BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 540/2018.

Hayat Mohammad Constable No. 520 .....Appellant.

VERSUS.

District Police Officer, Mardan & others.....Respondents.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.

REPLY ON FACTS.

1. Pertains to record, hence, no comments.
2. Incorrect. His service record speak otherwise as there is numerous bad entries, including 310 days previous absence. He never remained dutiful as required under rules/law and always found guilty of misconduct. Hence, denied.
3. Incorrect. The plea of sickness is just a pretext and to establish a ground for instant appeal in this Honourable Tribunal. Besides, availing medical prescriptions/bed rests has, now a days, become an easier practice which almost all the Governement employees produce/present during their service appeals/trial/court proceedings with the hope to establish moral or legal grounds therein. Hence, strongly denied.
4. Correct, hence, no comments.
5. Pertains to record, hence, no comments.
6. Correct, hence, no comments.
7. Correct, however, his appeal holds no grounds, legal or moral, to stand here on in this Honourable Tribunal.

REPLY ON GROUNDS:-

A. Incorrect. The respondents have honoured directions issued by this Honourable Tribunal for conducting De-novo inquiry. The medical prescriptions presented now, and which he was required to have presented at the time of his regular/first departmental Inquiry, mitigated gravity of his misconduct. He is therefore, recommended for minor penalty by the inquiry officer on the ground of not adopting proper procedure for seeking leave, medical or otherwise. **(Copy of De-novo Inquiry is attached as Annexure-A).**

B. Incorrect. The appellant has been remained absent for an uncondonable long period, however, the penalty of "censure and leave without pay" is awarded to him for not adopting proper procedure for earning leave. Hence, guilty of misconduct and the punishment awarded deserves him under rules/law.

C. Incorrect. The penalty awarded to appellant has been mitigated from major to minor for the only reason of his not adopting proper way for earning leave from the competent authority. The appellant has not been exonerated of the misconduct he committed. Besides, the appellant has not performed duty, therefore, the general principal of "No Work No Pay" holds ground here. The appellant, hence, not entitled to as prayed for.

D. Incorrect and baseless, hence, no comments.

E. Incorrect. Proper De-novo Inquiry has been conducted by adopting all codal formalities.

F. Incorrect. The impugned orders are legal, justified and according to rules/law. Hence, maintainable in the eyes of law.

G. The respondents also seek permission to raise additional grounds, if any, at the time of arguments.

PRAYER:-

The prayer of the appellant, being baseless & devoid of merits, is liable to be dismissed with costs.

Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)

Deputy Inspector General of Police,
Inquiry & Inspection
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 03)

Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)

District Police Officer,
Mardan
(Respondent No. 04)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 540/2018.

Hayat Mohammad Constable No. 520 .....Appellant.

VERSUS.

VERSUS.

District Police Officer, Mardan & others.....Respondents.

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.

Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)

Deputy Inspector General of Police,
Inquiry & Inspection
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 03)

Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)

District Police Officer,
Mardan
(Respondent No. 04)

INQUIRY REPORT. (De-novo Inquiry)

This is departmental inquiry against Constable Hayat Muhammad No. 520 which was entrusted to me by the worthy District Police Officer Mardan vide No. 124/R/D.A-P.R-1975 dated 07.11.2017 with reference to letter No. 1390-31/ E&I dated 26.10.2017, issued by the worthy Assistant Inspector General of Police Complaints and Enquiries, CPO Peshawar. The defaulter official was charge sheeted by the worthy District Police Officer Mardan in response to which he submitted his written explanation/reply which was found not satisfactory. Therefore, the undersigned started to conduct formal departmental inquiry against the above named defaulter official. The charges against him are as under:

"That Constable Hayat Muhammad No. 520, while posted at Police Station Garhi Kapoora, Mardan left the PS Garhi Kapoora on account of transfer vide DD No. 23 dated 07.02.2013 but he failed to report at new place of posting, therefore he was marked absent vide DD No. 41 dated 07.02.2013 PS Garhi Kapoora, who later on joined duty there vide DD No. 36 dated 09.05.2013 and remained 91 days absent from duty. He was served with Show Cause Notice vide this office No. 165/PA dated 26.04.2013, but his reply was unsatisfactory and he was awarded major punishment of dismissal from service vide OB No. 1145 dated 24.05.2013. Then he approached to the Service Tribunal, Khyber Pakhtunkhwa, Peshawar, wherein he was reinstated in service and recommended for de-novo departmental proceedings by the Addl: Inspector General of Police, Complaints & Enquiries, Khyber Pakhtunkhwa, Peshawar vide his office letter No. 1390-91 dated 26.10.2017. Therefore, the alleged Constable is liable to proceed against departmentally".

During the course of inquiry the undersigned summoned PWs namely Muhammad Tahir Khan then ASI now SI Special Branch, SI Mushtaq then OASI and Muhammad Riaz MASI PS Takht Bhai and defaulter official Constable Hayat Muhammad No. 520. I heard them in detail and recorded their statements which are available on inquiry file for kind perusal. However, brief of statements are given below:-

Legal action into
the matter may kindly
be called from Inspector
Legal for the light of
early please.

A/DD

SP/Investigation
Mardan.
28.11.2017

CHARGE SHEET UNDER KPK POLICE RULES 1975

I, Dr. Mian Saeed Ahmed District Police Officer, Mardan as competent authority hereby charge you **Constable Hayat Muhammad No. 520,** as follows.

That you **Constable Hayat Muhammad No. 520,** while posted at Police Station Garhi Kapoora, Mardan left the PS Garhi Kapoora on account of transfer vide DD No. 23 dated 07.02.2013, but you failed to report at new place of Posting, therefore you were marked absent vide DD No. 41 dated 07.02.2013 PS Garhi Kapoora. Later on you joined duty vide DD No. 36 dated 09.05.2013 and remained 91 days absent from duty. You were served with show cause Notice vide this office No. 165/PA dated 26.04.2013, but your reply was unsatisfactory and you were awarded major punishment of dismissal from service vide OB NO. 1145 dated 24.05.2013. Then you approached to the Service Tribunal, Khyber Pakhtunkhwa, Peshawar wherein you were reinstated in service and recommended for de-nove departmental proceeding by the Addle: Inspector General Police, Complaints & Enquiry, Khyber Pakhtunkhwa, Peshawar vide his office letter No. 1390-91 dated 26.10.2017. Therefore, the you are liable to proceed against departmentally.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section – 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.

(Dr. Mian Saeed Ahmed) PSP
District Police Officer,
Mardan

OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

Tel: 0937-9
Fax: 0937-9
Email: dpoma om
Facebook: District Police Mardan
Twitter: @dpomardan

No. 124 /R/D.A-P.R-1975.
Dated 7 - 11 - /2017.

DISCIPLINARY ACTION UNDER KPK POLICE RULES – 1975

I, Dr. Mian Saeed Ahmed District Police Officer, Mardan as competent authority am of the opinion that **Constable Hayat Muhammad No. 520,** rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.

STATEMENT OF ALLEGATIONS

That **Constable Hayat Muhammad No. 520,** while posted at Police Station Garhi Kapoora, Mardan left the PS Garhi Kapoora on account of transfer vide DD No. 23 dated 07.02.2013, but he failed to report at new place of Posting, therefore he was marked absent vide DD No. 41 dated 07.02.2013 PS Garhi Kapoora, who later on joined duty there vide DD No. 36 dated 09.05.2013 and remained 91 days absent from duty. He was served with show cause Notice vide this office No. 165/PA dated 26.04.2013. but his reply was unsatisfactory and he was awarded major punishment of dismissal from service vide OB NO. 1145 dated 24.05.2013. Then he approached to the Service Tribunal, Khyber Pakhtunkhwa, Peshawar wherein he was reinstated in service and recommended for de-nove departmental proceeding by the Addle: Inspector General Police, Complaints & Enquiry, Khyber Pakhtunkhwa, Peshawar vide his office letter No. 1390-91 dated 26.10.2017. Therefore, the alleged Constable is liable to proceed against departmentally.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations _____ is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the Enquiry Officer.

(Dr. Mian Saeed Ahmed) PSP
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. _____/R. dated Mardan the _____/2017.

Copy of above is forwarded to the:

1. _____ for initiating proceedings against the accused official / Officer namely **Constable Hayat Muhammad No. 520,** under Police Rules, 1975.
2. **Constable Hayat Muhammad No. 520,** with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

!!!

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 540/2018.

Hayat Mohammad Constable No. 520 .....Appellant.

VERSUS.

VERSUS.

District Police Officer, Mardan & others.....Respondents.

AUTHORITY LETTER.

Mr. Atta-ur-Rahman Sub-Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa; Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 01)

Deputy Inspector General of Police,
Inquiry & Inspection
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 03)

Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)

District Police Officer,
Mardan
(Respondent No. 04)

1. PW Muhammad Tahir Khan deposed in his statement that on 07.02.2013, he was posted as ASI at PS Garhi Kapoora. He was informed by the then Muharrar Usman Ghani that Constable Hayat Muhammad No. 520 was required to report his arrival on transfer to the said Police Station but he failed. Therefore, his absence report was made vide DD No. 41 dated 07.02.2017 PS Garhi Kapoora. The PW in his statement admitted correct that he remained absented himself without any leave or permission vide DD mentioned above. The defaulter official did not want to cross examine the PW.

2. PW Riaz ASI, Muharrar PS Takht Bhai stated that according to the record of PS Takht Bhai DD No. 23 dated 07.02.2013 PS Takht Bhai is departure report of Constable Hayat Muhammad No. 520 to PS Garhi Kapoora as his transfer was ordered by the high ups. He was directed to make his arrival report at PS Garhi Kapoora at the same date. The defaulter also did not cross examine the said PW which has brought on record.

3. Mushtaq Ali then OASI stated that being OASI in the year 2013 he received absence report vide DD No. 41 dated 07.02.2013 PS Garhi Kapoora from said PS. According to which Constable Hayat Muhammad No. 520 absented himself from his official duties without any leave or permission. He got issued Show Cause Notice to him and his salary was stopped vide OB No. 943 dated 16.04.2013 by the competent authority then he handed over the said case to PA of Worthy DPO Mardan. Despite given opportunity the defaulter official also did not cross examined the said PW.

4. Hayat Muhammad No. 520 defaulter official stated that on 07.02.2013 his departure report was made vide DD No. 23 PS Takht Bhai as he was transferred from the said PS to PS Garhi Kapoora. Due to suffering from fever he did not join PS Garhi Kapoora. He rushed to RHC Shabazgarh got examined himself and he was advised bed rest by the MO from 07.02.2013 to 09.03.2013 for one month. After laps of bed rest he visited the said Hospital and was given one month bed rest. Third time he again got examined himself and was given one month bed rest (Total 03 months bed rest from 07.02.2013 to 09.05.2013). He stated that he sent the certificates of medical rest to the high ups through one of his relative who is now died. He does not know to whom the medical certificates were

handed over by him. After recovery from ailment he reported back of his arrival on 09.05.2013 vide DD No. 36 at PS Garhi Kapoora after remaining absent from official duties for a period of 91 days. During cross examination he admitted that he did not get sanctioned 03 months bed rest advised by the doctor from the competent authority. He produced copy of medical certificates/ OPD chit CRP No. 177, 450 and 311 according to which he was granted medical rest by the doctor of RHC Shahbazgarh which are attached with inquiry file.

It is worth to mention here that Rules 8-4 provides that grant of medical leave confers no right to leave and the certificate has to be forwarded to the authority competent to grant leave whose order must be awaited.

Keeping in view the above, the undersigned come to the conclusion that the charges of willful absence from official duty against the defaulter official Hayat Muhammad No. 520 have been proved as he did not forward medical bed rest certificates of 03 months to the competent authority for grant/sanction of leave. Therefore, he is recommended for appropriate action please.

Superintendent of Police,
Investigation Mardan.

Sir,

Though Constable Hayat Mohammad No 520 got medical rest from 07.02.2013 to 09.05.13 for the period of his absence which mitigate the gravity of misconduct for not adopting proper procedure to avail such bed rest. Therefor he is recommended for minor punishment. However,

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal
Diary No. 570
Dated 16/04/2018

Service appeal No: 540 2018

Hayat Muhammad Khan, Constable No 520, Police Line Mardan

.....*Appellant*

VERSUS

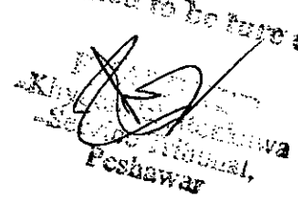
1) Inspector General of Police KPK, Peshawar.
2) Deputy Inspector General of Police Mardan Region 1, Mardan.
3) Deputy inspector General of Police Enquiry & Inspection KPK Peshawar.
4) District Police Officer Mardan.

.....*Respondents*

Filed to-day
Registrar
16/4/18

APPEAL U/S 4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 13-12-2017 VIDE ANNEXURE 'F' WHEREBY THE APPELLANT'S ABSENCE PERIOD HAS BEEN TREATED AS LEAVE WITHOUT PAY WITH IMMEDIATE EFFECT AND ALSO MINOR PENALTY OF "CENSURE" HAS BEEN IMPOSED UPON HIM AND ALSO AGAINST THE FINAL IMPUGNED ORDER DATED 16-3-2018 VIDE ANNEXURE 'G' WHEREBY THE DEPARTMENTAL APPEAL DATED 8-1-2018 VIDE ANNEXURE 'F' HAS BEEN REJECTED.

Prayer



On acceptance of appeal, both the impugned orders vide annexure E & G may be set aside and the pay for the period from 7-2-2013 to 9-5-2013 and 24-5-2013 to 28-9-2017 may be [illegible] the appellant to meet the ends of Justice.

06.11.2018 Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 24.12.2018. Written reply not received.

READER

24.12.2018 Mr. Aslam Khan Khattak, Advocate for appellant and Addl. AG alongwith Attaur Rahman, S.I (Legal) for the respondents present.

Written reply on behalf of the respondents has been submitted which is placed on file. To come p for arguments on 20.02.2019 before D.B-II. The appellant may submit rejoinder within a fortnight, if so advised.

Chairman

Certified to be ture copy

Service Tribunal,
Peshawar

Date of Presentation of Application 04-01-19
Number of Words 800
Copying Fee 6
Urgent 2
Total 8
Name of Copyist
Date of Completion of Copy 04-01-19
Date of Delivery of Copy 04-01-19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 540/2018

20/2/2019

Hayat Muhammad Khan, Constable No. 520

Appellant

VERSUS

Inspector General of Police KPK Peshawar & Others.

Respondents

APPELLANT'S REJOINDER

Respectfully Sheweth:

Preliminary Objections:

The 6 Preliminary objections raised by the respondents in their comments are illegal, wrong, incorrect and are denied in every detail. The appellant has a genuine cause of action and his appeal does not suffer from any formal defect whatsoever.

Facts:

1. Needs no comments.
2+3. Incorrect, Para 2 & 3 of appeal are correct and its replies are incorrect.
4+6. Needs no comment.
7. Incorrect. Para 7 of appeal is correct and its reply is incorrect.

GROUNDS:

A+B. Incorrect. Grounds A&B of appeal are correct and its replies are incorrect.

C. Incorrect. That the appellant has illegally been kept away from employment and he was also not employed any where during such a period. So he is entitled to back benefits. It is further submitted that the dismissal of appellant was void ab-initio and on reinstatement, he is also entitled to back benefits.

D to F: Incorrect. Grounds D to E of appeal are correct and its replies are incorrect.

G. Needs no comments.

It is, therefore, prayed that on acceptance of appeal & rejoinder, the two impugned orders at annexure E & G may be set aside and the pay for the period from 07/02/2013 to 09/05/2013 and 24/05/2013 to 28/09/2017 may be released to the appellant.

Dated: 03/01/2019

Appellant

Through

1. Aslam Khan Khattak
2. Muhammad Khurshid
Advocates, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Hayat Muhammad, Constable No. 520.

VERSUS

Inspector General of Police KPK Peshawar & Others

AFFIDAVIT

I, **Hayat Muhammad, Constable No. 520,** do hereby solemnly affirm and state on oath that all contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.

ATTESTED

M. RAFIQ KHALIL ADVOCATE OATH COMMISSIONER HIGH COURT PESHAWAR

DEPONENT

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. S/ 959-61 /18, Dated Peshawar the 08/03/2018.

To: The Regional Police Officer,
Kohat Region.

Subject: **REPRESENTATION**

Memo:

Please refer to your office memo: No. 2/CC dated 26.02.2018 on the subject cited above.

A representation submitted by Sub-Inspector Shah Duran of Hangu district Police for the expunction of Adverse Remarks recorded in his ACR for the period from 27.07.2016 to 31.12.2016 has been examined and filed by the competent authority.

The Representationist may be informed accordingly.

Furthermore, Service Roll, Service Book, Fauji Missal and Character Roll Dossier in r/o SI Shah Duran received with your memo: under reference are also returned herewith for your office record.

Please ack: receipt.

Encl: As Above.
S/Roll – (1)
S/Book – (2)
F/missal (1)
C.R Dossier (1)

(SYED ZIA ALI SHAH)
Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

Endst: No. & Date even

Copy of above is forwarded for information and necessary action to the:-

1. District Police Officer, Hangu.
2. PA to DIG/HQrs: Khyber Pakhtunkhwa CPO.

NO 28 dt 13-3-018
DPO Hangu pa
N/action pls.

KHYBER PAKHTUNKWA
SERVICE TRIBUNAL, PESHAWAR
No. 204 /ST
Dated: 31/01 /2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The District Police Officer,
Government of Khyber Pakhtunkhwa
Mardan.

Subject: **JUDGMENT IN APPEAL NO. 540/2018 MR. HAYAT MUHAMMAD KHAN.**

I am directed to forward herewith a certified copy of Judgement dated 16.12.2021 by this Tribunal on the above subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

outcome of de-novo inquiry. Competent Authority charge sheeted the appellant and de-novo inquiry was conducted against him. On conclusion of the de-novo inquiry, the appellant was awarded minor punishment of *censure* and the period of his absence from duty was treated as leave without pay vide order bearing O.B No. 2843 dated 12.12.2017 passed by the competent Authority. The competent Authority, however did not mention anything about the intervening period from 24.05.2013 till 27.09.2017 in its order dated 12.12.2017, therefore, the appellant filed departmental appeal for grant of back benefits, which was also rejected vide order dated 16.03.2018, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that it has been affirmed in the inquiry proceedings that the absence of the appellant was on account of his illness. He further argued that after treating the absence period of the appellant as leave without pay, the competent Authority was not justified in awarding him even minor punishment. He next argued that the competent Authority was legally required to have granted back benefits to the appellant but the impugned order dated 12.12.2017 is silent regarding the same.

4. Conversely, learned District Attorney for the respondents has contended that the appellant had willfully remained absent from duty and the allegations against him stood proved in a regular inquiry. He further argued that keeping in view the principle of "no work no pay", the appellant is not entitled to any salary for the period during which he either remained absent from duty or remained out of service.

5. Arguments heard and record perused.

6. A perusal of the record would show that disciplinary action was taken against the appellant on the ground of his absence from duty for a period of 91 days and he was

dismissed from service vide order dated 24.05.2013, however his service appeal was accepted vide judgment dated 18.07.2017 passed by this Tribunal. The concluding para of the aforementioned judgment is reproduced as below:-

> *"9 In light of the above discussion, the appeal is accepted and the appellant is reinstated into service. The respondents are at liberty to conduct de-novo inquiry within a period of 02 month from the date of receipt of this judgment. The inquiry should be conducted in the mode and manner prescribed in the rules and the appellant be fully associated with the inquiry proceedings. The issue of back benefits shall be subject to outcome of the de-novo inquiry,"*

7. The appellant was charge sheeted by competent Authority and de-novo inquiry was conducted against him. Vide the impugned order dated 12.12.2017 passed by the competent Authority, the appellant was awarded minor punishment of *censure,* while his absence period of 91 days was treated as leave without pay. The only allegation against the appellant was his absence from duty without leave/permission of the competent Authority and when the same was treated by the competent Authority as leave without pay, the allegation of misconduct has vanished away. The competent Authority was thus not even justified in awarding minor punishment of *censure* to the appellant. While deciding the pervious appeal of the appellant, it was observed by this Tribunal in its judgment dated 18.07.2017 that the issue of back benefits will be subject to outcome of de-novo inquiry, however in the impugned order dated 12.12.2017, the competent Authority did not mention anything regarding the intervening period with effect from 24.05.2013 till 27.09.2017. The impugned order dated 12.12.2017 is also silent regarding the date of reinstatement of the appellant into service. The

appellant remained out of service with effect from 24.05.2013 till 27.09.2017 on account of his wrongful dismissal from service. It would be very unjust and harsh to deprive the appellant from back benefits for the period during which he remained out of service for no fault of him. The appellant is thus entitled to back benefits particularly, when nothing is available on the record that the appellant remained gainfully employed anywhere during the concerned period.

8. In light of the above discussion, the appeal in hand is partially accepted. The penalty of *censure* awarded to the appellant is set-aside and he shall be considered to have been reinstated in service from the date of his dismissal with all back benefits. The impugned order to the extent of treating of the absence period of 91 days as leave without pay is kept intact. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.12.2021

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

ORDER
16.12.2021

Appellant alongwith his counsel present. Mr. Khayal Roz, Inspector alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is partially accepted. The penalty of *censure* awarded to the appellant is set-aside and he shall be considered to have been reinstated in service from the date of his dismissal with all back benefits. The impugned order to the extent of treating of the absence period of 91 days as leave without pay is kept intact. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.12.2021

(Atiq-ur-Rehman Wazir)
Member (E)

(Salah-Ud-Din)
Member (J)

13.12.2021 Appellant alongwith his counsel Mr. Aslam Khan Khattak, Advocate present. Mr. Noor Zaman, learned Deputy District Attorney alongwith Mr. Khyal Roz Inspector for respondents present.

Arguments heard, however, order could not announced due to rush of work. Adjourned. To come up for order before the D.B on 16.12.2021.

(Atiq Ur Rehman Wazir)
Member (E)

(Salah-ud-Din)
Member (J)

02.09.2021

Mr. Aslam Khan Khattak, Advocate, for the appellant present. Mr. Riaz Khan Paindakheil Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he is not feeling well. Adjourned. To come up for arguments before D.B on 13.12.2021.

(ATIQ UR REHMAN WAZIR)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

28.12.2020 Due to summer vacation, case is adjourned to 15-3.2021 for the same as before.

Reader

15.03.2021 Counsel for the appellant and Addl: AG alongwith Mr. Khayal Roz, Inspector for the respondents present.

Learned counsel for the appellant requests for adjournment as he is unwell to argue the case today.

Adjourned to 08.06.2021 before D.B.

(Mian Muhammad)
Member(E)

Chairman

08.06.2021 Learned counsel for the appellant present. Mr. Khayal Roz, Inspector (Legal) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned counsel for the appellant is seeking adjournment on the ground that he has not gone through the record due to some domestic problems. Adjourned. To come up for arguments before the D.B on 02.09.2021.

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

27.10.2020 Proper D.B is on Tour, therefore, the case is adjourned for the same on 28.12.2020 before D.B.

Reader

12.02.2020 Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional AG alongwith Mr. Atta Ur Rehman Inspector for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 30.03.2020 before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

30.03.2020 Due to public holiday on account of COVID-19, the case is adjourned to 08.06.2020 for the same as before.

Reader

08.06.2020 Appellant in person present. Mr. Muhammad Jan, DDA alongwith Mr. Atta Ur Rehman, SI for respondents present. Due to general strike of the Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 17.08.2020 before D.B.

MEMBER

MEMBER

17.08.2020 Due to summer vacations, the case is adjourned to 27.10.2020 for the same.

Reader

20.09.2019 Learned counsel for the appellant present. Mr. Ziaullah, DDA alongwith Mr. Atta ur Rehman, SI for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 05.11.2019 before D.B.

Member Member

05.11.2019 Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Atta-Ur-Rehman, S.I for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 13.12.2019 before D.B.

Member Member

13.12.2019 None for the appellant present. Addl: AG alongwith Mr. Atta ur Rehman, SI for respondents present. Due to general strike of the bar the case is adjourned. Case to come up for arguments on 12.02.2020 before D.B.

Member Member

08.04.2019 Counsel for the appellant present. Mr. Ziaullah, DDA alongwith Mr. Atta Ur Rehman, S.I for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. Case to come up for arguments on 10.06.2019 before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

10.06.2019 Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Attaur Rahman, Inspector (Legal) for the respondents present.

Learned counsel for the appellant requests for adjournment as he is not feeling well. Adjourned to 25.07.2019 for arguments before the D.B.

Member

Chairman

25.07.2019 Counsel for the appellant and Mr. Usman Ghani, District Attorney alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 20.09.2019 for arguments before D.B.

(HUSSAIN SHAH)
MEMBER

(M.. AMIN KHAN KUNDI)
MEMBER

06.11.2018 Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 24.12.2018. Written reply not received.

READER

24.12.2018 Mr. Aslam Khan Khattak, Advocate for appellant and Addl. AG alongwith Attaur Rahman, S.I (Legal) for the respondents present.

Written reply on behalf of the respondents has been submitted which is placed on file. To come p for arguments on 20.02.2019 before D.B-II. The appellant may submit rejoinder within a fortnight, if so advised.

Chairman

20.02.2019 Learned counsel for the appellant and Mr. Muhammad Jan leaned Deputy District Attorney alongwith Mr. Atta Ur Rehman SI for the respondents present.

Learned counsel for the appellant requests for adjournment in order to further prepare the brief.

Adjourned to 08.04.2019 before D.B.

Member

Chairman

27.06.2018

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant has filed the present service appeal against the order dated 13.12.2017 whereby the appellant was awarded minor punishment of *Censure* moreover his absence period (91 days) was treated as leave without pay. The departmental appeal of the appellant was also rejected vide order dated 16.03.2018.

Points raised need consideration. The present appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 02.08.2018 before S.B

Appellant Deposited
Security & Process Fee

Member

02.08.2018

Mr. Aslam Khan Khattak, Advocate counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. Representative of the respondents made a request for adjournment. Granted. To come up for written reply/comments on 12.09.2018 before S.B.

Chairman

11.09.2018

Since 12th September 2018 has been declared as public holiday, by the Provincial Government on account of 1st Mukharram-ul-Haram, therefore the case is adjourned to 06.11.2018 for reply before S.B.

Chairman

Form-A

FORMOF ORDERSHEET

Court of _____

Case No. 540/2018

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge
1	2	3
1	16/04/2018	The appeal of Mr. Muhammad Hayat Khan presented today by Mr. Aslam Khan Khattak Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please. REGISTRAR 16/4/18
2-	18/04/18.	This case is entrusted to S. Bench for preliminary hearing to be put up there on 30/04/18. MEMBER
	30.04.2018	Counsel for the appellant present. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 27.06.2018 before S.B. Reader

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service appeal No: 540 2018

Hayat Muhammad Khan, Constable No. 520.....Appellant

VERSUS

Inspector General of Police KPK, Peshawar & others.....Respondents

INDEX

S#	Description of Documents	Annexure	Page No's
1	Memo of Appeal	-	1-4
2	Letter No 1145 dated 24-5-2013	"A"	5
3	Judgment dated 18-7-2017	"B"	6-9
4	Show cause notice	"C"	10
5	Reply to show cause notice	"D"	11
6	Impugned order dated 12-12-2017	"E"	12
7	Departmental appeal dated 8-1-2018	"F"	13
8	Impugned order dated 16-3-2018	"G"	14
9	Leave Rules	"H"	15
10	Wakalat Nama	-	-

Dated:14/04/2018

Appellant

Through

1. ***Aslam Khan Khattak***
2. ***Muhammad Khurshid***

Advocates, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service appeal No: 540 2018

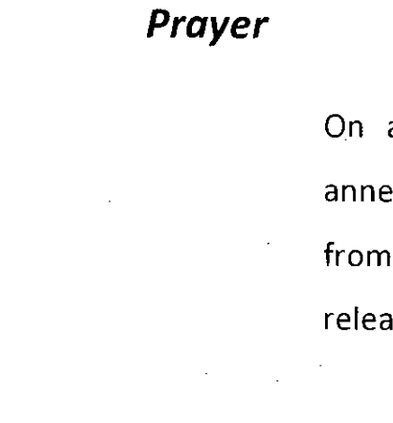
Hayat Muhammad Khan, Constable No 520, Police Line Mardan

.....*Appellant*

VERSUS

1) Inspector General of Police KPK, Peshawar.
2) Deputy Inspector General of Police Mardan Region 1, Mardan.
3) Deputy inspector General of Police Enquiry & Inspection KPK Peshawar.
4) District Police Officer Mardan.

.....*Respondents*



APPEAL U/S 4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 13-12-2017 VIDE ANNEXURE 'F' WHEREBY THE APPELLANT'S ABSENCE PERIOD HAS BEEN TREATED AS LEAVE WITHOUT PAY WITH IMMEDIATE EFFECT AND ALSO MINOR PENALTY OF "CENSURE" HAS BEEN IMPOSED UPON HIM AND ALSO AGAINST THE FINAL IMPUGNED ORDER DATED 16-3-2018 VIDE ANNEXURE 'G' WHEREBY THE DEPARTMENTAL APPEAL DATED 8-1-2018 VIDE ANNEXURE 'F' HAS BEEN REJECTED.

Prayer

On acceptance of appeal, both the impugned orders vide annexure E & G may be set aside and the pay for the period from 7-2-2013 to 9-5-2013 and 24-5-2013 to 28-9-2017 may be released to the appellant to meet the ends of Justice.

Respectfully Sheweth,

Brief facts leading to the instant appeal are as under:-

1) That the appellant having been inducted in service on 20-7-1998 as constable in Police department.

2) That the appellant throughout his whole service has performed his duties with utmost of his capabilities and to the entire satisfaction of his superiors.

3) That the appellant due to sickness did not perform his duties and thereafter he was dismissed from service vide order dated 24-5-2013 at annexure 'A'.

4) That the appellant thereafter has filed his appeal before this Hon'ble Tribunal Peshawar which was accepted vide judgment dated 18-7-2017 at annexure 'B' and the appellant was reinstated in service and the department was directed to hold the denovo enquiry which shall be completed within a period of two months from the receipt of the judgment.

5) That the Respondent No.4 has served the show cause notice upon the appellant vide annexure 'C' and the appellant has submitted his reply to show cause notice vide annexure 'D'.

6) That thereafter denovo enquiry was completed against the appellant and minor punishment of "censure" was imposed upon the appellant and also his absence period has been treated as leave without pay vide impugned order dated 13-12-2017 at annexure 'E'.

7) That the appellant has filed his representation dated 8-1-2018 vide annexure 'F' to Respondent No.2 for release of pay for the period from 7-2-2013 to 9-5-2013 and 24-5-2013 to 28-9-2017 which has been rejected vide impugned order dated 16-3-2018 at annexure G and hence this appeal inter-alia on the following grounds:-

Grounds:

A. That the respondents had not challenged the reinstatement order of appellant in any forum and they were satisfied with that decision therefore, the appellant is entitled to all back benefits from the date of his dismissal to his reinstatement in service.

B. That a civil servant shall earn leave on full pay which shall be calculated at the rate of 4 days for every calendar month of the period of duty rendered and credited in his leave account as leave on full pay. That the appellant has a long service of 21 years and therefore, the said period which has been converted into leave without pay can easily be converted as leave on full pay vide annexure 'H'.

C. That the appellant has been reinstated in service and the reinstatement in service would mean to reinstate, re-establish or restore a person or thing to its former state of condition. So the conditions attached to the reinstatement of appellant are totally unwarranted and unjustified. So the appellant is entitled to all back benefits.

D. That the appellant was not employed anywhere during the relevant period. Therefore, he cannot be deprived from back benefits under the law.

E. That the copy of enquiry report has not been provided to the appellant which means that the full opportunity of defense has not been given to him. To this effect both the impugned orders at annexure E and G are liable to be set aside.

F. That both the impugned orders at annexure E and G are illegal, malafide, without jurisdiction and without lawful authority and are liable to be set aside.

G. That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this Appeal, both the impugned orders at annexures E and G may be set aside and the pay for the period from 7-2-2013 to 9-5-2013 and 24-5-2013 to 28-9-2017 may be released to the appellant to meet the ends of justice.

Dated:14/04/2018

Appellant

Through

1. ***Aslam Khan Khattak,***
2. ***Muhammad Khurshid***
   Advocates, High Court
   Peshawar

POLICE DEPARTMENT

MARDAN DIS

Annexure A/5

DISMISSAL O R D E R

Constable Hayat Muhammad No. 520, while posted at Police Station Takht Bhai, (now PS Garhi Kapura) left for PS Garhi Kapura on account of transfer vide DD report No. 23 dated 07.02.2013, but he has failed to report at new place of posting, therefore he was marked absent vide DD report No. 41 dated 07.02.2013 PS Garhi Kapura, who later-on joined duty there vide DD report No. 36 dated 09.05.2013, so he remained absent for (91) days without any leave/permission of the competent authority.

In this connection, he was issued a proper Show Cause Notice under NWFP Police Rules 1975, issued vide this office No. 165/PA/SCN/R dated 26.04.2013, to which, his reply was received and found un-satisfactory.

On 23.05.2013, he was heard in person in O.R, but failed to present any plausible reasons in his defense, while on the other hand, during the checking of his service record, he was enlisted with effect from 20.07.1998 and has earned (10) bad entries with (01) good entry and also remained absent for (310) days previously on various occasions, proving that he is not interested in Police Service.

From the above discussion, I am of the considered opinion that his more retention in the force will badly affect the other lower subordinates, therefore Constable Hayat Muhammad No. 520 of PS Garhi Kapura is awarded major punishment of dismissal from Police Force with counting his (91) days absence's period as leave with out pay with immediate effect, in exercise of the power vested in me under NWFP Police Rules 1975.

Attested as!

Order announced
O.B No. 1145
Dated 24/05/2013

(Tahir AyubKhan) PSP
District Police Officer,
Mardan.

No. 5753-55 /PA dated Mardan the 24-5-2013.

Copy forwarded for information and necessary action to:-

1. The S.P/Operations Mardan.
2. The DSP/HQrs Mardan.
3. The SHO Garhi Kapura.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan with ( ) enclosures.

Annexure B
(6)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 1255/2013

Date of institution ... 15.08.2013
Date of judgment ... 18.07.2017

Hayat Muhammad S/o Yousaf Khan,
R/o Mohallah Goarsian Village Gujrat District & Tehsil Mardan.

... (Appellant)

VERSUS

1. District Police Officer Mardan.
2. Deputy Inspector General of Police Mardan Region-I Mardan.
3. Superintendent of Police Line Mardan.
4. Inspector General of Police Peshawar.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 15.07.2013 PASSED BY RESPONDENT NO. 2, WHEREBY ORDER DATED 15.07.2013 WAS CONFIRMED AND APPELLANT WAS DISMISSED FROM SERVICES AS MAJOR PUNISHMENT OF DISMISSAL FROM POLICE FORCE.

Mr. Zahid Ullah Khan, Advocate. .. For appellant.
Mr. Ziaullah, Deputy District Attorney .. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. GUL ZEB KHAN .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - This appeal has been filed under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 24.05.2013 passed by respondent No. 1 whereby he was dismissed from service as well as against the order dated 15.07.2013 vide which the departmental appeal of the appellant was also rejected.

Attested
ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

2. Facts of the case as per memo of the appeal are that the appellant was appointed as Constable in Police Department on 21.07.1998. That the appellant was performing his duty efficiently that during service he fell ill, therefore, he could not attend his duty due to which major penalty in the shape of dismissal from service was imposed upon him by the respondents and he was dismissed from service vide order dated 24.05.2013. That the appellant also filed departmental appeal but the same was also rejected vide order dated 15.07.2013 hence, the present service appeal.

3. The respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department and was performing his duty to the satisfaction of his superior but during service he fell ill and was admitted in hospital, therefore, he could not attend the service/duty. It was further contended that the absence was not deliberately but due to illness, the appellant could not report for duty. It was further contended that the appellant was dismissed from service under Khyber Pakhtunkhwa Police Rules, 1975 but neither any charge sheet, statement of allegations were served on him nor inquiry was conducted nor the appellant was given an opportunity of personal hearing and defence, therefore, the impugned order is illegal and liable to be set-aside. It was further contended that as per impugned order dated 24.05.2013 the appellant was dismissed from service on the allegation of absence but in the said order the competent authority has also treated his absence period as leave without pay with immediate effect, therefore, it was contended that the absence period of the appellant was regularized by the competent authority in the aforesaid order, therefore, the impugned order as well as the order passed by departmental authority are illegal and liable to be set-aside.

5. On the other hand, learned Deputy District Attorney Mr. Ziaullah opposed the contention of learned counsel for the appellant and contended that the appellant was willfully absent from duty and medical prescriptions available on record are after thought and fabricated. It was further contended that the appellant was willfully absent from duty, therefore, charge sheet and statement of allegations as well as the inquiry proceedings were

not necessary under the law and the competent authority has rightly dismissed him from service.

6. We have heard the arguments of learned counsel for the parties and gone through the record available on file.

7. Perusal of the record reveals that the appellant was serving in Police Department and during service he remained absent from duty. Major penalty was imposed upon him and ultimately he was dismissed from service. It is well settled law that in case of imposing major penalty the principles of natural justice required that regular inquiry was to be conducted in the matter and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against otherwise the civil servant would be condemned unheard. In this regard reliance is also made to 2008 SCMR 1369 titled "Naseeb Khan-Versus-Divisional Superintendent, Pakistan Railways, Lahore and other" wherein it has been held

Removal from Service (Special Powers) Ordinance (XVII of 2000)

----S. 5---- Misconduct-----Dismissal from service----Non-holding of departmental inquiry----Violation of principles of natural justice----Effect--Held, in case of imposing a major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

It was also held in 2009 SCMR page 412 titled "Fuad Asadullah Khan-Versus-Federation of Pakistan through Secretary Establishment and others"

(C) Government Servants (Efficiency and Discipline) Rules, 1973

----R. 5----Major penalty, awarding of ----Principles----In case of awarding major penalty, a proper inquiry is to be conducted in accordance with law, where full opportunity of defence is to be provided to delinquent officer.

ATTESTED

Khyber Pakhtunkhwa Service Tribunal, Peshawar

8. In the present case major penalty was imposed upon appellant and he was dismissed from service on the ground of willful absence, but neither charge sheet, statement of allegation was served on him nor any inquiry was conducted. Moreover, the record also reveals that the appellant was dismissed from service on the ground of willful absence but the competent authority has treated the period of his absence as leave without pay in the impugned order dated 24.05.2013, meaning thereby that the competent authority has also regularized the absence period of the appellant. As such the impugned order is illegal and liable to be set-aside.

9. In light of the above discussion the appeal is accepted and the appellant is reinstated into service. The respondents are at liberty to conduct de-novo inquiry within a period of two months from the date of receipt of this judgment. The inquiry should be conducted in the mode and manner prescribed in the rules and the appellant be fully associated with inquiry proceedings. The issue of back benefits shall be subject to the outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
18.07.2017

Sd/- M. Amin Khan Kundi
Member

Sd/- Gul Zeb Khan
Member

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attested

Date of Presentation of Application 19-7-17
Number of Words 1600
Copying Fee 10
Urgent —
Total 10
Name of Copyist
Date of Completion of Copy 7-8-17
Date of Delivery of Copy 7-8-17

OFFICE OF THE DISTRICT POLICE OFFICER MARDAN

Annexure-C

No. 165 /PA/SCN/R Date 26-04-/2013

SHOW CAUSE NOTICE UNDER NWFP POLICE RULES 1975

Whereas, you **Constable Hayat No. 520**, while posted at P.S Takht Bhai, left for P.S Garhi Kapura vide DD No. 23 dated 07.02.2013 on account of transfer but failed to report at P.S Garhi Kapura till-date without any leave/permission of the competent authority vide DD report No. 41 dated 07.02.2013 P.S Garhi Kapura.

You are therefore, found guilty of misconduct, as defined in section 2 (iii) of NWFP Police Rules 1975 and as such are liable to action under section 3 of the said Rules.

Based on the above facts, I am satisfied that no enquiry is needed in this case as contained in section 5. 3 clauses (a) & (c) under the said Rules.

Now, therefore you Constable Hayat are called upon under section 4 (1) of the NWFP Police Rules,1975, to show cause within 15 days of the issuance of this notice, as to why one or more penalties including major penalty of dismissal from service should not be imposed upon you.

NOTE.

Take note that if you failed to submit reply in compliance of this show cause notice within the stipulated time, it will be presumed that you have nothing to offer in your defense and in that case, an ex-parte action shall straightaway be taken against you without any further notice.

(Tahir Ayub Khan)PSP
District Police Officer,
Mardan

Attested as

Copy to SHO/Choora, (Attention Moharrar) with the directions to deliver this notice upon Constable Hayat s/o Yousaf Khan of Choora and the receipt thereof should be returned to this office within (05) days positively.

Received

(2)

Annexure D

(11) جیاعالی

گزارش ہے کہ تحریراً [illegible] نمبری 165/AA مورخہ [illegible]

26-4-2013 کو حسب [illegible] کہ مسمی [illegible] گوندل [illegible]

[illegible] سے [illegible] آپ [illegible] گوندل

[illegible] ہے کہ [illegible]

[illegible] کر [illegible] اور [illegible] گزارش کر [illegible]

[illegible] کے وقت [illegible]

[illegible] حصول [illegible]

الراقم

13-5-2013

العارض

[illegible] حیات محمد نمبر 520 [illegible]

[illegible]

Attested

Annexure E
(12)

OFFICE OF THE
DISTRICT POLICE OFFICER
MARDAN

Tel: 0937-9230109
Fax: 0937-9230111
Email: dpomardan650@gmail.com
Facebook: District Police Mardan
Twitter: @dpomardan

No. 11501-08 /R, 1406
Dated 13-12-/2017.

ORDER

This order will dispose-off the denove departmental inquiry, which has been conducted against ~~FC Hayat Muhammad No. 520, on~~ the allegation that he while posted at Police Station Garhi Kapoora, Mardan left the PS Garhi Kapoora on account of transfer vide DD No. 23 dated 07.02.2013, but he failed to report at new place of Posting, therefore he was marked absent vide DD No. 41 dated 07.02.2013 PS Garhi Kapoora, who later on joined duty there vide DD No. 36 dated 09.05.2013 and remained 91 days absent from duty. He was served with show cause Notice vide this office No. 165/PA dated 26.04.2013. but his reply was unsatisfactory and he was awarded major punishment of dismissal from service vide OB NO. 1145 dated 24.05.2013. Then he approached to the Service Tribunal, Khyber Pakhtunkhwa, Peshawar wherein he was reinstated in service and recommended for de-nove departmental proceeding by the Addle: Inspector General Police, Complaints & Enquiry, Khyber Pakhtunkhwa, Peshawar vide his office letter No. 1390-91 dated 26.10.2017. Therefore, the alleged Constable is liable to proceed against departmentally. This attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.

In this connection, **FC Hayat Muhammad No. 520**, was charge sheeted vide this office No. 124/R, dated 07.11.2017, and also proceeded him against in denove departmental inquiry through **Hafiz Janas Khan SP Investigation, Mardan**, who after fulfilling necessary process, submitted his findings to the undersigned vide his office Memo: No. 987/PA. dated 20.11.2017. The enquiry officer recommended the alleged constable for minor punishment.

The undersigned agreed with the recommendation of inquiry officer hence the alleged **FC Hayat Muhammad No. 520**, is hereby awarded minor punishment of *"Censure"* while his absence period (91-Days) is treated as leave without pay, with immediate effect in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 2843
Dated 12 / 12-/2017.

Dr. Mian Saeed Ahmed (PSP)
District Police Officer,
M a r d a n.

Attested as!

No. 11501-08 /R, dated Mardan the 13-12 /2017.

Copy for information and necessary action to the:

1. Deputy Inspector General of Police Mardan Region-I, Mardan.
2. Deputy Inspector of Police Enquiry & Inspection Khyber Pakhtunkhwa Peshawar w.r.t his office letter No. 1389 dated 26.10.2017.
3. SP Investigation, Mardan.
4. S.P Operations, Mardan.
5. DSP/ HQrs: Mardan.
6. E.C (DPO) Mardan.
7. Pay Officer, DPO Office, Mardan.
8. OSI (DPO) Mardan.

*******!!!*******

Annexure F
(13)

بخدمت جناب D.I.G صاحب ٹیلی کمیونیکیشن پشاور

درخواست بابت ادائیگی تنخواہ از 2/7/13 تا 5/9/13 اور 24/5/13 تا 28/9/17 مطابق بحالی سائل سروس

جناب عالی!
درخواست حسب ذیل عرض ہے

1. یہ کہ سائل 2/7/13 تا 5/9/13 غیر حاضری کی وجہ سے ڈسمس کیا گیا۔ جو کہ سائل نے سروس ٹریبونل میں اپیل دائر کی جس پر سروس ٹریبونل نے 28/9/17 میں بحالی کا حکم صادر فرمایا۔ جو کہ سائل سروس میں دوبارہ بحال ہوا اور 28/9/17 سے ڈیوٹی پر ہوں۔

2. یہ کہ اب سائل عرصہ مذکورہ بابت تنخواہ و مراعات دینا میں انصاف کا تقاضا ہے۔ کیونکہ تقریباً چار سال شدید متاثر ہوا۔ سائل کا بچوں کا تعلیم بھی شدید متاثر ہوا اور لہٰذا مذکورہ سائل کے عرصہ سروس میں شمار کرنا بھی انصاف کا تقاضا ہے۔

لہٰذا استدعا ہے کہ بمنظوری درخواست ہذا سائل کو عرصہ مذکورہ کا تنخواہ ادائیگی اور عرصہ مذکورہ سروس میں شمار کرنے کا حکم صادر فرمایا جائے۔

مورخہ 8/18

سائل ... نمبر 1406 پولیس کانسٹیبل ...

Attested

Annexure G
14

ORDER.

This order will dispose-off the appeal preferred by Constable Hayat Muhammad No. 520 of Mardan District Police against the order of the District Police Officer, Mardan, whereby 91 days absence period was treated as leave without pay vide District Police Officer, Mardan OB No. 2843 dated 12.12.2017.

Brief facts of the case are that the appellant while posted at Police Station Garhi Kapura) left for Police Station Garhi Kapura on account of transfer vide DD report No. 23 dated 07.02.2013, but he failed to report at his new place of posting, therefore he was marked absent vide DD report No. 41 dated 07.02.2013 PS Garhi Kapura who later on joined duty there vide DD report No. 36 dated 09.05.2013 as he remained absent for 91 days without any leave/permission of the competent authority. He was served with a proper Show Cause Notice to which his reply was received and found unsatisfactory and awarded Major Punishment of Dismissal from Service on 24.05.2013 and same appeal was filed vide this office order No. 2076/ES dated 15.07.2013. Then he approached to the Service Tribunal Khyber Pakhtunkhwa Peshawar wherein he was re-instated in service and recommended for de-nove departmental proceeding by the Addl: IGP Complaints & Enquiry Khyber Pakhtunkhwa Peshawar. Therefore, the alleged Constable is liable to be proceeded against departmentally. In this connection he was charge sheeted and also proceeded against in denove departmental enquiry through SP Investigation Mardan. The Enquiry Officer after fulfilling necessary process submitted his finding report to District Police Officer, Mardan and recommended for minor punishment. The District Police Officer, Mardan agreed with the recommendation of Enquiry Officer and the alleged FC was awarded Minor Punishment of Censure while his absence period (91 days) was treated as leave without pay.

He was called in orderly room held in this office on 14.03.2018 and heard him in person, The appellant was retained in service vide District Police Officer, Mardan OB No. 2843 dated 12.12.2017, while counted his absence period as leave without pay on the grounds of general principle of "No Work No Pay" and its being subject to the outcome of De-novo inquiry by Service Tribunal. Therefore, he does not deserve for the pay. Therefore, I find no grounds to intervene the order passed by the District Police Officer, Mardan. Appeal is rejected.

Attested
ASI

ORDER ANNOUNCED

(Muhammad Alam Shinwari)PSP
Regional Police Officer,
Mardan

No. 1607 /ES, Dated Mardan the 16/3/2018.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 226/LB dated 05.03.2018. The Service Record is returned herewith.

(******)