

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7493/2021

BEFORE: MR. AURANGZEB KHATTAK ... MEMBER(Judicial)
MRS. RASHIDA BANO ... MEMBER(Judicial)

Muhammad Abid No. 8389 FRP D.I.Khan Range D.I.Khan.

... Appellant)

VERSUS

1. Inspector General of Police Khyber Pakhtunkhwa Peshawar.
2. Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commandant FRP, Khyber Pakhtunkhwa. Peshawar.
4. Superintendent of Police FRP, Range D.I.Khan. ... (Respondents)

Muhammad Anwar Awan
Advocate

... For appellant

Mr. Muhammad Jan
District Attorney

... For respondents

Date of Institution.....24.09.2021
Date of Hearing.....08.10.2024
Date of Decision.....08.10.2024

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:

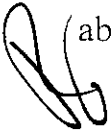
“On acceptance of this appeal, the Hon’ble court may graciously be pleased to declare the impugned order dated 16.07.2020 as illegal, void, without jurisdiction and without any lawful authority and thereafter the orders on appeal and revision are also liable to be set aside.”



2. Brief facts of the case, as alleged by the appellant in the memorandum of appeal, are that he was appointed as Constable in FRP range Police Department in the year 2014. During service, the appellant was suffered from back bone disease and was unable to perform his duties. He informed his high ups regarding his disease and also provided the medical prescription but they did not sanction his leave nor informed the appellant regarding the fact of non-processing of his leave case. Respondents vide impugned order dated 16.07.2020 removed him from service. Feeling aggrieved, he filed departmental appeal which was rejected vide order dated and was later on promote 01.10.2020. Thereafter he filed revision petition on 06.04.2021, which also met the same on 31.05.2021, hence the present service appeal.

3. Respondents were put on notice, who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney and perused the case file with connected documents in detail.

4. Learned counsel for appellant argued that the impugned order is against the law, facts, norms of justice, hence liable to be set aside; that appellant has not been treated in accordance with law and rules; that neither charge sheet nor final show cause notice was served upon the appellant, which against the norms of justice; that so called inquiry proceedings have been conducted at the back of the appellant and no chance of personal hearing was afforded to him and he was condemned unheard; that the absence of the

 absence of the appellant was not willful rather due to back bone disease due to

which he was unable to perform his duty. He requested that instant appeal might be accepted.

5. Conversely, learned District Attorney contended that the impugned orders passed by the respondents are legally justified and in accordance with law/rules as the same were issued after fulfillment of due legal formalities under the law. He further contended that on the allegations of willful absence he was proceeded against departmentally that he remained absent from his lawful duty with effect from 23.11.2019 to 25.11.2019 from 14.12.2019 to 12.04.2020 for total period of 122 days and again absented himself from 28.04.2020 till the date of his removal from service i.e 16.07.2020 for total period of 02 months & 18 days, without any leave or prior permission of the competent authority. He was issued charge sheet alongwith statement of allegations and S.I Sher Bahadar of FRP D.I.Khan Range was nominated as enquiry officer to unearth the actual facts. He was summoned by the enquiry officer time and again to joined the enquiry proceedings, but he did not turn up and after completion of all legal formalities the Enquiry Officer, submitted his finding alongwith other relevant papers, wherein we found him guilty of the charges leveled against him.

6. Perusal of record reveals that the appellant was appointed as Constable in FRP range Police Department in the year 2014. During service, he allegedly suffered from back bone disease and was unable to perform his duties. He informed his high ups regarding his disease and also provided the medical prescription but they did not sanction leave of appellant nor informed the appellant regarding the fact of non-processing of his leave case.




Respondents vide impugned order dated 16.07.2020 removed him from service.

7. Record further reveals that the respondents issued the impugned order without properly investigating the appellant's medical condition. The appellant claims to have informed his superiors about his back bone disease and submitted medical prescriptions, yet no substantive steps were taken by the respondents to evaluate the authenticity of his illness or to process his medical leave application. The inquiry conducted by the respondents was clearly deficient in this regard. While the appellant's absence from duty was a central issue, the respondents were also under a duty to verify whether the absence was justified due to medical reasons. The inquiry officer did not consider the appellant's medical condition in sufficient detail, nor did the inquiry report address the possibility that the appellant's absence was due to a legitimate illness.

8. It is also noted that the appellant was not afforded a proper opportunity to defend himself. The inquiry proceedings were conducted in his absence, and no adequate effort was made to ensure his participation. The principle of natural justice, which requires that no one be condemned unheard, was violated in this case.

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 require that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded





against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would 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.

10. In view of the above, the inquiry conducted by the respondents cannot be said to have been fair and just. The failure to consider the appellant's medical condition and the lack of a proper inquiry into the genuineness of his illness constitute substantial procedural irregularities.

11. In view of the above, we are unison to set aside the impugned order and reinstate the appellant for the purpose of denovo inquiry. The respondents are directed to conduct a fresh inquiry into the matter, specifically focusing on the appellant's medical condition and the genuineness of his illness. The appellant shall be provided with a fair opportunity to present his defense, and the respondents shall make a decision in accordance with law after completing the inquiry. The issue of back benefits shall be decided subject to the outcome of the inquiry. Costs shall follow the event. Consign.

12. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 8th day of October, 2024.*


(Aurangzeb Khattak) 08.10.2024
Member (J)


(Rashida Bano)
Member (J)

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.7493/2021

Date of presentation of Appeal 24.09.2021
Date of hearing 08.10.2024
Date of Decision 08.10.2024

Muhammad Abid No. 8389 FRP D.I.Khan Range D.I.Khan.

... (Appellant)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Commandant FRP, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE REMOVAL ORDER DATED 16.07.2020 OF RESPONDENT NO. 4 AND ALSO ORDERS OF RESPONDENTS NO. 1 TO 3 AND MAY KINDLY REINSTATE THE APPELLANT INTO SERVICE WITH ALL BENEFITS.


PRESENT

1. Mr. Muhammad Anwar Awan, Advocate for the appellant
2. Mr. Muhammad Jan, District Attorney for the 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 8th day of October 2024.


(AURANGZEB KHATTAK)
Member (J)


(RASHIDA BANO)
Member (J)

ORDER

08.10.2024 1. Learned counsel for the appellant present. Mr. Muhammad Jan,
District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file we are unison
to set aside the impugned order and reinstate the appellant for the
purpose of denovo inquiry. The respondents are directed to conduct
fresh inquiry into the matter, specifically focusing on the appellant
medical condition and the genuineness of his illness. The appellant shall
be provided with a fair opportunity to present his defense, and the
respondents shall make a decision in accordance with law after
completing the inquiry. The issue of back benefits shall be decided
subject to the outcome of the inquiry. Costs shall follow the event.
Consign.


3. *Pronounced in open court in Peshawar and given under our
hands and seal of the Tribunal on this 8th day of October, 2024.*

(Aurangzeb Khattak)
Member (J)

(Rashida Bano)
Member (J)

Note

4th October, 2024 The case could not be fixed before DB at Camp Court, D.I. Khan due to cancellation of tour. Therefore, instant case be fixed on 08/10/2024 before D.B at the Principal Seat, Peshawar. Counsel has been informed telephonically.


(Habib Ur Rehman Orakzai)
Registrar