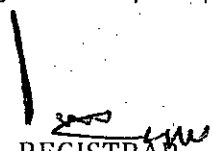




FORM OF ORDER SHEET

Court of _____

Case No. 2410 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/02/2021	<p>The appeal of Mr. Kamran Khan resubmitted today by Naila Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>16/04/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	16.04.2021	<p>Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 04.08.2021 for the same as before.</p> <p style="text-align: right;"> Reader</p>

04.08.2021

Counsel for the appellant present.

The order impugned in the present appeal was passed on 06.05.2008 and its copy is available on file at page -9 Annexure-A. Departmental appeal against the said order was filed on 10.12.2015 annexure-B. The appellant after stating the facts about his absence from duty due to unavoidable circumstances, self stated in his appeal that after 20/25 days when he contacted his Platoon Munshi, the later informed about dismissal of his service. After 2/3 months he received the dismissal order on Fax but it was not visible. Being admission by appellant in his departmental appeal clearly reveals that he had got the knowledge of dismissal from service. However, he preferred departmental appeal in the year 2015 after about seven years and then present service appeal after another period of about six years with an application for condonation of delay citing the reason as to the order having been given retrospective effect and accordingly the order being void is not affected by limitation. If the period beyond prescribed limitation for departmental appeal is condoned deeming the order being void but the appellant has neither advanced any sufficient cause in the application nor is there any reason for condonation of delay, having occurred after expiry of ninety days waiting period of order on departmental appeal. Learned counsel seeks adjournment for preparation. To come up for preliminary hearing on 30.09.2021 before S.B.


Chairman

30.09.2021

Junior of counsel for the appellant present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for preliminary hearing before the S.B on 29.11.2021.


(MIAN MUHAMMAD)
MEMBER (E)

29.11.2021

Counsel for the appellant present.

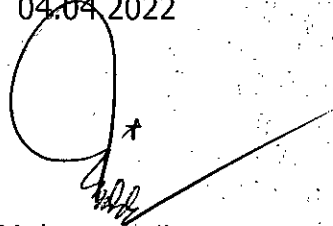
Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the brief. Adjourned. To come up for preliminary hearing on 01.02.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

01.02.2022

Counsel for the appellant present.

Learned counsel for the appellant seeks adjournment. Adjourned. To come up for preliminary hearing on 04.04.2022 before S.B.


(Mian Muhammad)
Member(E)

04.04.2022

Mst. Naila Jan, Advocate for the appellant present and heard. To come up for consideration tomorrow on 05.04.2022 before this S.B.

9

Chairman

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	5 th April, 2022	<p style="text-align: center;">KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.</p> <p style="text-align: center;">Service Appeal No. 2410/2021</p> <p>Kamran Ex-Constable No. 4025 of FRP Headquarter, Peshawar. ... (Appellants)</p> <p style="text-align: center;"><u>Versus</u></p> <p>Inspector General of Police Khyber Pakhtunkhwa Peshawar and others. ... (Respondents)</p> <p style="text-align: center;"><u>ORDER</u></p> <p style="text-align: center;"><u>KALIM ARSHAD KHAN CHAIRMAN.</u> Counsel for the appellant present and heard.</p> <p>02. Through the present appeal the appellant has challenged the order dated 06.05.2008 of respondent No. 1, whereby the appellant was removed service, against which his departmental appeal was not decided within the statutory period. It has been prayed that on acceptance of the appeal, the impugned order may be set aside and the appellant may be reinstated into service with all back benefits.</p> <p>03. The appeal was fixed for preliminary hearing on 04.08.2021. the following observations were made by the Tribunal:-</p> <p style="text-align: center;"><i>"The order impugned in the present appeal was passed on 06.05.2008 and its copy is available on file at page-9</i></p>

Annexure-A. Departmental appeal against the said order was filed on 10.12.2015 Annexure-B . The appellant after stating that the facts about his absence from duty due to unavoidable circumstances, self stated in his appeal that after 20/25 days when he contacted his Platoon Munshi, the later informed about dismissal of his service. After 2/3 months he received the dismissal order on Fax but it was not visible. Being admission by appellant in his departmental appeal clearly reveals that he had got the knowledge of dismissal from service. However, he preferred departmental appeal in the year 2015 after about seven years and then present service appeal after another period of about six years with an application for condonation of delay citing the reason as to the order having been given retrospective effect and accordingly the order being void is not affected by limitation. If the period beyond prescribed limitation for departmental appeal is condoned deeming the order being void but the appellant has neither advanced any sufficient cause in the application nor is there any reason for condonation of delay, having occurred after expiry of ninety days waiting period of order on departmental appeal. Learned counsel seeks adjournment for preparation. To come up for preliminary hearing on 30.09.2021 before S.B."

D. S. B.
 05/9/21

04. Learned counsel for the appellant contended that no

charge sheet alongwith statement of allegations was issued to the appellant nor show cause notice was served upon him and he has been condemned unheard. That this Hon'ble Tribunal had accepted similar nature Appeal No. 985/2012 on 13.05.2015 and the appellant is also entitled to same treatment. That the impugned order has been given retrospective effect which rendered the impugned order as void and no limitation runs against such orders as per judgment of Hon'ble Supreme Court of Pakistan reported as 2016-SCMR-648.

05. Both the departmental representation and this appeal are barred by time. Learned counsel for the appellant could not explain delay of each and every day in filing the present service appeal. Thus, the ground taken for condonation of delay does not seem plausible. Therefore, the appeal is dismissed in limine. Consign.

06. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 5th day of April, 2022.*



(KALIM ARSHAD KHAN)
Chairman

The appeal of Mr. Kamram Ex-Constable No. 4025 of /FRP Headquarters Peshawar received today i.e. on 26/01/2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Appeal has not been flagged/marked annexures' marks.
- 4- Annexures of the appeal may be attested.
- 5- Annexures C&D of the appeal are missing.
- 6- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.

No. 201 /S.T,

Dt. 28/01 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Naila Jan Adv. Pesh.

*Received
all the documents
and resubmitted by*

*Charge sheet
show cause notice and
enquiry are not
available with the appellant
my kindly be against
from the department.*

*7/2/21
ATC
08/02/2021*

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

APPEAL NO...../2021

Kamran Khan


VERSUS

IGP KPK Peshawar & Others


INDEX

S#	Description of Documents	Annexure	Pages
1.	Appeal		1-4
2.	Application for Condonation of Delay		5-6
3.	Affidavit		7
4	Addresses of the Parties		8
5	Copy of the impugned order dated 06/05/2008	"A"	9
6	Copy of the departmental appeal	"B"	10
7	Copy of Judgments	"C & D"	11-17
8	Wakalat Nama		18

Dated:26/01/2021


Appellant

Through


Naila Jan
Advocate, High Court
Peshawar.

①

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

APPEAL NO. 2410 /2021

Khyber Pakhtukhwa
Service Tribunal

Diary No. 1640

Dated 26/01/2021

Kamran (Ex Constable No 4025 of /FRP Headquarters
Peshawar.

Appellant

Vs

1. Inspector General of Police Khyber Pukhtunkhwa Peshawar
2. Additional Inspector General/Commandant Frontier Reserved Police Peshawar.
3. Deputy Commandant Frontier Reserved Police Peshawar.

.Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PUKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED
6/05/2008 OF RESPONDENT NO 1 WHEREBY
THE APPELLANT WAS REMOVED FROM HIS
SERVICES WITH RETROSPECTIVE EFFECT, AND
NON DECIDING DEPARTMENTAL APPEAL OF THE
APPELLANT IS UTTER VIOLATION OF LAW,
RULES AND PRINCIPLES OF NATURAL JUSTICE.**

Filed to-day

Registrar
26/01/2021

PRAYERS:

Re-submitted to -day
and filed.

**ON ACCEPTANCE OF THE INSTANT APPEAL THE
IMPUGNED ORDER DATED 6/05/2008 MAY
KINDLY BE DECLARED ILLEGAL VOID AB-INITIO,
SET ASIDE THE IMPUGNED ORDER AND THE
APPELLANT MAY KINDLY BE REINSTATED INTO
SERVICE WITH ALL BACK BENEFITS.**

Registrar
8/2/2021

Respectfully Sheweth;

1. That the appellant was enlisted in the year 2004 as constable in the FRP HQRs: Peshawar and since his

2

appointment the appellant performed his duties with full devotion ,enthusiasm and to the entire satisfaction of the respondents.

2. That the appellant was deputed for emergency duty in district tank and then transferred to DIKHAN region on loan basis to his native district bannu.when the appellant came to FRP DIK range to Receive his transfer order he was informed that the interim provincial government cancelled all the transfers and the appellant was informed that his platoon had been deployed in swat .then the appellant left for swat however on the way on a police check post their coach was returned by the police due to the deteriorating situation in swat the appellant tried his level best to join duty but in vain .the appellant returned to Peshawar however after a few days when the appellant contacted Munshi of his platoon by phone and he informed the appellant about the impugned order dated 06/05/2008 and asked the appellant not to come there.(copy of the impugned order dated 06/05/2008 is annexed as A)
3. That thereafter the appellant tried hard to get the impugned order and after 3 months of struggle the appellant got its copy through fax however the same was not visible and as the appellant got the copy of the order the appellant filed a departmental appeal before respondent No 2 however the same has not yet decided(Copy of the departmental appeal is annexure B)
4. That feeling aggrieved from the impugned orders the appellant having no other adequate remedy filed the instant appeal on the following grounds

4

GROUNDS

- A. That the impugned order is against the law, rules and Principles of natural justice vide ab-initio, hence liable to be set aside.
- B. That no opportunity of personal hearing or defense has been provided to the appellant hence the appellant has been condemned unheard.
- C. That no charge sheet along with statement of allegation or show cause notice had been issued/served on the appellant which are mandatory under RSO 2000.
- D. That similar Nature Appeal No 985/2012 decided on 13/02/2015 was accepted by this honorable Tribunal. Another similarly placed police constable namely Wali Ayaz was reinstated vide order dated 31/01/2019 by the respondents on the basis of another judgment of this honorable Tribunal in Appeal No 369/2012 hence as per judgment of the supreme court reported as 2009 SCMR 01 being similarly placed person the appellant is also entitled for similar treatment.(Copies of the same are C & D)
- E. That all similarly placed employees who were dismissed during insurgency in swat have been reinstated hence the appellant is also entitled for the same relief.
- F. That the inquiry officer neither recorded statement of any witness nor did the appellant was provided opportunity of cross examination.
- G. That opportunity of FAIR TRAIL, as guaranteed by art 10 A of the constitution has not been provided to the appellant.


\$

- H. That the appellant has not been treated in accordance with Art 4&25 of the constitution.
- I. That the appellant has been awarded the punishment with retrospective effect which is void order as per judgment 2002 SCMR 1124.
- J. That the period of absence has been treated as leave without pay hence regularized the absence period then there lift no charge of absence against the appellant.
- K. That the absence of the appellant is not willful but due to the reason mentioned above which cannot be termed as misconduct.
- L. That since the impugned order the appellant is jobless and facing hardship.
- M. That the appellant sought permission of this honorable tribunal to adduce other ground during final hearing of the instant appeal.

It is therefore requested that the appeal may kindly be accepted as prayed for.


Appellant

Through


NAILA JAN
Advocate High Court
Peshawar.

3

BEFORE THE KHYBER PUKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.

APPEAL NO...../2021

Kamran (Ex Constable No 4025 of /FRP Headquarters Peshawar
Appellant

Vs

Inspector General of Police Khyber Pukhtunkhwa Peshawar.
Respondents

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth;

1. That the above titled appeal is filing today in which no date has been fixed so far.
2. That the impugned order has been given retrospective effect as well as the absence period has been regularized by treating it leave without pay which render the impugned order to be void order and as per dictum laid down by superior court no limitation runs against void order reference is made to 2019 SCMR 648,2019 PLCCS S.C 928.

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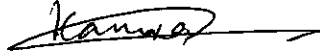
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3. That the Supreme Court also laid down the dictum that cases are to be decided on merit rather than technicalities.
4. That the impugned order is against the constitution as well as the RSO 2000.
5. That valuable rights of the appellant is involved which may not be take away on the basis of technicalities.

It is therefore requested that the delay in filing the instant appeal may kindly be condoned for the end of justice.

Dated: 26/01/2021

Through


Appellant


NAILA JAN

Advocate High Court
Peshawar.

7

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

APPEAL NO...../2021

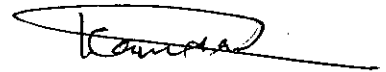
Kamran Khan

VERSUS

IGP KPK Peshawar & Others

AFFIDAVIT

I, Kamran (Ex Constable No 4025 of /FRP Headquarters Peshawar, do hereby solemnly affirm & declare on oath that all contents of instant service appeal are true & correct to the best of my knowledge & belief and nothing has been kept concealed or misstated from this Hon'ble Tribunal.



DEPONENT

Identified by

Naila Jan
Advocate, High Court,
Peshawar.



68-2-2021




8

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

APPEAL NO...../2021

Kamran Khan

VERSUS

IGP KPK Peshawar & Others

ADDRESSES OF THE PARTIES

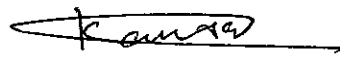
APPELLANT

Kamran (Ex Constable No 4025 of /FRP Headquarters Peshawar

RESPONDENTS

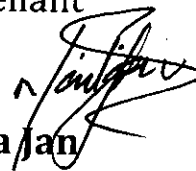
1. Inspector General of Police Khyber Pukhtunkhwa Peshawar
2. Additional Inspector General/Commandant Frontier Reserved Police Peshawar.
3. Deputy Commandant Frontier Reserved Police Peshawar

Dated: 26/01/2021



Appellant

Through



Naila Jan

Advocate, High Court,
Peshawar.

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Amir Au

O.R.D.E.R


This office order relates to the disposal of formal departmental enquiry against Constable Kamran, No.4025 of FRP/HQrs: Peshawar, who remained absent, from duty w.c. from 10-12-2007 till-to date without taking any leave/permission of the competent authority.

In this connection he was issued Charge Sheet and Summary of Allegations. I.O/FRP/HQrs, was nominated as Enquiry Officer to conduct the enquiry and submit his findings. The Enquiry Officer after completion of all codal formalities submitted his finding/report wherein he was found guilty of the charge of intentional fault of absence without any cogent reason. Moreover the delinquent official is not willing to serve more in Police Department.

Upon the findings of the Enquiry Officer he was issued Final Show Cause Notice on his home address through DFC/FRP/HQrs to which he received, but failed to submit reply of the said notice within stipulated period of (14) days.

Keeping in view the recommendation of the Enquiry Officer and other material available on record it has become crystal clear that his further retention in service is no more required in the discipline force. Therefore, in exercise of Powers vested to me under the NWFP, Removal from Service (Spl: Powers) Ordinance 2000. Constable Kamran, No.4025, of FRP/HQrs, is hereby Removed from Service from the date of his absence i.e 10-12-2007. The period of absence is treated as leave without pay.

Order announced.


(RAJA NASEER AHMAD)
Dy: Commandant,
Frontier Reserve Police,
NWFP, Peshawar.

No. 688 - 91 /PA/FRP/HQrs: dated Peshawar, the

06/05/2008.

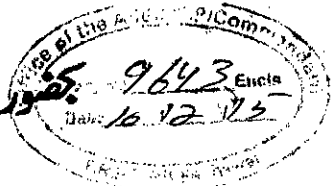
Copy of the above is forwarded to:-

1. The Commandant FRP NWFP, Peshawar.
2. The Dy: Superintendent of Police FRP/Admn: Peshawar.
3. The OASI/Accountant FRP/HQrs: Peshawar.
4. SRC/FMC FRP/HQrs: Peshawar.

FRP. HQ
O.B. No. 324
Date 06-05-08

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جناب والا شان کمانڈنٹ صاحب FRP صوبہ خیبر پختونخواہ پشاور

رحم درخواست: بحال فرمانے ملازمت سائل بچہ کنشیل جو جناب ڈپٹی کمانڈنٹ صاحب FRP پشاور نے کمترین کو یکطرفہ اور فرضی کاروائی کے تحت ملازمت سے بحوالہ OB نمبر 394 مورخہ 06-05-2008 ڈس مس کیا ہے اور سائل کو دفاع کا کوئی موقع نہیں دیا ہے۔ مجھے برخاستگی کی اطلاع موبائل پر دی گئی۔ جو میں آج تک پریشان اور ذہنی کوفت میں مبتلا رہا ہوں۔

جناب عالی!

کمترین آنجناب کے حضور حسب ذیل منوہ بانہ رحم درخواست پیش کرتا ہے کہ سائل 2004 میں محکمہ FRP پشاور ہیڈ کوارٹر میں بطور کنشیل بھرتی ہوا۔ ابتدائی ٹریننگ مکمل کر کے مختلف مقامات پر ڈیوٹی انجام دیتا رہا۔ سائل کی تعیناتی ضلع ٹانک میں تھی کہ اس دوران سائل کا تبادلہ پشاور ہیڈ کوارٹر سے D.I.K ریج ہوا اور D.I.K سے آن لائن تبادلہ اپنے آبائی ضلع بنوں ہوا۔ میں نے حسب رولز سات یوم چائننگ ٹائم گذاری لیکن جب D.I.K ایف آر پی آفس سے پروانہ تبادلہ وصول کرنے گیا تو مجھے بتایا گیا کہ نگران صوبائی حکومت نے تمام تبادلوں کو منسوخ کر کے پابندی لگائی ہے اور ان آیام میں میری پلاٹون ضلع سوات جا چکی تھی مجھے اپنی پلاٹون میں دوبارہ حاضری کی ہدایت دی گئی۔ جو میں ضلع سوات اپنے پلاٹون میں حاضری کرنے کے لئے روانہ ہوا لیکن اس دوران سوات کے حالات سخت خراب تھے۔ راستے میں ایک پولیس کی چوکی پر ہماری فلائنگ کوچ روک دی گئی اور سوات جانے کے حالات سے آگاہ کرتے ہوئے فلائنگ کوچ واپس پشاور آ گئی۔ سوات کے مقامی لوگوں نے مختلف مقامات کا رخ کیا جبکہ سائل واپس گھر خود آیا اور ضلع سوات جانے کے راستے بند ہونے پر گھر پر مقیم رہا۔

میں نے اپنے پلاٹون کے منشی سے 20/25 دن بعد جب رابطہ کیا تو منشی نے بتلایا کہ تم کنشیل ڈس مس ہوئے ہو یہاں آنے کی کوشش مت کرو۔ 2/3 ماہ بعد مجھے ڈس مس آرڈر فیکس ہوا لیکن پڑھنے کے قابل نہ تھا مجھے جناب ڈپٹی کمانڈنٹ صاحب نے اپنے دفاع کا کوئی موقع نہیں دیا اور یکطرفہ کاروائی کے تحت مجھے ملازمت سے برخاست کیا گیا۔ جو آج تک میرا کوئی پُرساں حال نہیں بنا ہے۔ لہذا عاجزانہ رحم کی درخواست پیش کرتے ہوئے استدعا کرتا ہوں کہ میرے اور میرے کم سن اولاد پر رحم کر کے مجھے دوبارہ اپنی ملازمت پر بحال فرمایا جاوے۔

ماتحت پروری ہوگی

Ex کنشیل محمد کامران خان بیلٹ نمبر 4025 FRP

ساکن سلیمہ سکندر خیل تحصیل ضلع بنوں

رابطہ نمبر: 0334 8812837

0336 9727816

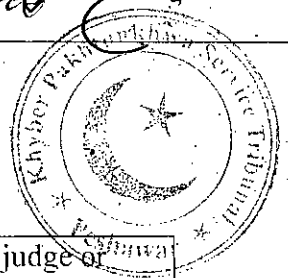
Ofs
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relevant

10/12/15

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Amir



S.No.	Date of order/ proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	13.02.2015	<p><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p>Service Appeal No. 985/2012, Zahid Ullah Khan Versus Commandant, FRP, KPK, Peshawar etc.</p> <p><u>PIR BAKHSH SHAH, MEMBER.-</u> Appellant with counsel (Arbab Saiful Kamal, Advocate) and Mr. Muhammad Jan, GP with Ihsanullah, H.C for the respondents present.</p> <p>2. The appellant Zahidullah filed the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 26.3.2012 whereby the appellant was awarded the major penalty of removal from service. His departmental appeal dated 1.04.2012 was rejected by the Commandant, FRP Khyber Pakhtunkhwa vide his order dated 11.06.2011, hence this appeal before the Tribunal.</p> <p>3. Arguments heard and record perused.</p> <p>4. During the course of arguments, it was asserted by the learned counsel for the appellant that without going into merits of the case, the impugned order is liable to be set aside solely on the technical ground that charge sheet and statement of allegations were issued to the appellant vide order dated 16.11.2011 and the proceedings were made against the appellant under the Khyber Pakhtunkhwa Removal from Service (Special Powers)</p>

ATTESTED

[Handwritten signature]

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

12

Ordinance, 2000 which had been repealed on 15th September, 2011. It was further submitted that vested rights of the appellant have been damaged by mis-application of law. The learned counsel for the appellant lastly argued that this Tribunal has already remanded cases on the basis of mis-application of law. Reliance was placed on 2006-SCMR-1000, 2003 PLC(C.S.)600, 2008 PLC(C.S.)1227, 2007 PLC (C.S) 251, & 2007-SCMR-229.

5. The Tribunal is of the considered opinion that charge sheet and statement of allegations were issued to the appellant under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 which was not in the field and had been repealed. Since the cases of similar nature have already been remanded to the respondent-department for conducting proper denovo enquiry, the appellant is also entitled to the same treatment under Article 4 of the Constitution of Islamic Republic of Pakistan.

6. For the said reasons, we are of the considered view to set aside the impugned orders, the appellant is reinstated in service for the purpose of enquiry and to remit the case back to the respondent No. 3 with the direction to initiate fresh disciplinary proceedings against the appellant under relevant law/rules and if the charges are established, penalty duly in accordance with

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



12

the law be imposed upon him. Back benefits etc. will be subject to the outcome of fresh disciplinary proceedings. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED.
13.2.2015



(PIR BAKHSH SHAH)
MEMBER


(ABDUL LATIF)
MEMBER

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Date of Presentation of Application 8-2-2021
Number of Words 1600
Copying Fee 18-
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Name of Copyist _____
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14

Ayaz Khan



Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL.</u></p> <p align="center">Appeal No. 369/2012</p> <p align="center">Date of Institution ... 16.03.2012</p> <p align="center">Date of Decision ... 10.09.2018</p> <p align="center">Wali Ayaz Khan, Ex-constable.No.682 R/O zul-qadar Mandan P.O. Khawaga-mad Mandan Tehsil and District Bannu.</p> <p align="right">-----Appellant-----</p> <p>1. District Police Officer, Bannu.</p> <p>2. Regional Police Officer, Bannu Region, Bannu.</p> <p>3. The Inspector General of Prision Khyber Pakhtunkhwa.</p> <p align="right">-----Respondent-----</p> <p>Mr. Hussain Shah.....Member</p> <p>Mr. Muhammad Hamid Mughal.....Member</p> <p>10.09.2018</p> <p align="center"><u>JUDGMENT</u></p> <p><u>HUSSAIN SHAH, MEMBER:</u> - Appellant, learned counsel for the appellant and Mr. Kabirullah Khattak, Learned Additional Advocate General on behalf of the official respondents present:</p> <p>2. Appellant Wali Ayaz Khan has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act being aggrieved against the order of respondents No.1 dated 30.06.2010 the appellant was dismissed from service from the date of absence. The appellant has also contested the rejection orders of the</p>		

Signature

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(5)

departmental appeal by the respondents No.2 dated 27.11.2010.

3. The Learned counsel for the appellant stated that the impugned orders are against the law, facts and very harsh punishment was awarded to the appellant. Further argued that the appellant remained absent from duty for 27 days which was neither willful nor intentional, but behind his control due to severe illness. Further argued that the inquiry was conducted without giving him the opportunity of defense. He also placed on record the departmental appeal to respondent No.2 wherein facts of his illness and dismissal for service without giving him the opportunity of defense mentioned. Learned counsel for the appellant argued that the impugned punishment was awarded retrospectively hence no limitation run against the same being void order. Learned counsel for the appellant prayed for setting aside the impugned orders and re-instatement of the appellant.

4. Against that the learned AAG argued that the competent authority dismissed the appellant from his service after completion of formalities under the relevant law and the reason for his absence and pre-planned after thoughts. Further argued that the appellant did not bother to inform the competent authority about his illness

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

and neither he appeared before the inquiry officer.

5. Arguments heard. File perused.

6. Charge against the appellant was that he absented himself for recruit training program for more than twenty Seven (27) days and was returned as unqualified by the commandant PTC hangu vide his signal No. 191-92/GC dated 0902.2009. There is no Cavil to the proposition that if punishment is awarded to a Civil Servant with retrospective effect the no limitation would run against the same being void. From the perusal of the record and arguments of the parties it transpired that there is no dispute that the appellant remained absent from duty without permission. However learned counsel for the appellant has taken the plea that the appellant was absent being severely ill. The appellant mentioned the fact of ^{his} severe illness not only the present service appeal but also in his departmental appeal. Learned counsel for the appellant referred to the judgments reported in 2008 S C M R 214 & 2006 S C M R 1120. In view of the back ground of the case and the above mentioned judgments of the Hon'able Supreme court the punishment of dismissal from service appears to be excessive and harsh.

Attest

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(17)

7. Consequently the present appeal is partially accepted and the major punishment of dismissal from service is modified and converted into withholding of Three (3) annual increments for a period of Five (5) years. Absent period and Intervening period shall also be treated as extraordinary leave without pay. In case the appellant is found still adamant not to qualify the recruit course, the respondent department is at liberty to proceed against him in accordance with law. The Present appeal is partially accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room after its completion.

STH

STH
 (HUSSAIN SHAH)
 MEMBER

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EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

STH

(MUHAMMAD HAMID MUGHAL)
 MEMBER

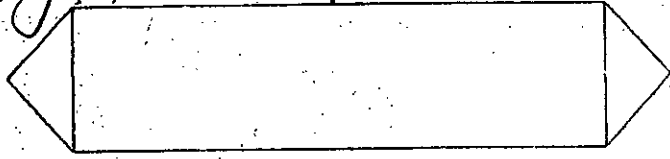
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10.09.2018

Date of Presentation of Application 8-8-2021
 Number of Copies 2000
 Copying Fee 22-
 Urgent 4-
 Total 26-
 Name of Copyist J
 Date of Completion of Copy 8-2-2021
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18



اسلام آباد
پولیس

صفحہ 2 منجانب
محمد کامران بنام

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام لپٹا رہ سکیئے نامکوجان
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تفریث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخیت منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
سبب سے ہوگا۔ کوئی تارتخ نیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

محمد کامران (Appellant)

M Kamran

2020

ماہ جنوری

19

المرقوم

العبد گواہ العبد

کے لئے منظور ہے۔

لٹیا وہ

مقام

Attested

Accepted

Signature
AME