

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
FAREEHA PAUL ... MEMBER (Executive)

Service Appeal No. 2489/2023

Date of presentation of Appeal.....27.11.2023
Date of Hearing.....03.10.2024
Date of Decision.....03.10.2024

Tilawat Shah S/o Munaf Khan, R/o Village Urmar Miana, Tehsil and District Peshawar, Ex-Constable No. 650 FRP Headquarters Peshawar.
.....**Appellant**

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
4. Accountant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar.
.....**(Respondents)**

Present:

Mr. Zia-ur-Rehman Tajik, Advocate.....For appellant
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents
.....

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL): The facts of the case, as alleged by the appellant in his memorandum of appeal, are that he was appointed as Constable in the Frontier Reserve Police, Khyber Pakhtunkhwa, on October 26, 2004. He was implicated in a murder case FIR No. 550 dated July 13, 2020 and was acquitted by the trial court on September 11, 2023. He allegedly during his incarceration was removed from service on June 16, 2021. After his acquittal, he filed departmental appeal against his removal on September 25, 2023, which was dismissed on October 5, 2023. He

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subsequently filed a revision petition, which was also dismissed on October 10, 2023. He has now filed the instant appeal before this Tribunal for redressal of his grievance.

2. The respondents were summoned, who contested the appeal by way of filing their respective written reply/comments.

3. Learned counsel for the appellant contended that the appellant was not given a proper opportunity to present his case before his removal, which directly contravenes the principles of natural justice. He next contended that the acquittal of the appellant in the murder case invalidates the basis of the charges against him. He further contended that any punitive action should have been held in abeyance until the criminal proceedings were concluded. He also contended that the absence of the appellant from duty during his imprisonment was not deliberate but caused by circumstances beyond his control. He next argued that the major penalty of removal from service cannot be imposed without conducting a proper inquiry and providing him an opportunity to defend himself. He further argued that according to the case of Azhar Mahmood (PLJ 2005 TRC (SERVICE) 222), dismissal based solely on criminal charges, prior to trial outcomes, was erroneous unless a proper inquiry was conducted. He also argued that mere absence from duty does not constitute gross misconduct warranting major penalties like removal. He next added that the removal order of the appellant from service lacks compliance with the Khyber Pakhtunkhwa Government Servants (E&D) Rules, which requires fair play and adherence to investigation protocols. In

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the last, he argued that the appellant may be reinstated in service with all back benefits.

4. On the other hand, the learned Deputy District Attorney for the respondents contended that the appellant has a record of inefficiency, noting previous absences from duty between September 2008 and March 2009, which led to earlier disciplinary actions resulting into his removal from service, however he was later on reinstated in service. He next contended that the appellant obtained ad-interim BBA but later on went into hiding, so the trial court declared him a proclaimed offender, justifying disciplinary actions against him. He further contended that a thorough inquiry was conducted, which included issuing a charge sheet and providing the appellant opportunities for defense, which he neglected to utilize. He also contended that the appellant remained absent from duty and was absconder w.e.f 17.01.2021 to 06.02.2023 and on 06.02.2023, he was arrested in the criminal case and that the departmental appeal was time-barred, therefore, the appeal in hand is not competent. He next argued that the removal from service of the appellant adheres to Police Rules 1975 and is supported by the established framework of disciplinary action within police regulations. He further argued that the actions taken against the appellant are consistent with the required legal and procedural norms and thus uphold the removal order as justified. In the last, he argued that the appeal in hand being barred by time as well as merit less may be dismissed with costs.

5. We have heard the arguments of learned counsel for the parties and have perused the record.

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6. The perusal of the record shows that the appellant, while serving as a Constable in the Frontier Reserve Police, Khyber Pakhtunkhwa, was charged in case FIR No. 550 under sections 302/34/148/149 PPC on July 13, 2020. He obtained ad-interim BBA from the court on 16.07.2020 but later went into hiding and also absented himself from his duties w.e.f. January 17, 2021 and remained an absconder till his arrest in the case on 06.02.2023.

7. The record also shows that, vide order dated 05.08.2020, issued by respondent No. 3, the appellant was suspended in connection with the aforementioned criminal case. Charge sheet and statement of allegations were issued to him, while DSP Headquarters FRP was appointed as the inquiry officer. The appellant, who had obtained ad-interim BBA from the court concerned vide order dated 16.07.2020, received the charge sheet and statement of allegations and also submitted a written reply thereof. Thereafter, he went into hiding and absconded, resulting in his ad-interim pre-arrest bail being recalled by the court. After completion of legal formalities, he was declared a proclaimed offender by the court.

8. Upon conclusion of the inquiry, the appellant was found guilty of willful absence from duty since 17.01.2021 and absconding in the criminal case. Thus, while relying on the inquiry report, respondent No. 3, being the competent authority, imposed the major penalty of removal from service upon the appellant, vide order dated 15.06.2021. The appellant remained an absconder and absent from duty since 17.01.2021 till his arrest on 06.02.2023. He faced trial in


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custody and vide order dated 11.09.2023, was acquitted, along with others, by the court of learned ADJ XIII Peshawar. After his release from judicial lock-up, he filed his departmental appeal, which was rejected on 05.10.2023. He also filed a revision petition, which was also rejected, vide order dated 31.10.2023. Thus, he filed the instant service appeal on 27.11.2023.


9. The appellant was not in custody since the registration of the FIR on 13.07.2020 till he went into hiding on 17.01.2021, rather, he was on ad-interim pre-arrest bail since 16.07.2020. He was required to surrender before the law but he opted to remain an absconder for two years. The designation of the appellant as a proclaimed offender serves as a critical juncture in evaluating his subsequent legal actions, including the filing of the departmental appeal. The legal ramifications of being declared a proclaimed offender include a suspension of certain rights that might otherwise facilitate the timely filing of appeals or other legal remedies. The learned counsel's assertion that the departmental appeal filed post-acquittal is within the time limits as prescribed by law does not hold when one considers the appellant's status during the pendency of the criminal case. His designation as a proclaimed offender interrupts the timeline for considering any appeals, including those of a departmental nature. As a result, we find that the arguments of learned counsel for the appellant regarding the timeliness of the departmental appeal has got no force. The circumstances leading to and including, the proclamation as an offender indicate a significant departure from the legal norms


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surrounding the timely filing of appeals. In light of these points, we conclude that the appeal is, in fact, badly time-barred.

10. Consequently, upon the above discussion, it is held that the appeal in hand is liable to be dismissed, which is hereby dismissed. Parties are left to bear their own costs. The file is to be consigned to the record room.

11. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 03rd day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial)



FARIEHA PAUL
Member (Executive)


Naeem Amin

ORDER

03rd Oct, 2024

1. Appellant alongwith his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.
2. Vide our judgment of today placed on file, it is held that the appeal in hand is liable to be dismissed, which is hereby dismissed. Parties are left to bear their own costs. The file is to be consigned to the record room.
3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 03rd day of October, 2024.*


(Farzana Paul)
Member (Executive)


(Aurangzeb Khattak) 03/10
Member (Judicial) 2024.

22nd July, 2024 1.

Appellant in person present. Mr. Muhammad Jan,

District attorney for respondents present.

2. Former requested for adjournment on the ground that his counsel is not available today. Granted. To come up for arguments on 03.10.2024 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

(Aurangzeb Khattak)
Member (J)

(Kalim Arshad Khan)
Chairman

Adnan Shah, P.A.