

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT, ABBOTTABAD.

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MISS FAREEHA PAUL ... MEMBER(E)

Service Appeal No. 1072/2023

Raja Sadaqat Khan Ex-Constable No. 4536 FRP, Platoon No. 101 Hazara Range, Abbottabad, R/O Pharahari, Tehsil and District Haripur.
.....(Appellant)

Versus

1. The Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
2. Superintendent of Police FRP, Hazara Range, Abbottabad.
3. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
..... (Respondents)

Mr. Muhammad Ishaq,
Advocate ... For appellant

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

Date of Institution.....11.05.2023
Date of Hearing.....25.09.2024
Date of Decision..... 25.09.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 26.01.2023, whereby the appellant was removed from service and against the order dated 11.04.2023, whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the appellant be



reinstated into service from the date of removal from service, alongwith the consequential/back benefits.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed in the FRP in the year 2009 and performed his duty for more than 13 years. On 09.10.2022, all of a sudden, he had a severe backache due to which he could not walk or move and became confined to bed. He also remained admitted in hospital and the doctor advised that his disc/backbone had been dislocated and became defective. Resultantly, the appellant could not attend his duty. Charge sheet, statement of allegations and show cause notice were served upon him which were not received by him and he was removed from service through ex-parte proceedings against him, vide order dated 26.01.2023. Feeling aggrieved, he preferred departmental appeal to the respondent No. 1 which was rejected on 11.04.2023; hence the instant service appeal.

3. Respondents were put on notice who submitted written reply/comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that absence of the appellant was not willful but due to his severe illness which was beyond his control. No charge sheet, statement of allegations and show cause notice were served upon him nor opportunity of personal hearing was afforded to him, which were mandatory under the law before passing such order. He further argued that the appellant had more



than 13 years service at his credit and that harsh view had been taken against him. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that on the charge of willful absence, the appellant was issued show cause notice dated 28.12.2022 and it was duly served upon him as was evident from his signature obtained on the notice as a token of receipt. Proper departmental proceedings were initiated against him. Mr. Hassan Gul, Inspector was nominated as Inquiry Officer. Charge sheet was served upon the appellant to which he replied. The Inquiry officer submitted his findings wherein the appellant was found guilty of the charge levelled against him. Final show cause notice was served upon him to which he did not respond. The learned Deputy District Attorney informed that he was called for personal hearing also but he did not appear before the competent authority and hence after fulfillment of all the codal formalities, he was removed from service. Learned Deputy District Attorney requested that the appeal might be dismissed.


6. This appeal has been preferred by the appellant against an order dated 26.01.2023 vide which he was removed from service on the charge of willful absence, against which his departmental appeal was rejected vide order dated 11.04.2023. Arguments and record present before us transpired that the appellant absented himself from lawful duty, without taking any leave or prior permission of the competent authority. An inquiry was conducted against him in which he was found guilty and awarded him major penalty of removal from service. The departmental appeal dated 24.02.2023 preferred




by him clearly indicated this his mother was not well and he had to attend to her and in that appeal he, himself, admitted that he remained absent from duty. In the service appeal, he mentioned about his own illness and there was no mention about the illness of his mother as stated by him in his departmental appeal, thus showing contradiction in his statements. When confronted with the question whether any application for leave was submitted by the appellant to his high ups, learned counsel for the appellant could not provide any such document before us. Being an employee of a uniformed and disciplined police force of the province, the appellant was bound by certain rules according to which he had to seek prior approval of his high ups before proceeding on any kind of leave, which was not done in this case. This was a serious misconduct on the part of the appellant for which he was rightly proceeded against departmentally.

7. In view of the above discussion, the appeal in hand is dismissed, being devoid of merit. Cost shall follow the event. Consign.

8. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 25th day of September, 2024.*


(FAREEHA PAUL)
Member (E)
(Camp Court, A/Abad)



(KALIM ARSHAD KHAN)
Chairman
(Camp Court, A/Abad)

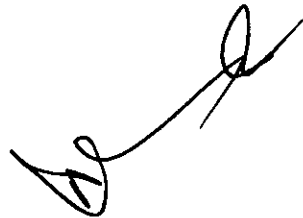
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25.09 2024 01. Mr. Muhammad Ishaq, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 04 pages, the appeal in hand is dismissed, being devoid of merit. Cost shall follow the event. Consign.

03. *Pronounced in open court at Camp Court, Abbottabad and given under our hands and seal of the Tribunal on this 25th day of September, 2024.*


(FAREEHA PAUL)
Member (E)
Camp Court, A/Abad


(KALIM ARSHAD KHAN)
Chairman
Camp Court, A/Abad

Fazle Subhan PS