

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**

APPEAL NO. 938 /2022

AMIR MUHAMMAD

VS

POLICE DEPTT:

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APPELLANT

THROUGH:


MIR ZAMAN SAFI
ADVOCATE

Office: Room No. 6-E, 5th Floor,
Rahim Medical Centre, Hashtnagri,
Peshawar.

Cell: 0333-9991564

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2022

Mr. Amir Muhammad, Constable No. 1513,
Police Line Mardan.....APPELLANT

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Regional Police Officer Mardan Region at Mardan.
- 3- The District Police Officer, District Mardan.

.....RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
ORDER DATED 22.09.2007 WHEREBY MINOR PENALTY OF
FORFEITURE OF TWO ANNUAL INCREMENTS HAS BEEN
IMPOSED UPON THE APPELLANT AND AGAINST THE
IMPUGNED APPELLATE ORDER DATED 07.06.2022 WHEREBY
DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN
REJECTED ON NO GOOD GROUNDS

PRAYER:

That on acceptance of this appeal the impugned orders dated 22.09.2007 and 07.06.2022 may very kindly be set aside and the respondents please be directed to restore/release the annual increments of the appellant. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the employee of respondent Department and is serving as constable No. 1513 quite efficiently and up to the entire satisfaction of his superiors.
- 2- That the appellant has served the respondent department from the date of 1st appointment with full devotion and honesty and during his entire service no complaint whatsoever received to the high ups against him.
- 3- That appellant while posted at Police Lines Mardan, mother of the appellant became seriously ill and for her treatment and care the appellant absented from his lawful duty for a few days.
- 4- That on the basis of aforementioned absence from duty the appellant proceeded departmentally and during the course of proceedings the appellant produced all documentary proofs regarding illness of her mother but despite that the respondent department imposed minor penalty of forfeiture of two annual increment with accumulative effect upon the appellant vide

impugned order dated 22.09.2007. Copy of the impugned order is attached as annexure.....A.

5- That feeling aggrieved from the impugned order dated 22.09.2007 the appellant preferred departmental appeal before the respondent No.2 but the same has been rejected on no good grounds vide appellate order dated 07.06.2022. Copies of the Departmental appeal and rejection order are attached as annexure.....B & C.

6- That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUND:

A- That the impugned orders dated 22.09.2007 and 07.06.2022 are against the law, facts, norms of natural justice and materials on the record, hence not tenable and liable to be set aside.

B- That the appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the respondents acted in arbitrary and mala fide manner while issuing the impugned order dated 22.09.2007.

D- That absence of the appellant was not willful but due to cause serious illness of her mother, therefore, the impugned order dated 22.09.2007 is not tenable in the eye of law and the same is liable to be set aside.

E- That the impugned order dated 22.09.2007 is clear violation of the principle of natural justice, hence not tenable and liable to be set aside.

F- That after gone through the documentary evidence and perusal of the record the respondents admitted illness of mother of the appellant but despite that the respondents issued the impugned order dated 22.09.2007.

G- That the impugned order dated 22.09.2007 has been issued by the respondents in violation of FR-29, therefore, the impugned order dated 22.09.2007 is not tenable and liable to be set aside.

H- That appellant seeks permission to other grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 22.06.2022

APPELLANT

Amir Muhammad

AMIR MUHAMMAD

THROUGH:

M. Zaman Safi

MIR ZAMAN SAFI
ADVOCATE

CERTIFICATE:

It is certified that no other earlier appeal was filed between the parties.

M. Zaman Safi

DEPONENT

LIST OF BOOKS:

- 1- CONSTITUTION OF PAKISTAN, 1973
- 2- SERVICES LAWS BOOKS
- 3- ANY OTHER CASE LAW AS PER NEED

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2022
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2022

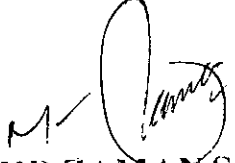
AMIR MUHAMMAD

VS

POLICE DEPTT:

AFFIDAVIT

I Mir Zaman Safi, Advocate High Court, Peshawar on the instructions and on behalf of my client do hereby solemnly affirm and declare that the contents of this **service appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


MIR ZAMAN SAFI,
Advocate
High Court, Peshawar

A-5

ORDER

This order will dispose-off a departmental enquiry, under NWFP. Removal From Service (Special Power) Ordinance 2000, initiated against Constable Amir Muhammad No. 1513, under the allegations that he while posted at Police Lines Mardan, proceeded against departmentally under the above quoted rules through Mr. Muhammad Quraish Khan DSP City Mardan on account of his absence for the following periods:-

1. 10.04.2007 to 12.04.2007.
 2. 16.04.2007 to 19.04.2007.
 3. 14.05.2007 to 17.05.2007.
 4. 23.05.2007 to 31.05.2007.
- [16 days]

The enquiry officer completed the enquiry and concluded that the defaulter Constable has submitted various prescriptions of his mother's illness in support of his absence's plea, so the E.O suggested a compassionate view in this regard.

The defaulter Constable was served with final show cause notice issued vide this office Endst: No. 25/PA dated 21.08.2007, to which his reply was received and considered but found not satisfactory, therefore, he was heard in person on 17.09.2007 in O.R, but he did not highlight any plausible/cogent reasons in his defence, therefore, his two increments are hereby forfeited with accumulative effect, while keeping in view his family back ground, the absence's period counted as earned leave and his pay released.

ORDER ANNOUNCED

O.B. No. 1518

Dated / / 2007

(Akhtar Hayat Khan (PSP)
District Police Officer,
 Mardan.

No. 5630-33 / PA Dated 22/9 / 2007.

Copy for information and necessary action to:-

1. The DSP Hqrs: Mardan
2. The Pay Officer (DPO) Mardan.
3. The Estt: Clerk (DPO) Mardan.
4. The OHC (DPO) Mardan with () Enclosures.

File

To

The Regional Police Officer,
Mardan Region, District Mardan.

3-6

Application Departmental appeal against the
order dated 22.9.2007

P/51

With due respect it is stated that I am serving
as constable in your good self Department from
long time and in performing my duties with
honesty and devotion. That during service my
mother was seriously ill and due to the
fact that I was unable to take her to the
doctor for treatment and I was never able
for her care because there was no one else
available for her care also your my
duties during her illness I was also your my
duty and not willingly imposed penalty of
stoppage of two annual increments despite
of knowing the fact.

It is therefore, most humbly requested
that order dated 22.9.2007 may kindly be
set aside and please the annual increments
your obediently
Amir Muhammad
Constable No. 1573

N-1

ORDER.

C-7

This order will dispose-off the departmental appeal preferred by **Constable Amir Muhammad No. 1513** of Mardan District Police, against the order of District Police Officer, Mardan, whereby he was awarded minor punishment of forfeiture of two increments with cumulative vide OB: No. 1518 dated 22.09.2007. The appellant was proceeded against departmentally on the allegations that he while posted at Police Lines, Mardan willfully and deliberately absented himself from his lawful duty for the following periods:-

1. 10.04.2007 to 12.04.2007.
2. 16.04.2007 to 19.04.2007.
3. 14.05.2007 to 17.05.2007.
4. 23.05.2007 to 31.05.2007.


Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and then Sub Divisional Police Officer, (SDPO) City, Mardan was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities, submitted his findings wherein he highlighted that the delinquent Officer has remained absent without proper approval of his Seniors and thus has violated the rules. However, suggested to take compassionate view in light of medical prescriptions produced by the delinquent Officer.

He was served with Final Show Cause Notice to which he submitted his reply, perused by the then District Police Officer, Mardan and found unsatisfactory.

The delinquent Officer was heard in Orderly Room by the then District Police Officer, Mardan on 17.09.2007, wherein he failed to produce any cogent reason in his defense. Therefore, he was awarded minor punishment of forfeiture of two increments with cumulative effect absence vide OB: No. 1518 dated 22.09.2007.

Feeling aggrieved from the order of District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 30.05.2022.

From the perusal of the enquiry file and service record of the appellant, it has been found that the allegations of misconduct against the appellant have been proved beyond any shadow of doubt. As the perusal of his service record revealed that he remained absent on many occasions. It is worthwhile that the appellant approached

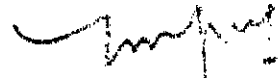
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this forum with the delay of 14 years and 06 months without advancing any cogent reason, hence, badly time barred. Therefore, order passed by the competent authority does not warrant any interference and I find it a case of habitual absentee.

Based on the above, I, Yaseen Farooq, PSP Regional Police Officer, Mardan, being the appellate authority, finds no substance in the appeal, therefore, the same is rejected and filed, being badly time barred for 14 years and 06 months.

Order Announced.

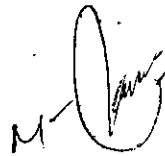


Regional Police Officer,
Mardan.

No. 3988 /ES, Dated Mardan the 07/06 /2022.

Copy forwarded to District Police Officer, Mardan for information and necessary w/r to his office Memo: No. 86/LB dated 12.04.2022. His Service Record is returned herewith.

(*****)



WAKALAT NAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2022

Amir Muhammad

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Petee Depitt

(RESPONDENT)
(DEFENDANT)

I/We Amir Muhammad

Do hereby appoint and constitute **MIR ZAMAN SAFI, Advocate, High Court, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. _____ / _____ /2022



CLIENT



ACCEPTED
MIR ZAMAN SAFI
ADVOCATE

OFFICE:

Room No.6-E, 5th Floor,
Rahim Medical Centre, G.T Road,
Hashtnagri, Peshawar.
Mobile No.0333-9991564
0317-9743003

