




Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 6349 /2020

| 1S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|--------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 03/07/2020 | <p>The appeal of Mr. Usman Ali resubmitted today by Mr. Abdul Wahid 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>21/08/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> |
| | 21.08.2020 | <p>Due to public holiday on account of 1st Moharram, the case is adjourned to 26.10.2020 for the same as before.</p> <p style="text-align: right;"> Reader</p> |

26.10.2020

Appellant present in person.

Lawyers are on general strike, therefore, case is adjourned to 05.01.2021 for preliminary hearing, before S.B.



(Rozina Rehman)
Member (J)

05.01.2021

Counsel for the appellant present.

Contends that the appellant was awarded major penalty of removal from service with effect from the date of his absence which is 13.02.2008. The proposition regarding retrospectivity of penalty is yet to be decided by a Larger Bench of this Tribunal, therefore, request for adjournment is made.

The request of learned counsel is not unreasonable. The hearing in this matter is, therefore, adjourned to 17.02.2021 before S.B.



Chairman

17.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 29.06.2021.



Reader

6349/2020

29.06.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections including limitation. 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 in office within 10 days of the receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 11.11.2021 before the D.B.

Appellant Deposited
Security & Process Fee
29/7/21


Chairman

Stipulated period passed reply not submitted.


29.07.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


Chairman

1.11.2021

Appellant alongwith his counsel Mr. Taimur Ali Khan, Advocate, present. Mr. Javed Ullah, Assistant Advocate General for the respondents present and sought time for submission of reply/comments. Adjourned. To come up for submission of reply/comments as well as arguments on 01.02.2022 before the D.B.

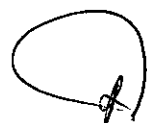

(Atiq-Ur-Rehman Wazir)
Member (E)

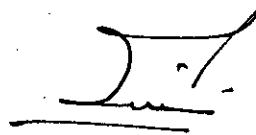

(Salah-Ud-Din)
Member (J)

01.02.2022

Learned counsel for the appellant present. Mr. Muhammad Saddique, Muhammad Daud, H.C and Mr. Aziz, IHC alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Comments have already been submitted through office, which have been placed on file. Learned counsel for the appellant sought time for submission of rejoinder. Adjourned. To come up for rejoinder as well as arguments on 12.05.2022 before the D.B.


(Rozina Rehman)
Member (J)


(Salah-ud-Din)
Member (J)

12.05.2022


None present on behalf of the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Case was called time and again but none appeared on behalf of the appellant till closing hour's of the court. Consequently the present appeal is dismissed in default. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 12th day of May, 2022.*




(KALIM ARSHAD KHAN)
Chairman


(FARIEHA PAUL)
Member (E)




The appeal of Mr. Muhammad Usman Ex-Constable No. 2413 FRP Bannu received today i.e. on 06.03.2020 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- 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.
- 3- Copy of rejection order of departmental appeal mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 4- Wakalat nama in favour of appellant be placed on file.
- 5- Five more copies/sets of the appeal along annexures i.e. complete in all respect may also be submitted with the appeal.

No. 530 /S.T,


Dt. 11-03 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv. Pesh.

Respected Sir,

- 1- Removed
- 2- Copies of charge sheet, show cause notice, enquiry report and replies are not mentioned ^{as Annexure} in the memo of appeal
- 3- Copy of rejection order is attached at page -10
- 4- Removed
- 5- Removed

Resubmitted after
compliance


BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 6349/2020

Muhammad Usman

V/S

Police Deptt:

INDEX

| S. No. | Documents | Annexure | P. No. |
|--------|---|----------|--------|
| 01 | Memo of appeal | ----- | 01-03 |
| 02 | Condonation of delay application | ----- | 04-05 |
| 03 | Copies of application and inquiry report | A&B | 06-07 |
| 04 | Copy of order dated 09.07.2009 | C | 08 |
| 05 | Copies of departmental appeal, order dated 16.1.02020 | D&E | 09-10 |
| 06 | Wakalat Nama | ----- | 11 |

APPELLANT

THROUGH:


(TAIMUR ALI KHAN)

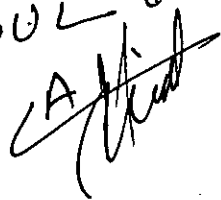
ADVOCATE HIGH COURT

&

(ASAD MAHMOOD)

ADVOCATE HIGH COURT

Room No. Fr-08, 4th Flour,
Bilour plaza, Peshawar cantt:
Cell# 0333-9390916

ABDUL WAHID


BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 6349/2020

Khyber Pakhtunkhwa
Service Tribunal

Case No. 1508

Dated 06-03-2020

Muhammad Usman, Ex-Constable, No.2413,
FRP, Bannu.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Commandant FRP, Khyber Pakhtunkhwa Peshawar.
3. The Superintendent of Police FRP, Bannu.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 16.01.2020, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED AND AGAINST THE ORDER DATED 09.07.2009, WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE FROM THE DATE OF HIS ABSENCE.

Filed to
Registrar
06/3/2022

PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 16.01.2020 AND 09.07.2009 MAY KINDLY BE SET ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO REINSTATE THE APPELLANT WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Re-submitted
to day
3/3/20

RESPECTFULLY SHEWTH:

FACTS:

1. That the appellant joined the police force on 26.07.2007 and was on probation under rule 12:21 of Police Rules 1934 and performed his duty with great devotion and honesty, whatsoever assigned to him and also have good service record throughout.
2. That due to the illness and domestic problem of the appellant, he was unable to perform his duty and was remained absent from his duty.
3. That one sided inquiry was conducted against the appellant in which the inquiry officer mentioned that as the appellant is under probation therefore recommended him to be discharged from service as the appellant was under probation under Rule 12:21 of Police Rules 1934 and that inquiry report was provided to the appellant on his application filed on 02.12.2019 for provision of documents. **(Copies of application and inquiry report are attached as Annexure-A&B)**
4. That without issuing show cause notice, the appellant was removed from service with effect from the date of his absence under RSO (Special Power) Ord: 2000 vide order dated 09.07.2009 without observing the probation period of the appellant and the observation of the inquiry officer. **(Copy of order dated 09.07.2009 is attached as Annexure-C)**
5. That against the removal order dated 09.07.2009, appellant filed departmental appeal on 12.12.2019, but the same was rejected on 16.01.2020 and received by the appellant on 20.02.2020. **(Copies of departmental appeal, order dated 16.1.02020 are attached as Annexure-D&E)**
6. That now the appellant come to this august Service Tribunal for redressal of his grievance on the following grounds amongst others.

GROUND:

- A. That the impugned order dated 16.01.2020 and 09.07.2009 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B. That one sided inquiry was conducted against the appellant in which no chance of defence was provided to the appellant, which is against the norms of justice and fair play.

- C. That no charge sheet was issued to the appellant before passing the impugned order of removal from service, which is violation of law and rule.
- D. That no show cause notice was issued to the appellant before passing the impugned order, which is violation of law and rules.
- E. That the appellant was probation and should be discharged from service under Rule 12:21 of Police Rules 1934 which was also mentioned by the inquiry officer in his inquiry report, but he was removed from service under RSO 2000, and as such the whole proceeding is void and illegal.
- F. That the appellant was removed from service with effect from the date of his absence which is retrospective and as such no limitation run against such like orders.
- G. That the appellant has been condemned unheard and has not been treated according to law and rules.
- H. That the penalty of removal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- I. That the appellant did not intentionally absent from his duties, but he was ill and has domestic problem due to which he was unable to perform his duty.
- J. That the appellant seeks permission to advance others 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.

LA Hand
ABDUL WAHID

THROUGH:

Muhammad Usman
APPELLANT
Muhammad Usman
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
&
(ASAD MAHMOOD)
ADVOCATE HIGH COURT

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2020

Muhammad Usman

V/S

Police Deptt:

.....
**APPLICATION FOR CONDONATION
OF DELAY IN THE INSTANT APPEAL.**

RESPECTFULLY SHEWETH:

1. That the instant appeal is pending before this Honourable Tribunal in which no date is fixed so for.
2. That the appellant was absent from duty and was removed from service from the date of his absence, which means that impugned removal order is retrospective order and as per superior courts judgments such like order is void order and no limitation runs against such like orders.
3. That the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking-out the litigants on technicalities including limitation. Therefore, appeal needs to be decided on merit (2003, PLD (SC) 724).
4. That the instant appeal may kindly be decide on merit as the appellant has good cause to be decided on merit.

It is therefore most humbly prayed that on the basis of above submission, the instant appeal may be decided on merit by condoning the delay to meet the ends of justice.

THROUGH:


APPELLANT

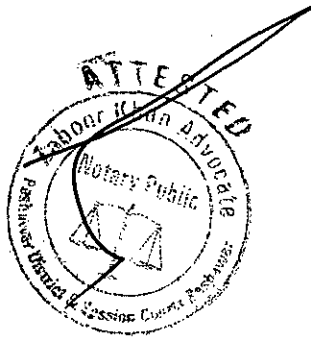

(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of application are true and correct to the best of my knowledge and belief and nothing has been concealed from this august Tribunal.



DEPONENT



ہوجانے گزرا جس جگہ سال 2007 کا جوائنڈہ
 تھا اور سال کو سو دہ عشرہ امر 11 2009ء میں حکم پوسٹ
 سے مرخص ہو گیا تھا جس کے بعد اور اب سال دوبارہ
 سو دہ عشرہ امر 11 2009ء میں حکم پوسٹ
 مرخصی کی آڈر ڈرائنگ کی اور عمر و شہادت
 بعد اس کے سال کو مرخصی کی عملی

دستاویز فرما کر
 تھوڑے دنوں میں
 2019-2020

العارضا
 شہزادہ محمد عثمان صاحب
 (Signature)
 (Signature)
 (Signature)

(Signature)
 (Signature)

مانس رکوورٹ

B (7)

سولہ انکوائری کا عدالت کینسل عثمان 243 روزانہ 28/11/2009

مذکورہ غیر ملکی آرٹا سے مذکورہ کینسل کو غیر ملکی آرٹا سے

16 مئی 2009 کو مذکورہ کینسل کو بذریعہ اسٹیٹمنٹ 20/09 کو

انکوائری کے ماہر کینسل مذکورہ کے جاری ہیں اور

شوکارا اور اس کے ذریعہ انکوائری کے ماہر ذرا سی جاری ہیں اور

کئی کینسل مذکورہ کے خلاف ذرا سی آئے ہیں یہاں کئی

کینسل مذکورہ جاری ہیں کئی آرٹا مذکورہ کینسل

ہیں اور ذرا سی کے خلاف ورزی کینسل سے کینسل

کو فلک سے اسٹیشن ماہر آرٹا 2000 کے تحت ڈسچارج کینسل

کی سہولت کئی ہے

مذکورہ غیر ملکی آرٹا 16 مئی 2009 کو

R Sheel

Discharge from Service S. P. R. U.
4/7/2009

Rehman
SP/FRP
677

صاف عالی
مذکورہ کینسل صرف 26/7 کا ہوا ہے
ایک سال 11 مئی 2009 ہے
روبر ڈسچارج ہے

Signature
SLC/FRP B4
4/7/09

ATTESTED

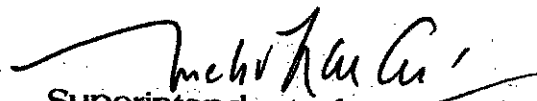
C 8


ORDER

Constable Usman Ghani No.2413 absented himself from lawful duty w.e.f 13-02-2008 till date without any leave/permission of the competent authority. He was informed through Daily Newspapers "Ausaf" & Mashriq" on 20-02-2009 but the delinquent Police Constable did not pay any heed. Consequently, a Show-cause Notice in accordance with Removal from Service (Special Powers) Ord: 2000 was sent at his home address which was properly received by him on 26-04-2009 but he did not bother to report his arrival for duty or to submit his reply to Show-cause Notice. The delinquent constable had remained absent from duty for more than 16 months 17 days which inter-alia suggests that there is no likelihood of his return for duty, as such he is not likely to become a good Police Officer, therefore, I, MEHR ZAMAN Superintendent of Police, FRP Bannu Range Bannu, in exercise of the power conferred upon me under the NWFP Removal from Service (Special Powers) Ord:2000, the delinquent constable Usman Ghani No.2413 is hereby removed from Service w.e.f the date of his absence.

OB No. 467

Dated 9 / 7 / 2009


Superintendent of Police
FRP, Bannu


ATTESTED.

To

29

The Commandant FRP,
Khyber Pakhtunkhwa, Peshawar

Subject: **APPEAL FOR REINSTATEMENT IN SERVICE**

Respected Sir,

1. That the appellant was enlisted as Constable on 26.07.2007 alongwith other constables and his name was figured at S.No.80.
2. That due to domestic problems as well as of illness, appellant was removed from service vide O.B. No.467 dated 09.07.2009. This order was never dispatched to appellant as is evident from the same.
3. That codel formalities regarding removal from service were not observed and appellant was straight away removed from service.
4. That order dated 09.07.2009 is illegal and ab-initio void as the same was given retrospective effect.
5. That no limitation runs against void order.
6. That the said order was issued on 02.12.2019 to appellant as per his application on the said date.

It is, therefore most humbly requested that order dated 09.07.2009 of SP, FRP Bannu be set aside and appellant be reinstated in service with all back benefits.

Appellant

Muhammad Usman
Muhammad Usman
S/o Abdur Rasheed
R/o near Post Office Mohallah Maskeen
Abad, Naurang District Lakki Marwat
Ex-Constable No.2413
FRP Bannu
Cell No.0303-8301668

Dated 12.12.2019

[Signature]
ATTESTED

E 10

ORDER

This order will dispose of the departmental appeal preferred by ex-constable Muhammad Usman No. 2413 of FRP Bannu Range, against the order of SP FRP Bannu Range, Bannu issued vide OB No. 467, dated 09.07.2009, wherein he was awarded major punishment of removal from service. The applicant was proceeded against on the allegations that he absented himself from lawful duty with effect from 13.02.2008 till the date of removal from service 09.07.2009 for period of 16 months 26 days, without any leave or prior permission of the competent authority.

In this regard he was issued Show Cause Notice was issued in accordance with law, which was properly served upon him on 27.04.2009, and Enquiry Officer was nominated to conduct enquiry against him. He was also informed through daily Newspapers Ahsaf & Mashiq on 20.02.2009, but the delinquent police constable did not make his arrival report. Enquiry Officer submitted his findings dated 04.07.2009 wherein the delinquent constable was found guilty of the charges leveled against him. The Enquiry Officer further reported that he has a habitual absentee seems not to be interested to continue further service and recommended him for imposition of major punishment of a sentence from service.

Keeping in view the above narrated facts and other material available on record he was awarded major punishment of removal from service vide OB No. 467 dated 09.07.2009.

The aggrieved against the impugned order of SP FRP Bannu Range Bannu has preferred the instant appeal. The applicant was summoned and he failed to appear in Court Room held on 15.11.2009.

During the course of personal hearing, the applicant failed to present any explanation regarding his prolonged absence. From perusal of records it has been found that the applicant appears daily and serves about more than 18 years. The one who with experience his claim must not at the earliest a lacks deprive the applicant from his right. Keeping in view the above facts his reinstatement in service may not be just and would be liable to affect adversely the discipline of the force. Thus there is no ground for interference in the order passed by the competent authority. Hence no ground for interference in same.

Based on the findings narrated above, Malik Muhammad Tariq PSP Deputy Commandant, Frontier Reserve Police, Peshawar being the competent authority has no substance in the appeal, therefore the same is hereby dismissed being back time barred and meritless.

Once Announced

104
20/2/20

Deputy Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No. EC-2 EC, dated Peshawar the 16/01/2020

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

1. SP FRP Bannu Range, Bannu. His service record along with D file sent herewith.
2. Ex-constable Muhammad Usman No. 2413 S/O Abdur Rasheed, Police Station Sarai Naurang, R/O Near Post Office, Mohallah Maskeen Abad, Naurang District Larkh Marwat.

For Information
WDM
20/2

GP

AT

ORDER

This order will dispose of the department appeal preferred by ex-constable Muhammad Usman No Rata FP Banu Rang against me order of SP FRP Bannu Range Bannu saved Videos No toy al 07 2009 where he was awarded major punishment of real mom serve the was proceeded against on the allegations that he absented himself from lawful duty with effect from 13.02.2008 till the date of removal from service 09.07.2009 for period of 16 months 26 days without any leave or prior permission et the competent authority

In this regard he was issued the cause notice was issued in accordance with be which was property served upon him on 27.04.2009, and Enquiry Officer was nominated to conduct enquiry against him. He was also informed through daily Newspapers Ausaf & Mashriq 20.02.2009 but the delinquent police constable did not make his arrival report. Enquiry submitted his findings dated 04.07.2009 wherein the delinquent constable was found guilty of the charges leveled against him. The Enquiry officer further reported that he has a habitual absentee seems not to be interested to continue further service and recommended him for imposition of major punishment of discharge from service.

Keeping in view the above narrated facts and other material available on record he was awarded major punishment of removal from service vide OB No 467, dated 09.07.2009.

Feeling aggrieved agent the impugned order of SP FRP Bannu Range, Bannu the applicant preferred instant appeal. The applicant was summoned and heard in person in ordinary Room held on 15.01.2020.

During the course of personal hearinh, the applicant failed to present any justification regarding to his prolong absence. From perusal of record it has been found that his present appeal is badly time barred about more then 10 years. The one who wish to enforce his claim, must do it at the earliest a lacks deprive the litigant from enforcing his right. Keeping view the above facts his reinstatement in service may impinge upon the over all moral and affect adversely the discipline of the force. Thus there doesn't seem any infirmity in the order passed by the competent authority, therefore no ground exist to interfere in same.

Based on the findings narrated above. I Malik Muhammad Tariq PSP Deputy Commandant FRP khyber Pakhtawa, Peshawar being the competent authority has found no substance in the appeal, therefore the same is rejected /dismissed being badly time barred and meritless.

Order Announced

Deputy Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

No 622 /EC, dated Peshawar the 16/01/2020

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

1. SP FRP Bannu Range, Bannu. His service record alongwith D-file sent herewith.
2. Ex-constable Muhammad Usman No 2413 S/O Abdur Rasheed Police Station Sarai Naurang. R/o Near Post Office. Mohallah Maskeen Abad. Naurang District Lakki Marwat

ATTESTED

VAKALAT NAMA

NO. _____/2020

IN THE COURT OF KP Service Tribunal, Peshawar

Muhammad Usman

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt

(Respondent)
(Defendant)

I/We, Muhammad Usman

Do hereby appoint and constitute Taimur Ali Khan ~~Advocate~~ ^{High} ~~Court~~ ^{Advocate} ~~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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

Taimur Ali Khan

(CLIENT)

ACCEPTED

Taimur Ali Khan

TAIMUR ALI KHAN
Advocate High Court, Peshawar

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9390916)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6349/2020.

Muhammad Usman Ex-constable No. 2413, FRP Bannu Range.....Appellant.

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar & others.....Respondents

| S. NO | DESCRIPTION OF DOCUMENTS | ANNEXURE | PAGES |
|--------------|--------------------------|--------------|-----------|
| 1. | Para-wise Comments | | 03 |
| 2. | Show Cause Notice | Annexure "A" | 01 |
| 3. | Affidavit | | 01 |
| 4. | Index | | 01 |
| Total | | | 06 |

RESPONDENTS

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6349/2020.

Muhammad Usman Ex-constable No. 2413, FRP Bannu Range.....Appellant.

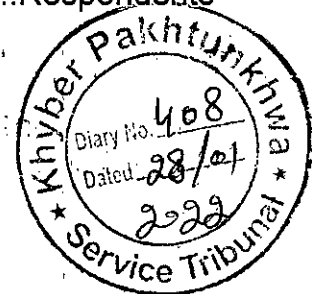
VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar & others.....Respondents

PARAWISE REPLY BY RESPONDENTS.

RESPECTFULLY SHEWETH.

PRELIMINARY OBJECTIONS



1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has no cause of action to file the instant appeal.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant is trying to conceal the material facts from this Honorable Tribunal.

FACTS:-

1. Incorrect. The appellant was enlisted as constable in Police Department. However, he remained absent from his lawful duty for a long period of 16 months & 17 days, without any leave or prior permission of the competent authority.
2. Incorrect. The appellant while posted at Police Line II Bannu remained deliberately absent from duty with effect 11.02.2008 till the date of his removal from service i.e 09.07.2009 for a long period of 16 months & 17 days, without any leave or prior permission of the competent authority. The plea taken by the appellant regarding his illness is a propounded story.
3. Incorrect. On the allegations of willful absence the appellant was proceeded against departmentally under the relevant law i.e Special Power Ordinance 2000 by the competent authority as he was issued Show Cause Notice dated 13.02.2008 and enquiry officer was nominated to conduct enquiry against him. The Enquiry Officer submitted his findings report dated 04.07.2009 wherein the delinquent constable was found guilty of the charges leveled against him. The Enquiry officer further reported that the appellant was a habitual absentee seems not to be interested to continue further service and recommended him for imposition of major punishment of discharge from service.
4. Incorrect. The Enquiry Officer found him guilty of the charges leveled against him and recommended him for major punishment under Police Rule 12-21. However, the entire proceedings initiated against the appellant under RSO

therefore, the competent authority was not agreed with the recommendation of enquiry officer.

5. Incorrect. A Show Cause Notice was issued to the appellant and served upon on his home address through special messenger and his signature was obtain on duplicate copy of Show Cause Notice as a token of receipt, but he failed to submit his reply. (Copy of Show Cause Notice attached herewith as annexure "A"). Moreover, the competent authority is correctly passed the order of his removal from service as the entire proceedings was carried out under the existing law i.e (RSO) Special Power Ordinance 2000, which was applicable to the case of appellant.
6. Correct to the extent that departmental appeal submitted by the appellant was thoroughly examined and rejected on the ground of badly time barred and meritless as well. The copy of rejection order was endorsed to the appellant, vide office order Endst: No. 622/EC, dated 16.01.2020 on his home address.
7. Incorrect. The appellant has no cause of action to file the instant service appeal. However, the same may be dismissed on the following grounds.


GROUND:-

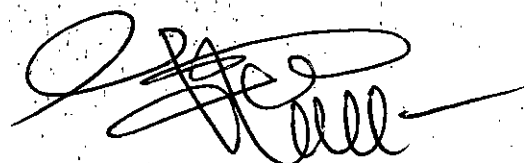
- A. Incorrect. The appellant was absolutely treated in accordance with law/rules within the meaning of Article 4 of the constitution by giving him sufficient and proper opportunities at every level of defense and that the entire proceedings were carried out in accordance with existing laws and rules. Thus the orders passed by the respondents are legally justified and in accordance to law and rules.
- B. Incorrect. The Para has already been explained in the preceding Para "A" above.
- C. Incorrect. The appellant was issued Show Cause Notice in accordance with law, which was properly served upon him on 27.04.2009, and Enquiry Officer was nominated to conduct enquiry against him. He was also informed through daily Newspapers Ausaf & Mashriq on 20.02.2009, but he did not make his arrival report or to appear before the enquiry officer to defend himself.
- D. Incorrect. A Show Cause Notice was already issued to the appellant to which he received too, but he failed to submit his reply. After fulfillment of all codal formalities he was awarded major punishment of removal from service under the law/rules.
- E. Incorrect. According to the rules 12-21 the penalty of discharge from service shall imposed upon an official, when he was found inefficient Police Officer at any time within three years of his enrolment, without initiating of departmental enquiry. The appellant was proceeded again departmentally under the existing law i.e RSO therefore the appellant was awarded major punishment of removal from service as per law/rules.


- F. Incorrect. As the appellant remained willful absent from lawful duty with effect 11.02.2008 till the date of his removal from service i.e 09.07.2009 for a long period of 16 months & 17 days, without any leave or prior permission of the competent authority. Thus the competent authority has correctly passed the order of his removal from service from the date of his willful absence as the appellant did not perform his duty in such period.
- G. Incorrect. The opportunity of being heard in person in the light of natural justice was also provided to the appellant but he failed to avail this opportunity. Thus the appellant treated in accordance to law/rules.
- H. Incorrect. The penalty of removal from service of the appellant is commensurate with the gravity of his misconduct. Moreover, the appellant was absolutely treated in accordance to law/rules.
- I. Incorrect. The appellant while posted at Police Line II Bannu remained deliberately absent from lawful duty with effect 11.02.2008 till the date of his removal from service i.e 09.07.2009 for a long period of 16 months & 17 days, without any leave or prior permission of the competent authority. He was proceeded against departmentally and awarded major punishment of removal from service. The plea taken by the appellant regarding his illness/domestic problems is a propounded story.
- J. The respondents may also be permitted to raise additional grounds at the time of arguments.

PRAYERS:-

Keeping in view the above facts and circumstances, it is most humbly prayed that the instant service appeal being not maintainable may kindly be dismissed with costs please.


Superintendent of Police FRP,
Bannu Range, Bannu
(Respondent No. 03)


Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 6349/2020.

Muhammad Usman Ex-constable No. 2413, FRP Bannu Range.....Appellant.

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar & others..... Respondents

AFFIDAVIT

I, Ghasan Ullah ASI FRP HQ: do hereby solemnly affirm and declare on oath that the contents of the accompanying Para-wise Comments on behalf of Respondents No. 1, 2 & 3 is correct to the best of my knowledge and belief that nothing has been concealed from this Honorable Court.

ATTESTED



Deponent
Ghasan Ullah
17101-9891560-3