

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

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

**Service Appeal No. 1610/2023**

Date of presentation of Appeal.....02.08.2023  
Date of Hearing.....28.10.2024  
Date of Decision.....28.10.2024

**Muhammad Zeeshan**, Ex-Constable (Belt No. 718), Special Security Unit, District Charsadda. ....*Appellant*

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
  2. Commandant, Special Security Unit (CPEC), Khyber Pakhtunkhwa Police, Central Police Offices, S.A.Q Road, Peshawar Cantt.
  3. Superintendent Police Admin & Minority, Special Security Unit (CPEC), Khyber Pakhtunkhwa, Peshawar.
- .....(*Respondents*)

Present:

Mr. Sagheer Iqbal Gulbela, Advocate .....For appellant  
Mr. Naseer-ud-Din Shah, Assistant Advocate General.....For respondents

**JUDGMENT**

**AURANGZEB KHATTAK, MEMBER (JUDICIAL):** The facts of the case are that the appellant was appointed as a Constable on 15.12.2021 in Police Department. Disciplinary proceedings were initiated against the appellant on the allegations of his absence from duty with effect from 28.02.2022 up to 13.09.2022 (197 days) as well as remaining absence from his Basic Recruit course at PTS Kohat with effect from 18.09.2022 and returned as unqualified to home district. On conclusion of the inquiry, the appellant was imposed major penalty of discharged from service vide impugned order dated 16.11.2022. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide impugned order dated 11.04.2023. Where-after, the appellant also

filed revision petition, which was not responded. Hence, he has now 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 discharge order of the appellant from service is arbitrary and unfair, given the compelling family circumstances that led to the appellant's absence. He next contended that the appellant's communication of his situation to his superiors demonstrates his willingness to comply with departmental requirements and that his absence was not an act of negligence or willful desertion. He further contended that the department failed to conduct a fair and transparent inquiry, disregarding the principle of natural justice and procedural fairness. He also contended that in light of the appellant's unique circumstances and communication efforts, 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 Assistant Advocate General for the respondents contended the appellant's prolonged absence, totaling 197 days, constituted a violation of departmental rules and discipline. He next contended that the appellant failed to produce any documentary evidence of his brother's illness or treatment during the inquiry, which would substantiate his claims. He further contended that despite being served with a charge sheet and given an opportunity to reply, the appellant's response was unsatisfactory. He also argued that all the legal and formalities, including a final show-cause notice, were duly observed

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and the discharge order of the appellant from service was issued lawfully and in accordance with departmental rules. In the last, he argued that the appeal in hand being lacks of merit is liable to be dismissed with cost.

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

6. The record shows that this appeal has been preferred by the appellant, challenging his discharge from service as a Constable in the Police Department. The discharge order of the appellant was issued on 16.11.2022, based on the appellant's alleged unauthorized absence from duty as well as declared as unqualified from the basic recruit course, PTC. The appellant claims that his absence was due to genuine and compelling circumstances related to the critical illness of his only brother, for whom he was the sole caregiver. Admittedly, the appellant's absence was prolonged and it is acknowledged that he did not secure formal leave approval from the department. This prolonged absence without leave constitutes a breach of departmental discipline. However, the appellant claims he communicated his circumstances informally to the department, explaining that he was caring for his only brother, who was gravely ill and in urgent need of support. Although this communication was not formally documented as a leave request, it provides context to the appellant's conduct and intent, which were driven by pressing family responsibilities rather than disregard for duty. During the departmental inquiry conducted by DSP SSU Kohat Range, the appellant submitted a written statement citing his brother's illness as the cause of his absence. The inquiry officer, however, found the appellant guilty, primarily due to his failure to provide medical records

  
28/10/2024


substantiating his brother's illness. This finding formed the basis for his discharge, as the appellant's justification lacked corroborating evidence at the time. Subsequently, in his appeal before this Tribunal, the appellant submitted the medical records regarding his brother's illness. This evidence, now part of the appeal record, could potentially substantiate the appellant's claims of a compelling family emergency and mitigate the severity of his absence. However, as this evidence was not presented during the original inquiry, it was not considered by the inquiry officer, who based his findings on the information available at that time. Another ground for discharge cited by the respondents was the appellant's failure to qualify from the basic recruit course at the Police Training College (PTC). However, it appears from the record that the primary focus of the disciplinary proceedings and the resulting discharge order was the unauthorized absence, with limited analysis on the appellant's performance or qualification at the PTC. This raises a question about the proportionality of the penalty imposed, as it is unclear whether the failure to qualify independently justified the appellant's discharge or was merely a secondary consideration. In light of the appellant's claim of unavoidable absence due to his brother's illness and the subsequent submission of supporting medical records, we deem it necessary to uphold the principle of fairness and natural justice. Considering the appellant's submission of medical records regarding his brother's illness, we deem it appropriate to remit the matter back to the respondent department. The respondents are directed to verify the authenticity and relevance of the medical records provided by the appellant, which substantiate his claim regarding his brother's illness.

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Additionally, the department should reassess whether, in light of this evidence, the penalty of discharge remains proportionate, or whether alternative disciplinary measures might be more appropriate given the extenuating circumstances.

7. In view of the above, the impugned orders are set-aside and the appellant is reinstated in service for the purpose of de-novo inquiry. The matter is remitted to the respondent department for a de novo inquiry, with specific instructions to verify the medical documents presented by the appellant and reassess the disciplinary action taken in light of this evidence. The department shall complete this verification and re-evaluation within 60 days from the date of receipt of copy of this judgment. The appellant is advised to fully cooperate with the department in the verification process. The issue of back benefits of the appellant shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 28<sup>th</sup> day of October, 2024.*

  
AURANGZEB KHATTAK  
Member (Judicial) 28/10/2024.

  
FAREEHA PAUL  
Member (Executive)

**MEMO OF COSTS**  
**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

**Service Appeal No. 1610/2023**

Date of presentation of Appeal 02.08.2023  
Date of hearing 28.10.2024  
Date of Decision 28.10.2024

**Muhammad Zeeshan**, Ex-Constable (Belt No. 718), Special Security Unit,  
District Charsadda. ....*Appellant*

**Versus**

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
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  3. Superintendent Police Admin & Minority, Special Security Unit (CPEC), Khyber Pakhtunkhwa, Peshawar.
- .....(*Respondents*)

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SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER NO. 0B430 DATED 11.04.2023 OF THE COMMANDANT SSU (CPEC) WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE IMPUGNED ORDER NO. 9630-37EC/SSU DATED 16.11.2022 OF THE OFFICE OF THE SP SSU (CPEC) WHEREBY THE APPELLANT WAS DISCHARGED FROM THE SERVICE, WAS TURNED DOWN IN CLASSICAL CURSORY & WHIMSICAL MANNER.

**PRESENT**


1. Mr. Sagheer Iqbal Gulbela, Advocate .....For appellant
2. Mr. Naseer-ud-Din Shah, Assistant Advocate General .....For respondents

<b>Appellants</b>	<b>Amount</b>	<b>Respondent</b>	<b>Amount</b>
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
<b>Total</b>	<b>Rs. 100/-</b>	<b>Total</b>	<b>Rs. Nil</b>

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 28<sup>th</sup> day of October 2024.



  
**Fareeha Paim**  
Member (Executive)

  
**Aurangzeb Khattak**  
Member (Judicial) 28/10/2024

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

Service Appeal No. 1610 of 2023

Muhammad Zeeshan versus Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 02 others.

S.No. of Order & Date of proceeding	<b>Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary</b>
Order-12 28 <sup>th</sup> October, 2024.	<p>Present:</p> <ol style="list-style-type: none"><li>1. Mr. Sagheer Iqbal Gulbela, Advocate on behalf of appellant.</li><li>2. Mr. Naseer-ud-Din Shah, Assistant Advocate General on behalf of respondents.</li></ol> <p>Arguments heard and record perused.</p> <p>Vide our judgment of today placed on file, the impugned orders are set-aside and the appellant is reinstated in service for the purpose of de-novo inquiry. The matter is remitted to the respondent department for a de novo inquiry, with specific instructions to verify the medical documents presented by the appellant and reassess the disciplinary action taken in light of this evidence. The department shall complete this verification and re-evaluation within 60 days from the date of receipt of copy of this judgment. The appellant is advised to fully cooperate with the department in the verification process. The issue of back benefits of the appellant shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 28<sup>th</sup> day of October, 2024.</i></p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"><div data-bbox="552 2293 860 2482" style="text-align: center;"> (Fareeha Paul) Member (Executive)</div><div data-bbox="1088 2293 1542 2482" style="text-align: center;"> (Aurangzeb Khattak) Member (Judicial) 28/10/2024</div></div>