

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No. 7613/2021

Date of presentation of Appeal.....04.10.2021
Date of Hearing.....09.10.2024
Date of Decision.....09.10.2024

Muhammad Qadeer (Constable) Son of Wali Muhammad Caste Siraj
Khel, R/o Panyala, Mohallah Siraj Khel, Tehsil & District Dera Ismail
Khan. **Appellant**

Versus

1. Secretary Home & Tribal Affairs, Khyber Pakhtunkhwa, Peshawar.
 2. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
 3. Regional Police Officer/DIG, Dera Ismail Khan Division.
 4. District Police Officer, Dera Ismail Khan.
-(**Respondents**)

Present:

Mr. Muhammad Idrees Khan, Advocate,For appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as narrated by the appellant in his memorandum of appeal, are that he while posted as Constable at Gomal University Dera Ismail Khan, was granted study leave from January 20, 2020 to May 20, 2020. Upon expiry of the aforementioned leave period, he applied for an extension of study leave until July 20, 2020. However vide impugned order date June 3, 2020, he was awarded major punishment of dismissal from service on the allegations of absence from duty. The appellant appealed this order to the next higher authority (RPO Dera Ismail Khan,

Ans. P
09/10/2024.

Respondent No. 3) on June 15, 2020, which was rejected on October 8, 2020. Subsequently, he filed revision petition before Inspector General of Police, Khyber Pakhtunkhwa, Peshawar, which was also dismissed on July 29, 2021. He has now approached this Tribunal through filing of instant appeal 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 Respondent No. 4 (District Police Officer Dera Ismail Khan) order dated June 3, 2020 was issued without following proper procedure, failing to provide the appellant the required notice or an opportunity to defend himself against the allegations of absence. He next contended that the process followed by the respondents violated the principles of natural justice, as they did not allow the appellant a fair chance to present his case, constituting a denial of due process. He further contended that the accusations of habitual absenteeism lacked proper evidence from the respondents, stressing that the service record must be carefully reviewed to avoid prejudicial treatment against the appellant. He next argued that the actions taken by the respondents were influenced by personal motives, including a grudge, which is unacceptable in administrative justice. He also argued that the appellant was initially granted leave and withdrawing it without due cause was arbitrary and unjustified. In the last, he argued that the appellant may be reinstated in service with all back benefits.


09/10/2024.

4. On the other hand, the learned Deputy District Attorney for the respondents contended that the appellant, despite being granted a month's earned leave, failed to report back for duty from March 27, 2020, until June 3, 2020, demonstrating willful absence without valid leave. He next contended that the appellant's record shows a pattern of bad conduct, including multiple absences and prior punishments for similar behavior. He further contended that the process followed by the respondents was lawful and the appellant had been given multiple opportunities to explain his actions but failed to provide a satisfactory account. He also contended that the appeal is meritless, claiming that the series of actions taken against the appellant are per the rules and were necessary to maintain discipline within the department.

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

6. The perusal of the case file reveals that the appellant was serving as a Constable at Police Station Gomal University, applied for study leave from January 20, 2020, to May 20, 2020. However, he was granted only a one-month leave on February 27, 2020 and was therefore expected to return by March 28, 2020. The appellant claimed to have applied for an extension until July 20, 2020 but he failed to provide any documentation to substantiate his claim of submitting a formal application for this extension. He did not return to duty when his sanctioned leave expired on March 28, 2020. A charge sheet was issued to the appellant due to his absence and Mr. Iftikhar Ali Shah, DSP

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Parova Circle, was appointed as the inquiry officer. Although the appellant was issued a charge sheet, he failed to respond to it and did not attend the inquiry proceedings despite being summoned. The appellant's consistent absence without approved leave was noted as a pattern and was classified as misconduct. His previous record showed instances of absence without permission, demonstrating a breach of service discipline. The appellant was unable to provide satisfactory justification for his absence. Civil servants are entitled to earn leave, availing leave requires following the proper procedural framework. Leave cannot be taken at the employee's discretion without necessary approvals and adherence to service rules. Taking leave without permission was classified as gross misconduct. The appellant was imposed major penalty of dismissal from service vide order dated 03.06.2020. The charges of absence from duty against the appellant involved misconduct that, though serious, did not encompass criminal acts or corruption. Rather, it pertains to violation of conduct rules, such as unauthorized absence, insubordination, or failure to fulfill duties as expected. We recognize the importance of maintaining discipline and standards within public service. Nonetheless, it was noted that the misconduct did not directly lead to substantial loss to the state or involve moral turpitude. The principles of natural justice and fairness necessitate that penalties should not be excessively harsh if circumstances don't justify such severity. We considered the broader consequences of dismissal on the appellant, including the loss of livelihood, reputation and future employment



09/10/2024.

Service Appeal No.7613/2021 titled "Muhammad Qadeer versus Secretary Home & Tribal Affairs, Khyber Pakhtunkhwa, Peshawar and others", decided on 09.10.2024 by Division Bench comprising of Mr. Aurangzeb Khattak, Member Judicial and Ms. Rashida Bano, Member Judicial, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

prospects. It is emphasized that punitive actions should aim to correct behavior rather than merely punish.

7. Considering these factors, we found the penalty of dismissal from service is disproportionate. Therefore, we partially accept the appeal and the major penalty of dismissal from service is converted into stoppage of two annual increments for a period of five years. The period of his absence, as well as the intervening period, is treated as leave of the kind due. 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 09th day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial)

09/10/2024




RASHIDA BANO
Member (Judicial)


Naeem Amin

ORDER

09th Oct, 2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Khalid Nawaz, Inspector (Legal) for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, we partially accept the appeal and the major penalty of dismissal from service is converted into stoppage of two annual increments for a period of five years. The period of his absence, as well as the intervening period, is treated as leave of the kind due. 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 09th day of October, 2024.*


(Rashida Bano)
Member (Judicial)


(Aurangzeb Khattak)
Member (Judicial) 09/10/2024