

Saleem Jan (Ex. Sawar BMP) Vs. Deputy Commissioner/Senior Commandant, Border Military Police, Rajanpur & another

10.03.2023

PRESENT

1. Mr. Allah Nawaz Khosa Advocate, Counsel for the appellant
2. Malik Muhammad Qasim, D.D.A.
3. Mr. Kafayat Hussain, Sawar, D.R.

The appellant was serving as Sawar in Border Military Police, District Rajanpur. A special report was submitted on 24.05.2021 by one Atta Ullah Khan, In-charge/Dafedar, BMP Police Station Kot Rum, District Rajanpur regarding misuse of official capacity, providing the official uniform, official weapon (Rifle, G-III) and handcuffs to certain notorious private persons for misusing the same for their personal benefits, by the appellant. On the aforesaid report, the departmental proceedings were initiated against the appellant under the Border Military Police Act, 2004. A show cause notice was issued to the appellant, an inquiry officer was also appointed, who summoned the appellant thrice, but his service could not be processed. Hence, the inquiry officer found him guilty on the basis whereof the competent authority, vide order dated 29.06.2021, imposed upon the appellant the major penalty of "dismissal from service". The appellant filed departmental appeal, which was declined on 25.11.2021. Hence, this appeal.

2. Learned counsel for the appellant as well as learned Deputy District Attorney having been heard at length, the available record has also been perused.

3. The perusal of record reveals that the proceedings against the appellant were initiated on the basis of a special report chalked out by his In-charge. During the course of proceedings, the appellant was summoned through normal procedure, but since he was detained in the Police Station that is why his brother had to file an application

under Section 491 of Cr.P.C for the release of the appellant, wherein the Border Military Police (BMP) reported that the appellant had been released, on the basis whereof the petition was disposed <sup>off</sup> on 28.05.2021. However, the inquiry report available on file shows that the appellant deliberately did not respond to the notices issued to him. The aforesaid report of BMP was made on 27.05.2021 and although the notices for joining the inquiry proceedings were issued to the appellant subsequently, but it is also a material fact that prior to that the appellant was detained in the Police Station and his brother



had to file an application under Section 491 Cr.P.C for his release, hence it is strong apprehension that the appellant slipped away from his abode due to harassment of the department, so it cannot be stated that he willfully did not join the inquiry proceedings, rather his non-

joining was due to the aforesaid circumstances. Though the statements of witness were recorded by the inquiry officer, but since the appellant was not there, hence question of cross-examination does not arise. It is settled principle of law that no one should be condemned unheard and the matters be decided after hearing the accused. But in present case, since the department did not try with zeal to join the appellant with the inquiry proceedings, hence, such proceedings being not warranted by law cannot be validated. Reliance is placed upon **1997 SCMR 1543, 2007 PLC (C.S) 5, PLD 2008 Supreme Court 392 and 2009 SCMR 412.**

4. Consequent upon the said findings, the impugned orders are not sustainable in the eyes of law. Therefore, the appeal in hand is **partially allowed**, the impugned orders are set aside and the appellant is reinstated into service with immediate effect. However, the

BEFORE THE PUNJAB SERVICE TRIBUNAL, LAHORE

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Note:

Very kindly fix this Appeal  
for Lahore.

*[Signature]*

164  
12-1-2022

Service Appeal No. \_\_\_\_\_/2022

Saleem Jan S/o Ghulam Nabi, Ex-Sawar BMP R/o Post office Lal  
Garh, Tehsil Jampur District, Rajanpur

...APPELLANT

VERSUS



Deputy Commissioner/Senior commandant Border Military  
Police, Rajanpur

Political Assistant/Commandant Border Military Police  
District Rajanpur

...RESPONDENTS

APPEAL AGAINST THE ORDER NO .678/BMP DATED 29-  
06-2021 OF THE POLITICAL  
ASSISTANT/COMMANDANT BORDER MILITARY  
POLICE ,DISTRICT RAJANPUR WHEREBY THE  
APPELLANT WAS AWARDED MAJOR PUNISHMENT OF  
DISMISSAL FROM SERVICE AND APPELLATE ORDER  
DATED 25.11.2021 COMMUNICATED TO THE  
APPELLANT ON 10.01.2022 WHERBY THE APPEAL OF  
THE APPELLANT WAS REJECTED BY THE  
RESPONDNET NO.01

CLAIM IN APPEAL:

Very kindly set-aside the impugned order  
No.678 dated 29-06-2021 of the respondent  
No.02 and appellate Order dated 25/11/2021