cross examination and then a show cause notice was issued to him, which was replied by the appellant. The respondent No.2 awarded major punishment of removal from service to the appellant vide order dated 01.02.2024. The appellant filed departmental before the respondent No.1 on 22.02.2024, which was partially accepted and major penalty of removal from service was converted to minor penalty of withholding of increments for three years and the intervening period of the appellant from the date of removal from service to the date of re-instatement in service was considered as leave without pay. The appellant aggrieved from the impugned order of respondent No.1 dated 26.03.2024 and approach this Tribunal by filing 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. We have heard learned counsel for the appellant and learned Assistant Advocate General for the respondent.

4. We have heard learned counsel for the appellant and learned Assistant

Advocate General 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 Assistant Advocate General controverted the same by supporting the impugned order(s).

6. The perusal of the record reveal that the appellant was posted as Wardar in Central Prison Mardan and he was proceeded departmentally on the allegations reproduced as below;

“You were allotted duty at Sector No.5 as sector relief from unlocking to 08:30 AM. During body search in Dewri, you handed over one android mobile phone voluntarily to Warder Usman (Talashi Gate). Another android mobile/cell phone without sim card was recovered from your possession concealed by you in your front pocket by warder Usman (Talashi Gate) at about 06:31AM on 28.11.2023 during body search. The recovery was made in the presence of Warder Shahid Masih (Talashi Shab) and Warder Saleem (Key Mate) at Dewri of the Jail.”

Mardan Jail is a sensitive premises as notorious terrorists and criminals are detained there, who are threat to the peace of country. Therefore, every official working there must require to be extra ordinary vigilant. The appellant was caught red handed which taking cell phone inside the Jail.

7. Appellant submitted reply of charge sheet and also attended the inquiry proceeding which means that inquiry officer provided him opportunity to defend himself, which appellant availed accordingly. Authority after receiving inquiry report issued final show cause notice to the appellant and vide order

dated 01.02.2024 awarded major penalty of removal from service. Appellant filed departmental appeal which was partially accepted by the appellate authority, who by taking lenient view converted major penalty of removal from service into minor penalty of withholding of increments for three years by considering intervening period from removal to reinstatement i.e. 1.02.2024 to 26.03.2024 as leave without pay vide order dated 26.03.2024 impugned before us.

Appellant was awarded minor penalty by the appellate authority, which is just keeping in view the misconduct committed by him. Therefore, need no interference by this Tribunal.

8. For what has been discussed above, we are unison to dismiss the instant service appeal being devoid of merits and the same is dismissed accordingly. Costs shall follow the event. Consign.

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


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

*M.KHAN


ORDER

27.09.2024 1. Learned counsel for the appellant present. Mr. Naseer ud Din Shah, learned Assistant Advocate General alongwith Mr. Suleman, Law Officer for respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to dismiss the instant service appeal being devoid of merits and the same is dismissed accordingly. Costs shall follow the event. Consign.

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


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

*M.KHAN