

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. 2412/2021</p> <p>Fayaz Khan Ex-Constable No. 6618/FRP District Bannu. ... (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 03.08.2009 of respondent No. 1, whereby the appellant was discharged from service and against the order dated 13.03.2014, whereby, his departmental appeal was rejected and order dated 14.06.2016, whereby, his mercy petition was rejected. The appellant prayed that on acceptance of the appeal, the impugned orders may be set aside and he 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><i>"The appellant was discharged from service from the</i></p>

date of his absence vide order dated 03.08.2009, he filed departmental appeal and the same was rejected vide order dated 13.03.2014 mainly for the reason of its being time barred. Then the appellant filed second departmental appeal under Rule-11-A of K.P Police Rules, 1975 against the rejection of his first appeal. The same was also rejected on the ground of limitation and merit as well mentioning in the order that service of the appellant was less than three years. The present service appeal has been filed after about six years after passing the impugned order on second departmental appeal. The appeal at hand has been filed on 20.01.2021 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 in 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 there is 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."

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 the punishment of "discharge" is nowhere mentioned in the Khyber Pakhtunkhwa Removal from service Special Powers Ordinance, 2000. 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

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.

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.

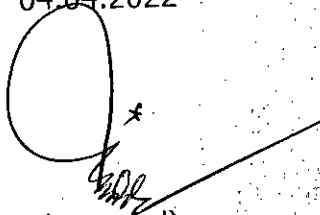
Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the brief. Adjourned. To come up for preliminary hearing on 01.02.2022 before S.B.


(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)

04.08.2021 Counsel for the appellant present.

The appellant was discharged from service from the date of his absence vide order dated 03.08.2009, he filed departmental appeal and the same was rejected vide order dated 13.03.2014 mainly for the reason of its being time barred. Then the appellant filed second departmental appeal under Rule-11-A of K.P Police Rules, 1975 against the rejection of his first appeal. The same was also rejected on the ground of limitation and merit as well mentioning in the order that service of the appellant was less than three years. The present service appeal has been filed after about six years after passing the impugned order on second departmental appeal. The appeal at hand has been filed on 20.01.2021 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 there is 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

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 2412 /2021

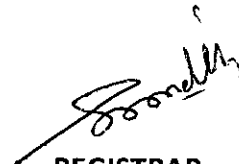
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/02/2021	<p>The appeal of Mr. Fayyaz Khan resubmitted today by Naila Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>14/04/21</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-	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>

The appeal of Mr. Fayyaz Khan Ex-Constable o. 6618/FRP Bannu received today i.e. on 20/01/2021 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Annexure-H is not attached with the appeal which may be placed on it.
- 3- Appeal has not been flagged/marked annexures' marks.

No. 147 /S.T,

Dt. 21/01 /2021



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Naila Jan Adv. Pesh.

*Cancelled all the
objections or resubmitted
by [Signature] 08/02/2021*

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal no...../2021

Fayaz khan

VERSUS

IGP KPK Peshawar & Others

INDEX

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Dated:15/01/2021

Fayaz Khan
Appellant

Through

Naila Jan
Advocate, High Court
Peshawar.

1

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

APPEAL NO. 2412/2021

Khyber Pakhtukhwa
Service Tribunal

Diary No. 1521

Dated 22/1/2021

Fayaz khan (Ex Constable No 6618/FRP District Bannu.

.....Appellant

VERSUS

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

..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 03/08/2009 OF RESPONDENT NO 1 WHEREBY THE APPELLANT WAS DISCHARGED FROM HIS DUTIES WITH RETROSPECTIVE EFFECT, ORDER DATED 13/03/2014 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPEAL OF THE APPELLANT WAS REJECTED AND ORDER DATED 14/06/2016 WHEREBY THE MERCY PETITION/REVIEW OF THE APPELLANT WAS REJECTED IN UTTER VIOLATION OF LAW RULES AND PRINCIPLES OF NATURAL JUSTICE.

Filed to day
[Signature]
 Registrar
 20/1/2021

Re-submitted to -day
 and filed.

[Signature]
 Registrar
 8/2/2021
 PRAYERS:

ON ACCEPTANCE OF THE INSTANT APPEAL THE IMPUGNED ORDERS DATED 03/08/2009, 13/03/2014 AND 14/06/2016 MAY KINDLY BE DECLARED ILLEGAL VOID ABINITIO, SET ASIDE THE IMPUGNED ORDERS AND THE APPELLANT MAY KINDLY

**BE REINSTATED INTO SERVICE WITH ALL
BACK BENEFITS.**

Respectfully Sheweth;

1. That the appellant was appointed as constable in the FRP Bannu and passed the recruitment course from Punjab Army Centre Mardan.
2. That the appellant was deputed for emergency duty in district Hangu on 21/03/2008 where during performance of his duties the appellant along with another constable Shah Nawaz were seriously injured while another constable Muzzamil shah was murdered by terrorist .**(Copy of the FIR is annexed as A)**
3. That the appellant after shifting home became Victim of hepatitis due to which the appellant could not join duty. **(Copies of the medical prescription are annexed as B)**
4. That the appellant was shocked to receive order dated 03/08/2009 whereby the appellant was discharged from his service with retrospective effect under Removal from service special power Ordinance 2000, without serving/issuing charge sheet along with statement of allegation and conducting regular inquiry. **(Copy of the impugned order is annexed as C)**
5. That the appellant then submitted departmental appeal before respondent no 2 however without any opportunity of defense/personal hearing the departmental appeal was rejected vide order dated 13/03/2014. **(Copy of the departmental appeal is not available with the appellant the same may be requisitioned from the department however copy of the appellate order is annexed as D).**
6. That the appellant then submitted a mercy/review petition vide order dated 14/06/2016 without

- * providing any opportunity of personal hearing. **(Copies of the Mercy Petition and Rejection Order are annexed as E & F)**

7. That feeling aggrieved from the impugned orders the appellant having no other adequate remedy filed the instant appeal on the following grounds

GROUNDS

- A. That the impugned orders are against the law rules 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 the appellant has been awarded a punishment of discharge which is nowhere mentioned in RSO 2000 .the punishment is mentioned in police Rules 1975, and awarding such punishment is meant that he has been awarded punishment under Police rules 1975 despite the fact that police rules was not in field at that time and 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 G & H)**

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- E. That the inquiry officer neither recorded statement of any witness nor did the appellant was provided opportunity of cross examination.
- F. That opportunity of fair trial, as guaranteed by Art 10 A of the Constitution of Islamic Republic of Pakistan 1973, has not been provided to the appellant.
- G. That the appellant has not been treated in accordance with Art 25 of the constitution.
- H. That the appellant has been awarded the punishment with retrospective effect which is void order as per judgment 2002 SCMR 1124.
- I. That the absence of the appellant is not willful but due to the reason mentioned above which cannot be termed as misconduct.
- J. That since the impugned order the appellant is jobless and facing hardship.
- K. 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.

Through

Fayaz Khan
Appellant

Naila Jan
Naila Jan
Advocate High Court
Peshawar.

5

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal no...../2021

Fayaz khan (Ex Constable No 6618/FRP District Bannu

.....Appellant

VERSUS

Inspector General of Police Khyber Pukhtunkhwa Peshawar etc.

.....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 appellant has been proceeded under wrong law i.e police rules 1975 which was not in field at the time of issuing the impugned order because the word discharge is no where mentioned in RSO 2000.Hence the impugned order is void.
3. That the impugned order has been given retrospective effect which also 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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4. That the Supreme Court also laid down the dictum that cases are to be decided on merit rather than technicalities.
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.

Fayaz Khan
Appellant

Through

Naila Jan
Naila Jan
Advocate High Court,
Peshawar.

2

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal no...../2021

Fayaz khan

VERSUS

IGP KPK Peshawar & Others

AFFIDAVIT

I, Fayaz khan (Ex Constable No 6618/FRP District Bannu, 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.

Identified by

Naila Jan
Advocate, High Court,
Peshawar.

✓
Fayaz Khan
DEPONENT



8

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Appeal no...../2021

Fayaz khan

VERSUS

IGP KPK Peshawar & Others

ADDRESSES OF THE PARTIES

APPELLANT

Fayaz khan (Ex Constable No 6618/FRP District Bannu

RESPONDENTS

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

Dated: 15/01/2021

Fayaz Khan

Appellant

Through

Naila Jan

Naila Jan

Advocate, High Court,
Peshawar.

AL SHIFA INTERNATIONAL® Computerized Medical Laboratory

Railway Road Ghallah Mandi Chowk
Opposite Many Sperkal Bannu City
Phone: 0928-614110
Mob: 0300-906389



الشفاء انٹرنیشنل

کمپیوٹرائزڈ میڈیکل لیب

ریلوے روڈ گلہ منڈی چوک بالتقابل مانی سپرکالی بنوں شہ

سہ ماہی: ۰۳۰۰-۹۰۶۳۸۹۹

فون: ۰۹۲۸-۶۱۴۱۱۰

P. Name: Fayaz khan

Age/Sex: M Date 6/9/2009

Advised By: Dr:

Exam. Required: Sbr Test

Test	Normal Rang	Result
S.Bilirubin Total	0-1.0	2.61 mg/dl

Signature

AL SHIFA INTERNATIONAL® Computerized Medical Laboratory



Railway Road Ghallah Mandi Chowk
Opposite Many Sperkai Bannu City
Phone: 0928-614110
Mob: 0300-9063899

الشفاء انٹرنیشنل

کمپیوٹرائزڈ میڈیکل لیب

ریلوے روڈ غلاہ منڈی چوک بالقابل مانی سپرکائی بنو ش

موبائل: ۰۳۰۰-۹۰۶۳۸۹۹

فون: ۰۹۲۸-۶۱۴۱۱۰

P. Name: Fayaz khan

Age/Sex: M Date 5/8/2009

Advised By: Dr:

Exam. Required: Sbr Test

Test	Normal Rang	Result
S.Bilirubin Total	0-1.0	4.28 mg/dl

Signature

الشفاء انٹرنیشنل کمپیوٹرائزڈ میڈیکل لیب

AL SHIFA INTERNATIONAL COMPUTERIZED MEDICAL LABORATORY BANNU CITY

ALSHIFA INTERNATIONAL

Al Shifa International

AL SHIFA INTERNATIONAL

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ORDER

Constables Fiaz Khan No.6618 has absented himself from lawful duty w.e.f 05-12-2008 without any leave/permission from the competent authority & still absent.

S.No	Name & No	Absence Period
1	Fiaz Khan No.6618	07 months 25 days

He was charge sheeted & Statement of Allegation was issued/served upon him, but he is still absent. He is not likely to become a good Police Official; hence he is not worth retention in the discipline force. Therefore, he is discharged from the police force from the date of ^{his} absence under the NWFP removal from service (Special Powers Ordinance 2000).


Superintendent of Police
FRP, Bannu.

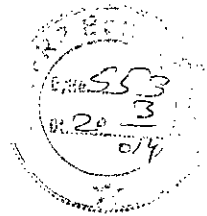
OB No. 539 Dated 3/2/2009
Copy of above to SP/DI Khan for information & necessary action.



0010
14 D M

ORDER.

This order shall dispose off on the appeal of Ex-Constable Fayaz Khan No. 6618 of FRP against the order of SP FRP Bannu Range.



Brief facts of the case are that he while posted to Police Station Dhauba District Hangu absented himself from emergency duty vide DD No: 03 dated 05.12.2008 till the date of discharged from service without any leave permission of the competent authority for a total period of 07 months and 25 days. He was issued Charge sheet/Statement of Allegation and SI/PC^{192nd} Khan of FRP Bannu Range was appointed as Enquiry Officer. After conducting proper Enquiry, the enquiry officer submitting findings wherein he recommended the said constable for major punishment. Therefore he was discharged from service by the SP FRP Bannu Range vide his OB No.539 dated 03.08.2009. His appeal is too time barred.

However from the perusal of record and recommendation of Enquiry officer there are no cogent reason to interfere in the order of SP FRP Bannu Range. Therefore his appeal is rejected.

14
Addl: IGP/Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar
07/06/2013
13 1 03 /2014. 7-3-2014

No. 1914-15 /EC dated Peshawar the

✓ Copy of above is sent to the Superintendent of Police FRP Bannu Range Bannu for information and necessary action.

2. Ex-Constable Fayaz Khan No. 6618 R/o Hassan Khel Eassaki Police Station Saddar District Bannu.

src/OSI

70
Superintendent Of Police
FRP/ Bannu 18 03
2014.

1
2
2

بکھور جناب والا شان عزت مآب جناب کمانڈرنٹ صاحب FRP صوبہ خیبر پختونخواہ پشاور

x

عنوان: سجان فرمانے ملازمت سائل بعدہ ٹائم سکیل کا نیشنل جو جناب SP-FRP صاحب

بنوں نے بندہ کو ایک سادہ یکطرفہ اور فرضی کاغذی کارروائی کو بنا دینا تے ہوئے بحوالہ

539/OB مورخہ 03/08/2009 نوٹس آرڈر نمبر 2000 کی رو سے ملازمت

سے ڈسچارج کماے اور سائل کو صفائی کا کوئی موقع نہیں دیا ہے۔

جناب عالی!

کے کترین آجنگ کے حضور عاجزانہ حسب ذیل رحم درخواست پیش کرتا ہے۔

یہ کہ سائل مورخہ 09/06/2007 FRP فورس بنوں میں بطور کا نیشنل بھرتی ہوا اور ریکورڈ کورس پنجاب آرمی سنٹر مردان سے

پاس کر کے خواندہ لسٹ پر نام درج ہوا۔ سائل میٹرک پاس تک تعلیم یافتہ نوجوان ہے۔

2008ء میں سائل کو ایمر جنسی ڈیوٹی کیلئے ضلع ہنگو بھیجا گیا۔ جہاں پر مورخہ 21/03/2008 دہشت گردوں کی فائرنگ سے سائل بمعدہ

کا نیشنل شاہ نواز 512 تھانہ ٹل شدید زخمی ہوئے جبکہ ساتھی کا نیشنل منزل شاہ 551 تھانہ ہنگو شہید ہوا۔

علاج معالجہ کے دوران ہپاٹائٹس جیت مہلک بیماری نے بھی ہمارا کیا۔ والدین نے بندہ کو گھر خود پر زیر علاج رکھا جسکی اطلاع والدین نے

جناب SP صاحب مہر زمان خان کو اسکے گھر پر جا کر دی۔ زخمت تو ٹھیک ہوئے لیکن ہپاٹائٹس بیماری کی وجہ سے چلنے پھرنے سے قاصر رہا۔

صحت باقی ہونے پر جب بندہ دفتر SP-FRP صاحب گیا۔ تو OASI صاحب نے بتایا کہ مجھے مورخہ 03/08/2009 سے برخواست

کنا گیا ہے۔ میں سخت پریشان ہوا۔ کسی بھی مسلمان اہلکار نے مجھے یہ نہ بتایا کہ اس بارے میں آپیل کا حق بھی رکھتا ہوں۔ کیونکہ میں نا آشنا تھا۔

آج چونکہ آپیل کا میناد بھی گزر چکا ہے۔ رحم کا دروازہ کھلا ہے۔ بے روزگار اور بوڑھے والدین پر بوجھ بنا ہوں پولیس فورس کا تربیت یافتہ۔

ہوں۔ قوم ملک کی خدمت کا جذبہ رکھتا ہوں۔ ملکی بقاء اور قومی سالمیت کی خاطر اپنی زندگی وقف کرنے کو تیار ہوں۔ موجودہ مہنگائی کا مقابلہ نہیں

کر سکتا۔ وعدہ کرتا ہوں۔ کہ فورس کی نمک خرامی نہیں کرونگا۔ عاجزانہ خواستگار ہوں۔ کہ سائل کے حال پر رحم فرمایا جا کر بعدہ ٹائم سکیل کا نیشنل

ملازمت پر بحال فرمایا جاوے۔ تازیت دعا گور ہونگا۔

نوٹ:- کاپی FIR ہمراہ لسٹ مقنولین / مقررین لف ہے۔

Fayaz Khan

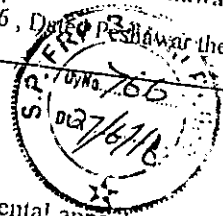
سائل EX کا نیشنل فیاض خان نمبر 6618/FRP ضلع بنوں۔ سید حسن خیل جسکی تھانہ صدر بنوں



(16) F

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

No. SI 4557 /16, Dated Peshawar the 14/06/2016.



ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Constable Fayaz Khan No. 6618. The appellant was discharged from service w.e.f 05.12.2008 by SP / FRP, Bannu vide OB No. 539 dated 03.08.2009, on the charge of absence from duty for a period of 07 months and 29 days.

His appeal was filed / rejected by Commandnat FRP, Khyber Pakhtunkhwa, Peshawar vide order No. 1914-15/EC, dated 13.03.2014.

Meeting of Appellate Board was held on 12.05.2016 wherein appellant was heard in person. Petitioner contended that he was suffering from Hepatitis C. The impugned order of his discharge from service was passed in the year 2009 and he submitted review petition in the year 2015. His appeal is time barred. His service length is less than 03 years. Thus his appeal is rejected on grounds of limitation and merit as well.

His order is issued with the approval by the Competent Authority.

Najeeb

(NAJEEB-UR-REHMAN BUGVI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. SI 4557-64/16,

Copy of the above is forwarded to the:

1. Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
2. SP / FRP, Bannu Range.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Adul: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. Office Supdt: E-IV CPO Peshawar.
7. Central Registry, CPO.

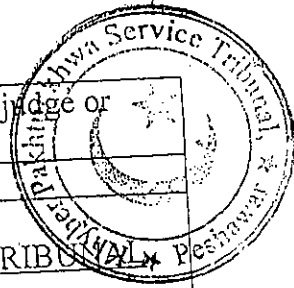
SRE
for n/action.

Ans
Superintendent Of Police
FRP/ Bannu
27/6

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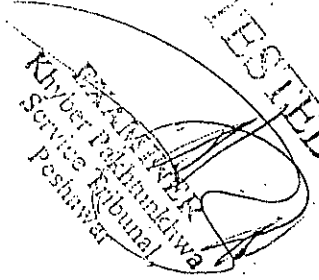
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Amir G



S.No.	Date of order/ proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	13.02.2015	<p>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</p> <p>Service Appeal No. 985/2012, Zahid Ullah Khan Versus Commandant, FRP, KPK, Peshawar etc.</p> <p>PIR BAKHSH SHAH, MEMBER.- 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>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



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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

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MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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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

Adl. Pt. Bahadur Qizal
Member
Adl. Aedul Latif
Member

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of	26-2-2015
Time	12:00
	8
	2
	10
	26-2-2015
	26-2-2015

ES

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Amber H



Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;">Appeal No. 369/2012</p> <p style="text-align: center;">Date of Institution ... 16.03.2012</p> <p style="text-align: center;">Date of Decision ... 10.09.2018</p> <p style="text-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 style="text-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 Prison Khyber Pakhtunkhwa.</p> <p style="text-align: right;">-----Respondent</p> <p>Mr. Hussain Shah.....Member</p> <p>Mr. Muhammad Hamid Mughal.....Member</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p><u>HIUSSAIN 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>		

10.09.2018

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ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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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 theⁿ 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.

officer

[Signature]

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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.

Shah

[Signature]

[Signature]
 (HUSSAIN SHAH)
 MEMBER

Certified to be true copy

EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

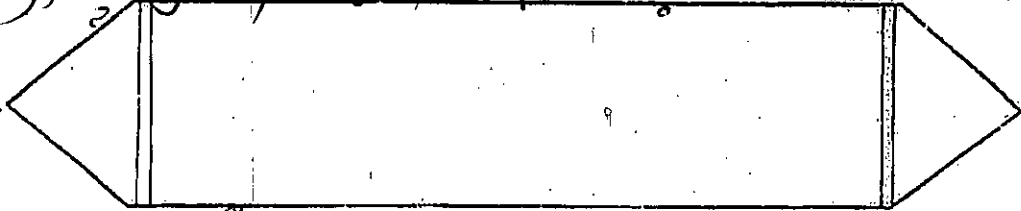
[Signature]

(MUHAMMAD HAMID MUGHAL)
 MEMBER

ANNOUNCED
 10.09.2018

Date of Presentation of Application 8-2-2021
 Number of Months 2000
 Urgency 22
 Urgent 4
 Total 26 79
 Name of Applicant [Signature]
 Date of Completion of Copy 8-2-2021
 Date of Delivery of Copy 8-2-2021

بعد الت جواب KP کروس رٹھوئلہ لٹنار



2626 منجانب ایلو مندر
فیاض خان بنام لولین

موزخ
مقدم
دعویٰ
برم

باعث تحریر آنگہ

مقدمہ بندرج عنوان بالا میں اپنی طرف سے واسطے پیردی وجواب دی روکل کاروائی متعلقہ
آن مقام لٹنار کیلئے نائیک خان

مقررہ کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو رضی نامہ کر لے و تقرر ثالثیت فیصلہ برحلف دیے جواب دی اور اقبال دعویٰ اور
بلاورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کر۔ نے اپیل نمائنی و نظر ثانی و پیردی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ لیا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساتھ
برداشتہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانشہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیردی
مذکورہ کریں۔ لہذا وکالت نامہ لکھد یا کہ سند ہے۔

المرقوم 15 ماہ جنوری 2020ء

واہ العبد

لئے منظور ہے۔

استاد
Attested & Accepted by
Fayaz Khan

فیاض خان (اسٹاٹ)
Fayaz Khan