

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

BEFORE: **AURANGZEB KHATTAK** ... MEMBER (Judicial)
RASHIDA BANO ... MEMBER (Judicial)

Service Appeal No. 08/2021

Date of presentation of Appeal.....04.01.2021
Date of Hearing.....09.10.2024
Date of Decision.....09.10.2024

Hidayatullah, Constable No. 223, R/o Village Umarkhel, Tehsil & District Tank.....*Appellant*

Versus

1. Provincial Police Officer (IGP), Khyber Pakhtunkhwa, Peshawar.
 2. Regional Police Officer (DIG), Tank/Dera Ismail Khan Region.
 3. The District Police Officer, Tank.
-(*Respondents*)

Present:

Mr. Sheikh Iftikhar-ul-Haq, Advocate.....For appellant.
Mr. Asif Masood Ali Shah, Deputy District Attorney.....For respondents

JUDGMENT

AURANGZEB KHATTAK, MEMBER (JUDICIAL):- The appellant, Hidayat Ullah, was appointed as a Constable on 30/04/2002 and has served the Police Department in District Tank. The appellant allegedly suffered from a serious illness during the COVID-19 pandemic and commenced treatment at DHQ Hospital Tank, which involved himself and his family members contracting the virus. On 26/08/2020, the appellant was dismissed from service retroactively, starting from 23/03/2020, prompted by allegations of willful absence without leave. Feeling aggrieved, the appellant field departmental

appeal, which was rejected vide order dated 12/01/2021, leading to the instant appeal 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 impugned dismissal order was passed without giving the appellant a proper opportunity for a personal hearing, rendering the decision unjust. He next contended that absence of the appellant was a result of his medical condition and not willful neglect. He further contended that the medical records substantiating his illness were reportedly submitted to the authorities. He also contended that the inquiry conducted against the appellant was inadequate, lacking essential steps including a charge sheet, show-cause notices, and an adequate opportunity for the appellant to defend himself. He next argued that the dismissal order has significant ramifications for the appellant's family, as he is the sole breadwinner, therefore, seeks reinstatement with all entitled benefits. He further argued that he had accrued 880 days of earned leave, demonstrating his commitment and punctuality throughout his service. In the last, he argued that the impugned orders may be set-aside and 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 willfully remained absent from duty without any leave or prior permission of the competent authority. He next contended that ill health was contradicted by the

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findings of the Inquiry Officer, who reported the medical documents as fake, fraudulent behavior justifies the dismissal order. He further contended that final show cause notice was issued, to which the appellant's defense was found unsatisfactory during the hearing conducted on 26/08/2020 and the appellant failed to provide credible explanations or evidence. In the last, he argued that all the legal and codal formalities were fulfilled before passing the impugned orders, therefore, the appeal in hand being meritless may be dismissed with cost.

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

6. The perusal of the record shows that the appellant was proceeded against on the allegations of his absence from duty. It is the contention of the appellant that his absence was result of his medical condition and not willful neglect. Charge sheet and statement of allegations were issued to the appellant on 05.05.2020, clearly defining the periods in question (March 23, 2020, to May 10, 2020, and from May 11, 2020, to May 27, 2020). The total absence accounted was 65 days, which forms the crux of the allegations. The appellant responded to the charge sheet, asserting that he was present at the police station until the conclusion of his duty on March 23, 2020. He further claimed to have suffered a medical condition that necessitated immediate attention, after which he was prescribed rest and medication by a medical professional. The appellant contended that his absence should be considered medical leave, as it was

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substantiated by medical advice and he resumed duty on May 28, 2020. Mr. Iqbal Baloch, DSP Headquarter Tank, was appointed as the inquiry officer. A review of the inquiry proceedings revealed significant procedural missteps. The inquiry officer did not record the appellant's statement during the inquiry process, which is a fundamental aspect of ensuring a fair hearing. There was no effort to associate the appellant in the inquiry proceedings nor was any witness statement recorded, which calls into question the integrity and thoroughness of the inquiry. The inquiry officer's conclusions appear to rest solely on the appellant's written reply to the charge sheet, without conducting a comprehensive investigation that included the opportunity for the appellant to present his case in person or to call witnesses that may substantiate his claims. The lack of opportunity for the appellant to be heard, both in terms of presenting his statement and the absence of witness testimonies, contravenes the principles of natural justice. The burden of proving the allegations lies with the respondent but the absence of proper inquiry raises doubts regarding the validity of the charges levied against the appellant. It is clear that there were substantial deficiencies in the inquiry process that undermined the appellant's right to a fair hearing. The inquiry conducted is deemed insufficient and flawed due to procedural lapses.


7. In view of the above, the impugned orders are set-aside and the appellant is reinstated for the purpose of proper inquiry. The competent authority is directed to conduct proper inquiry within ninety (90) days from the receipt of a copy of this judgment. The

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respondents are directed to verify the genuineness of the defense plea concerning the appellant's claims of illness as part of the inquiry process. The appellant shall be given a fair opportunity to be associated with the inquiry proceedings, allowing him adequate means to defend himself against the allegations. The issue of back benefits of the appellant shall be contingent upon the outcome of the inquiry. Parties are left to bear their own costs. File be consigned to the record room.

8. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 09th day of October, 2024.*


AURANGZEB KHATTAK
Member (Judicial)


RASHIDA BANO
Member (Judicial)


ORDER

09th Oct, 2024

1. Learned counsel for the appellant 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, the impugned orders are set-aside and the appellant is reinstated for the purpose of proper inquiry. The competent authority is directed to conduct proper inquiry within ninety (90) days from the receipt of a copy of this judgment. The respondents are directed to verify the genuineness of the defense plea concerning the appellant's claims of illness as part of the inquiry process. The appellant shall be given a fair opportunity to be associated with the inquiry proceedings, allowing him adequate means to defend himself against the allegations. The issue of back benefits of the appellant shall be contingent upon the outcome of the inquiry. Parties are left to bear their own costs. File 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 09th day of October, 2024.*



(Rashida Bano)
Member (Judicial)





(Aurangzeb Khattak)
Member (Judicial) 2024.

21.05.2024 1. Appellant present in person. Mr. Asif Masood Ali Shah,
learned Deputy District Attorney for the respondents present.



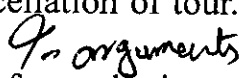


2. Former stated that his learned counsel is not in attendance
due to general strike of the lawyers. Adjourned. To come up for
arguments on 20.08.2024 before D.B at camp court, D.I.Khan.

P.P given to the parties.


(Fareeha Paul)
Member (E)
Camp Court, D.I.Khan


(Rashida Bano)
Member (J)
Camp Court, D.I.Khan

Note

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


(Habib Ur Rehman Orakzai)
Registrar