KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
MUHAMMAD AKBAR KHAN ... MEMBER (Executive)

Service Appeal No.221/2024

Date of presentation of Appeal.....31.01.2024
Date of Hearing.....21.10.2024
Date of Decision.....21.10.2024

Haq Nawaz Constable No.177, Police Post Mazanga, District Bannu
.....***(Appellant)***

Versus

1. **Provincial Police Officer,** Khyber Pakhtunkhwa, Peshawar.
2. **Regional Police Officer,** Bannu Regtion, Bannu.
3. **District Police Officer,** Hangu.....***(Respondents)***

Present:
Miss. Hira Babar, Advocate .....For the appellant
Mr. Muhammad Jan, District Attorney.....For respondents

.....

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST IMPUGNED ORDER DATED 28.08.2023, PASSED BY RESPONDENT NO.1 WHEREBY THE APPELLANT WHO WAS REINSTATED INTO SERVICE WITH IMMEDIATE EFFECT AND THE OUT OF SERVICE PERIOD AND ABSENCE PERIOD WAS ILLEGALLY TREATED AS LEAVE WITHOUT PAY AGAINST THE APPELLANT FILED DEPARTMENTAL APPEAL HOWEVER NO RESPONSE WAS RECEIVED.

JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Appellant's case as reflected from the record, in brief is that he was appointed as Constable on 01.01.2008; that after serving for about 15 years, vide order dated 18.01.2023 he was dismissed from service on the ground

of absence; that he preferred departmental appeal, which was rejected on 20.04.2023; that feeling aggrieved, he filed revision petition which was accepted on 28.08.2023 and he was reinstated into service, his back benefits, keeping in view the probability that his appeal was accepted by appellate authority; that appellant's departmental appeal regarding granting of back benefits was submitted on 05.10.2023 and was placed on file on 16.10.2023 but no response, hence, the appeal in hand.

2. 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.

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

4. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal while the learned District Attorney controverted the same by supporting the impugned order(s).

5. The appellant, having served as a Constable since January 1, 2008, faced dismissal on January 18, 2023, due to allegations of absence after approximately 15 years of service. Following the dismissal, he filed a departmental appeal, which was rejected on April 20, 2023. Undeterred, the appellant pursued a revision petition that ultimately led to his reinstatement on August 28, 2023, along with

back benefits, likely due to the appellate authority's acknowledgment of the merits of his case. Subsequently, on October 5, 2023, he submitted a further appeal specifically seeking clarification on his entitlement to back benefits, which was acknowledged on October 16, 2023, but has since received no response. This lack of resolution has prompted the current appeal.

6. This Tribunal in a similar nature service Tribunal vide consolidated judgment dated 28.02.2024 in Service Appeal No.253/2023 titled "Muhammad Usman verus Police Department" and others, has held as under:

> *"6. Perusal of record reveals that appellants were issued charge sheet alongwith statement of allegation that they while posted MHC Police Post City Lakki facilitated the proclaimed offender Naveed Nawaz. In this regard DSP/Hqrs was appointed as inquiry officer who after inquiry found the appellants guilty of misconduct upon which impugned order of dismissal from service dated 18.05.2022 was passed. Appellants assailed that order wherein appellate authority partially accepted the appeals and ordered re-inquiry into the matter vide order dated 06.06.2022.*
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> *7. Perusal of record further reveals that during re-inquiry, appellants were exonerated from the charges levelled against them, that's why they were reinstated into service by the authority. When the appellants were*

declared innocent by the enquiry officer in the re-enquiry then they ought to have been granted the back benefits for the period they were kept out of service for no fault of their own. Reliance in this regards has rightly been placed by the learned counsel for the appellants on 2021 SCMR 962 titled "Muhammad Sharif and others-versus-Inspector General of Police, Punjab, Lahore and others" wherein it has been held that a civil servant once exonerated from the charges would stand restored in service as if he were never out of it and would be entitled to back benefits.

7. For what has been discussed above, we accept the instant appeal as well as connected appeals by allowing the appellants back benefits for the period they remained out of service. Costs shall follow the event. Consign."

7. Being similar in nature, instant service appeal is also accepted in terms of the above judgment. Costs shall follow the event. Consign.

8. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21st day of October, 2024.

KALIM ARSHAD KHAN
Chairman

MUHAMMAD AKBAR KHAN
Member (Executive)

**Muazem Shah*2*

MEMO OF COSTS
KHYBER PAKHTUNKHKWA SERVICE TRIBUNAL, PESHAWAR

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PRESENT

1. Miss. Hira Babar, Advocate, for the Appellant
2. Mr. Muhammad Jan, District Attorney for respondents.

Appellants	Amount	Respondent	Amount
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
Total	**Rs. 100/-**	**Total**	**Rs. Nil**

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 21st day of October 2024.

Muhammad Akbar Khan
Member (Executive)

Kalim Arshad Khan
Chairman

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.221 of 2024

Haq Nawaz versus Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	**Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary**
Order-06 21st October, 2024.	Present: 1. Miss. Hira Babar, Advocate on behalf of appellant. 2. Mr. Muhammad Jan, District Attorney for the respondents. 3. Vide our detailed judgment of today, placed on file, the appeal in hand stands accepted. Costs shall follow the event. Consign. 4. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21st day of October, 2024* (Muhammad Akbar Khan) Member (E) (Kalim Arshad Khan) Chairman *Mutazem Shah*