

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 205/2014

Date of institution ... 30.12.2013

Date of judgment ... 02.03.2017

Waqar Ali S/o Mushtaq Hussain,
R/o Mohallah Garhi Saidan Inside Hashtnagri Peshawar City.

... (Appellant)

VERSUS

1. S.P Headquarters Police Line Peshawar.
2. Capital City Police Officer Police Line Peshawar.
3. Inspector General of Police, Police Line Peshawar.
4. Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST OFFICE ORDER NO. 205/56 DATED 04.12.2013 OF B. NO. 1 WHEREBY SERVICES OF THE APPELLANT WERE DISPENSED WITH IMMEDIATE EFFECT.

Mr. Johar Shah, Advocate.

.. For appellant.

Mr. Kabirullah Khattak, Assistant Advocate General

.. For respondents.

MR. MUHAMMAD AAMIR NAZIR

.. MEMBER (JUDICIAL)

MR. ASHFAQUE TAJ

.. MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER:- The appellant Waqar Ali S/o Mushtaq Hussain resident of Hashtnagri, Peshawar, through instant appeal has impugned order dated 04.12.2013 vide which the appellate authority has rejected the departmental appeal of the appellant against the order dated 07.05.2013 vide which the appellant was dismissed from service with immediate effect.

2. Briefly stated facts giving rise to the appeal in hand are that the appellant joined the Police Department in the year 2007 and thereafter started performing his duty with great zest and zeal. That during his service the appellant was issued charge sheet alongwith statement of allegation on the ground of absence from duty with effect from 12.02.2012 till

Handwritten signature and date:
02.03.17

07.07.2012. That the appellant submitted a reply to that effect, however, an inquiry was initiated against the appellant. The inquiry officer in his finding recommended minor penalty for the reason that the appellant remained under treatment during absence period. That the competent authority, however disagreed with the finding of inquiry officer and awarded major punishment of dismissal from service to the appellant and his absence period was also treated as leave without pay. That the departmental appeal filed by the appellant against the impugned order was also turned down vide appellate order dated 04.12.2013, hence, the instant appeal.

3. We have heard the arguments of learned counsel for the appellant and Learned Government Pleader for respondents and have gone through the record available on file.

4. Learned counsel for the appellant argued before the court that despite the fact that the inquiry officer in his finding held that the absence of the appellant was due to his ailment and recommended appellant for minor punishment, yet the competent authority without considering the finding of the inquiry officer, awarded major punishment of dismissal from service to the appellant. That if the competent authority did not agree with the finding of the inquiry officer, it was incumbents upon him to have order another inquiry. That the impugned order has been passed without providing any opportunity of hearing to the appellant, hence, by accepting instant appeal the impugned order be set-aside and the appellant be reinstated into service.

5. Learned Government Pleader in rebuttal argued before the court that the appellant has misguided the inquiry officer and produced bogus medical certificates regarding his illness. That after verification, it was revealed that the medical certificates were fake, hence, the competent authority has rightly awarded the appellant major punishment of dismissal from service. That the instant appeal being devoid of merits be dismissed.

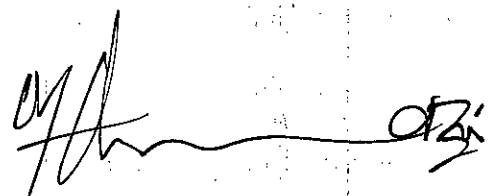
6. Perusal of the case file reveals that the appellant was charge sheeted for willful absence from duty with effect from 12.02.2012 to 07.07.2012. In this respect an inquiry was initiated and the inquiry officer in his finding held that since the appellant remained ill during his absence period as per medical record produced by him, therefore, absence period of the appellant be treated as leave without pay and he may be awarded minor punishment

02.03.17

of censure. However, the competent authority subsequently sent the medical record of the appellant for verification and after verification it was found that medical certificates are bogus, hence, the appellant was awarded major punishment of dismissal from service and his absence period was treated as leave without pay. It was incumbent upon the competent authority to have re-inquired the matter regarding the genuineness of the medical record submitted by the appellant regarding his illness by providing the appellant reasonable opportunity to associate himself with the inquiry proceedings and the appellant should be confronted with the evidence so collected against him. By not providing the appellant an opportunity to give his point of view on the bogus medical prescriptions, the appellant has been condemned unheard and on this scope. Hence, we are inclined to accept the instant appeal by reinstating the appellant into service with the direction to the respondent-department to conduct a de-novo inquiry. Ample opportunity be provided to the appellant to associate himself during the inquiry proceedings and duly confront him with the medical record so produced by him which was later on found fake/ bogus. The issue of back benefits shall be subject of outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.03.2017


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

01.02.2017

Appellant with counsel and Mr. Aziz Shah, Reader alongwith Mr. Kabirullah Khattak, Assistant AG for respondents present. At the very outset of arguments it reflects that the impugned order vide which the appellant was dismissed from service is not available on file. The order is essential for this Tribunal to proceed further. The respondents are directed to produce the complete record on or before next dated. To come up for record and arguments on 02.03.2017 before D.B.



(AHMAD HASSAN)
MEMBER



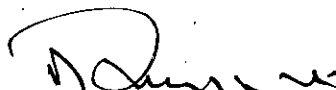
(ASHFAQUE TAJ)
MEMBER

02.03.2017

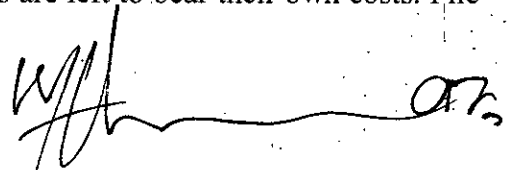
Appellant with counsel and Mr. Aziz Shah, Reader alongwith Mr. Kabirullah Khattak, Assistant Advocate General for respondents present. Arguments heard and case file perused.

Vide our detailed judgment of today consisting of three pages placed on file, we are inclined to accept the instant appeal by reinstating the appellant into service with the direction to the respondent-department to conduct a de-novo inquiry. Ample opportunity be provided to the appellant to associate himself during the inquiry proceedings and duly confront him with the medical record so produced by him which was later on found fake/ bogus. The issue of back benefits shall be subject of outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.03.2017




(ASHFAQUE TAJ)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

28.01.2016

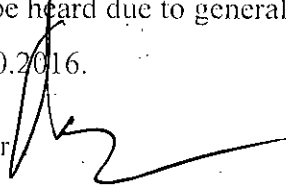
Counsel for the appellant and Asst: AG for respondents present. Counsel for the appellant requested for the adjournment. To come up for arguments on 19.5.16.


MEMBER


MEMBER

19.5.2016

Appellant in person and Assistant AG for respondents present. Arguments could not be heard due to general strike of the bar. To come up for arguments on 06.10.2016.

Member 

Member 

06.10.2016

None present on behalf of the appellant. Mr. Hayat Muhammad, Reader alongwith Assistant AG for respondents present. Notice be issued to appellant and his counsel for arguments for 1-2-17 before D.B.


(MUHAMMAD AMIR NAZIR)
MEMBER


(PIR BAKHSH SHAH)
MEMBER


Appellant with counsel and Addl: A.G for respondents present. Written reply not submitted despite last chance and despite waiting till the last hour as such no further opportunity granted to the respondents for submission of written reply. Those responsible for submission of written reply be proceeded against departmentally and the appeal be assigned to D.B for final hearing for 13.10.2015.


Chairman

13.10.2015

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Learned GP submitted an application for setting aside ex-parte proceedings alongwith his para-wise comments on behalf of the respondent-department and its annexure the same is placed on file. In order to save time, learned counsel for the appellant stated at the Bar that the appeal already has taken a huge time due to the careless attitude of the respondent-department in this appeal, therefore, he does not want to contest this application and that the case may be fixed for arguments after a short date, hence written comments on behalf of the respondent-department be deemed to have been admitted. The appellant does not to file any rejoinder, hence file to come up for arguments on 28-1-16.


Member


Member

6 16.10.2014

Appellant in person and Mr. Riaz Ahmad, S.I (Legal) on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Written reply has not been received. To come up for written reply/comments, positively, on 06.02.2015.


Chairman

7 6.2.2015

Appellant in person and Mr. Iqbal Munir, H.C on behalf of respondents alongwith Addl. A.G present. Submitted that written reply/comments has been prepared and put up for signature of the respondents. He requested for further time. Request is granted. Case to come up for written reply/comments on 25.3.2015.


MEMBER

8 25.03.2015

Appellant in person and Addl: A.G for respondents present. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 31.3.2015 before S.B.



Chairman



Appeal No. 205/2014
Mr. Wagan Ali.

3. 07.04.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the original order dated 07.05.2013, (copy of which not available on the file) he filed departmental appeal on 12.09.2013, which has been rejected on 04.12.2013, hence the present appeal on 30.12.2013. He further contended that the impugned order dated 06.12.2013 has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules 1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents for submission of written reply/comments on 23.06.2014


Member

4. 07.04.2014

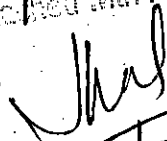
This case be put before the Final Bench I for further proceedings.


Chairman

5. 23.6.2014

Appellant with counsel present. Notices to the respondents could not be issued due to non-deposit of security and process fee. Application for extension of time has been moved on behalf of the appellant. Security and process fee be deposited within a week, whereafter notices be issued to the respondents for written reply/comments on 16.10.2014.

Appellant Deposited
Security & Process Fee
Rs. 200/- Bank
Receipt is Attached with File.


8/7/14

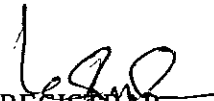


Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 205 /2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17/02/2014	<p>The appeal of Mr. Waqar Ali resubmitted today by Miss Hasina Awan Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	18-2-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>7-4-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Waqar Ali son of Mushtaq Hussain received today i.e. on 30.12.2013 is incomplete on the following scores which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Index of the appeal may be prepared according to rules.
- 2- ✓ Addresses of respondent No. 1 to 3 are incomplete which may be completed according to Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- Law under which appeal is filed is not mentioned.
- 4- Copy of appointment order mentioned in para-1 of the memo of appeal is not attached with the appeal which may be placed on it.
- 5- Copy of impugned dismissal order dated 07.05.2013 is not attached with the appeal which may be placed on it.
- 6- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 7- 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.
- 8- Annexures of the appeal may be attested.
- 9- ~~Six~~ more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1875 /S.T.

Dt. 31/12 /2013.

Leo
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Miss. Hassina Awan Adv. Pesh.

15/01/2014

Sir,
Resubmitted with request for extension of time

Time for resubmission of the instant appeal
is extended upto 25th January, 2014,

Miss. Hassina Awan, Advocate
Per

Leo
15/1/14

25/01/2014

Sir,
Resubmitted with request for extension
of time as the appellatant has not been provided
the required copies by the Deptt.

Time is again extended upto 10-2-2014.

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30/1/14

10/2/2014 Sir,
Resubmitted with ^{request} - for extension of time
for necessary documents.

Last chance is given for
extension of time upto 15th Feb, 2014.

Handwritten signature
10/2/2014

Handwritten signature
10/2/14

17/2/2014

Sir Resubmitted the instant appeal and when record
will available then will be placed on file.

Handwritten signature
17/2/2014

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. 205/2014

Waqar AliAppellant

V E R S U S

S.P Headquarter and othersRespondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Appeal		1-4
2.	Copy of appointment letter	A	5
3.	Copy of Representation dated 11.09.2013	B	
4.	Copy of impugned order dated 04.12.2013	B/1	6
5.	Copy of medical	C	
6.	Wakalat Nama		

Through Appellant



Miss Hasina Awan
Advocate High Court
Peshawar

Date: 28/12/2013

BEFORE THE N.W.F.P SERVICE TRIBUNAL PESHAWAR.

Appeal No. 205/2014

Waqar Ali S/o Mushtaq Hussain R/o Mohallah Garhi Saidan inside
Hashtnagri Peshawar City.

Appellant

VERSUS

N.W.F.P. Service Tribunal
Registry No. 1690
Dated 30/12/13

- EX-Parte
31-3-15
1. S.P Head Quarters. Police line Peshawar
 2. Capital ^{City} Police Officer. Police line Peshawar.
 3. Inspector General of Police. Police line Peshawar.
 4. Government of N.W.F.P through Chief Secretary Peshawar.

Respondents

u/s-4 APPEAL AGAINST OFFICE ORDER NO.205/56 DATED
04/12/2013 OF B. NO.1 WHEREBY SERVICE OF THE
APPELLANT WERE DISPENSED WITH IMMEDIATE
EFFECT.

PRAYER IN APPEAL:-

ON ACCEPTANCE OF APPEAL, THE IMPUGNED ORDER
BE SET ASIDE AND THE APPELLANT BE RE-INSTATED
IN SERVICE WITH FULL BACK BENEFITS.

Respectfully Sheweth:-

re-submitted to-
and filed:

1. That appellant was inducted as police constable in N.W.F.P Police Department vide order dated 25/07/2007. (Copy is annexed as annexure "A").

30/12/13
30/12/14

2. That appellant through the tenure of his service performed his duties very efficiently and satisfactorily and his service record as such remained unblemished.
3. That respondent No.2 vide impugned order dated 04/12/2013 dispensed with service of appellant with immediate effect. (Copy is annexed as annexure "B").
4. That the appellant filed representation as which was refused vide order dated 04/12/2013, hence this appeal, inter alia, on the following grounds.

Grounds:-

1. That the impugned order as referred to above are illegal, malafide and against all canons of natural justice, hence liable to be set aside.
2. That the posts of Police Constables were duly advertised in news papers and thereafter a Departmental Selection Committee was constituted who conducted the test and interview and the appellant was validity appointed as Police Constable on the recommendation of Departmental Selection Committee where appellant has served for about seven years and thus valuable rights were accrued to him which cant not be taken back under any law.
3. That respondent No.1 has dismissed the appellant from service vide O.B No. 1638 dated 07/05/2013.
4. That no notice in the matter was even served upon appellant which was mandatory under the law and thus he was condemned unheard.

2. That appellant through the tenure of his service performed his duties very efficiently and satisfactorily and his service record as such remained unblemished.
3. That respondent No.2 vide impugned order dated 04/12/2013 dispensed with service of appellant with immediate effect. (Copy is annexed as annexure "B").
4. That the appellant filed representation as which was refused vide order dated 04/12/2013, hence this appeal, inter alia, on the following grounds.

Grounds:-

1. That the impugned order as referred to above are illegal, malafide and against all canons of natural justice, hence liable to be set aside.
2. That the posts of Police Constables were duly advertised in news papers and thereafter a Departmental Selection Committee was constituted who conducted the test and interview and the appellant was validity appointed as Police Constable on the recommendation of Departmental Selection Committee where appellant has served for about seven years and thus valuable rights were accrued to him which cant not be taken back under any law.
3. That respondent No.1 has dismissed the appellant from service vide O.B No. 1638 dated 07/05/2013.
4. That no notice in the matter was even served upon appellant which was mandatory under the law and thus he was condemned unheard.

5. That the appellant has suffered in chest disease and also injure his head of deported about it and move an application of leave with medical certificate but no head was paid to the same. (Copy is annexed as annexure "C").
6. That the appellant seeks leave of this Honourable Tribunal to rely on additional ground at the time of arguments, if need be.

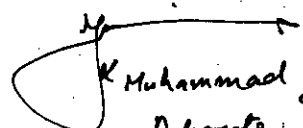
It is, therefore, most humbly prayed that on acceptance of the appeal, the impugned order dated 04/12/2013 be set aside and appellant be re-instated in service with all back benefits with cost.

Dated: 28/12/2013


Appellant,

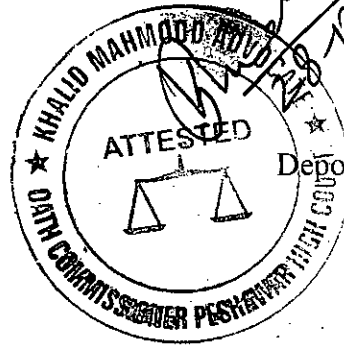
Through,


Miss Hasina Awan
Advocate Peshawar.


Muhammad Jamal Afridi
Advocate Peshawar.

VERIFICATION

Verified on oath that all the contents of the above instant appeal are true and correct to the best of my knowledge and belief.



Deponent

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No. _____/2014

Waqar AliPetitioner

V E R S U S

S.P Headquarter and othersRespondents

ADDRESSES OF PARTIES

Appellant

Waqar Ali S/o Mushtaq Hussain R/o Mohallah Garhi
Saidan inside Hashtnagri Peshawar City

Respondents

1. S.P Headquarters Police Line Peshawar
2. Capital City Police Officer Police Line Peshawar.
3. Inspector General of Police Peshawar
4. Government of Khyber Pakhtunkhwa through
Chief Secretary Peshawar.

Through

Appellant



Miss Hasina Awan
Advocate High Court
Peshawar

Date: 28/12/2014

ORDER

*Annexure
" B-21*

This office order will dispose off departmental appeal of ex-constable **Waqar Ali No. 5403** who was awarded the major punishment of **Dismissal** from service vide OB No. 1638 dated 7.5.2013 under PR 1975 by SP-HQRs: Peshawar on the charge of deliberate absence from lawful duty w.e.f. 12.2.2012 to 7.7.2012 (4-months and 25-days) from Police Lines Peshawar.

Proper departmental proceedings were initiated against him and DSP/Saddar Circle was appointed as the E.O. after observing all the codal formalities the Competent Authority awarded him the above major punishment.

The relevant record has been perused along with his explanation and also heard him in person in OR on 29/11/2013 but he could not defend himself. The appellant is habitual absentee and prior to the instant punishment i.e. Dismissal from service, the appellant has previously earned several minor/major punishments including Dismissal from service on the charge of absence in short period of service. His retention in Police service is not adviseable. Therefore, the undersigned seems no plausible reason to interfere in the order passed by SP-HQRs: Peshawar, hence the appeal is rejected/filed.


**CAPITAL CITY POLICE OFFICER,
PESHAWAR.**

No. 2051-56/PA dated Peshawar the 04/12 13

Copies for information and n/a to the :-

- 1/ SP-HQRs: Peshawar
- 2/ PO /OASI
- 3/ CRC along with S.Roll for making n/entry.
- 4/ FMC encl: complete FM
- 5/ Official concerned.

Annexure "B" = E

درخواست برای تجدید نظر

Dy: No. 4136 PA-CCPO
Dt: 11-9-2013
Encl: 5

No 106-LB
12/9/2013

2007

درخواست تجدید نظر در خصوص پرونده کیفری سال 2007

کاغذی، تازہ وقت مسائنڈ نو نمبر 11/08/1381

25

درخواست تجدید نظر در خصوص پرونده کیفری سال 2007

کاغذی، تازہ وقت مسائنڈ نو نمبر 11/08/1381

درخواست تجدید نظر در خصوص پرونده کیفری سال 2007

کاغذی، تازہ وقت مسائنڈ نو نمبر 11/08/1381

درخواست تجدید نظر در خصوص پرونده کیفری سال 2007

کاغذی، تازہ وقت مسائنڈ نو نمبر 11/08/1381

درخواست تجدید نظر در خصوص پرونده کیفری سال 2007

کاغذی، تازہ وقت مسائنڈ نو نمبر 11/08/1381

درخواست تجدید نظر در خصوص پرونده کیفری سال 2007

کاغذی، تازہ وقت مسائنڈ نو نمبر 11/08/1381

درخواست تجدید نظر در خصوص پرونده کیفری سال 2007

کاغذی، تازہ وقت مسائنڈ نو نمبر 11/08/1381

درخواست تجدید نظر در خصوص پرونده کیفری سال 2007

کاغذی، تازہ وقت مسائنڈ نو نمبر 11/08/1381

e.R. e/FAIC
For Record

D.S.P. LEGAL
C.C.P.O., PESHAWAR.
12-9-2013

0308 8098066
0300 5836857

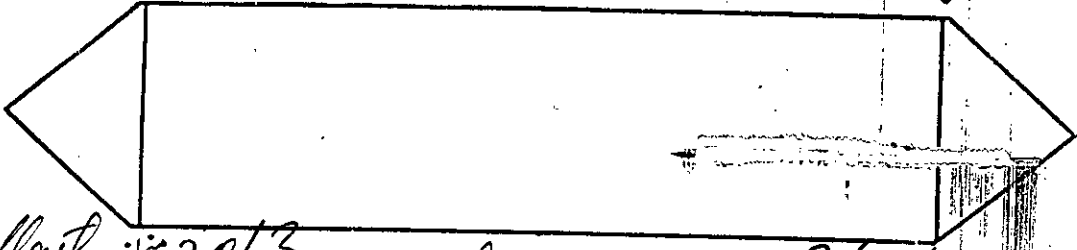
DSP-L
For Comments, P1

11/9/13

11/9/2013

Before the N.W.F.F Service Tribunal
Peshawar

بعدالت



Appellant 2 of 3
Muhammad Ali (Appellant)
S. PHARS etc
(Respondents)

28/12/2013 مورخہ
Service Apped دعویٰ
جرم

باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام Peshawar کیلئے Miss Habiba Awan
Advocate Peshawar
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 ثالثتہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
و اس پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز و اس پر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکورہ کریں۔ لہذا ادکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم 12 28 2013
ماہ ستمبر 2013
واہ الع

کے لئے منظور ہے۔

Accepted
Muhammad Ali

Sign of Appellant

وقار علی
وہوگا

In The Court of Service Tribunal Chairman K.P.K.

waswar Ali vs S. P. etc.

Application for extension of time
for depositing security amount in
the above title case.

Respectfully Sheweth, The applicant submits as under:-

- 1- That the above captioned case is fixed
for today date 23/6/2014.
- 2- That due to some reasons the applicant
did not deposit the security amount.
- 3- That now the applicant want to
deposit the security amount and
there is no bar to allow this application
and the same is according to
law & Justice.

Date 23/6/2014

Applicant
waswar Ali
Through,
Mr. K. R.
Miss Harma Ganes
Advocate

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

Service Appeal No.205/2014.

Ex-constable Waqar Ali No. 5403, S/O Mushtaq Hussain R/O Mohallah Garhi
Saidan inside Hashtnagri Peshawar City.**Appellant.**

VERSUS.

1. Superintendent of Police, HQ:rs, Police Line, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
4. The government of Khyber Pakhtunkhwa through Secretary Home.
Peshawar.....**Respondents.**

Parawise comments on behalf of Respondents.

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from this Honorable Tribunal.
7. That the appellant has got no locus standi.
8. That the appeal is not maintainable.

FACTS:-

- 1- Para No. 1 is not related, hence needs no comments.
- 2- Para No. 2 is incorrect. The appellant is a habitual absentee from his lawful duty, and prior to the instant punishment, the appellant was awarded several minor and major punishments including dismissal from service on same charges.(record attached)
- 3- Para No. 3 is correct to the extent that the appellant while posted at police line Peshawar absented himself from his lawful duty w.e.f

12.02.2012 to 07.07.2012 without taking permission or leave. In this regard, he was issued charge sheet and summary of allegations vide No. 139/E/PA/SP/HQrs: dated 05.03.2012; SDPO Saddar circle was appointed as enquiry officer, he conducted an enquiry against the delinquent official and submitted his report. Upon the findings of enquiry officer, the appellant was issued final show cause notice to which he received and replied. But his reply was found unsatisfactory, and the medical prescription produced in support of his absence from duty during the course of enquiry and personal hearing were verified from concerned hospital which were found fake vide No. 1157/GVH/Verification-13 dated 02.05.2013 (Verification annexed). Furthermore, the appellant was also previously dismissed from service vide OB No. 3115 dated 17.08.2011 on the same charges. As the charges of allegations leveled against him were stand proved, hence he was awarded major punishment of dismissal from service vide OB No. 1638 dated 07.05.2013 by the competent authority. (Charge sheet, statement of allegations, order and verification are annexed as A,B,C and D respectively).

- 4- Para No. 4 is correct to the extent that departmental appeal was preferred by the appellant but was rejected on the ground that charges leveled against him were stand proved. Furthermore this is his second dismissal from service so he does not deserve any leniency.

GROUND:-

1. Incorrect. The punishment order is legal, veraciously and in accordance with law/rules.
2. First part of Para No. 2 is not related while rest of the Para is denied on the ground that, the appellant is a habitual absentee and he does not take interest in his duties. Being a member of a disciplined force he defamed image of the department hence does not deserve any leniency.
3. Para No. 3 is correct, hence needs no comments.
4. Incorrect. as replied in para 3 of facts. Moreover the appellant was called and heard in person. He was also issued final show cause notice.(FSCN is already annexed)
5. Incorrect. The medical prescription produced by the appellant in support of his absence from duty was verified from concerned hospital vide No. 1157/GCH/Verification-13 dated 02.05.2013 which was found fake. (Verification already annexed)
6. That the respondents also seek permission of this Honorable Service Tribunal to raise additional grounds at the time of arguments.

PRAYER:-

It is therefore most humbly prayed that in light of above facts and submissions the appeal of the appellant being devoid of merits, legal footing may be dismissed.


**Secretary,
Govt of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department,
Peshawar.**


**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**


**Capital City Police Officer,
Peshawar.**


**Superintendent of Police
HQ:rs Police line
Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.205/2014.


Ex-constable Waqar Ali No. 5403, S/O Mushtaq Hussain R/O Mohallah Garhi Saidan inside Hashtnagri Peshawar
City.....Appellant.

VERSUS.

1. Superintendent of Police, HQ:rs, Police Line, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
4. The government of Khyber Pakhtunkhwa through Secretary Home PeshawarRespondents.

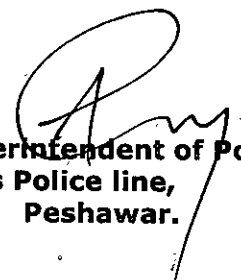
AFFIDAVIT.

We respondents 1 to 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


**Secretary,
Govt of Khyber Pakhtunkhwa,
Home & Tribal Affairs Department,
Peshawar.**


**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**


**Capital City Police Officer,
Peshawar.**


**Superintendent of Police
HQ:rs Police line,
Peshawar.**

1. **Name of Official** Waqar Ali S/o Mushtaq Hussain
2. **Date of Birth** 23.11.1984 *073 JLU 29: 4 * on 26-11-13*
3. **Date of enlistment** 25.07.2007
4. **Education** FA
5. **Courses Passed** Recruit.
6. **Total qualifying service** 04 Years, 10 Months & 07 Days
7. **Good Entries** Nil
8. **Punishment (previous)**

Minor

1. Fine Rs. 1000 in the charge of absence vide OB No. 305 dt: 22.01.2011.
2. Awarded "censure" on the charge of absence vide OB No. 209 dt: 15.01.2011.
3. Awarded "censure" on the charge of absence vide OB No. 952 dt: 17.03.2010.
4. Awarded "censure" on the charge of absence vide OB No. 1440 dt: 23.04.2010.

Major

1. Dismissed from service on the charge of absence vide OB No. 3115 dated 17.08.2011.] charge of absence (87-days)

* Re-instated vide No. 162-66/PA dt: 16.1.2012

9. Bad Entries

Leave without pay

Extra Drill

Warning

11 months & 05 Days

Nil

03

10. Punishment (Current)

- Dismissed from service vide OB No. 1638 dated 07.05.2013 on the charge of absence.

11. Leave Account

Total leave at his credit

Availed leave

Balance

232 Days

Nil

232 Days

PA

Mud
CRC 1-11-13

W/CCPO

Filed

CHARGE SHEET

27/27

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Waqar Ali Shah No.5403 City Police Peshawar with the following irregularities.

"That you Constable Waqar Ali Shah No.5403 while posted at Police Lines, Peshawar were absent from duty w.e.f. 12.02.2012 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case exparte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

J. ant
SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

26

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Waqar Ali Shah No.5403 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

No-498-PA
DT. 7-3-12


STATEMENT OF ALLEGATION

"That Constable Waqar Ali Shah No.5403 while posted at Police Lines, Peshawar absented himself from duty w.e.f. 12.02.2012 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and sn/PO / Saddar circle is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

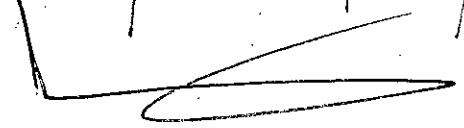
No. 139 /E/PA, dated Peshawar the 05/03 /2012

1. sn/PO / Saddar circle is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.
2. Official concerned

SP/HQ.rs/4/Ri/wan/New punishment folder/Disciplinary Action new

Steno

Call the PC on any working day


DSP-SC
6-3-12

FINAL SHOW CAUSE NOTICE

11

I Superintendent of Police, Headquarters, Capital City Police, Peshawar as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve you Constable Waqar Ali No.5403 of Capital City Police, Peshawar as follows.

1 (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing.

(ii) On going through the findings and recommendation of the enquiry Officer, the material on record and other connected papers produced before the E.O.

I am satisfied that you have committed the following acts/omissions specified in Police Disciplinary Rules 1975 of the said Ordinance.

"That you Constable Waqar Ali No.5403 while posted at Police Lines, Peshawar was absent from 12.02.2012 to 07.07.2012 (05-months & 05-days) without taking permission or leave. This act amounts to gross misconduct on your part and against the discipline of the force"

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Disciplinary Rules 1975 for absence willfully performing duty away from place of posting.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 7 days of its delivery, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parate action be taken against you.

5. The copy of the finding of the enquiry officer is enclosed.

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 139 /PA, SP/HQrs: dated Peshawar the 16/8/2012.

Copy to official concerned

Handwritten notes and signature in Urdu script, including the date 28/8/12.

ORDER

This office order will dispose off departmental appeal of ex-constable **Waqar Ali No. 5403** who was awarded the major punishment of **Dismissal** from service vide OB No. 1638 dated 7.5.2013 under PR 1975 by SP-HQRs: Peshawar on the charge of deliberate absence from lawful duty w.e.f. 12.2.2012 to 7.7.2012 (4-months and 25-days) from Police Lines Peshawar.

Proper departmental proceedings were initiated against him and DSP/Saddar Circle was appointed as the E.O. after observing all the codal formalities the Competent Authority awarded him the above major punishment.

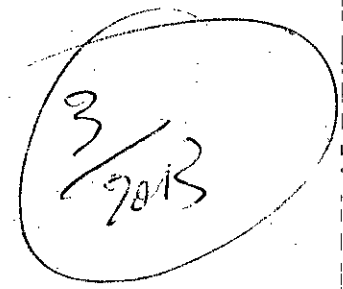
The relevant record has been perused along with his explanation and also heard him in person in OR on 29/11/2013 but he could not defend himself. The appellant is habitual absentee and prior to the instant punishment i.e. Dismissal from service, the appellant has previously earned several minor/major punishments including Dismissal from service on the charge of absence in short period of service. His retention in Police service is not adviseable. Therefore, the undersigned seems no plausible reason to interfere in the order passed by SP-HQRs: Peshawar, hence the appeal is rejected/filed.


**CAPITAL CITY POLICE OFFICER,
PESHAWAR.**

No. 2051-56/PA dated Peshawar the 04/12 13

Copies for information and n/a to the :-

- 1/ SP-HQRs: Peshawar
- 2/ PO /OASI
- 3/ CRC along with S.Roll for making n/entry.
- 4/ FMC encl: complete FM
- 5/ Official concerned.



OFFICE OF THE MEDICAL SUPERINTENDENT
GOVT. NASEERULLAH KHAN BABAR MEMORIAL
HOSPITAL KOHAT ROAD PESHAWAR
No. 1157 /GCH/Verification -13
Dated Peshawar the 02/04/2013.

To,

Mr. Shabih Hussain
Capital City Police Peshawar
Superintendent of Police Headquarters.

PAHQrs No. 2116

Date 3/5/13

Sub:- VERIFICATION OF MEDICAL BILL .

Reference to your office letter No. 1104/PA-2013 dated Peshawar the
March 12,2013 on the above noted subject.

In this connection it is stated that the concerned medical bill vide slips No.
8702/12, No. 12601/12, No. 15809/12, No. 21201/12 and discharge slip No.
40/176/12 is found bogus/fake according to the hospital record.

Report is submitted for information please.

Handwritten signature
Medical Superintendent
Govt. Naseerullah Khan Babar
Memorial Hospital Kohat Road
Peshawar *Signature*

Handwritten notes:
W/No 6/12/13
10605
10605

Cap... 10/8/13

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 205/2014.

**Ex-constable Waqar Ali No. 5403, S/O Mushtaq Hussain R/O Mohallah Garhi Saidan
Hashtnagri Peshawar City. Appellant.**

VERSUS

- 1. Superintendent of Police, HQ;RS, Police Line, Peshawar.**
- 2. Capital City Police Officer, Peshawar.**
- 3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.**
- 4. The government of Khyber Pakhtunkhwa through Secretary Home
Peshawar..... Respondents.**

Re-Application on parawise comments on behalf of the Applicant.

PRELIMENRY OBJECTION:

- 1. That it is incorrect, appeal is in-time in the service tribunal.**
- 2. That it is also incorrect.**
- 3. That it is incorrect.**
- 4. That it is not correct, the applicant has got locas standi.**
- 5. That no comments.**
- 6. That it is in-correct, nothing has been cancelled from this honourable tribunal by the
Appellant.**
- 7. That the appellant has local standi, and has right to file application.**
- 8. That appeal is very much maintainable accordingly.**

Facts:

- 1. That it is related comments is needed.**
- 2. That it is incorrect. The ground relity is not like that, that it is explained in this para by
the respondents.**
- 3. No comments. The arguments in the same para by the respondents will be argued
before this service tribunal coupled with written arguments by the council of the
appellant.**
- 4. That in the same para the allegation against the appellant will be given during the
arguments before the service tribunal.**

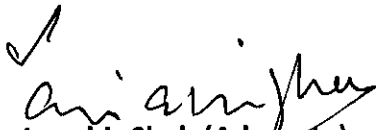
GROUNDS:

1. That the punishment order is illegal, un lawful without justification.
2. That it is incorrect, the allegation in this para is not true.
3. _____
4. That the final show cause and other action is not according to law.
5. No comments.
6. No comments.

PRAYERS:

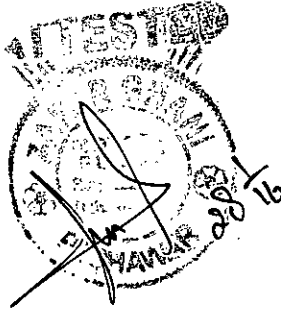
It is humbly prayed that the impuned order OB No. 1638 dated 7.5.2013 may kindly be satisfied and the appellant may kindly be reinstated in the service with all back benefits.

Dated: 25.01.2016


Jawahir Shah (Advocate)
Peshawar High Court
Peshawar.

AFFIDATE:

I hereby solemnly affirm and declare that the contents of the written re-application are true and correct to the best of my knowledge and belief and nothing has concealed from this hounrable tribunal.



Deponent

(3)

ORDER

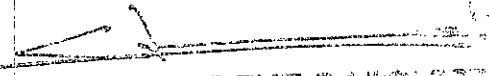
This office order relates to the disposal of formal departmental enquiry against Constable Wagar Ali No.5403 of Capital City Police Peshawar on the allegations that he while posted at Police Lines Peshawar absented himself from lawful duty w.e.f 12.02.2012 to 07.07.2012 without taking permission or leave.

In this regard, he was issued charge sheet and summary of allegations vide No.139/E/PA/SP/H.Qrs, dated 05.03.2012. SDPO Sadder Circle was appointed as Enquiry Officer. He conducted the enquiry proceedings and submitted his report that the defaulter official was ill due to which he remained absent. The E.O further recommended that his period of absence may be treated as leave without pay with minor punishment of censure for not informing his seniors well in time regarding his absence vides Enquiry Report No.498/PA dated 16.08.2012.

Upon the finding of E.O, he was issued final show cause notice to which he received & replied. He submitted his reply of the said notice along with production of medical prescription. He was called & heard in person but his explanation found unsatisfactory.

Therefore, his medical prescription was sent to Medical Superintendent City Hospital Kohat Road Peshawar vide letter No.1104/PA dated 12.03.2013 for verification & report. But the said medical prescription was found bogus/fake as per letter No.1157/GCH/verification-13 dated 02.05.2013.

In light of the finding of E.O, production of bogus medical prescription and other material available on record, the undersigned came to conclusion that the alleged official found guilty of the charges of deliberate absence and he will become a good police officer. Therefore, he is hereby dismissed from service under Police Disciplinary Rules-1975 with immediate effect. Hence, the period he remained absent from 12.02.2012 to 07.07.2012 is treated without pay.


SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

OB. NO. 1638 / Dated 7.5.2013

No. 1695-1798 PA/SP/dated Peshawar the 07.5.2013

Copy of above is forwarded for information & n/action to:

- ✓ Capital City Police Officer, Peshawar.
- ✓ SSP/Operation, Peshawar
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office/OASI/CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

ORDER

This office order will dispose off departmental appeal of ex-constable **Waqar Ali No. 5403** who was awarded the major punishment of **Dismissal** from service vide OB No. 1638 dated 7.5.2013 under PR 1975 by SP-HQRs: Peshawar on the charge of deliberate absence from lawful duty w.e.f. 12.2.2012 to 7.7.2012 (4-months and 25-days) from Police Lines Peshawar.

Proper departmental proceedings were initiated against him and DSP/Saddar Circle was appointed as the E.O. after observing all the codal formalities the Competent Authority awarded him the above major punishment.

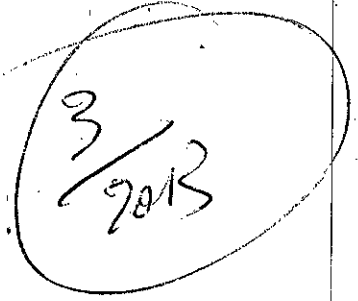
The relevant record has been perused along with his explanation and also heard him in person in OR on 29/11/2013 but he could not defend himself. The appellant is habitual absentee and prior to the instant punishment i.e. Dismissal from service, the appellant has previously earned several minor/major punishments including Dismissal from service on the charge of absence in short period of service. His retention in Police service is not adviseable. Therefore, the undersigned seems no plausible reason to interfere in the order passed by SP-HQRs: Peshawar, hence the appeal is rejected/filed.


**CAPITAL CITY POLICE OFFICER,
PESHAWAR.**

No. 2051-56/PA dated Peshawar the 04/12 13

Copies for information and n/a to the :-

- 1/ SP-HQRs: Peshawar
- 2/ PO /OASI
- 3/ CRC along with S.Roll for making n/entry.
- 4/ FMC encl: complete FM
- 5/ Official concerned.



The Superintendent of Police,
HQs: Peshawar.

121
632
T2
12

SUBJECT: DEPARTMENTAL ENQUIRY AGAINST CONSTABLE
WAQAR ALI SHAH NO.5403.

MEMO.

Please refer to your office Dr: NO.632-E/PA,
dated 11.08.2012, on the subject noted above.

Constable Waqar Ali No.5403, while posted in
Police Lines, Peshawar remained absent from lawful duty
w.e.f 12.02.2012 to 07.07.2012 (~~with~~) with
permission. In this regard, he was issued charged sheet and
statement of allegation and the undersigned was appointed
as enquiry officer to scrutinize the conduct of the said
Constable.

PROCEEDINGS.

The alleged constable Waqar Ali Shah No.5403
was summoned to appear before the undersigned to hear in
person and record their statement. The alleged constable
attended the enquiry proceedings and their statement was
recorded (attached).

The above mentioned absence, whereas, the alleged
constable also appeared before the undersigned and stated t
he was ill, due to which he remained absent. In this regard
he also produced his Medical record (attached).

RECOMMENDATION.

Keeping in view the above absence of the above
constable, he may be treated as leave without pay.
However, he may be awarded the minor punishment of censure
for his delinquency regarding his absence.

No. 498 /PA,
Dt. 16-8-2012

DEPUTY SUPDT. OF POLICE,
SADAR CIRCLE, PESHAWAR.

Issue final
show cause notice.

Signature
Superintendent of Police HQs
Peshawar

ORDER

Constable Waqar Ali Shah No.5403 of Capital City Police Peshawar while posted at Police Lines, Peshawar absented himself from duty with effect from 19.01.2012 to 02.02.2012 (13-days) without taking permission or leave.

In light of the recommendations of E.O, his period of absence from 19.01.2012 to 02.02.2012 is treated as leave without pay. Moreover, he is awarded the minor punishment of censure.

am
**SUPERINTENDENT OF POLICE
HEADQUARERS, PESHAWAR.**

OB NO. 2519
Dated 28/6/2012

No 2521-25 /PA/SP/HQrs: dated Peshawar the 28/6 /2012.

Copies to:

- ✓ DSP/HQrs: Peshawar
- ✓ Pay Officer/ I/C DAR, Peshawar
- ✓ OASI, CRC & PMC along-with complete departmental file.
Officials concerned.

SP/HQ.rs Punishment folder/Disposal order

ORDER

1) Constable Waqar Ali Shah No. 844 while posted at PS. Khan Razik Shaheed was required for duty, searched in the vicinity of Police Station but not found. In this regard an absence entry was made vide DD No. 41 dated 07.03.2011 and he deliberately absented himself from lawful duty without permission/leave till 22.03.2011 (total 43 days)


2) Constable Waqar Ali Shah No. 844 while posted at PS. Khan Razik Shaheed was required for duty, searched in the vicinity of Police Station but not found. In this regard an absence entry was made vide DD No. 14 dated 15.05.2011 and he deliberately absented himself from law full duty with out permission/leave to 15.05.2011 and he deliberately absented himself from lawful duty with out permission/leave till 29.06.2011 (total 44 days)..

In this connection two separate departmental enquiries were initiated against the delinquent Constable Waqar Ali Shah No. 844. SDPO/City as well as SDPO/Subrub were appointed as enquiry officers they submitted their finding that the delinquent official is not taking interest in his legitimate duty and also incorrigible absentee therefore recommended for major punishment of dismissal from service.

Final Show Cause Notices were also issued to the accused constable Waqar Ali Shah No.844 vide No. 2111/SP-City dated 03.05.2011 and No. 2715-SP.City, dated 25.05.2011. In response he submitted his replies but found unsatisfactory.

It is proved beyond any doubt, recommendation of the enquiry officers and other material on record that the delinquent official constable Waqar Ali Shah No. 844 is not taking interest in his legitimate duty and also incorrigible absentee. His retention in service is futile and stigma on the face of police force. I am fully agreed with the recommendation of Enquiry officers and award him major punishment of Dismissal from service with immediate effect under NWFP Removal From Service Special Power (Ordinance)2000. His absence period is treated as leave without pay.

Order announced.


(SYED IMTIAZ ALI SHAH)
QPM, PPM, UNPM (BAR)
Superintendent of Police City,
Peshawar.

OB: No. 3115

Dated 17-8/August: 2011.

No. 4707 /SP: City: dated Peshawar, the 18 /August, 2011.

Copy for information and necessary action to:-

1. The CCPO Peshawar.
2. The SSP Coordination, Peshawar.
3. The SSP Operations Peshawar.
4. The SP HQrs:
5. SDPO/City & Suburb.
6. Pay Officer.
7. SRC.
8. OASI Branch
9. Fauji Missal Branch with enquiry file for record.
10. Official Concerned.

Before the Honble Bench 2 Service Tribunal Khyber Pakhtunkhwa

Appeal No: 205/14

Waqar Ali vs S-P Head Quarter

Application for setting aside ex parte proceedings against the Petitioner/Respondent.

Respectfully & humbly

- I - That the Appeal mentioned above is pending before this Honble Tribunal which is fixed for today.
- II - That the comments on last date was not prepared and was under process in the Dept Resultantly the Honble Bench I proceeded ex parte against the petitioner on 31.3.15 which is liable to be set aside on the following grounds.
- (i) That the default is not willful and the Reply was under process.
 - (ii) That the Honble Supreme Court of Pakistan in various Judgment declared that cases is to be decided on merit and not on Technicalities.
 - (iii) That the Petitioner may kindly be given a chance for defending themselves.

It is therefore, requested that the ex parte proceedings may kindly be set aside and the Petitioner may be allowed to submit Reply.

Dated 13.10.15

Petitioner/Respondent's
Through Reply (Chem/S) Legal,
2
29 S/Legal

Affidavit

It is declared on oath that contents of the petition is correct to the best of my knowledge and belief and nothing concealed from this Honorable Tribunal.

21

Deponent &c

Before the Khyber Pakhtunkhwa Service Tribunal Peshawar

Waqar Ali s/o Mushtaq Hussain R/o Mohallah Garhi Saidan inside Hashtnagri Peshawar City.

Appellant

Versus

1. SP Headquarters Peshawar
2. Chief Capital Police officer
3. Provincial Police Officer
4. Government of Khyber Pakhtunkhwa through Chief Secretary Peshawar

Respondents

APPEAL AGAINST OFFICE ORDER NO. 205/56 DATED 04/12/2013 OF B. NO.1 WHEREBY SERVICE OF THE APPELLANT WAS DISPENSED WITH IMMEDIATE EFFECT.

Prayer: ON ACCEPTANCE OF APPEAL, THE IMPUGNED ORDER NO. 205/56 DATED 04/12/2013 BE SET ASIDE AND THE APPELLANT BE RE-INSTATED IN SERVICE WITH FULL BACK BENEFITS.

Written Arguments

Respectfully sheweth;

1. That Waqar Ali was inducted as Constable in Police Department on 25.7.2007.
2. That Waqar Ali, Constable, No. 5403, while he was on leave on 11/2/2012, suddenly became seriously sick and went to City Hospital for medical check-up, where the doctor kept him under treatment and also prescribed medicine, which

are placed on the file from 12.2.2012 to 7.7.2012 (5 months and 25 days).

3. That in this regard the appellant sent application for leave along-with doctor's prescriptions, which were used by him during his sickness period to the concerned quarters, knowingly that his medical leave has been approved by the concerned officer but later on the appellant understood that his leave was not properly sanctioned and in this regard an inquiry has been initiated against him.
4. That the Competent Authority appointed Enquiry officer i.e. DSP Saddar Circle Peshawar to inquire into absence of appellant. In the inquiry report, the Enquiry Officer has given the following remarks:-

“Keeping in view the above absence of the alleged constable may be treated as leave without pay. However, he may be awarded the minor punishment of Censure for not informing his senior regarding his absence.”

5. That there are number of Judgments of Superior Court that if the Competent Authority, does not agree with recommendations of the Enquiry Officer, it may legally re-constitute another committee to conduct enquiry. This settled principle has been seriously violated and another inquiry has not been initiated, which is contrary to the judgment of Supreme Court, which is reproduced below and copy is attached as annexure;

According to NLR.1999 Labor 88 (SC).


“It is settled proposition of law that the Competent Authority may, in its discretion accept the report of Enquiry Officer/Committee or not. If Competent Authority decides not to accept the report, then another Enquiry Committee can be legally constituted.”

6. That it is pertinent to mention here that, instead of reconstituting another Enquiry Committee, the concerned authorities issued charged sheet/show-cause and proceeded against the appellant, which resulted in his removal from service. It shows malafide, miscarriage of justice and such order is against the law of land.
7. That the appellant has sufficient outstanding leave in his seven years of service, so this period of his medical treatment may kindly be adjusted as leave.

In light of above stated facts, Departmental proceedings against appellant are based on ulterior motive, malafide and against the principles of natural justice. Authorized Officer neither considered the recommendation of Enquiry Officer nor medical grounds.

The impugned removal order of the appellant from service is void ab initio, therefore, It is humbly prayed that the instant appeal may be graciously accepted, impugned order No. 205/56 dated 04/12/2013 be set aside, appellant be reinstated by awarding him all back benefits and any other remedy the Tribunal consider appropriate.

~~Date: 07/10/13~~


Jawahir Shah
Advocate
Peshawar High Court
Peshawar

**BEFORE THE HONOURABLE BENCH 2 SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA**

Appeal No. 205/14

Waqar Ali VS S.p Headquarter

Application for setting aside Ex-parte proceeding against the Petitioners/Respondent by the State is unjustified, and not maintainable.

Respectfully Sheweth:

- 1. That the above subject appeal is prejudice in this honourable bench of service tribunal and the date is fixed for 28.1.2016**
- 2. That the reply from the department on appeal was asked to be sent to this honourable Tribunal, but inspite of many notices issued to the department, they did not submit reply. In this regard many dates were also changed by this tribunal, so that the reply could be received, but the department did not honour the Tribunal.**
- 3. That eventually the Chairman of the Service Tribunal passed an ex-parte order against the department and the respondents according to law.**

The order of the Chairman Service Tribunal is as under:

~~31.3.2015 Appellant with counsel and Addl. A.G for respondents present.
Written reply not submitted despite last chance and despite waiting
till the last hour as such no further opportunity granted to the respondents for
submission of written reply. Those responsible for submission of written reply
be proceeded against departmentally and the appeal be assigned to D.B for
final hearing for 13.10.2015.~~

4. That according to the Rules 19 (1) & (2) NWFP Service Tribunal 1974 is explained as under:

19. Dismissal of Appeal on failure to appear by the parties.

1. Where on the day fixed for the hearing of an appeal or any other day to which the hearing may be adjourned the appellant or his counsel, if any, does not appear when the appeal is called for hearing, the Tribunal may make an order that the appeal is dismissed.


2. Where the appellant or his counsel, if any, appears and the respondent or his counsel, if any, does not appear the appeal shall be heard ex-parte.

3. Where an appeal is dismissed under sub-rule (1) or an ex-parte order made under sub-rule (2), the Tribunal may for sufficient cause on an application made within 15 days restore the appeal or as the case may be set aside the ex-parte order on such terms as to costs or otherwise as it thinks fit to impose.

5. That keeping the above explanation in the aforeside rules the period of appeal is 15 days in which application could be made for the restoration of ex-parte order, otherwise the application/appeal will not be maintainable. Hence restoration is unjustified and against the rules.

It is therefore prayed that the application of the respondents may be dismissed/rejected because the rules are clear in this regard.

Dated: 27.01.2016


Jawahir Shah (Advocate)
Peshawar High Court
Peshawar.

AFFIDATE:

I hereby solemnly affirm and declare that the contents of the written applicant/application are true and correct to the best of my knowledge and belief and nothing has concealed from this honourable tribunal.


Deponent

