

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1905/2022

BEFORE: MR. AURANGZEB KHATTAK... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mulazim Hussain S/O Kala R/O Dhakki Tehsil Pharpur D.I.Khan Police
Lines FRP D.I.Khan. (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home Department,
Peshawar.
2. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
3. Additional Inspector General of Police, FRP Khyber Pakhtunkhwa Peshawar.
4. Superintendent of Police FRP D.I.Khan.(*Respondent*)

Mr. Muhammad Abdullah Balouch,
Advocate

... For appellant

Mr. Asif Masood Ali Shah
Deputy District Attorney

... For respondents

Date of Institution..... 03.02.2023

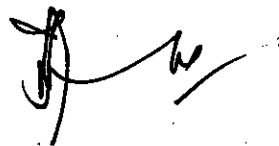
Date of Hearing.....21.10.2024

Date of Decision..... 21.10.2024

SCANNED
KPST
Peshawar

JUDGMENT

FAREEHA PAUL, MEMBER (E): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, against the order dated 24.08.2022, whereby the appellant was removed from service and against the order dated 28.11.2022, whereby his departmental appeal was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the respondents might be directed to reinstate the appellant into service with all back benefits.



02. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed as Constable in the Police Department. He was posted at P.S City Dera Ismail Khan where allegedly during mid night at duty time, he felt severe pain in the backbone and was brought to DHQ Hospital D.I.Khan for treatment. The doctor suggested medical treatment as well as 21 days complete bed rest. He, time and again, reported regarding his illness to his high-ups but in vain. Departmental proceedings were initiated against him but without issuing show cause notice to him and without affording opportunity of being heard, he was removed from service vide order dated 24.08.2022. Feeling aggrieved, he filed departmental appeal before respondent No. 2 on 18.10.2022 which was rejected vide order dated 28.11.2022; hence the instant service appeal.

03. Respondents were put on notice who submitted their joint written reply/comments. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

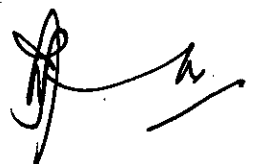
04. Learned counsel for the appellant, after presenting the case in detail, argued that absence of the appellant was not willful but due to severe pain in his backbone and the respondent department did not take into consideration medical prescriptions and complete bed rest advised by the authorized Medical Officer. He argued that no show cause notice was served upon the appellant nor he was heard in person and ex-parte proceedings were initiated against him. He requested that the appeal might be accepted as prayed for.

05. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the appellant was found indisciplined and irresponsible officer. In the past, he remained absent from his



lawful duty on different occasions for a total of 993 days for which he was awarded different punishments and that there were twenty bad entries at his credit. On the allegations of willful absence, the appellant was issued show cause notice but he failed to submit his reply or to appear before the competent authority. Later on, he was proceeded against departmentally and was issued charge sheet alongwith summary of allegations. An Inquiry Officer was nominated to conduct proper enquiry against him. After completion of the inquiry, the Inquiry Officer submitted his findings report wherein he was found guilty of the charges levelled against him and was recommended for major punishment. He was heard in person in the orderly room on 25.11.2022 by respondent No. 2 but he failed to present any justification regarding his misconduct and hence, he was removed from service after observing all the codal formalities. He requested that the appeal might be dismissed.

06. The instant service appeal has been preferred against an order dated 24.08.2022 vide which the appellant was removed from service on the charge of absence from duty at various dates. Arguments and record presented before us showed that the appellant remained absent from duty for the period from 29.03.2022 to 15.06.2022, 16.06.2022 to 29.07.2022 and 11.08.2022 till 24.08.2022, when the order of removal from service was issued. Two sets of charge sheet and statement of allegations dated 20.05.2022 and 18.07.2022 were available at page 7 and 9 respectively of the reply submitted by the respondents. For both the inquiries S.I Abdul Latif Khan of FRP D.I.Khan was appointed as Inquiry Officer, whereas the inquiry reports submitted by the respondents at page 13 and 15 showed that the first inquiry was conducted by S.I Abdul Latif, whereas the second inquiry was conducted by S.I Sajid Hussain. When asked, the




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learned Deputy District Attorney could not produce any order of the competent authority where the Inquiry Officer for second inquiry was changed from S.I Abdul Latif to S.I Sajid Hussain. Learned counsel for the appellant in his arguments stated several times that the appellant was not associated with the inquiry proceedings but the record produced by the respondents showed that he was associated in both the inquiries. Show cause notices dated 11.04.2022, 28.06.22 and 23.08.2022 available with the reply did not indicate whether they had been served upon the appellant or not, as no record of service of those show cause notices could be provided by the respondents either with the reply or by the learned Deputy District Attorney during the course of arguments.

07. In view of the above discussion, it appears that before awarding a major penalty, legal obligations have not been fulfilled in the present case. The matter is, therefore, referred back to the respondent department for denovo inquiry with the direction to fully associate the appellant in the entire proceedings by giving him full opportunity to present and defend his case and fulfill all the legal obligations of a fair trial. The appellant is reinstated into service for the purpose of denovo inquiry. The matter of back benefits is subject to the outcome of denovo inquiry. The entire process shall be completed within sixty days of the receipt of copy of this judgment. Cost shall follow the event. Consign.

08. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 21st day of October, 2024.*


(FARLEHA PAUL)
Member (E)


(AURANGZEB KHATTAK)
Member (J) 21/10/2024