

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR.**

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)  
**FAREEHA PAUL** ... MEMBER (Executive)

**Service Appeal No. 1281/2023**

Date of presentation of Appeal.....06.06.2023  
Date of Hearing.....22.10.2024  
Date of Decision.....22.10.2024

**Rizwan Ullah/Muhammad Rizwan S/o Rehmat Ullah Caste Kundi,**  
**R/o Village Pai Tehsil & District Tank. Ex-Constable Belt No. 8922**  
**FRP Tank/Dera Ismail Khan. ....Appellant**

Versus

1. Provincial Police Officer (IG), Khyber Pakhtunkhwa, Peshawar.
  2. Commandant FRP Khyber Pakhtunkhwa Peshawar.
  3. The SP FRP D.I.Khan Range Dera Ismail Khan.
- .....(Respondents)

Present:

Mr. Sheikh Iftikhar-ul-Haq, Advocate .....For appellant  
Mr. Muhammad Jan, District Attorney.....For respondents

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The facts of the case are that disciplinary proceedings were initiated against the appellant on the allegations of absence from duty with effect from 27.10.2022 to 12.01.2023. On conclusion of the disciplinary proceedings, the appellant was awarded major punishment of dismissal from service vide impugned order dated 12.01.2023. Feeling aggrieved, the appellant filed departmental appeal on 08.02.2023, which was rejected vide order dated 02.05.2023. Hence, the appellant filed the instant appeal before this Tribunal for redressal of his grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. The learned counsel for the appellant contended that the absence of the appellant from duty was due to an emergency following severe flooding that damaged his home. He next contended that the appellant was compelled to assist in rescue operations and care for his family, which constitutes a legitimate reason for his absence. He further contended that the appellant was not accorded a fair opportunity to present his defense during the inquiry process and that no proper inquiry was conducted into his circumstances. He next argued that there was a failure to comply with procedural fairness, as the appellant was neither provided a charge sheet nor allowed a personal hearing prior to the issuance of the dismissal order. He further argued that the service record of the appellant indicate that the appellant had not taken leave during his career and had always performed his duties satisfactorily, which should be taken into account. In the last, he argued that the impugned orders may be set-aside and the appellant may be reinstated in service with all back benefits.

4. On the other hand, the learned District Attorney for the respondents contended that the appellant has a documented history of willful absence from duty, leading to several punishments and a significant absence period from 27/10/2022 until his removal, therefore, this pattern undermines his claims about the legitimacy of his absence. He next contended that the appellant was provided with ample opportunities to answer the charges against him but failed to respond or

  
22/10/2024

attend the inquiry properly and his claim of an emergency does not excuse his absence from duty or his lack of communication with his superiors. He further contended that all procedures followed during the inquiry and subsequent disciplinary actions were in accordance with established Police Rules, indicating that the appropriate legal framework was respected throughout the process. He next argued that the respondents dismiss the appellant's flood-related claims as a mere excuse, asserting that he should have presented these claims during the inquiry rather than as a post-facto justification for his absence. In the last, he argued that the appeal in hand may be dismissed with cost being meritless.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

6. The perusal of the record shows that the appellant was subjected to departmental proceedings due to allegations of unauthorized absence from duty. Specifically, it was noted that the appellant remained absent from lawful duty from October 27, 2022, to January 21, 2023, totaling a period of 2 months and 15 days. During this time, the appellant did not submit any formal leave request or obtain permission from the competent authority. The appellant's service history reflects a concerning pattern of irresponsible conduct, characterized by numerous instances of absence without leave. In total, the records indicate that the appellant accumulated 365 days of unexplained absence across various instances, resulting in enforced disciplinary measures, including a previous dismissal. Notably, the records contain 9 adverse entries related

  
22/10/2024

to the appellant's conduct, with no mention of any positive commendations. In defense, the appellant claimed a flood situation as the rationale for the extensive absence. However, there was a distinct lack of evidence to support this claim, as it was not presented to the Enquiry Officer during the proceedings as mandated. The absence of any leave application or response to the Show Cause Notice issued on November 3, 2022, further underscores the appellant's neglect of duty. A formal enquiry was conducted, during which the appellant was repeatedly summoned and provided multiple opportunities to present a defense against the Charge Sheet issued on November 25, 2022. Nonetheless, the appellant failed to appear or engage in the process, reflecting a clear disinterest in fulfilling his responsibilities within the Police Department. Following the completion of the enquiry, final show cause notice was issued, to which the appellant did not respond. The appellant claims and actions were reviewed in light of the Police Rules of 1975, which govern the conduct of police personnel. It was found that the disciplinary actions taken against the appellant were consistent with established rules and procedures, ensuring that due process were followed throughout the proceedings. In light of the substantiated evidence of absence without valid justification, the respondents acted within their legal jurisdiction in dismissing the appellant from service. The appellant's consistent failure to adhere to established protocols, along with the extensive record of misconduct, renders the disciplinary action both appropriate and justified. The appeal, lacking merit due to the appellant's continued disregard for departmental rules, is hereby denied.

  
22/10/2024

Service Appeal No.1281/2023 titled "Rizwan Ullah Versus Provincial Police Officer (IGP), Khyber Pakhtunkhwa Peshawar and others", decided on 22.10.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Miss. Fareeha Paul, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

8. Consequently, the dismissal of the appellant from service is upheld and the disciplinary actions taken by the respondent are confirmed as valid and legally justified. Parties are left to bear their own costs. File be consigned to the record room.

9. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22<sup>nd</sup> day of October, 2024.*

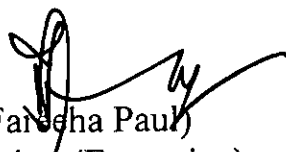
  
- 22/10/2024 .  
**AURANGZEB KHATTAK**  
Member (Judicial)


  
**FAREEHA PAUL**  
Member (Executive)

\*Nacem Amin\*

**ORDER**  
22<sup>nd</sup> Oct, 2024

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, the dismissal of the appellant from service is upheld and the disciplinary actions taken by the respondent are confirmed as valid and legally justified. Parties are left to bear their own costs. File be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 22<sup>nd</sup> day of October, 2024.*

  
(Faraha Paul)  
Member (Executive)

  
(Aurangzeb Khattak) 22/10  
Member (Judicial) 2024.