

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, AT CAMP COURT
ABBOTTABAD**

Service Appeal No. 661/2024

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

Mr. Asif, Ex-Constable, No.77, Police Line Judbah, Torghar.
..... (Appellant)

VERSUS

1. The Regional Police Officer, Hazara Region, Abbottabad.
 2. The District Police Officer, Torghar.
- (Respondents)

Mr. Taimur Ali Khan
Advocate ... For appellant

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

Date of Institution.....06.05.2024
Date of Hearing.....29.10.2024
Date of Decision.....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 this service appeal, the impugned orders dated 26.05.2023 and 08.04.2024, 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.”

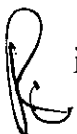


2. Brief facts of the case as narrated in the appeal are that the appellant, who joined the Police Department as a Constable in the year 2011, has consistently performed his duties with efficiency. His family members reside in Karachi, and he sought to visit them for a few days; therefore, he submitted an application for leave. After filing the application, the appellant traveled to Karachi, where he fell ill, resulting in his inability to report for duty and compelling him to remain absent. Upon recovering from his illness, he attempted to resume his duties, but was informed that he had been dismissed from service vide order dated 26.05.2023. Along with the dismissal order, he was provided with a charge sheet, a statement of allegations, an inquiry report, and a show cause notice. Feeling aggrieved by this decision, he filed a departmental appeal against the impugned order dated 26.05.2023, which was subsequently rejected on 08.04.2024. Hence, he has initiated the present service appeal.

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, a Constable in the Police Department since 2011, consistently performed his duties efficiently. He applied for leave to visit his family in Karachi but fell ill during his trip, which prevented him from reporting for duty. After recovering, he was informed that he had been dismissed from service vide order dated 26.05.2023, accompanied by a charge sheet, statement of allegations, inquiry report, and show cause notice.

7. The principles governing absence due to illness and the rights of employees in such circumstances are well established in case law. It is imperative that any disciplinary action taken against an employee must adhere to the principles of natural justice, which include the right to a fair hearing, the opportunity for cross-examination, and the right to self-defense. The appellant's absence from duty was due to a legitimate medical condition, which he has substantiated by his narrative. The law recognizes that employees may be unable to report for duty due to illness, and such absences should not automatically lead to punitive measures without due consideration of the circumstances. The appellant was not given a fair chance to defend himself against the allegations made in the charge sheet. The principles of natural justice dictate that an employee must be allowed to present their case and challenge the evidence against them.

8. 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."

9. 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.

10. 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 be 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 mala fide by the authority, who was biased.

12. For what has been discussed above, we are unison to set aside impugned orders and reinstate the appellant into service for the purpose of de-novo inquiry into the genuineness plea of illness of the appellant, by providing opportunity of self-defense, personal hearing and cross-examination to the appellant, which is requirement of fair trial. Respondents are further directed to conduct de-novo inquiry within 60 days after receipt of copy of this judgment. 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)

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 set aside impugned orders and reinstate the appellant into service for the purpose of de-novo inquiry into the genuineness plea of illness of the appellant, by providing opportunity of self-defense, personal hearing and cross-examination to the appellant, which is requirement of fair trial. Respondents are further directed to conduct de-novo inquiry within 60 days after receipt of copy of this judgment. 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)

SA 661/2024

10.07.2024 01. Nemo for the appellant. Mr. Arshad Azam, Assistant AG for the respondents present.


02. It appears that notice to DPO Turghar has not been issued due to non-availability of TCS service. Office is directed to issue notice respondent No. 2 through registered/A.D post. To come up for reply/comments on 06.08.2024 before the S.B. PP given to the learned AAG.

*TCS Expenses
Not Submitted*
**SCANNED
KPST
Peshawar**


(Fareeha Paul)
Member(I)

06.08.2024 1. *Subhan, P.S.** Learned counsel for the appellant. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Written reply/comments on behalf of respondents received through office which is placed on file, a copy whereof is handed over to learned counsel for the appellant. Adjourned. To come up for arguments on 29.10.2024 before D.B at C.C A/Abad. P.P given to the parties.


(Rashida Bano)
Member (J)

**SCANNED
KPST
Peshawar**