

31/20

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Gulzar Ahmed, HCJ
Mr. Justice Ijaz ul Ahsan

3 *AFR*
Civil Appeal No.58 of 2020

Against judgment dated 20.11.2017 of Khyber
Pakhtunkhwa Service Tribunal, Peshawar,
passed in Service Appeal No.734 of 2014.

*Government of Khyber Pakhtunkhwa
through Capital City Police Officer
Peshawar & others*

Appellant(s)

VERSUS

Shahid

Respondent(s)

For the Appellant(s) : Barrister Qasim Wadood,
Addl.AG, KP.

For the Respondent(s) : Mr. Muhammad Asif, ASC

Date of Hearing : 02.04.2020

ORDER

GULZAR AHMED, CJ-. We have heard the
learned Additional Advocate General, Khyber
Pakhtunkhwa as well as learned ASC for the Respondent
and have gone through the material available on record.
The Respondent was employed as a Police Constable in
the Police Department, Khyber Pakhtunkhwa. He was
issued a charge sheet alongwith statement of allegations.
An Inquiry Officer was appointed to inquire into the
allegations levelled against the Respondent. Despite
successive notices issued to the Respondent, he did not

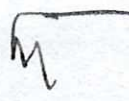
appear before the Inquiry Officer. Although, the Respondent was informed through mobile phone to appear before the Inquiry Officer, but he avoided attending the inquiry proceedings. The Inquiry Officer recommended that a major penalty of dismissal from service be imposed upon the Respondent. On such recommendations, the competent authority in the Department issued final show cause notice to the Respondent to which he failed to submit any explanation. After having fulfilled the codal formalities, the Respondent was dismissed from service on the allegation of wilful absence from duty for a period of six months and three days, vide office order dated 04.03.2014. The departmental appeal filed by the Respondent was rejected and then he filed a service appeal bearing No.734 of 2014 before the Khyber Pakhtunkhwa Service Tribunal, Peshawar (**"the Tribunal"**) which vide impugned judgment dated 20.11.2017 came to the following conclusion:

"It is not disputed that the appellant remained absent without permission and the stance of appellant is that he was absent due to unavoidable circumstances. In these circumstances, the impugned order appears to be harsh one and not commensurate with the lapse/guilt on the part of the appellant and as such the punishment of removal from service of the appellant is converted to withholding of two increments for two years. The absence period and intervening period shall be treated as leave of the kind due."

2. The learned Additional Advocate General, Khyber Pakhtunkhwa contends that once the allegation of unauthorized absence from duty stood proved against

the Respondent and the same having not been seriously disputed before the Tribunal, there was no power vested in the Tribunal to modify the penalty of dismissal from service to that of withholding of two increments for a period of two years for which the Tribunal has not cited any law, but it has just whimsically stated that the penalty imposed upon the Respondent was harsh. What are the parameters of imposition of major and minor penalties, under what circumstances such penalties are to be imposed and what law governs the imposition of such penalties, the Tribunal has not taken trouble of examining the same or making any observations in that regard in the impugned judgment. Just whimsically stating that the punishment is harsh could not be made basis by the Tribunal to modify the penalty imposed by the competent authority. Learned ASC for the Respondent has also not been able to show that the Tribunal while modifying the penalty has acted in accordance with law, in that, no law in this regard whatsoever was cited by him.

3. For what has been discussed above, we find that the Tribunal by interfering with the penalty imposed by the department has exceeded from its jurisdiction more so when the Respondent was employed in a disciplined force where he could not have remained absent from duty for a long period of 06 months and 03



days as noted in the impugned judgment. We find that the impugned judgment passed by the Tribunal suffers from illegality and is unsustainable in the eyes of law. The same is therefore set aside, the penalty of dismissal from service imposed upon the Respondent by the Department vide office order dated 04.03.2014 is restored and the present appeal is allowed.

4. All pending CMAs are also disposed of.


ISLAMABAD, THE

02.04.2020

ZR/*

-Not Approved For Reporting




18/4/20