

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... CHAIRMAN
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No.617/2022

Date of presentation of Appeal.....21.04.2022
Date of Hearing.....05.11.2024
Date of Decision.....05.11.2024

Hameed Ullah Ex-LHC No.940 S/O Muhammad Ashraf R/O Ghazni Kheli Sorazai Payan, Peshawar.....(Appellant)

Versus

1. **Inspector General of Police, Khyber Pakhtunkhwa.**
2. **Deputy Inspector General of Police Counter Terrorism Department, Khyber Pakhtunkhwa, Peshawar.**
3. **Superintendent of Police CTD, Peshawar.**
4. **Capital City Police Officer, Peshawar.....(Respondents)**

Present:

Mr. Saghir Iqbal Gulbela, Advocate.....For the appellant
Mr. Naseer Ud Din Shah, Assistant Advocate General.....For respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED DISMISSAL ORDER DATED 11.10.2019 ISSUED BY SUPERINTENDENT OF POLICE, COUNTER TERRORISM DEPARTMENT, KHYBER PAKHTUNKHWA, PESHAWAR WHEREBY APPELLANT WAS DISMISSED FROM SERVICE AND AGAINST THE IMPUGNED ORDER DATED 31.01.2022 WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS TURNED DOWN AND AGAINST THE IMPUGNED ORDER DATED 01.04.2022 WHEREBY REVISION PETITION OF APPELLANT WAS ALSO TURNED DOWN IN A CLASSICALLY, CURSORY AND WHIMSICAL MANNER.



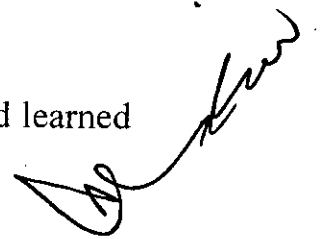
JUDGMENT

KALIM ARSHAD KHAN, CHAIRMAN: Brief facts of the case, as per averments of the appeal, are that appellant was serving in the Police Department as LHC; that in the year 2018, FIR No.1298 dated 04.12.2018 was registered against him due to which he absconded for two years and was placed under suspension vide order dated 12.03.2019 for alleged involvement in the criminal case; that vide order dated 11.10.2019, he was dismissed from service; that after his release on bail by the Hon'ble Peshawar High Court, Peshawar vide order dated 03.01.2022, he preferred departmental appeal for his reinstated on 18.01.2022; that his departmental appeal was rejected vide order dated 31.01.2022; feeling aggrieved, he filed revision petition/mercy petition before the Inspector General of Police Khyber Pakhtunkhwa, Peshawar but the same was turned down vide order dated 01.04.2022, hence, the instant service appeal.

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 Assistant Advocate General 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 Assistant Advocate General controverted the same by supporting the impugned order(s).

5. The appellant, serving as a LHC in the Police Department, was implicated in a criminal case when FIR No. 1298 was registered against him on 04.12.2018. As a result, he absconded for two years and was placed under suspension on 12.03.2019 pending investigation. Subsequently, he was dismissed from service on 11.10.2019 due to his alleged involvement in the criminal case. After being granted bail by the Hon'ble Peshawar High Court on 03.01.2022, the appellant filed a departmental appeal on 18.01.2022, seeking reinstatement. His appeal was rejected by the department on 31.01.2022. In response, the appellant submitted a revision petition/mercy petition to the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar, but this petition was also turned down on 01.04.2022. As a result, the appellant has filed the present service appeal.

6. The appellant was charged in a criminal case due to he remained absconder and in the meanwhile, vide order dated 11.10.2019 he was dismissed from service. He could make written request for his dismissal within thirty days of passing of the impugned dismissal order. However, the same has been made after a considerable delay and he has filed departmental appeal on 18.01.2022 i.e. more than two years.

7. This Tribunal in its judgment passed by larger bench, dated 18.07.2024 passed in Service Appeal No.7494/2021 titled "Muslim



Khan versus Government of Khyber Pakhtunkhwa" has denied relief in a similar nature case, whereby the appellant of that case was also an absconder and due to his abscondence, the period of limitation was elapsed. The said judgment is reproduced as under:

"07. The point for determination in this appeal was that a civil servant, who after his involvement in a criminal case, became fugitive from law, could make his absconsion a reasonable ground to explain absence.

08. Learned counsel for the appellant relied on 2003 SCMR 338 titled "Government of NWFP through Secretary, Finance, Excise and Taxation Department Peshawar and 2 others Versus Aurangzeb", 2006 SCMR 434 titled "Lahore Development Authority and others Versus Muhammad Nadeem Kachloo and another", 2012 SCMR 165 titled "Director General, Intelligence Bureau, Islamabad Versus Muhammad Javed and others" and 2024 SCMR 541 titled "Rahimullah Khan Versus Deputy Postmaster General, Southern Postal Region, Khyber Pakhtunkhwa and others". But none of the above judgments discussed the question of abscondance.

09. On the contrary, learned District Attorney relied on 2017 SCMR 965 titled "Federation of Pakistan through Secretary Ministry of Defence and another Versus Bashir Ahmed, SBA in MES, Ministry of Defence, GE (Army), Nowshera". Para-04 of the said judgment is relevant, which is reproduced as under:

"4. It has come on the record that during the period of absence, no attempt was made on behalf of the respondent to apply for leave. The respondent's counsel himself stated before the Tribunal that the reason for his absence was that he went underground being involved in a murder case and it was only on the basis of a compromise with the victim's relatives that he was acquitted in September, 2012. Though the criminal case came to an end in September, 2012 and he was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the compromise was reached with the victim's family members. To seek condonation of absence during his absconsion would amount to putting premium on such act. If this is made a ground for condonation of absence, then in every case where the civil servant is involved in a criminal case and absconds, his absence from duty would have to be condoned. The act of absconsion or being a fugitive from law cannot be regarded as a reasonable ground to explain absence. Even where a person is innocent, absconsion amounts to showing mistrust in the judicial system. Learned counsel for the respondent

was asked to show as to whether in any case, this Court has condoned the absconsion and the departmental action was set aside, he was unable to satisfy this Court on this point. In the circumstances, the case relied upon by the respondent's counsel is of no help to the case of the respondent as it has no relevant in the facts and circumstances of this case."

10. We may also refer to the judgment of the Federal Service Tribunal, reported as 1996 PLC (CS) 988 titled "Zarghunshah Versus Surgeon General, General Headquarter, A. G. Branch, MED DTE DMS 3(B), Rawalpindi and another" wherein, while dealing with the issue of absence of civil servant after his involvement in criminal case, found as under:

"5. We have heard the learned counsel for the parties and have also perused the record. It appears from the record that the appellant had remained absent from duty with effect from 5 5 1990 but, in spite of notices, he did not bother to submit any application for leave nor he tendered any explanation therefor. If the appellant's submission that he had submitted an application for one month's leave on 5 5 1990 is admitted even then he has no case because he was arrested on 17 4 1993 and was released on bail on 6 6 1993. He has failed to show any request for extensions of his leave after 5 6 1990. The appellant's contentions that no inquiry was conducted in his case and he was penalized without affording any opportunity are also of no avail to him as it is an admitted fact that, after committing murder, he had remained absent from 5 5 1990. This Tribunal has observed in several cases that a 'detailed enquiry is not necessary where the charge stands proved/established and a Government servant cannot insist that disciplinary proceedings should be initiated in a particular manner. The appellant's acquittal was effected through a compromise and he had never been confronted with any trial. Therefore, if he desired, he could have informed the department about his tragedy. In our view, the appellant had remained under custody for a short period, whereas he mainly remained absent from duty un-authorizedly and, therefore, the respondents were justified in taking action against him. The respondents have also alleged that earlier too the appellant was habitual of remaining absent without any permission for leave. The appellant was, therefore, rightly held guilty of the charge and was justifiably punished. The cases relied upon by, the learned counsel for the appellant are distinguishable, and therefore, no credence is placed on them"

11. Relying on the above judgment, we find that the appellant has not reasonably explained his absence of more than 14 years, after his involvement in the criminal case and before surrendering.

There is an application for condonation of delay, moved before the Tribunal, but that cannot be taken into consideration to condone the delay caused in filing of departmental representation. There is also no effort of the appellant stated in his memo and grounds of appeal to explain the absence of more than 14 years, after his involvement in the criminal case and after his arrest in the said case.

12. The departmental appeal of the appellant was barred by lottime as he did not file the same during the period of absconsion, nor moved any application for leave or for that matter, to inform his superiors therefore, the appeal in hand is not maintainable in view of the cases titled "Anwarul Haq v. Federation of Pakistan" reported in 1995 SCMR 1505, "Chairman, PIAC v. Nasim Malik" reported in PLD 1990 SC 951 and "State Bank of Pakistan v. Khyber Zaman & others" reported in 2004 SCMR 1426.

13. In view of the above, instant service appeal is dismissed with costs. Consign."

8. In view of above, instant service appeal, being barred by time, is dismissed with costs. Consign.

8. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of November, 2024.



KALIM ARSHAD KHAN
Chairman



RASHIDA BANO
Member (Judicial)

Mutazem Shah



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.617/2022

Hameed Ullah

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-13 5 th November, 2024.	<p><u>Kalim Arshad Khan, Chairman</u></p> <p>Present:</p> <ol style="list-style-type: none">1. Mr. Saghir Iqbal Gulbela, Advocate, on behalf of appellant.2. Mr. Naseer Ud Din Shah, Assistant Advocate General on behalf of respondents. <p>Vide our detailed judgment of today, placed on file, instant service appeal, being barred by time, is dismissed with costs. Consign.</p> <p>2. <i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 5th day of November, 2024</i></p> <p> (Rashida Bano) Member (J)</p> <p> (Kalim Arshad Khan) Chairman</p> <p><small>*Mutazem Shah*</small></p>

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.617/2022

Date of presentation of Appeal 21.04.2022
Date of hearing 05.11.2024
Date of Decision 05.11.2024

**Hameed Ullah Ex-LHC No.940 S/O Muhammad Ashraf R/O Ghazni Kheli Sorazai Payan,
Peshawar.....(Appellant)**

Versus

1. **Inspector General of Police, Khyber Pakhtunkhwa.**
 2. **Deputy Inspector General of Police Counter Terrorism Department, Khyber Pakhtunkhwa, Peshawar.**
-(Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

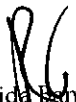
PRESENT

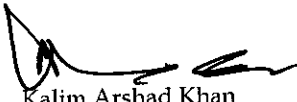
1. Mr. Saghir Iqbal Gulbela, Advocate, for the Appellant
2. Mr. Naseer Ud Din Shah, Assistant Advocate General, for respondents

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 5th day of November, 2024.


Rashida Bano
Member (Judicial)


Kalim Arshad Khan
Chairman