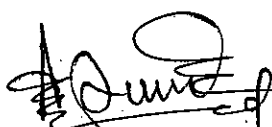



ORDER  
28.01.2022

Learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 5/2018 titled "Noor-UI-Amin Versus The Regional Police Officer, Malakand, Saidu Sharif Swat", the impugned orders are set aside and the appellant is re-instated in service. Since the appeal is decided on technical grounds more so while keeping in view the conduct of the appellant, he is not entitled to any of the back benefits, hence the absence period as well as the intervening period during which the appellant not performed duty shall be treated as extra-ordinary leave without pay. The department is at liberty to conduct de-novo inquiry against the appellants in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
28.01.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

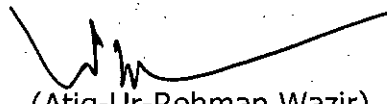
  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

25.01.2022

Petitioner in person and Mr. Asif Masood Ali Shah,  
DDA for the respondents present.

Arguments on restoration application heard.

The application in hand has been submitted on 11.01.2019 for restoration of the appeal, dismissed for non-prosecution on 31.12.2018. The application is well within time and duly supported by affidavit. Therefore, application is accepted and the appeal is restored to its original number. To come up for arguments on main appeal on 27.01.2022 before the D.B.

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


  
Chairman

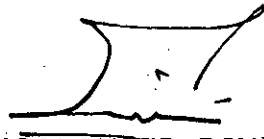
01.06.2021

Nemo for the appellant. Mr. Khawas Khan, Inspector (Legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Today's date was posted on Note Reader, therefore, notice for prosecution of the appeal be issued to appellant as well as his counsel and to come up for further proceedings before D.B on 09.09.2021.

Note  
10/6

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)


  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

09.09.2021

Junior to counsel for appellant present.

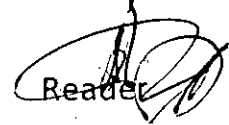
Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Lawyers are on general strike, therefore, case is adjourned. To come up for arguments on 25.01.2022 before D.B.

  
(Rozina Rehman)  
Member (J)

  
Chairman

\_\_\_\_\_ .2020 Due to COVID19, the case is adjourned to  
12/8/2020 for the same as before.

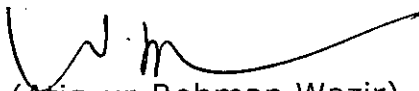
  
Reader

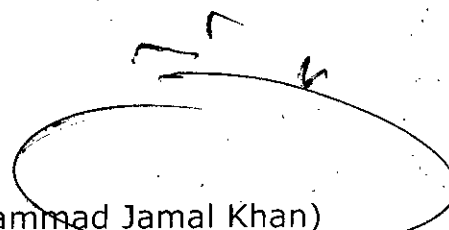
12.08.2020 Due to summer vacations case to come up for the same on  
15.10.2020 before D.B.

  
Reader

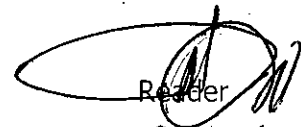
15.10.2020 Miss. Uzma Syed, Advocate for appellant is present. Mr.  
Kabirullah Khattak, Additional Advocate General for the respondents  
is also present.

Learned counsel for the appellant is seeking adjournment.  
Adjourned to 09.12.2020 on which to come up for further proceedings  
before D.B.

  
(Atiq-ur-Rehman Wazir)  
Member (Executive)

  
(Muhammad Jamal Khan)  
Member (Judicial)

09.12.2020 Due to COVID-19, case is adjourned to 01.03.2021 for the  
same as before.

  
Reader

1.3.21

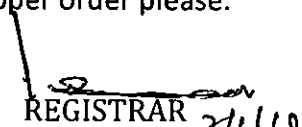

*Due to COVID 19, the case is adjourned  
to 1.6.2021 for the same.*



Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_

Case No. 8/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	2/1/2018	<p>The appeal of Mr. Ubaid Ullah resubmitted today by Uzma Syed Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;">   REGISTRAR 2/1/18 </p>
2-	04/01/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/01/18.</u></p> <p style="text-align: right;">   CHAIRMAN </p>

12.01.2018

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department and during service he was dismissed from service on the allegation of his absence from duty vide order dated 18.12.2008. It was further contended that the impugned order of dismissal from service was passed retrospectively from the date of his absence i.e 02.08.2008 therefore, the same is void ab-initio and limitation does not run against such void order. It was further contended that the appellant also filed departmental appeal but the same was rejected vide order dated 29.11.2017 hence, the present service appeal. It was further contended that since the impugned order is void ab-initio therefore, the same is liable to be set-aside.

Appellant Deposited  
Security Process Fee

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 26.02.2018 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member


26.02.2018

Counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply on 13.03.2018 before S.B.

  
(Ahmad Hassan)  
Member(E)

13.03.2018

Counsel for the appellant present. Mr. Riaz Paindakhel, Assistant AG for the respondents present. Written reply not submitted. Learned Assistant AG requested for adjournment. Adjourned. To come up for written reply/comments 26.03.2018 before S.B.

  
(M. Hamid Mughal)  
Member

26.03.2018

Appellant alongwith counsel present Mr. Kabir Ullah Khattak, Addl: AG alongwith Mr. Khawas Khan, S.I for the respondent present. Written reply not submitted. Requested for adjournment. Adjourned. Last opportunity is granted. To come up for written reply/comments 10.04.2018 before S.B.

  
Member

10.04.2018

Counsel for the appellant and Addl: AG alongwith Mr. Khawas Khan, S.I for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Another last opportunity is granted. To come up for written/comments on 24.04.2018 before S.B.



Member

24.04.2018

Appellant in person and Addl: AG alongwith Mr. Khawas Khan, S.I for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 11.07.2018 before D.B.



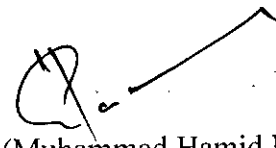
Chairman

11.07.2018

Clerk to counsel for the appellant and Mr. Sardar Shaukat Hayat learned Additional Advocate General present. Clerk to counsel for the appellant submitted rejoinder which is placed on file. Due to general strike of the bar, the case is adjourned. To come up on 31.08.2018 before D.B.



(Ahmad Hassan)  
Member



(Muhammad Hamid Mughal)  
Member



Service Appeal No. 08/2018

31.08.2018 Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.10.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

08.10.2018 Counsel for the appellant present. Mr. Riaz Ahmad Paidakhel, Assistant AG alongwith Mr. Khawas Khan, S.I (Legal) for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 12.11.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Kundi)  
Member

12.11.2018 Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 31.12.2018.

  
READER

31.12.2018 Appellant absent. Learned counsel for the appellant absent. Mr. Usman Ghani learned District Attorney present. Case called but neither the appellant nor his counsel turned up. Consequently the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.

  
Member

  
Member


ANNOUNCED.  
31.12.2018

The appeal of Mr. Ubaidullah Ex-Constable No. 1662 Distt. Swat received today i.e. on 28.12.2017 is incomplete on the following score which is returned to the counsel for the appelland for completion and resubmission within 15 days.

- 1- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 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.

No. 2772 /S.T,

Dt. 29/12 /2017


  
REGISTRAR 29/12/17  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Uzma Syed Adv. Pesh.

① The copy of departmental appeal is not available with the appelland. The same be requisite from the department. The plea also taken in Pleading

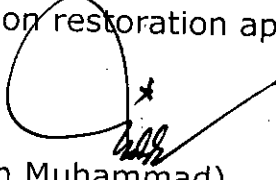
② there is no charge sheet/statment of allegation were served upon the appelland. neither any inquiry was conducted

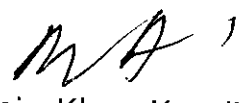
③ objections were reviewed & re submitted file

  
2-1-18

20.03.2020

Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 22.05.2020 for arguments on restoration application before D.B.


  
(Mian Muhammad)  
Member

  
(M. Amin Khan Kundi)  
Member

03.09.2019

Learned counsel for the appellant present. Mr. Riaz Khan Paindakhel learned Assistant Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 15.11.2019 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

15.11.2019

Syed Noman Bukhari, learned counsel for the applicant and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the applicant requested for adjournment. Adjourned to 14.01.2020 for arguments on restoration application before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

14.01.2020


Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the applicant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 24.02.2020 for arguments on restoration application before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

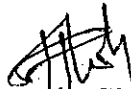
24-2-2020

The Bench is incomplete  
Therefore case is adjourned  
to 20-3-2020

  
Reader

16.04.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Mir Faraz DSP for the respondents present and submitted written reply on behalf of the respondents No. 1 & 2. Adjourned. To come up for argument on restoration application on 31.05.2019 before D.B. Original record be also requisitioned for the date fixed


  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

31.05.2019

Clerk to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Mir Faraz DSP for the respondents present. Clerk to counsel for the appellant requested for adjournment as counsel of the appellant is not in attendance. Adjourned. To come up for arguments on 10.07.2019 before D.B.

  
(Hussain Shah)  
Member

  
( M. Amin Khan Kundi)  
Member

10.07.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 03.09.2019 before D.B.





  
Member

  
Member

## FORM OF ORDER SHEET

Court of \_\_\_\_\_

Misc. Application No. 17/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1.	2	3
1.	11/01/2019	<p style="text-align: center;">The application for restoration of Appeal No. 08/2018 submitted by Mr. Ubaid Ullah by Uzma Saeed Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p style="text-align: center;">This Misc. application be put up before DB-II Bench on <u>4-3-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>
04.03.2019		<p style="text-align: center;">Counsel for the petitioner present. Notice of restoration application be issued to the respondents. To come up for reply and arguments on restoration application on 16.04.2019 before D.B.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">               (M. HAMID MUGHAL)              MEMBER         </div> <div style="text-align: center;">               (M. AMIN KHAN KUNDI)              MEMBER         </div> </div>

**BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,**  
**PESHAWAR.**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 59

Dated 11-1-2019

APPEAL NO. 8 / 2018

ubaid ullah (3) V/S

Police

Deptt:

**APPLICATION FOR RESTORATION OF APPEAL NO.**  
**08/2018 WHICH WAS DISMISSED ON DEFAULT VIDE**  
**ORDER DATED 31.12.2018.**

**RESPECTFULLY SHEWETH:**


1. That the instant appeal No. 08/2018 was filed before this Honorable Tribunal.
2. That the instant appeal was in Argument stage at principle Bench Peshawar, on date 31.12.2018 the counsel for the appellant waiting for the bench. The counsel wait till 10 O' Clock but the bench-II was not started and then move to Bench-1 for Cases and the case was called for one time and dismissed on default on today 31.12.2018 between 10:15 am to 10:25.
3. That it is in the interest of justice that the appeal should be dealt on merit rather to dismiss on default.

It is therefore, most humbly prayed, that the instant appeal No. 08/2018 may be restore on the acceptance of this application.

**APPELLANT**

Through:

  
Miss **UZMA SYED**

 &  
Syed **Noman Ali Bukhari**  
ADVOCATE, HIGH COURT  
PESHAWAR.

**AFFIDAVIT**

It is affirmed and declared that the contents of application are true and correct to the best of my knowledge and belief.

  
**DEPONENT**





1

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**



APPEAL NO. 8 /2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1468

Dated 28/12/2017

Ubaid ullah, EX- Constable, No.1662  
Distt: Swat.

.....(Appellant)

**VERSUS**

1. The Regional Police Officer, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 29.11.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 18.12.2008 HAS BEEN REJECTED FOR NO GOOD GROUNDS.**

READER

31.12.2018

Appellant absent. Learned counsel for the appellant absent. Mr. Usman Ghani learned District Attorney present. Case called but neither the appellant nor his counsel turned up. Consequently the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.

Member

**ANNOUNCED.**

31.12.2018

Member

Certificate to produce copy

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Date of Transcription of Copy .....  
 Number of Words 400  
 Copying Fee 4-  
 Unpaid 4-  
 Total 4-  
 Name of C. party [Signature]  
 Date of Completion of Copy 11-1-18  
 Date of expiry of Copy 11-1-18

**BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,  
PESHAWAR.**

APPEAL NO. 8 / 2018

Ubaid ullah (3)

V/S

Deptt:

**APPLICATION FOR RESTORATION OF APPEAL NO.  
08/2018 WHICH WAS DISMISSED ON DEFAULT VIDE  
ORDER DATED 31.12.2018.**

**RESPECTFULLY SHEWETH:**

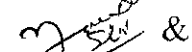
1. That the instant appeal No. 08/2018 was filed before this Honorable Tribunal.
2. That the instant appeal was in Argument stage at principle Bench Peshawar, on date 31.12.2018 the counsel for the appellant waiting for the bench. The counsel wait till 10 O' Clock but the bench-II was not started and then move to Bench-1 for Cases and the case was called for one time and dismissed on default on today 31.12.2018 between 10:15 am to 10:25.
3. That it is in the interest of justice that the appeal should be dealt on merit rather to dismiss on default.

It is therefore, most humbly prayed, that the instant appeal No. 08/2018 may be restore on the acceptance of this application.

**APPELLANT**

Through:

  
Miss UZMA SYED

 &  
Syed Noman Ali Bukhari  
ADVOCATE, HIGH COURT  
PESHAWAR.

(1)



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 8 /2018

Ubaid ullah, EX- Constable, No.1662  
Distt: Swat.

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1468  
Dated 28/12/2017

.....(Appellant)

**VERSUS**

1. The Regional Police Officer, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 29.11.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 18.12.2008 HAS BEEN REJECTED FOR NO GOOD GROUNDS.**

READER

31.12.2018 - Appellant absent. Learned counsel for the appellant absent. Mr. Usman Ghani learned District Attorney present. Case called but neither the appellant nor his counsel turned up. Consequently the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.

Member

**ANNOUNCED.**  
31.12.2018

Member

07-01-18

Carbon copy

Number of Witnesses ..... 400

Copying Fee ..... 4-

Usual ..... 4-

Name of the Officer .....

Date of the order ..... 11-1-18

Date of the meeting ..... 11-1-18

**BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL,  
PESHAWAR.**

APPEAL NO. 8 / 2018

Ubaid Allah 131

V/S

Police

Deptt:

**APPLICATION FOR RESTORATION OF APPEAL NO.  
08/2018 WHICH WAS DISMISSED ON DEFAULT VIDE  
ORDER DATED 31.12.2018.**

**RESPECTFULLY SHEWETH:**

1. That the instant appeal No. 08/2018 was filed before this Honorable Tribunal.
2. That the instant appeal was in Argument stage at principle Bench Peshawar, on date 31.12.2018 the counsel for the appellant waiting for the bench. The counsel wait till 10 O' Clock but the bench-II was not started and then move to Bench-I for Cases and the case was called for one time and dismissed on default on today 31.12.2018 between 10:15 am to 10:25.
3. That it is in the interest of justice that the appeal should be dealt on merit rather to dismiss on default.

It is therefore, most humbly prayed, that the instant appeal No. 08/2018 may be restore on the acceptance of this application.

**APPELLANT .**

Through:

Miss UZMA SYED

&  
Syed Noman Ali Bukhari  
ADVOCATE, HIGH COURT  
PESHAWAR.

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

**Service Appeal No.08/2018**

Ubaidullah Ex-Constable No.1662 District: Swat.

----- (Appellant)

**Versus**

1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer, Swat.

----- (Respondents)

**INDEX**

S.No:	Description of Documents	Annexure	Page
1	Para-wise Comments	-	1-3
2	Affidavit	-	4
3	Authority Letter	-	5

  
District Police Officer, Swat  
(Respondent No.02)

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

**Service Appeal No.08/2018**

Ubaidullah Ex-Constable No.1662 District: Swat.

----- (Appellant)

**Versus**

1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer, Swat.

----- (Respondents)

*M. A. G.*  
*24/18*

**Parawise comments on behalf of Respondents.**

**Respectfully shewith:**

**Preliminarily objection:-**

1. That the service appeal is time barred.
2. That the service appeal is not maintainable in its present form.
3. The instant appeal is bad due to mis-joinder and non-joinder of necessary parties.
4. That the appellant is estopped due to his own conduct.
5. That the appellant has concealed material facts from this Honorable Tribunal.
6. That the appellant has got no cause of action and locus standi to prefer the instant appeal.
7. The appellant has not come to this Tribunal with clean hands.

**ON FACTS**

1. Para to the extent of employment in Police Department pertains to record, hence need no comments
2. Correct to the extent that appellant was dismissed from service after fulfillment of all legal and codal formalities as appellant while posted at Javed Iqbal Shaheed Police Lines Swat absented himself from lawful duty vide daily diary No.04 dated 06/01/2009 without prior permission/leave of the competent authority.
3. Incorrect. The appellant while posted to Javed Iqbal Shaheed Police Lines Swat, willfully and deliberately absented himself from lawful duty vide daily diary No.04 dated 06/01/2009 without prior permission/leave of the competent authority, hence he was issued charge sheet, statement of

allegations, duly served on appellant and enquiry officer was nominated to probe into the conduct of appellant. Despite repeated summons/Parwanas the appellant bitterly failed either to submit his reply or joined enquiry proceedings meaning thereby that he had no defense to provide in his favor. It is worthwhile that right from the date of his absence i.e 06/01/2009 till the order of dismissal i.e 12/10/2009, the appellant neither repeated his arrival nor bothered to join enquiry proceedings rather remained dormant which clearly depicts his disinterest in his official duties. Therefore after fulfillment of all legal and codal formalities the appellant was awarded appropriate punishment of dismissal from service which does commensurate with the gravity of misconduct of appellant.

4. Incorrect. Each and every case has its own facts and circumstances, hence plea of the appellant is not plausible.
5. Incorrect. As discussed earlier each and every case has its own facts and circumstances, hence plea of the appellant is not tenable in the age of Law, moreover the appellant after dismissal from service kept mum and after lapse of almost 08 years he preferred departmental appeal at a very belated stage which was rejected being badly time barred. Therefore, stance of the appellant is devoid of any merit, hence liable to be set aside at naught.
6. Para already explained needs not comments.
7. That appeal of the appellant is liable to be dismissed on the following grounds.

#### **GROUND**

- A. Incorrect. The respondents have no grudges or ill will against the appellant, hence stance of the appellant has no legal footings to stand on.
- B. Incorrect. The order passed by the competent authority is legal and lawful which was passed after fulfillment of codal formalities.
- C. Para explained earlier needs no comments.

- D. Incorrect. Since the respondents have no grudges against the appellant, hence discrimination on part of respondents is immaterial.
- E. Para explained in the preceding paras, therefore needs no comments.
- F. Incorrect. The appellant has been treated in accordance with law.
- G. Incorrect. As discussed earlier the appellant was summoned and informed time and again but he did not bother to join enquiry proceedings for reason that he had nothing to produce in his defense.
- H. That the respondents also seek the permission of this Honorable Tribunal to adduce additional grounds at the time of hearing.

**PRAYER:-**

In view of the above comments of answering respondents, it is prayed that instant appeal may be dismissed with cost.



Regional Police Officer,  
Malakand Region at Saidu Sharif, Swat  
(Respondent No.1)



District Police Officer, Swat.  
(Respondent No.2)



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

**Service Appeal No.08/2018**

Ubaidullah Ex-Constable No.1662 District: Swat.

----- (Appellant)


**Versus**

1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer, Swat.

----- (Respondents)

**AFFIDAVIT**

We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from the August Tribunal.

  
Regional Police Officer,  
Malakand Region at Saidu Sharif, Swat  
(Respondent No.1)

  
District Police Officer, Swat.  
(Respondent No.2)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

**Service Appeal No.08/2018**

Ubaidullah Ex-Constable No.1662 District: Swat.

----- (Appellant)

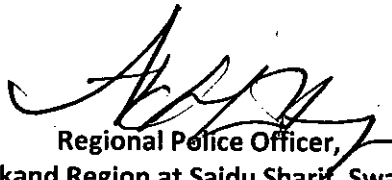
**Versus**

1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer, Swat.

----- (Respondents)

**AUTHORITY LETTER**

We, the above respondents do hereby authorize Mr. Khawas Khan SI Legal Swat to appear in the Service Tribunal on our behalf on each date fixed in connection with titled Service Appeal and do whatever is needed.

  
Regional Police Officer,  
Malakand Region at Saidu Sharif, Swat  
(Respondent No.1)

  
District Police Officer, Swat.  
(Respondent No.2)

**BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR.**

**Service Appeal No. 08/2018**

Ubaidullah

VS

Police Deptt:

.....

**REJOINDER ON BEHALF OF APPELLANT**

.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

- 1 Admitted correct by the respondents as the service record is laying in the custody of the respondents.
- 2 Incorrect. While para-2 of the appeal is correct as mentioned in the main appeal of the appellant.
- 3 Incorrect. While para-3 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, if the charge sheet, statement of allegation and final show cause notice was issued, then it is duty of the department the same could be annexed with the appeal but the department

fail to do so its means that no codal formalities were fulfilled before imposing major penalty.

- 4 Incorrect. While para-4 of the appeal is correct as mentioned in the main appeal of the appellant.
- 5 Incorrect. While para-5 of the appeal is correct as mentioned in the main appeal of the appellant.
- 6 Incorrect, hence denied misleading. While para-6 of the appeal is correct as mentioned in the main appeal of the appellant.
- 7 Incorrect, hence denied misleading. While para-7 of the appeal is correct as mentioned in the main appeal of the appellant.

**GROUND:**

- A) Incorrect. The orders of the respondents are against the law, rules and norms of justice therefore not tenable and liable to be set aside.
- B) Incorrect. While para-B of the appeal is correct as mentioned in the main appeal of the appellant.
- C) Incorrect. Incorrect. While para-C of the appeal is correct as mentioned in the main appeal of the appellant.
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- E) Incorrect. Incorrect. While para-E of the appeal is correct as mentioned in the main appeal of the appellant.
- F) Incorrect. Incorrect. While para-F of the appeal is correct as mentioned in the main appeal of the appellant.

- G) Incorrect. Incorrect. While para-G of the appeal is correct as mentioned in the main appeal of the appellant.
- H) Legal.

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

**APPELLANT**

Through:

*Uzma*  
(UZMA SYED)  
& *Noman*  
SYED NOMAN ALI BUKHARI  
ADVOCATE, PESHAWAR.

**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

*Uzma*  
DEPONENT

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 8 /2018

Ubaid ullah

V/S

Police Deptt:

.....  
**I N D E X**

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	1-4
2.	Copy impugned order	-A-	05
3.	Copy order	-B-	06
4.	copy of rejection order	-C-	07-08
5.	Vakalat Nama	-----	09

*Muhammad*  
**APPELLANT**

THROUGH:

*Uzma Syed*  
**(UZMA SYED)**

*Syed Noman Ali Bukhari*  
**SYED NOMAN ALI BUKHARI**  
**(ADVOCATES, PESHAWAR)**

**BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No. 08 / 2018

Ubaidullah

VS

Police Deptt:

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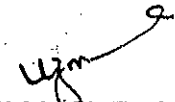
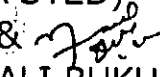


- G) Incorrect. Incorrect. While para-G of the appeal is correct as mentioned in the main appeal of the appellant.
- H) Legal.

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

**APPELLANT**

Through:

  
(UZMA SYED)  
&   
SYED NOMAN ALI BUKHARI  
ADVOCATE, PESHAWAR.

**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

  
DEPONENT

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

**Service Appeal No. 08/2018**

Ubaiddullah

VS

Police Deptt:

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(UZMA SYED)

&   
SYED NOMAN ALI BUKHARI  
ADVOCATE, PESHAWAR.

**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

  
DEPONENT

1

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 8 /2018

Ubaid ullah, EX- Constable, No.1662  
Distt: Swat.

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 1468  
Dated 28/12/2017

.....(Appellant)

**VERSUS**

1. The Regional Police Officer, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 29.11.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 18.12.2008 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

**PRAYER:**

Filed to-day  
Registrar  
28/12/17

THAT ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE ORDERS DATED 29.11.2017 AND 18.12.2008 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE 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  
and filed.  
Registrar  
2/1/18

**RESPECTFULLY SHEWETH:**

**FACTS:**

Facts giving rise to the present service appeal are as under:

1. That the appellant was the employee of the police and was on the strength of the police force Buner.
2. That during Taliban Militancy in Swat appellant was dismissed from the service by the respondent no.2 vide order dated 18.12.2008. **Copy of impugned order is attached as Annexure-A.**
3. That, neither any show cause, charge sheet, statement of allegation, inquiry, opportunity of defense, final show cause notice, opportunity of personal hearing has been served and provided respectively nor any publication has ever been made calling him for assumption of his duty.
4. That some of the colleagues of the appellant have been re-instated by the respondent no.1 vide OB NO 6421-22/E dated 1.11.2011. **Copy of order is attached as Annexure-B.**
5. That appellant upon getting knowledge of the aforesaid re-instatement order, immediately preferred departmental appeal before respondent no.1 & requested therein that case of the appellant is at par with those police officer, who have been re-instated in to service vide order dated 01.11.2011, so the appellant has also entitled to re-instatement in principle of natural justice. The copy of departmental appeal may be requisite from the department, the same is not available with the appellant.
6. That the departmental appeal of the appellant was rejected by respondent no.1 vide order dated 29.11.2017 for no good grounds. **Copy of rejection order is attached as Annexure-C.**
7. That appellant being aggrieved of the impugned order of respondent and having no other adequate and efficacious remedy, file this service appeal inter-alia on the following grounds amongst others.

**GROUND:**

- A) That the appellant has not been treated in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan 1973 by the respondents and the appellant has been dismissed from his legal service without adopting legal Pre-requisite mandatory Legal procedure. The order passed in violating of mandatory provision of law, such order is void and illegal order according to superior court judgment reported as 2007 SCMR 834. Hence the impugned order is liable to be set aside.
- B) That the impugned order was retrospective order which was void in the eye of law and also void according to Superiors Court Judgment reported as 2002 SCMR 1129, 2006 PLC 221 and KPK Service Tribunal Judgment titled as Abdul Shakoor Vs Govt of KPK.
- C) That the appeal of the appellant was rejected on the ground that the appeal is time barred but according to superior court judgment reported as 2015 SCMR 795 there is no limitation was run against the void order. Moreover, the Supreme court of Pakistan has laid down vide reported judgment PLD 2003 SC 724 and 2003 PLC (CS) 796 that the delay if any shall be condoned in respect of employee where delay already condoned in identical circumstances. All the person shall be treated equally who are sailing in the same board,
- D) That the appellant has highly been discriminated. Other police officials, who were also dismissed with appellant have been reinstated by the respondent No.1, whereas, appellant has been denied the same treatment. The case of the appellant is similar and identical in all respect with those, who have been reinstated.
- E) That neither charge sheet, statement of allegation, show cause notice was not served upon the appellant nor was inquiry conducted against the appellant, which was necessary and mandatory in law before imposing major punishment which is violation of law, rules and norms of justice.
- F) That the appellant has not been treated according to law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- G) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

4

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

میں اللہ  
**APPELLANT**  
Ubaid ullah

THROUGH:

Uzma  
**(UZMA SYED)**

و  
**(SYED NOMAN ALI BUKHARI)**  
ADVOCATES, PESHAWAR



3

A

**ORDER**

This order will dispose off the enquiry initiated against Constable Ubaidullah No.1662, who while posted to Police Lines absented himself from duty with vide DD No.52, dated. 02/08/2008 and failed to report. Thus absented himself from his legitimate duty and a report to this effect was entered at Police Lines vide DD No.52, dated 02/08/2008.

He was issued charge sheet with statement of allegations. Enquiry was initiated against him and DSP Legal was appointed as Enquiry Officer. The Enquiry Officer in his finding report submitted that the defaulter Constable was summoned time and again, but did not appear to record his statement. Hence he was recommended for Major punishment of the Enquiry Officer. He was issued Final Show Cause Notice No. 366/E, dated 03/11/2008 but no reply has been received.

This constitutes misconduct, cowardice on his part and as such he is liable for action under section 5 sub section (4) of the Removal from service (Special Powers) Ordinance 2000 (Amendment) Ordinance 2001.

This constitutes misconduct/disinterest on his part and as such he is liable for action under section 5 Sub Section (4) of the Removal from service (Special Power) Ordinance 2000 (Amendment) Ordinance 2001 and dispose with the enquiry proceeding as laid down in the Ordinance and am further satisfied that there is no need of holding further departmental enquiry. Since the defaulter Constable has been found guilty of gross misconduct as defined in the said Ordinance, I Mr. Dilawar Khan Bangash DPO Swat as a competent authority, therefore impose major penalty by dismissing him from service from the date of absence i.e 02/08/2008.

Order announced.

*[Signature]*  
District Police Officer, Swat

O.B. No. 231

Dated. 18/12/08

*[Signature]*  
AD

Annex B  
6

**ORDER**

WHEREAS as per the approval of the Provincial Police Officer, Khyber Pukhtunkhwa a Committee had been constituted vide this office No: 100-1-35 dated 24/11/2010 and 90-94/E dated 03/01/2011, headed by DPO Buner to reconsider the cases of the personnel dismissed during militancy.

AND WHEREAS the Committee has, after thorough deliberations and scrutiny of the relevant record, submitted its findings vide No: 5422/E dated 27/10/2011 wherein 16 personnel have been recommended for reinstatement in service.

NOW THEREFORE as per the approval of the Provincial Police Officer, the following personnel recommended by the Committee are hereby reinstated in service with effect from the date of their dismissal. The period during which they remained out of service after dismissal and the period of their absence will be treated as leave without pay.

S.No.	Name and No.
1.	Ex-Constable Sajjad Ali No. 32
2.	Ex-Constable Jehan Zeb No. 519
3.	Ex-Constable Shaukat Ali No. 418
4.	Ex-Constable Said Nawab Shah No. 183
5.	Ex-Constable Nawab Ali No. 188
6.	Ex-Constable Naeem No. 20
7.	Ex-Constable Irfanullah No. 620
8.	Ex-Constable Noor Zada No. 527
9.	Ex-Constable Amir Ali No. 511
10.	Ex-Constable Liaqat Ali No. 598
11.	Ex-Constable Sher Akbar No. 577
12.	Ex-Constable Inamullah No. 555
13.	Ex-Constable Samiullah No. 454
14.	Ex-Constable Sher Ghanl No. 502
15.	Ex-Constable Said Imran Shah No. 529
16.	Ex-Constable Shah Aurang Zeb No. 593

Order announced.

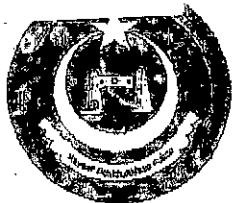
*Handwritten signature/initials*

(AKHTAR HAYAT KHAN) PSP  
Deputy Inspector General of Police,  
Malakand Region, Saidu Sharif, Swat.  
\*\*SAIF\*\*

o. 6421-22 /E,  
Dated 01/11/2010.

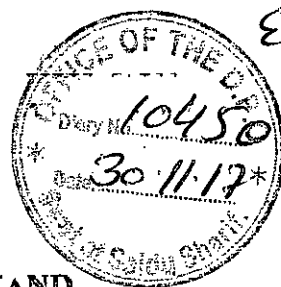
- Copy for information and necessary action to the
1. Provincial Police Officer, Khyber Pukhtunkhwa, Peshawar.
  2. District Police Officer, Buner.

*Handwritten signature*  
**ATTESTED**



OFFICE OF THE  
**REGIONAL POLICE OFFICER, MALAKAND**  
AT SAIDU SHARIF SWAT.

Ph: 0946-9240381-83 & Fax No. 0946-9240390  
Email: digmalakand@yahoo.com



**ORDER:**

The following Ex-Constables / Ex-SPF of the Districts noted against each, submitted applications for reinstatement in Service. Their applications were thoroughly examined and found long time barred having no legal justification to consider, hence hereby filed:-

S. No	Name and No	District	Date of Dismissal
1.	Ex-Constable Noor-ul-Amin No. 75/RR	Swat	12/10/2009
2.	Ex-Constable Naseer Ullah Khan No. 1428	Swat	26/01/2009
3.	Ex-Constable Ubaid Ullah No. 1662	Swat	12/12/2008
4.	Ex-Constable Saeed Ullah No. 1655	Swat	05/12/2008
5.	Ex-Constable Muhammad Ibrahim No. 399	Swat	15/02/2003
6.	Ex-Constable Bakht-Zaman No. 1719	Dir Lower	16/01/2013
7.	Ex-Constable Atta Ullah No. 568	Dir Lower	05/05/2008
8.	Ex-Constable Tahir Khan No. 781	Dir Lower	07/07/2009
9.	Ex-Constable Ruhul Amin No. 1012	Buner	01/09/2014
10.	Ex-Constable Aurang Zeb No. 390	Buner	30/05/2009
11.	Ex-Constable Tawseef Ahmad No. 258	Shangla	02/01/2009
12.	Ex-Constable Sher Wali No. 1050	Dir Upper	01/07/2016
13.	Ex-Constable (SPO) Nihar Muhammad No. 381	Buner	15/08/2016
14.	Ex-Constable (SPO) Imtiaz Ur Rehman No. 474	Buner	10/08/2017
15.	Ex-Constable (SPO) Zafar Ali No. 319	Buner	02/02/2017
16.	Ex-Constable (SPO) Muhammad Tariq No. 97	Buner	14/03/2016
17.	Ex-Constable (SPO) Lajbar Khan No. 279	Buner	14/03/2016
18.	Ex-Constable (SPO) Bakhtawar Zeb No. 474	Dir Lower	11/01/2013
19.	Ex-Constable (SPO) Muhammad Rafiq No. 162	Dir Lower	09/02/2016
20.	Ex-Constable (SPO) Shah Fahad No. 245	Dir Lower	11/01/2017
21.	Ex-Constable (SPO) Naik Amal No. 817	Dir Lower	16/09/2016
22.	Ex-Constable (SPO) Rahmatullah No. 459	Dir Lower	03/02/2017
23.	Ex-Constable (SPO) Muhammad Darwish No. 398	Dir Lower	24/02/2017
24.	Ex-Constable (SPO) Nadar Khan No. 2358	Swat	14/06/2017
25.	Ex-Constable (SPO) Umar Rahman No. 2828	Swat	07/12/2016
26.	Ex-Constable (SPO) Sher Ali No. 2001	Swat	30/10/2012

ATTESTAD

8

27.	Ex-Constable (SPO) Muhammad Rahim No. 2417	Swat	26/04/2017
28.	Ex-Constable (SPO) Khan Muhammad No. 2353	Swat	05/11/2015
29.	Ex-Constable (SPO) Taj Muhammad No. 714	Swat	24/05/2012
30.	Ex-Constable (SPO) Muhammad Ghafoor No. 3053	Swat	16/12/2016
31.	Ex-Constable (SPO) Muhammad Zahir Shah No. 2045	Swat	27/11/2013
32.	Ex-Constable (SPO) Hadi Khan No. 1902	Swat	10/04/2017
33.	Ex-Constable (SPO) Kishwar Ali No. 3080	Swat	18/09/2015
34.	Ex-Constable (SPO) Muhammad Alam No. 1965	Swat	19/04/2017
35.	Ex-Constable (SPO) Nazir Muhammad No. 3016	Swat	03/12/2013
36.	Ex-Constable (SPO) Taj Muhammad No. 2108	Swat	19/08/2013
37.	Ex-Constable (SPO) Waheed Gul No. 896	Swat	26/10/2016
38.	Ex-Constable (SPO) Hazrat Umar No. 2132	Swat	25/01/2016
39.	Ex-Constable (SPO) Syed Hassan No. 1194	Dir Lower	04/06/2015

The applicants of yours respective Districts may be informed accordingly, please.

*(Signature)*  
 (AKHTAR HAYAT KHAN)  
 Regional Police Officer,  
 Malakand, at Saidu Sharif Swat  
 30/11  
 \*\*Naqj\*\*

No. 13714-19 /E.

Dated 29-11 /2017.

Copy to All District Police Officers, in Malakand Region for information and necessary action. The applicants of your respective District may be informed accordingly please.

\*\*\*\*\*

*BC / OASi*  
 Inform the Ex-Constable  
 accordingly and also make  
 Entry in their Service Record.

*(Signature)*

*(Signature)*  
 ATTESTAD

*(Signature)*  
 30/11

Service Tribunal, Peshawar

موردہ  
مقدمہ  
دعویٰ  
جرم

2017ء منجانب  
عبداللہ بنام

پولیس

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام منسوخ کیلئے عظیمی سند

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 تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرفہ 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 باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے و ہوگا۔ کوئی تاریخ پیشی 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 سند ہے۔

۱۳۱

Attached & accepted

الرقوم 28 12 2017

العہد گواہ العہد کے لئے منظور ہے۔ Peshawar مقام

**"B"**

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

No.

Appeal No. .... of 20

..... Appellant/Petitioner  
Versus

..... Respondent  
Respondent No. ....

Notice to:

*Registered Notice Office Peshawar*

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

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

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

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

Day of.....20

*[Signature]*  
Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

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

**"B"**

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

No.

Appeal No..... of 20/17

..... Appellant/Petitioner

Versus

..... Respondent

Respondent No.....

Notice to:

*in the office of the Registrar*

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

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

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

Day of.....20/17

*[Signature]*  
**Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.**

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

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 8 /2018

Ubaid ullah

V/S

Police Deptt:

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*U.S.*  
**APPELLANT**

THROUGH:

*U.S.M.*  
**(UZMA SYED)**

*N.A.*  
**SYED NOMAN ALI BUKHARI**  
**(ADVOCATES, PESHAWAR)**



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. \_\_\_\_\_/2017

Ubaid ullah, EX- Constable, No.1662  
Distt: Swat.

.....(Appellant)

**VERSUS**

1. The Regional Police Officer, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 29.11.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 18.12.2008 HAS BEEN REJECTED FOR NO GOOD GROUNDS.**

**PRAYER:**

**THAT ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE ORDERS DATED 29.11.2017 AND 18.12.2008 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE 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.**

**RESPECTFULLY SHEWETH:**

**FACTS:**

Facts giving rise to the present service appeal are as under:

1. That the appellant was the employee of the police and was on the strength of the police force Buner.
2. That during Taliban Militancy in Swat appellant was dismissed from the service by the respondent no.2 vide order dated 18.12.2008. **Copy of impugned order is attached as Annexure-A.**
3. That, neither any show cause, charge sheet, statement of allegation, inquiry, opportunity of defense, final show cause notice, opportunity of personal hearing has been served and provided respectively nor any publication has ever been made calling him for assumption of his duty.
4. That some of the colleagues of the appellant have been re-instated by the respondent no.1 vide OB NO 6421-22/E dated 1.11.2011. **Copy of order is attached as Annexure-B.**
5. That appellant upon getting knowledge of the aforesaid re-instatement order, immediately preferred departmental appeal before respondent no.1 & requested therein that case of the appellant is at par with those police officer, who have been re-instated in to service vide order dated 01.11.2011, so the appellant has also entitled to re-instatement in principle of natural justice. The copy of departmental appeal may be requisite from the department, the same is not available with the appellant.
6. That the departmental appeal of the appellant was rejected by respondent no.1 vide order dated 29.11.2017 for no good grounds. **Copy of rejection order is attached as Annexure-C.**
7. That appellant being aggrieved of the impugned order of respondent and having no other adequate and efficacious remedy, file this service appeal inter-alia on the following grounds amongst others.

## GROUNDS:

- A) That the appellant has not been treated in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan 1973 by the respondents and the appellant has been dismissed from his legal service without adopting legal Pre-requisite mandatory Legal procedure. The order passed in violating of mandatory provision of law, such order is void and illegal order according to superior court judgment reported as 2007 SCMR 834. Hence the impugned order is liable to be set aside.
- B) That the impugned order was retrospective order which was void in the eye of law and also void according to Superiors Court Judgment reported as 2002 SCMR 1129, 2006 PLC 221 and KPK Service Tribunal Judgment titled as Abdul Shakoor Vs Govt of KPK.
- C) That the appeal of the appellant was rejected on the ground that the appeal is time barred but according to superior court judgment reported as 2015 SCMR 795 there is no limitation was run against the void order. Moreover, the Supreme court of Pakistan has laid down vide reported judgment PLD 2003 SC 724 and 2003 PLC (CS) 796 that the delay if any shall be condoned in respect of employee where delay already condoned in identical circumstances. All the person shall be treated equally who are sailing in the same board,
- D) That the appellant has highly been discriminated. Other police officials, who were also dismissed with appellant have been reinstated by the respondent No.1, whereas, appellant has been denied the same treatment. The case of the appellant is similar and identical in all respect with those, who have been reinstated.
- E) That neither charge sheet, statement of allegation, show cause notice was not served upon the appellant nor was inquiry conducted against the appellant, which was necessary and mandatory in law before imposing major punishment which is violation of law, rules and norms of justice.
- F) That the appellant has not been treated according to law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- G) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- H) 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.

*Ubaid ullah*  
**APPELLANT**

Ubaid ullah

THROUGH:

*Uzma Syed*  
**(UZMA SYED)**

*Syed Noman Ali Bukhari*  
**(SYED NOMAN ALI BUKHARI)**  
ADVOCATES, PESHAWAR

ORDER

A

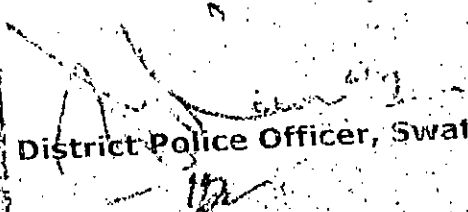
This order will dispose off the enquiry initiated against Constable Ubaidullah No.1662, who while posted to Police Lines absented himself from duty with vide DD No.52, dated. 02/08/2008 and failed to report. Thus absented himself from his legitimate duty and a report to this effect was entered at Police Lines vide DD No.52, dated 02/08/2008.

He was issued charge sheet with statement of allegations. Enquiry was initiated against him and DSP Legal was appointed as Enquiry Officer. The Enquiry Officer in his finding report submitted that the defaulter Constable was summoned time and again, but did not appear to record his statement. Hence he was recommended for Major punishment of the Enquiry Officer. He was issued Final Show Cause Notice No. 366/E, dated 03/11/2008 but no reply has been received.

This constitutes misconduct, cowardice on his part and as such he is liable for action under section 5 sub section (4) of the Removal from service (Special Powers) Ordinance 2000 (Amendment) Ordinance 2001.

This constitutes misconduct/disinterest on his part and as such he is liable for action under section 5 Sub Section (4) of the Removal from service (Special Power) Ordinance 2000 (Amendment) Ordinance 2001 and dispose with the enquiry proceeding as laid down in the Ordinance and am further satisfied that there is no need of holding further departmental enquiry. Since the defaulter Constable has been found guilty of gross misconduct as defined in the said Ordinance, I Mr. Dilawar Khan Bangash DPO Swat as a competent authority, therefore impose major penalty by dismissing him from service from the date of absence i.e 02/08/2008.

Order announced.

  
District Police Officer, Swat

O.B. No. 231

Dated. 18/12/2008

ORDER

Annex B  
6

WHEREAS as per the approval of the Provincial Police Officer, Khyber Pukhtunkhwa a Committee had been constituted vide this office No: 100-1-35 dated 24/11/2010 and 90-94/E dated 03/01/2011, headed by DPO Buner reconsider the cases of the personnel dismissed during militancy.

AND WHEREAS the Committee has, after thorough deliberations and scrutiny of the relevant record, submitted its findings vide No: 5422/E dated 27/10/2011 wherein 16 personnel have been recommended for reinstatement in service.

NOW THEREFORE as per the approval of the Provincial Police Officer, the following personnel recommended by the Committee are hereby reinstated in service with effect from the date of their dismissal. The period during which they remained out of service after dismissal and the period of their absence will be treated as leave without pay.

S.No.	Name and No.
1.	Ex-Constable Sajjad Ali No. 32
2.	Ex-Constable Jehan Zeb No. 519
3.	Ex-Constable Shaikat Ali No. 418
4.	Ex-Constable Said Nawab Shah No. 153
5.	Ex-Constable Nawab Ali No. 188
6.	Ex-Constable Nageem No. 20
7.	Ex-Constable Irfanullah No. 620
8.	Ex-Constable Noor Zada No. 527
9.	Ex-Constable Amir Ali No. 511
10.	Ex-Constable Liaqat Ali No. 598
11.	Ex-Constable Sher Akbar No. 577
12.	Ex-Constable Inamullah No. 555
13.	Ex-Constable Samiullah No. 454
14.	Ex-Constable Sher Ghanl No. 502
15.	Ex-Constable Said Imran Shah No. 529
16.	Ex-Constable Shah Aurang Zeb No. 593

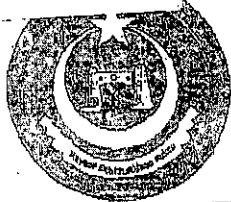
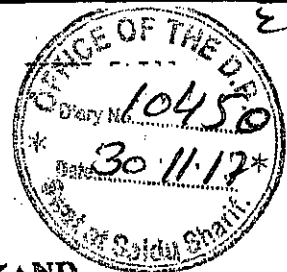
Order announced.

(AKHTAR HAYAT KHAN) PSP  
Deputy Inspector General of Police,  
Malakand Region, Saidu Sharif, Swat.

o. 6421-22 / E,  
Dated 01/11/2010

Copy for information and necessary action to the

1. Provincial Police Officer, Khyber Pukhtunkhwa, Peshawar.
2. District Police Officer, Buner.



OFFICE OF THE  
**REGIONAL POLICE OFFICER, MALAKAND**  
AT SAIDU SHARIF SWAT.

Ph: 0946-9240381-83 & Fax No. 0946-9240390  
Email: digmalakand@yahoo.com

**ORDER:**

The following Ex-Constables / Ex-SPF of the Districts noted against each, submitted applications for reinstatement in Service. Their applications were thoroughly examined and found long time barred having no legal justification to consider, hence hereby filed:-

S. No	Name and No	District	Date of Dismissal
1.	Ex-Constable Noor-ul-Amin No. 75/RR	Swat	12/10/2009
2.	Ex-Constable Naseer Ullah Khan No. 1428	Swat	26/01/2009
3.	Ex-Constable Ubaid Ullah No. 1662	Swat	12/12/2008
4.	Ex-Constable Saeed Ullah No. 1655	Swat	05/12/2008
5.	Ex-Constable Muhammad Ibrahim No. 399	Swat	15/02/2003
6.	Ex-Constable Bakht-Zaman No. 1719	Dir Lower	16/01/2013
7.	Ex-Constable Atta Ullah No. 568	Dir Lower	05/05/2008
8.	Ex-Constable Tahir Khan No. 781	Dir Lower	07/07/2009
9.	Ex-Constable Ruhul Amin No. 1012	Buner	01/09/2014
10.	Ex-Constable Aurang Zeb No. 390	Buner	30/05/2009
11.	Ex-Constable Tawseef Ahmad No. 258	Shangla	02/01/2009
12.	Ex-Constable Sher Wali No. 1050	Dir Upper	01/07/2016
13.	Ex-Constable (SPO) Nihar Muhammad No. 381	Buner	15/08/2016
14.	Ex-Constable (SPO) Imtiaz Ur Rehman No. 474	Buner	10/08/2017
15.	Ex-Constable (SPO) Zafar Ali No. 319	Buner	02/02/2017
16.	Ex-Constable (SPO) Muhammad Tariq No. 97	Buner	14/03/2016
17.	Ex-Constable (SPO) Lajbar Khan No. 279	Buner	14/03/2016
18.	Ex-Constable (SPO) Bakhtawar Zeb No. 474	Dir Lower	11/01/2013
19.	Ex-Constable (SPO) Muhammad Rafiq No. 162	Dir Lower	09/02/2016
20.	Ex-Constable (SPO) Shah Fahad No. 245	Dir Lower	11/01/2017
21.	Ex-Constable (SPO) Naik Amal No. 817	Dir Lower	16/09/2016
22.	Ex-Constable (SPO) Rahmatullah No. 459	Dir Lower	03/02/2017
23.	Ex-Constable (SPO) Muhammad Darwish No. 398	Dir Lower	24/02/2017
24.	Ex-Constable (SPO) Nadar Khan No. 2358	Swat	14/06/2017
25.	Ex-Constable (SPO) Umar Rahman No. 2828	Swat	07/12/2016
26.	Ex-Constable (SPO) Sher Ali No. 2001	Swat	30/10/2012

27.	Ex-Constable (SPO) Muhammad Rahim No. 2417	Swat	26/04/2017
28.	Ex-Constable (SPO) Khan Muhammad No. 2353	Swat	05/11/2015
29.	Ex-Constable (SPO) Taj Muhammad No. 714	Swat	24/05/2012
30.	Ex-Constable (SPO) Muhammad Ghafoor No. 3053	Swat	16/12/2016
31.	Ex-Constable (SPO) Muhammad Zahir Shah No. 2045	Swat	27/11/2013
32.	Ex-Constable (SPO) Hadi Khan No. 1902	Swat	10/04/2017
33.	Ex-Constable (SPO) Kishwar Ali No. 3080	Swat	18/09/2015
34.	Ex-Constable (SPO) Muhammad Alam No. 1965	Swat	19/04/2017
35.	Ex-Constable (SPO) Nazir Muhammad No. 3016	Swat	03/12/2013
36.	Ex-Constable (SPO) Taj Muhammad No. 2108	Swat	19/08/2013
37.	Ex-Constable (SPO) Waheed Gul No. 896	Swat	26/10/2016
38.	Ex-Constable (SPO) Hazrat Umar No. 2132	Swat	25/01/2016
39.	Ex-Constable (SPO) Syed Hassan No. 1194	Dir Lower	04/06/2015

The applicants of yours respective Districts may be informed accordingly, please.

*(Signature)*  
 (AKHTAR HAYAT KHAN)  
 Regional Police Officer,  
 Malakand, at Saidu Sharif Swat  
 \*\*Naqi\*\*  
 mg/11

No. 13714-19 /E.

Dated 29-11 /2017.

Copy to All District Police Officers, in Malakand Region for information and necessary action. The applicants of your respective District may be informed accordingly please.

\*\*\*\*\*

*BC/ASi*  
 Inform the Ex-Constable  
 accordingly and also make  
 Entry in their respective record.

*(Signature)*  
 D.P.O. Swat,  
 30/11



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

**Service Appeal No.08/2018**

Ubaidullah Ex-Constable No.1662 District: Swat.

----- (Appellant)

**Versus**

1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer, Swat.

----- (Respondents)

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District Police Officer, Swat  
(Respondent No.02)

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

**Service Appeal No.08/2018**

Ubaidullah Ex-Constable No.1662 District: Swat.

----- (Appellant)

**Versus**

1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer, Swat.

----- (Respondents)

**Parawise comments on behalf of Respondents.**

**Respectfully shewith:**

**Preliminarily objection:-**

1. That the service appeal is time barred.
2. That the service appeal is not maintainable in its present form.
3. The instant appeal is bad due to mis-joinder and non-joinder of necessary parties.
4. That the appellant is estopped due to his own conduct.
5. That the appellant has concealed material facts from this Honorable Tribunal.
6. That the appellant has got no cause of action and locus standi to prefer the instant appeal.
7. The appellant has not come to this Tribunal with clean hands.

**ON FACTS**

1. Para to the extent of employment in Police Department pertains to record, hence need no comments
2. Correct to the extent that appellant was dismissed from service after fulfillment of all legal and codal formalities as appellant while posted at Javed Iqbal Shaheed Police Lines Swat absented himself from lawful duty vide daily diary No.04 dated 06/01/2009 without prior permission/leave of the competent authority.
3. Incorrect. The appellant while posted to Javed Iqbal Shaheed Police Lines Swat, willfully and deliberately absented himself from lawful duty vide daily diary No.04 dated 06/01/2009 without prior permission/leave of the competent authority, hence he was issued charge sheet, statement of

allegations, duly served on appellant and enquiry officer was nominated to probe into the conduct of appellant. Despite repeated summons/Parwanas the appellant bitterly failed either to submit his reply or joined enquiry proceedings meaning thereby that he had no defense to provide in his favor. It is worthwhile that right from the date of his absence i.e 06/01/2009 till the order of dismissal i.e 12/10/2009, the appellant neither repeated his arrival nor bothered to join enquiry proceedings rather remained dormant which clearly depicts his disinterest in his official duties. Therefore after fulfillment of all legal and codal formalities the appellant was awarded appropriate punishment of dismissal from service which does commensurate with the gravity of misconduct of appellant.

4. Incorrect. Each and every case has its own facts and circumstances, hence plea of the appellant is not plausible.
5. Incorrect. As discussed earlier each and every case has its own facts and circumstances, hence plea of the appellant is not tenable in the age of Law, moreover the appellant after dismissal from service kept mum and after lapse of almost 08 years he preferred departmental appeal at a very belated stage which was rejected being badly time barred. Therefore, stance of the appellant is devoid of any merit, hence liable to be set aside at naught.
6. Para already explained needs not comments.
7. That appeal of the appellant is liable to be dismissed on the following grounds.

#### **GROUND**

- A. Incorrect. The respondents have no grudges or ill will against the appellant, hence stance of the appellant has no legal footings to stand on.
- B. Incorrect. The order passed by the competent authority is legal and lawful which was passed after fulfillment of codal formalities.
- C. Para explained earlier needs no comments.

- D. Incorrect. Since the respondents have no grudges against the appellant, hence discrimination on part of respondents is immaterial.
- E. Para explained in the preceding paras, therefore needs no comments.
- F. Incorrect. The appellant has been treated in accordance with law.
- G. Incorrect. As discussed earlier the appellant was summoned and informed time and again but he did not bother to join enquiry proceedings for reason that he had nothing to produce in his defense.
- H. That the respondents also seek the permission of this Honorable Tribunal to adduce additional grounds at the time of hearing.

**PRAYER:-**

In view of the above comments of answering respondents, it is prayed that instant appeal may be dismissed with cost.



Regional Police Officer,  
Malakand Region at Saidu Sharif, Swat  
(Respondent No.1)



District Police Officer, Swat.  
(Respondent No.2)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

**Service Appeal No.08/2018**

Ubaidullah Ex-Constable No.1662 District: Swat.

----- (Appellant)


**Versus**

1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District, Police Officer, Swat.

----- (Respondents)

**AFFIDAVIT**

We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from the August Tribunal.

  
Regional Police Officer,  
Malakand Region at Saidu Sharif, Swat  
(Respondent No.1)

  
District Police Officer, Swat.  
(Respondent No.2)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.**

**Service Appeal No.08/2018**

Ubaidullah Ex-Constable No.1662 District: Swat.

----- (Appellant)

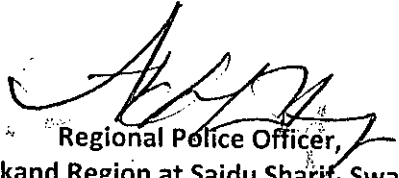
**Versus**

1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer, Swat.

----- (Respondents)

**AUTHORITY LETTER**

We, the above respondents do hereby authorize Mr. Khawas Khan SI Legal Swat to appear in the Service Tribunal on our behalf on each date fixed in connection with titled Service Appeal and do whatever is needed.

  
Regional Police Officer,  
Malakand Region at Saidu Sharif, Swat  
(Respondent No.1)

  
District Police Officer, Swat.  
(Respondent No.2)