

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT CAMP COURT
ABBOTTABAD

Service Appeal No. 1458/2023

BEFORE: MR. KALIM ARSHAD KHAN ... CHAIRMAN
MRS. RASHIDA BANO ... MEMBER (J)

**Mr. Azmat Ullah Shah, Ex-FC, No.457, Police Station Judbah,
Torghar.**

.... (Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Hazara Region, Abbottabad.
3. The District Police Officer, Torghar.

.... (Respondents)

Mr. Taimur Ali Khan
Advocate ... For appellant

Mr. Umair Azam,
Additional Advocate General ... For respondents

Date of Institution.....23.06.2023
Date of Hearing.....29.10.2024
Date of Decision.....p...29.10.2024

JUDGMENT

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

“On acceptance of the instant service appeal, the impugned orders dated 06.10.2022, 27.03.2023 and 09.05.2023 may kindly be set aside and the appellant may be reinstated into service with all back and consequential benefits. Any other remedy, which



this august Tribunal deems fit and appropriate, may also be awarded in favor of appellant.”

2. Brief facts of the case as narrated in the appeal are that the appellant, who joined the Police Department as a Constable, has consistently performed his duties efficiently. However, he faced domestic issues that led to his absence from duty for 24 days, from October 24, 2021, to November 16, 2021. A charge sheet was issued on December 14, 2021, indicating his absence from October 23, 2021, and an inquiry recommended treating this absence as leave without pay. Subsequently, another charge sheet dated January 5, 2022, cited an additional 28 days of absence, which the appellant attributed to the death of relatives. The inquiry officer again recommended treating this absence as leave without pay.

Later, a show cause notice was issued, detailing a total of 102 days of absence, including periods from October 24, 2021, to November 16, 2021, December 1, 2021, to December 29, 2021, and May 30, 2022, to July 20, 2022. Despite having performed his duties regularly during the latter period, the appellant was dismissed from service on October 6, 2022, for a total of 102 days of absence. His departmental appeal against the dismissal was rejected on March 27, 2023, followed by a revision that was also denied on May 9, 2023. Consequently, the appellant has filed the present service appeal, feeling aggrieved by the decisions made against him.

3. 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.

4. We have heard learned counsel for the appellant and learned Additional Advocate General for the respondents.

5. The learned counsel for the appellant reiterated the facts and grounds detailed in the memo and grounds of the appeal, while the learned Additional Advocate General controverted the same by supporting the impugned order(s).

6. The perusal of the record reveals that the appellant joined the Police Department as a Constable and has consistently performed his duties efficiently. Due to domestic issues, the appellant was absent from duty from October 24, 2021, to November 16, 2021, totaling 24 days. A charge sheet was issued on December 14, 2021, indicating his absence from October 23, 2021, and an inquiry was conducted, which recommended treating this absence as leave without pay. Subsequently, another charge sheet dated January 5, 2022, cited an additional 28 days of absence, which the appellant attributed to the death of relatives. The inquiry officer again recommended treating this absence as leave without pay.

7. Later, a show cause notice was issued detailing a total of 102 days of absence, including periods from October 24, 2021, to November 16, 2021, December 1, 2021, to December 29, 2021, and May 30, 2022, to July 20, 2022. Despite having performed his duties regularly during the latter period, the appellant was dismissed from service on October 6, 2022, for a total of 102 days of absence.



8. The inquiry officer's recommendations to treat the periods of absence as leave without pay were not acted upon, and the subsequent dismissal was based on cumulative absences without due process. The final show cause notice issued to the appellant did not consider the recommendations of the inquiry officers, which is contrary to the established norms of administrative justice.

9. When the appellant was absent for 50 days then to include earlier absence period just to increase number of absence's day, shows the malafidy intention and ill will of the authority, where alone render the impugned order illegal and result of ill will, the Appellant was awarded major penalty of dismissal from service without providing opportunity to defend himself, which is not in accordance with law and rules, and have no effect. It is has been held in 2022 SCMR 745 that:

“Regular inquiry and preliminary/fact finding inquiry--- Distinction---Regular inquiry was triggered after issuing show cause notice with statement of allegations and if the reply was not found suitable then inquiry officer was appointed and regular inquiry was commenced (unless dispensed with for some reasons in writing) in which it was obligatory for the inquiry officer to allow evenhanded and fair opportunity to the accused to place his defence and if any witness was examined against him then a fair opportunity should also be afforded to cross-examine the witnesses-- Whereas a discrete or fact finding inquiry was conducted at initial stage but internally to find out whether in the facts and circumstances reported, a proper case of misconduct was made out to initiate disciplinary proceedings.”

10. It is a well settled legal proposition, that regular inquiry is must before imposition of major penalty, whereas in case of the appellant, no such inquiry was conducted. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 has held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice. In absence of proper disciplinary proceedings, the appellant was condemned unheard, whereas the principle of 'audi alteram partem' was always deemed to be embedded in the statute and even if there was no such express provision, it would be deemed to be one of the parts of the statute, as no adverse action can be taken against a person without providing right of hearing to him. Reliance is placed on 2010 PLD SC 483. So, appellant was condemned unheard by the respondents which is against the rules on the subject and also against the principal of natural justice that no one could condemned unheard.

11. In the case of Abdul Ghaffar Vs. Superintendent of Police, South Zone Karachi, it was established that a major penalty, such as dismissal, cannot be imposed without a proper inquiry. The inquiry must be thorough, allowing the accused to cross-examine witnesses and present their defense. The absence of such procedures in the appellant's case indicates a clear violation of his rights in the instant case too appellant was condemned unheard malafidely by the authority, who was biased.

12. For what has been discussed above, we are unison to accept the instant service appeal by setting aside the impugned orders dated

06.10.2022, 27.03.2023 and 09.05.2023 being result of ill will, and to reinstate the appellant into service, absence and intervening period is treated as leave without pay. Costs shall follow the event. Consign.

13. Pronounced in Camp Court at Abbottabad and given under our hands and seal of the Tribunal on this 29th day of October, 2024.



(KALIM ARSHAD KHAN)
CHAIRMAN



(RASHIDA BANO)
Member (J)

*M.KHAN

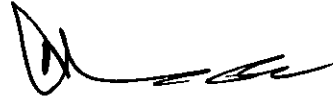
ORDER

29.10.2024 1. Learned counsel for the appellant present. Mr. Umair Azam,

Additional Advocate General, for respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept the instant service appeal by setting aside the impugned orders dated 06.10.2022, 27.03.2023 and 09.05.2023 being result of ill will, and to reinstate the appellant into service, absence and intervening period is treated as leave without pay. Costs shall follow the event. Consign.

3. *Pronounced in Camp Court at Abbottabad and given under our hands and seal of the Tribunal on this 29th day of October, 2024.*



(KALIM ARSHAD KHAN)
CHAIRMAN



(RASHIDA BANO)
Member (J)

*M.KHAN