


The appeal of Mr. Syed Atiq Hussain received to-day i.e. on 22.12.2021 which is returned to the counsel for the appellant with the remarks to submit copy of charge sheet, statement of allegation, enquiry report and replies thereto with the appeal i.e. complete in all respect within 15 days.


No. 2525 /S.T,

Dt. 21/12 /2021


Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Roeeda Khan Adv. Pesh.

No Charge sheet
Statement of allegation
has been served or
summoned to the appellant
And no inquiry has been
conducted to Mr. Regard.


28/12/2021

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

CHECK LIST

1.	Case title		
2.	Case is duly signed.	Yes	No
3.	The law under which the case is preferred has been mentioned.	Yes	No
4.	Approved file cover is used.	Yes	No
5.	Affidavit is duly attested and appended.	Yes	No
6.	Case and annexure are properly paged and numbered according to index.	Yes	No
7.	Copies of annexure are legible and attested. If not, then better copies duly attested have annexed.	Yes	No
8.	Certified copies of all requisite documents have been filed.	Yes	No
9.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filled.	Yes	No
10.	Case is within time.	Yes	No
11.	The value for the purpose of court fee and jurisdiction has been mentioned in the relevant column.	Yes	No
12.	Court fee in shape of stamp papers affixed. For writ Rs. 500 , for other as required}	Yes	No
13.	Power of attorney is in proper form.	Yes	No
14.	Memo of addressed filed.	Yes	No
15.	List of books mentioned in the petition.	Yes	No
16.	The requisite number of spare copies-attached { Write petition- 3, Civil appeal(SB-2) Civil Revision (SB-1, DB-2)	Yes	No
17.	Case (Revision /appeal/petition etc) is filled on a prescribed form.	Yes	No
18.	Power of attorney is attested by jail authority (for jail prisoner only)	Yes	No

It is certified that formalities /documentations as required in column 2 to 18 above, have been fulfilled.

Name:- **Roeda Khan**
Advocate High Court
Peshawar

Signature: - 

Dated: - 21/12/2021

FOR OFFICE USE ONLY

Case: - _____

Case received on _____

Complete in all respect: Yes/No, (If NO, the grounds) _____

Signature _____
(Reader)

Dated: - _____

Countersigned: - _____
(Deputy Registrar)

کے نام پر

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تاریخ

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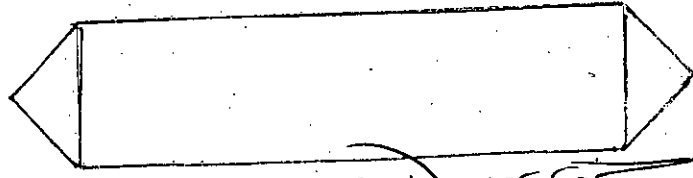
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باعتبار

تاریخ
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2021

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BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. 7940 /20201

Syed Atiq Hussain

VERSUS


Police Department Govt of KPK

INDEX

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6.	Wakalatnama		


APPELLANT

Through


Roeeda Khan
Advocate, High Court
Peshawar.

Dated: 21/10/2021

①

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/2021

Syed Atiq Hussain No.1138. Driver/Constable at
District Police Hangu.

Appellant

VERSUS

1. District Police Officer Hangu
2. Regional Police Officer Kohat Region.
3. Inspector General of Police KPK Peshawar.

Respondents

APPEAL U/S-4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 18-06-2020, WHEREBY THE APPELLANT HAS BEEN AWARDED MAJOR PUNISHMENT FROM HIGHER STAGE TO LOWER STAGE AS TIME SCALE OF PAY FOR THREE YEARS AS WELL AS RECOMMENDED FOR TRANSFER TO KARAK DISTRICT AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL ON 15.07.2020 WHICH HAS BEEN DECIDED ON 25.02.2021 ON NO GOOD GROUNDS.

PRAYER:-

ON ACCEPTANCE OF THIS APPEAL
THE IMPUGNED ORDERS DATED

(2)

18/06/2021 & 25.02.2020 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY KINDLY BE RESTORE ON HIS ORIGINAL POST/SERVICE ALONG WITH ALL BACK BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE ONWARD TRIBUNAL DEEMS FIT THAT MAY ALSO BE GRANTED IN FAVOUR APPELLANT.

Respectfully Sheweth

1. That the Appellant was appointed as Constable since long time with respondent department.
2. That after appointment the appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.
3. That while performing his official duty with respondent department, the impugned order dated 18.06.2020 has been passed against the appellant where by major punishment from higher stage to lower stage as time scale for pay for 3 years as well as recommended for transfer to District Karak against which the appellant filed departmental appeal on 15.07.2020 which has been rejected on 25.02.2021 communicated to the appellant on 25.11.2021. (Copies of impugned order dated 18.06.2020 ,departmental appeal and

(3)

rejection order are attached as annexure "A", "B" & "C"

4. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

GROUND:-

- A. That the impugned order 18/06/2020 and rejection orders dated 25/02/2021 are void and ab-initio order because it has been passed without fulfilling codal formalities in this respect the appellant relied upon a judgment reported on 2007 SCMR Page 834.
- B. That no opportunity of personal hearing and defense has been provided to the appellant relied upon a judgment 2003 PLC (CS) page 365.
- C. That the impugned order is also void because no regular or departmental inquiry was conducted against the appellant which is mandatory before imposing the major penalty relied upon a judgment reported on 2021 PLC (CS) page 235 as well as judgment of this Tribunal in service appeal No. 1181/2018 decided on 17.09.2021.
- D. It is a well settled principle of law no one can be condemned unheard because it is against the natural justice of law in this respect the appellant relied upon a judgment reported on 2008 SCMR page:678.
- E. That no opportunity of cross examination has been provided to the appellant. In this respect the appellant relied upon a

(4)

judgment reported on 2016 SCMR Page
108.

- F. That there is no proof and evidence regarding the allegation leveled against the appellant with respondent department.
- G. That any other ground not raised here may graciously be allowed to be raised at the time full of arguments on the instant service appeal.

It is therefore, most humbly prayed that on acceptance of this appeal the impugned orders dated 18/06/2021 & 25.02.2020 may kindly be set aside and the appellant may kindly be restore on his original post/service along with all back benefits. any other remedy which this august tribunal deems fit that may also be onward tribunal deems fit that may also be granted in favour appellant.

Any other relief not specifically asked for may also graciously be extended in favour of the Appellant in the circumstances of the case.

(Signature)
APPELLANT

Through

(Signature)
Roed Khan

&

(Signature)
Sheeba Khan

Advocate, High Court
Peshawar.

Dated: 21/12/2021

NOTE:-

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.

(Signature)
Advocate.

(5)

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/20201

Syed Atiq Hussain

VERSUS

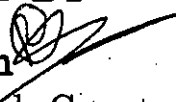
Police Department Govt of KPK

AFFIDAVIT

I, Syed Atiq Hussain No.1138 Driver/Constable at District Police Hangu, do hereby solemnly affirm and declare that all the contents of the **instant appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Court.


DEPONENT

IDENTIFIED BY:

Roeeda Khan 
Advocate High Court
Peshawar.

6

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/20201

Syed Atiq Hussain

VERSUS

Police Department Govt of KPK

ADDRESSES OF PARTIES

PETITIONER.

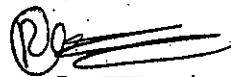
Syed Atiq Hussain No.1138 Driver/Constable at
District Police Hangu.

ADDRESSES OF RESPONDENTS

1. District Police Officer Hangu
2. Regional Police Officer Kohat Region.
3. Inspector General of Police KPK Peshawar.


APPELLANT

Through


Roeda Khan
Advocate, High Court
Peshawar.

Dated: 21/12/2021

(7)

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/20201

Syed Atiq Hussain

VERSUS

Police Department Govt of KPK

APPLICATION FOR CONDONATION OF DELAY (IF ANY)

Respectfully Sheweth,

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.

2. That while performing his official duty with respondent department, the impugned order dated 18.06.2020 has been passed against the appellant where by major punishment from higher stage to lower stage as time scale for pay for 3 years as well as recommended for transfer to District Karak against which the appellant filed departmental appeal on 15.07.2020 which has been rejected on 25.02.2021 communicated to the appellant on 25.11.2021.

(2)

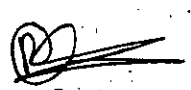
GROUND:

- A. That the impugned order is void and illegal and no limitation run against the void orders because the impugned order has been passed without fulfilling the codal formalities.
- B. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.
- C. That there are many judgment of the superior court as well as specific provision of service law that limitation has been counted from the date of communication/knowledge.

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.


APPELLANT

Through


Roeeda Khan
Advocate, High Court
Peshawar.

Dated: 21/12/2021

ORDER

(9) (A)

This order of mine will dispose off the departmental enquiry against Driver Constable Atiq Hussain No. 03 on the basis of allegations that while posted at MT Staff Police Lines Hangu on 25.03.2020, the undersigned was on routine supervision/checking of Guardat established with regard to "Corona Virus" when reached at Khairshah Banda Chowk, noticed the government APC No. B7 parked abandoned. On enquiry he accompanied by FC Sarwar Khan No. 2198/Ex-Servicemen in plain clothes found laying on bed (Charpai) without wearing uniform, shoes, shoulder badges, cap etc away from Government vehicle detailed for a vulnerable place of PTC Hangu. As such, when asked regarding his this indiscipline, negligence, he misbehaved with District Police Officer severely which is objectionable and contrary to discipline force as well as police rules. His above indiscipline behavior show his disinterest, irresponsibility, negligence and amounts to gross misconduct on his part which cannot be ignored.

Therefore, he was served with Charge Sheets and statement of allegations under Police Disciplinary Rules 1975 vide No. 27/EC, dated 30.03.2020 for which he submitted the reply to Enquiry Officer Mr. Nazir Khan DSP City Hangu who was appointed as Enquiry Officer into the matter. After completion of enquiry, the Enquiry Officer in his finding report dated 27.04.2020, held him guilty for the charges leveled against him and recommended for punishment.

As such, he was heard in person at orderly room held on 28.05.2020, but no reasonable response could be given in his self defence.

Thereafter, Final Show Cause Notice was issued to him vide No. 105/EC, dated 29.05.2020 for which he submits his reply on 04.06.2020, but his reply was found unsatisfactory.

Keeping in view of above and having gone through available record, the undersigned has arrived at the conclusion that the defaulter Driver Constable had shown indiscipline with the undersigned which is punishable under Police Disciplinary Rules 1975 therefore, I, Shahid Ahmed, District Police Officer, Hangu in exercise of the powers conferred upon me, award him major punishment from higher stage to lower stage as time scale of pay for 03 years as well as recommended for transfer to Karak District on complaint basis.

OB No. 13/1

Dated 13/06/2020


DISTRICT POLICE OFFICER,
HANGU

OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No. 6365-6/2/EC, dated Hangu, the 22/06/2020

Copy of above is submitted to the Regional Police Officer, Kohat for favour of information please.

2. Pay Officer, Reader, SRC & OHC for necessary action.


DISTRICT POLICE OFFICER,
HANGU

(11) 'B'

بخدمت جناب ریجنل پولیس آفیسر کوہاٹ ریجن

عنوان :- دیپارٹمنٹل اپیل بر خلاف آرڈر مورخہ 18.06.2020

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

یہ کہ اپیلانٹ محکمہ پولیس میں بطور ڈرائیور کا نشینیل ڈیوٹی سرانجام دے رہا ہے۔ جو کہ مورخہ 8.06.2020 کو سائل کے خلاف بے بنیاد الزامات لگا کر اپیلانٹ کو ہائیر پوسٹ سے لوئر پوسٹ کی سزا دی گئی ہے۔ جو کہ غلط اور غیر قانونی ہے کیونکہ سائل نے مجوزہ قانونی کی کوئی خلاف ورزی نہیں کی ہے اور نہ ہی سائل کے خلاف عائد کردہ بے بنیاد الزامات کی بابت کوئی گواہ اور ثبوت ملا ہے۔

لہذا استدعا کی جاتی ہے کہ اپیلانٹ کے خلاف عائد کردہ بے بنیاد سزا from Higher Stage to Lower stage as time scale of pay from 3 years Restore پر ریجنل پوسٹ پر کیا جائے۔

المرقوم: 15/07/2020

اپیلانٹ سید عتیق حسین

ڈرائیور کا نشینیل۔ 1138

POLICE DEPTT:

(V0)

(B)

KOHAT REGION

ORDER.

This order will dispose of an appeal preferred by Constable Syed Atiq Hussain No. 1138 of Operation Staff Hangu, against the punishment orders, passed by DPO Hangu vide OB No. 134, dated 18.06.2020 whereby he was awarded major punishment of time-scale for the period of 03-years on the following allegations:-


"The appellant while posted on special duty as Driver had parked abandoned APC and was laying on bed (charpai) in plain clothes as noticed by the then DPO Hangu Mr. Shahid Ahmed during his visit. On enquiry, he misbehaved with DPO."

Comments as well as relevant record were requisitioned from DPO Hangu. The appellant was also heard in person in Orderly Room, held in this office on 18.02.2021 wherein he failed to advance any plausible explanation.

Record gone through, which indicates that the appellant being a member of disciplined force was not supposed to exhibit such negligence and misbehaviour.

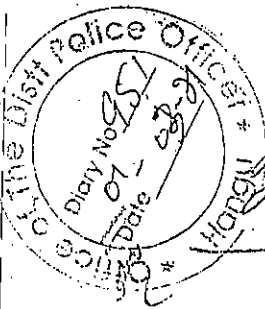
Above in view, the undersigned reached to the conclusion that the allegations leveled against the appellant are fully proved duly established by the Enquiry Officer in his findings. Hence, the impugned order passed by DPO Hangu is justified, upheld and the appeal is hereby rejected.

Order Announced
18.02.2021



(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.

No. 2466 /EC, dated Kohat the 25/2 /2021.

Copy to District Police Officer, Hangu for information and necessary action w/r to his office Memo: No. 650/LB, dated 19.01.2021. His Service Record & Fauji Missal is returned herewith.



Imp. legal / SRE / OAC
For information & action.
D.P.O Hangu
01/03/2021


(TAYYAB HAFEEZ) PSP
Region Police Officer,
Kohat Region.
19/2

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No. _____

7940

21

Syeda ~~Atiq~~ Hussain of 20

Recd

D-P-O Hanjra Appellant/Petitioner

..... Respondent

Distt: Police Officer No. Hanjra

Notice to: _____

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on.....at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated..... 1 It

Given under my hand and the seal of this Court, at Peshawar this.....

Day of.....20

(for Reply)

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

- Note:
1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, S.B.
PESHAWAR.

No. _____

Appeal No. 7940 of 20 21
Syed Atiq Hussain Appellant/Petitioner

Regd
D-P-O Hangu Versus Respondent
2

Notice to: _____ Respondent No. _____
Regional Police Officer Kohat Region
Kohat.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 21/6/21 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. _____ dated _____

Given under my hand and the seal of this Court, at Peshawar this 1st Day of June 22 2021

(for Reply)

Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

“B”

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR. S.B

No.

Appeal No. 7960 of 20 21
Syed Atiq Hussain Appellant/Petitioner
 Versus
D.P.O. Hangu Respondent
 Respondent No. 3

Notice to: — Inspector General of Police
KPK Peshawar.

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 21/7/22 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 15

Day of June 20 22

(for Reply)

[Signature]
03/06

[Signature]

Registrar,
 Khyber Pakhtunkhwa Service Tribunal,
 Peshawar.




Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
 2. Always quote Case No. While making any correspondence.

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7940 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/12/2021	<p>The appeal of Mr. Syed Atiq Hussain resubmitted today by Roeeda Khan Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR,</p>
2-	18.02.2022	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put up there on <u>18/02/22</u>.</p> <p> CHAIRMAN</p> <p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 16.05.2022 for the same as before.</p> <p> Reader</p>

16.05.2022

Learned counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant at the outset of her arguments contended that the appellant is aggrieved of the impugned order dated 18.06.2020 when major penalty from higher stage to lower stage in time scale of pay for 3 years, was imposed upon the appellant and he was also recommended for transfer to Karak District on complaint basis. Thus, it is a case of double jeopardy. The appellant submitted departmental appeal on 15.07.2020 which was rejected vide appellate order dated 18.02.2021 hence the instant service appeal instituted in the Service Tribunal on 21.12.2021. It was further argued that no charge sheet/statement of allegations was issued and served on the appellant and as per dictum of law no one can be condemned unheard. The impugned order is claimed to have actually been communicated to the appellant on 25.11.2021 and taking from that point, the impugned order was not based on merit, then no limitation can run against an illegal order. To strengthen her argument, she relied on 2013 SCMR 1053.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments. To come up for reply/comments before the S.B on 21.07.2022.

(Mian Muhammad)
Member(E)

Ms
500
Deposited
Process Fee
20/5