

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Service Appeal No. 296/2018

BEFORE: MR. KALIM ARSHAD KHAN, ... CHAIRMAN
MR. MIAN MUHAMMAD, ... MEMBER(E)

Waleed (Ex-Constable No. 3606, District Police Mardan) son of Yousaf Khan, resident of Akhun Baba Koroona Dagay Shah, Tehsil and District Mardan.
..... (*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa** through Secretary Home Civil Secretariat, Peshawar.
2. **Inspector General of Police**, Khyber Pakhtunkhwa (Provincial Police Officer) Peshawar.
3. **Deputy Inspector General of Police**, Mardan. (Regional Police Officer).
4. **District Police Officer**, Mardan. (*Respondents*)

Mr. Amjad Ali, Advocate ... For appellant

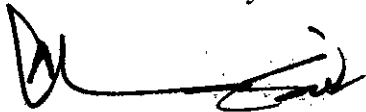
Mr. Muhammad Adeel Butt, Addl. Advocate General ... For respondents.

Date of Institution.....13.02.2018
Date of Hearing.....05.04.2022
Date of Decision.....07.04.2022

JUDGEMENT

KALIM ARSHAD KHAN CHAIRMAN. This appeal has been filed against the order dated 23.10.2017 whereby appeal of the appellant was dismissed by the Regional Police Officer against his order of dismissal from service passed by the District Police Officer, Mardan on 13.03.2017. It also assails the order dated 15.01.2018 whereby his Petition under Rule 11-A was rejected by respondent No.2, hence, this appeal.

2. The facts surrounding the appeal are that the appellant was appointed as Constable in the respondent department vide order dated 25.12.2012. The allegations against the appellant were that he, while posted at Police Lines Mardan, deliberately absented from duty vide DD No. 25 dated 17.01.2016 to DD No. 24




dated 29.06.2016 Police Lines, Mardan and while posted at Police Station Lund Khwar deliberately absented himself from duty from 30.06.2016 till 13.03.2017.

3. Two enquiries, for the above two periods of absence of the appellant, were conducted and in both the enquiries the appellant was found guilty and as a resultant consequence the appellant was dismissed on 13.03.2017.

4. On receipt of appeal and its admission, notices were given to the respondents. They submitted joint written reply and contested the appeal vehemently. It was mentioned that the appellant if, in fact, was bitten by a mad dog then he was required to have had adopted proper procedure for earning leave from the competent authority. Besides the appellant was summoned time and again by the enquiry officer but he did not bother to appear and record his statement. That the appellant was a member of Police Force, he was, therefore, dealt with under the Khyber Pakhtunkhwa Police Rules, 1975 which were still in the field.

5. The learned counsel for the appellant submitted that the appellant was bitten by a mad dog and was sent to the hospital by District Police Mardan and he then continued treatment in DHQ Hospital Mardan. That the appellant had not been served with any charge sheet or final show cause notice and had been condemned unheard. He further contended that on one hand the appellant had been dismissed from service and on the other his absence period was treated as without pay, hence, he had been jeopardized to double punishment and that ex-parte proceedings were conducted against the appellant. Learned counsel for the appellant requested that the appeal might be accepted as prayed for.

6. The learned Additional Advocate General refuted the arguments and prayed for dismissal of the appeal.


07/4/22

7. There is no denying the fact that the appellant remained absent from duty for quite long time without any permission, leave or application/intimation. The appellant could not explain as to what was the factor which stopped him to make application to his high ups to obtain leave. According to him he was bitten by a dog. If it were so, he could have applied and obtained medical leave, which if applied, is hardly refused. The appellant was serving in the disciplined force and was required to maintain strict discipline having regard to nature of duties enjoined to such forces and his attitude could not be excused and tolerated nor his willful absence can be ignored or taken leniently. Reliance is placed on a case law decided by the august Supreme Court of Pakistan and reported as 2022 P L C (C.S.) 278 titled "*Deputy Inspector General of Police, Lahore and Others Versus Sarfraz Ahmed*", wherein the august Supreme Court of Pakistan was pleased to have observed as under:

"(a) Civil service---

---Police constable---Willful absence from duty, involvement in criminal cases and maintaining relations with criminals---Dismissal from service---Department had conducted a regular inquiry against the respondent-police constable in which it was found that he had close relations with criminals operating in the city against whom as many as 37 FIRs had been registered for the offences of robbery, kidnapping for ransom, dacoity etc.---Department had followed all the legal formalities while awarding penalty of dismissal to the respondent and he was given full opportunity to defend himself---Furthermore respondent remained absent (from duty) for a long period of about 55 days without taking prior leave or without informing his higher ups---Respondent being a member of a highly disciplined force was required to maintain strict discipline having regard to nature of duties enjoined to such forces and his attitude could not be excused and tolerated---Appeal was allowed, impugned judgment of Provincial Service Tribunal was set-aside, and major penalty of dismissal from service imposed upon respondent was maintained."

8. Therefore, this appeal is groundless and is accordingly dismissed. Costs to follow the event. Consign.



9. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 07th day of April, 2022.



(KALIM ARSHAD KHAN)
Chairman

(MIAN MUHAMMAD)
Member (E)

07th April, 2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, containing 04 pages, the appeal is groundless and is accordingly dismissed. Costs to follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 07th day of April, 2022.*



(KALIM ARSHAD KHAN)

Chairman


(MIAN MUHAMMAD)

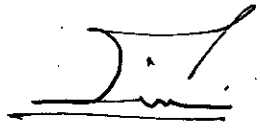
Member (E)

16.09.2021

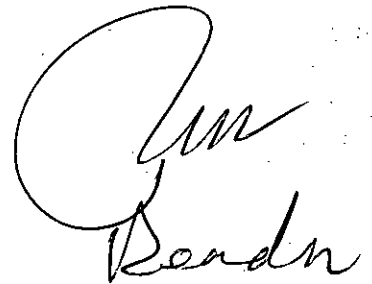
Junior of learned counsel for the appellant present. Mr. Khayal Roz, Inspector (Legal) alongwith Mr. Javed Ullah, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant was not feeling well and has proceeded to his home. Adjourned. To come up for arguments before the D.B on 28.12.2021.


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


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Due to winter vacation the case is adjourned to 5/4/22 for the same as before.

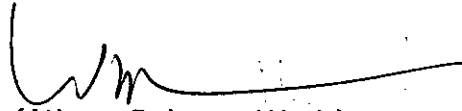

Qum Bander

10.03.2021


Nemo for appellant.

Noor Zaman Khan Khattak learned District Attorney
alongwith Khyal Roz Inspector for respondents present.

Notice be issued to appellant/counsel for 04/06/2021
for arguments before D.B.



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

04.06.2021

Appellant alongwith his counsel Mr. Amjid Ali, Advocate,
present. Mr. Khayat Roz, Inspector (Legal) alongwith Mr.
Kabirullah Khattak, Additional Advocate General for the
respondents present.

Arguments could not be heard due to paucity of court time.
Adjourned. To come up for arguments before the D.B on
16.09.2021.



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



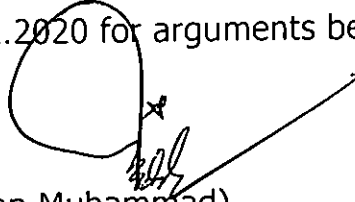
(SALAH-UD-DIN)
MEMBER (JUDICIAL)

30.09.2020

Nemo for appellant.

Mr. Usman Ghani learned District Attorney alongwith
Atta ur Rehman Inspector for respondents present.

Notice be issued to appellant and his counsel for
15.12.2020 for arguments before D.B.


(Mian Muhammad)
Member (E)

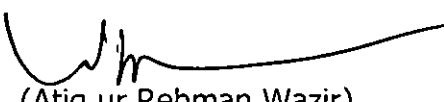

(Rozina Rehman)
Member (J)


15.12.2020

Appellant in person present.

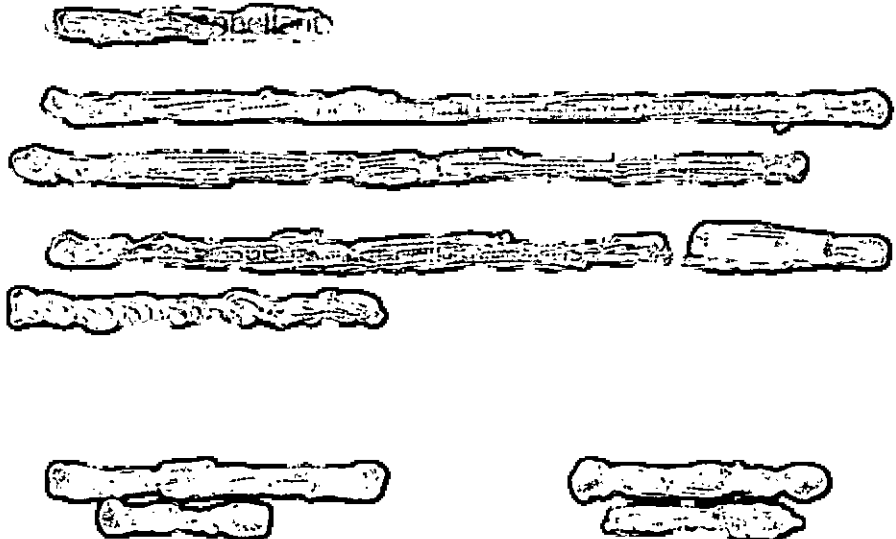
Mr. Kabir Ullah Khattak learned Additional Advocate
General alongwith Khyal Roz Inspector for respondents
present.

Former made a request for adjournment as his counsel is
busy before Apex Court. Adjourned. To come up for
arguments on 10.03.2021 before D.B.


(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

10.03.2021




10.02.2020

Appellant alongwith his counsel and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 13.04.2020 for arguments before D.B.


(Hussain Shah)
Member

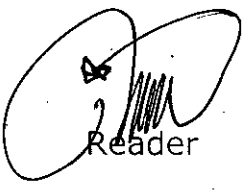

(M. Amin Khan Kundi)
Member

Due to Covid-19, the case is adjourned. To come up for the same on - 01-07-2020


Reader

01.07.2020

Due to COVID-19, the case is adjourned. To come up for the same on 30.09.2020 before D.B.


Reader

05.08.2019

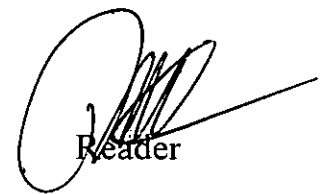
Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney present. Appellant submitted application for adjournment. Application allowed. Adjourn. To come up for arguments on 29.10.2019 before D.B.


Member


Member

29.10.2019

Due to incomplete bench the case is adjourned. To come up for the same on 17.12.2019 before D.B.


Reader

17.12.2019

Lawyers are on strike on the call of Peshawar Bar Association. Adjourn. To come up for further proceedings/arguments on 10.02.2020 before D.B.


Member


Member

23.01.2019


Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, S.I (Legal) for the respondents present. Representative of the department submitted record, copy of the same is handed over to learned counsel for the appellant. Adjourned to 26.03.2019 for arguments before D.B.



(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

26.03.2019


Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Learned counsel for the appellant requests for adjournment. Adjourned. To come up for arguments on 12.06.2019 before D.B.


(Hussain Shah)
Member


(Muhammad Amin Khan khudi)
Member


12-6-2019

The Bench is incomplete
Therefore case is adjourned
to 5/8/19


Rendas


Service Appeal No. 296/2018

29.08.2018 Appellant in person and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, S.I (legal) for the respondents present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for rejoinder and arguments on 18.10.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member


18.10.2018 Learned counsel for the appellant and Mr. Muhammad Jan learned DDA alongwith Mr. Atta Ur Rehman SI for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 03.12.2018 before D.B.


(Hussain Shah)
Member


(Ahmed Hassan)
Member

03.12.2018 Appellant in person present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, S.I (Legal) for the respondents present. Appellant submitted rejoinder, copy of the same is handed over to learned Additional AG. Adjourned. To come up for arguments on 23.01.2019 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

04.04.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that the appellant was appointed as constable in the Police Department on 25.12.2012. On account of willful absence from duty he was dismissed from service vide impugned order dated, 13.03.2017. He preferred an undated departmental appeal, which was dismissed on 23.10.2017. That he filed a review petition which was rejected on 15.10.2018. Learned counsel for the appellant when confronted on the point of limitation was unable to give any plausible explanation. The appellant has not been treated according to law and rules.

**Appellant Deposited
Security & Process Fee**

Points urged need consideration. Admit, subject to limitation. The appellant is directed to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 28.05.2018 before S.B.


(AHMAD HASSAN)
MEMBER

28.05.2018

Junior to counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General alongwith Atta Ur Rehman S.I legal for the respondents present. Written reply not submitted. Representative of the respondents seeks time to file written reply/comments. Granted. To come up for written reply/comments on 03.07.2018 before S.B


Member

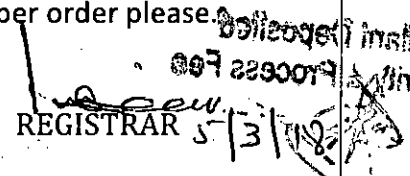


03.07.2018

Junior counsel for the appellant and Mr. Sardar Shaukat Hayat, Addl: AG alongwith Mr. Atta Ur Rahman, ASI for the respondents present. Written reply submitted. To come up for rejoinder if any and arguments on 29.08.2018 before D.B.


Member

Form-A
FORM OF ORDERSHEET

Court of _____
Case No: 296/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	05/03/2018	<p>The appeal of Mr. Waleed resubmitted today by Mr. Amjid Ali Advocate may be entered in the Institution Register and put up to Learned Member for proper order please.</p> <p style="text-align: right;">  REGISTRAR 5/3/18 </p>
2-	06/03/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/03/18.</u></p> <p style="text-align: right;">  MEMBER </p>
19.03.2018		<p>Learned counsel for the appellant present and seeks adjournment. Adjourn. To come up for preliminary hearing on 04.04.2018 before S.B</p> <p style="text-align: right;">  Member </p>

The appeal of Mr. Waleed son of Yousaf Khan Ex-Constable No. 3606 Distt. Police Mardan received today i.e. on 13.02.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.


- 1- Annexure-A of the appeal is illegible which may be replaced by legible/better one.
- 2- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.

No. 345 /S.T,

Dt. 14/02 /2018


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Amjid Ali Adv. Mardan.

Sir The objection removed
and resubmit after complete
Amjad Ali
Mardan


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

Service Appeal No. 296 /2018

Waleed.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through
Secretary Home, Civil Secretariat, Peshawar and others

.....Respondent

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Appellant

Through

asluor

Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

Cell: 0321-9882434

Dated: 13.02.2018

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 296 /2018

Khyber Pakhtukhwa
Service Tribunal

Diary No. 196

Dated 13-2-2018

Waleed S/o Yousaf Khan
Ex-Constable 3606, District Police Mardan.
R/o Akhun Baba Koroon, Dagay Shah, Tehsil & District
Mardan.

.....Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa (Provincial Police Officer), Peshawar.
3. Deputy Inspector General of Police, Mardan (Regional Police Officer).
4. District Police Officer, Mardan

.....Respondents

Appeal against the final Appellate Order dated 15.10.2018 passed by respondent NO.1 (received on 11.02.2018 passed by respondent NO.1 (received on 11.02.2018 through his own efforts) and order dated 23.10.2017 passed by respondent No.3 and order dated 13.03.2017 passed by respondent No.4, wherein appellant has been dismissed from service, which is illegal, against law and facts.

Filed to-day
~~Registrar~~
13/2/18

Re-submitted to -day
and filed.

~~Registrar~~
5/3/18

PRAYER:

On acceptance of this appeal, the impugned final Appellate Order dated 15.01.2018 passed by

(2)

respondent NO.1 (received on 11.02.2018 passed by respondent NO.1 (received on 11.02.2018 through his own efforts) and order dated 23.10.2017 passed by respondent No.3 and order dated 13.03.2017 passed by respondent No.4, wherein appellant has been dismissed from service, may please set-aside and the appellant may be reinstated in service with all back benefits.

Sir,

Appellant humbly submits as under;-

- 1) That appellant was appointed as a Constable in the respondent/ department vide order dated 25-12-2012.
- 2) That appellant has been dismissed from service by the DPO, Mardan vide order dated 13.03.2017 on the ground of absence for 420 days, which is illegal, against law and facts. **(Copy of order dated 13.03.2017 is Annex "A")**
- 3) That appellant filed departmental appeal as per Appeal Rules, to the DIG Mardan, which is dismissed vide order dated 23.10.2017, which is illegal, against law and facts. **(Copy of appeal and order of DIG, Mardan dated 23.10.2017 is Annex "B")**
- 4) That the appellant filed departmental appeal under Rule 11-A of the KPK Police Rules, 1975 which is dismissed vide order dated 15.01.2018, which is illegal, against law and facts. **(Copy of the order dated 15.01.2018 alongwith appeal are Annex "C")**

- (3)
- 5) That the impugned orders are illegal, without lawful authority and against law and facts on the following grounds:-

GROUND

- A. Because appellant was bitten by a mad dog and was taken to the hospital by the concerned District Police Mardan and then continued treatment in DHQ Hospital, Mardan and from the concerned Syncretic. **(Copies of descriptions in original duly attested by the concerned Medical Officers are Annex "D")**
- B. Because appellant has not been served with any charge sheet or final show cause notice and has been condemned unheard.
- C. Because the ex-parte action/ orders has been passed against the appellant by the DPO, Mardan which is as per Law and consistent judgments of this hon'ble Tribunal as well as hon'ble Supreme Court of Pakistan considered as weak evidence and weak action under the law and liable to be struck down on this score alone.
- D. Because the impugned orders are illegal, against law and facts
- E. Because the respondents are bound to proceed against the appellant under the KP E&D Rules, 2011 and by not proceeding under the same, the respondents have committed glaring illegality.
- F. Because the Police Rules, 1975 are ultra-vires as the Police Ordinance, 1968 has been omitted by the Police Order, 2002.
- G. Because the past record of the appellant is clean and transparent.

- H. Because the absence was not willful and therefore, cannot constitute an offence.
- I. Because the requirement of section-9 of the KP E&D Rules, 2011 regarding service of show cause notice and publication in two newspapers has not been complied with and solely on this score alone, the impugned orders are illegal, against law and facts.
- J. Because when the DPO, Mardan has treated the absence period of 420 days as leave without pay, then the second punishment of dismissal is not warranted in the facts and circumstances of the case as per 1996 SCMR.

It is therefore, humbly prayed that, On acceptance of this appeal, the impugned final Appellate Order dated 15.01.2018 passed by respondent NO.1 (received on 11.02.2018 passed by respondent NO.1 (received on 11.02.2018 through his own efforts) and order dated 23.10.2017 passed by respondent No.3 and order dated 13.03.2017 passed by respondent No.4, wherein appellant has been dismissed from service, may please set-aside and the appellant may be reinstated in service with all back benefits.

Appellant *[Signature]*



Through

Amjad Ali (Mardan)
 Advocate
 Supreme Court of Pakistan

VERIFICATION

It is verified that, the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

[Signature]

Deponent

(5)

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

Service Appeal No. _____/2018

Waleed.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through
Secretary Home, Civil Secretariat, Peshawar and others

.....Respondent

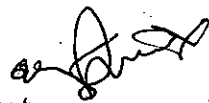
ADDRESSES OF PARTIES

APPELLANT

Waleed S/o Yousaf Khan
Ex-Constable 3606, District Police Mardan.
R/o Akhun Baba Koroona, Dagay Shah, Tehsil & District
Mardan.

RESPONDENTS

1. Govt. of Khyber Pakhtunkhwa through Secretary Home,
Civil Secretariat, Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa
(Provincial Police Officer), Peshawar.
3. Deputy Inspector General of Police, Mardan (Regional
Police Officer).
4. District Police Officer, Mardan


Appellant

Through


Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

BETTER COPY

Better copy

6

MARDAN DISTRICT

ORDER.

This order will dispose-off departmental inquiries, which been conducted against Constable Waleed No.3606, on the allegations that:

1. He while posted at Police Lines Mardan, deliberately absented himself from lawfull duty vide DD No. 25 dated: 17.01.2016 to DD No.24 dated: 29.06.2016 Police Lines, Mardan.
2. He while posted at Police Station Lund Khwar, deliberately absented himself from lawful duty from dated DD No.04 dated: 30.06.2016 to till-date without any leave / permission of the competent authority.

This attitude adversely reflected on his performance which is an indiscipline at and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975. Therefore he has recommended for departmental action.

In this connection Constable Waleed No.3606, was charge sheeted vide this office order No.29/R, dated: 09.03.2016 and Charge Sheet No. 238/R, dated: 28.07.2016. To scrutinize the conduct Mr. Ikhtiraz Khan DSP/ Rural Mardan and Mr. Ijaz Khan, DSP/ Katlong Mardan were appointed as Enquiry Officers, whom after fulfilling necessary process (not visible) their finding to the undersigned vide his office endorsement No.382/St/R, dated: (not visible) and Endorsement No.235/KTG, dated: 07.08.2016 respectively. The alleged official (not visible) hearing before the EOs so that an ex-part action was taken against him and recommended for major punishment by the Enquiry Officer.

The undersigned agreed with the findings of the enquiry officers and the alleged Constable Waleed No.3606, is hereby awarded major punishment of "Dismissal from Service (not visible) his (420)-days absence period is counted as leave without pay, with immediate effect (not visible) of the power vested in me under the above quoted rules.

Order

O.B No _____

Dated _____

Sd/-

Dr. Mian Saeed Ahmed (PSP)

District Police Officer,

Mardan

No. _____ / dated Mardan the 13.03.2017.

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
2. The S.P, Operations Mardan.
3. The Pay Officer (DPO), Mardan.
4. The E.O,(not visible) Mardan.
5. The OSI (not visible) Mardan.

Falses
Muzaffar
Mardan
(Signature)

ORDER

Aux-A

(6)

This order will dispose-off departmental inquiries, which have been conducted against Constable Waleed No. 3606, on the allegations that:

1. He while posted at Police Lines Mardan, deliberately absented himself from lawful duty vide DD No. 25 dated 17.01.2016 to DD No. 24 dated 29.06.2016 Police Lines, Mardan.
2. He while posted at Police Station Lund Khwar, deliberately absented himself from lawful duty from dated DD No. 04 dated 30.06.2016 to till-date without any leave / permission of the competent authority.

This attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules, 1975. Therefore he was recommended for departmental action.

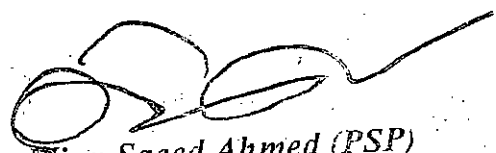
In this connection, Constable Waleed No. 3606, was charge sheeted vide this office order No. 29/R, dated 29.03.2016 and Charge Sheet No. 238/R, dated 28.07.2016. To scrutinize the conduct Mr. Ikhtiraz Khan, DSP/Rural Mardan and Mr. Ijaz Khan, DSP/Kandahar Mardan were appointed as Enquiry Officers, whom after fulfilling necessary process submitted their findings to the undersigned vide his office endorsement No. 382/St/R, dated 27.07.2016 and Endorsement No. 235/KFG, dated 07.08.2016 respectively. The alleged official did not appear before the EOs so that an ex-parte action was taken against him and recommended for major punishment by the Enquiry Officers.

The undersigned agreed with the findings of the enquiry officers and the alleged Constable Waleed No. 3606, is hereby awarded major punishment of "Dismissal from Service" and his (420)-days absence period is counted as leave without pay, with immediate effect in exercise of the power vested in me under the above quoted rules.

Order as above.

O.B No. _____

Dated 13/03/2017.


Dr. Mian Saeed Ahmed (PSP)
District Police Officer,
Mardan.

No. 28/11/17 dated Mardan the 13-3-2017.

Copies for information and necessary action to:-

- The Deputy Inspector General of Police, Mardan Region-I, Mardan.
- The S.P. Operations, Mardan.
- The Pay Officer (DFO) Mardan.
- The E.C (H.O) Mardan.
- The OSI (H.O) Mardan.

MARDAN

Subject: APPEAL AGAINST THE ORDER OF DISTRICT POLICE OFFICER MARDAN, ISSUED VIDE HIS OFFICE ENDORSEMENT NO.2910-14 DATED 13-03-2017 WHERE BY THE APPELLANT WAS AWARDED THE PUNISHMENT "DISMISSEL FROM SERVICE".

R/Sir,

It is submitted that:

The DPO Mardan had issued the following charge sheets with the allegations:-

- A. He while posted at police lines, Mardan, deliberately absented himself from lawful duty vide DD No.25 dated 17-01-2016 to DD No.24 dated 29-06-2016 police lines, Mardan.
- B. He while posted at police station Lund Khwar deliberately absented himself from lawful duty vide DD No:04 dated 30-06-2016 till the date of dismissal.

1. That for the period of absence at 02 different occasion, 02 separate charge sheets were issued, DSP rural Mardan and DSP katlang Mardan were appointment as inquiry officer respectively. Both the inquiry officer have sent their inquiry findings to the office of DPO Mardan. The DPO Mardan took an ex-parte action against the appellant and dismissed him from the service on account of his absence for 420 days vide his office endorsement No. 2910-14 dated 13-03-2017. (Copy enclosed)
2. That the facts behind the alleged period of absence are that during in the year 2016, the appellant transferred to P.P Dubai Adda of PS Choora. During patrolling, the appellant was made Dog severely bite the appellant on left leg. The appellant informed the Moharar of the P.P regarding the incident. Meanwhile, the appellant was transferred to police lines Mardan. The appellant requested the Moharar of the police lines for granting leave to make his treatment but his request was turned down. The appellant left the police lines Mardan for DHQ Mardan , where he started his initial treatment of biting by mad Dog. After then, the appellant continued his treatment at National Institute of Health (NIH), Islamabad. During this period, it was learnt to the appellant that he has been marked as absent. (Medical documents are enclosed)
3. That the appellant was transferred to police station lund khwar and on 29-06-2016, the appellant reported his arrival at PS Lund Khwar and assumed his charge of duty. Due to the continuous chronic disease of (Biting by mad Dog), the appellant was not in a good state of affair, rather he was mental disturbed. The appellant left the police station for his village and visited different spiritual Quarters for treatment which is continued till now.
4. That the period of absence, no any kind of charge sheet was served upon the appellant and the appellant was kept totally untouched during the course of alleged departmental inquiries.

(7)
Aux-B
Served
Mansell

5. That the appellant was not given any opportunity to put forward his defense / virgin before the inquiry officer and thus an ex-parte action was taken against him. As per justice of the universe that no one can be condemned unheard.

6. That there is no denying that the appeal is time bared but this was due to the mental agony of the appellant faced to him by a chronic disease mad Dog bite, furthermore, it is well settled principle of law that procedural technicalities should not be allowed on dispensation of substantial justice. procedural laws are meant to advance the cause of justice and not thwart it. The supreme court of Pakistan in criminal original petition No. 90/2009 has further emphasized that while deciding case principles of natural justice "audi alteram partem" and other fundamental rights should be observed which guarantee the right of appellant.

Prayer:

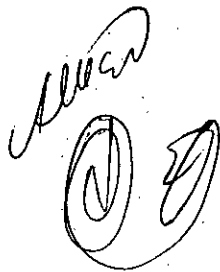
It is requested that the appeal of the appellant may kindly be accepted and Order of the punishment be set aside on the following grounds:-

- A. The allegations i.e the alleged absence is not intentional but was due the chronic disease / mental agony of the appellant
- B. The appellant was not given an opportunity of self defense, neither any charge sheet was served upon the appellant nor the appellant was examined during the course of inquiries. An ex-parte action was taken against him which is against the principle of law that no one can be condemned unheard.
- C. The Appellant was not given any opportunity of "PERSONAL HEARING" by the competent authority at the time of passing of impugned punishment Order, which is contrary to the Police rules 1975, hence great injustice was extended.
- D. The Appellant was not given "FINAL SHOW CAUSE NOTICE" by the competent authority, which was the necessary requirement as per relevant rules and thus the illegal Order was passed.
- E. In addition to the above facts, the E.O has also made certain irregularities and has dashed the rules and regulations to the ground. The present inquiry, so far conducted is just an eye wash and amounts to fill in the blanks.
- F. The Appellant performed his duties efficiently, honestly, with great zeal and never showed any in efficiency and negligence during his service. Except the mere charge of absence.

Keeping in view of the facts and circumstances mentioned above, it is humbly requested that the appeal of the appellant may kindly be accepted and the impugned Order passed by DPO Mardan may kindly be set aside.

Yours Obediently,

Ex-Constable WALEED No.3606
District Police Mardan
(Now Dismissed from service)



ORDER.

Shawid Rana
(Signature)

(9)

This order will dispose-off the appeal preferred by Ex-Constable Waleed No. 3606 of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded Major punishment of dismissal from service vide OB No. 678 dated 13.03.2017.

Brief facts of the case are that, the appellant while posted at Police Lines Mardan, deliberately absented himself from lawful duty from 17.01.2016 to 29.06.2016 and while posted at Police Station Lund Khawar, absented himself from lawful duty with effect from ~~date~~ 30.06.2016 till the date of his dismissal without any leave / permission of the competent authority. Consequently he was charge sheeted and Mr. Ikhtiraz Khan, the then DSP/Rural Mardan and Mr. Ijaz Khan, DSP/Katlang Mardan were appointed as Enquiry Officers. The Enquiry Officers after fulfilling necessary process, submitted their findings to the District Police Officer, Mardan stating therein that the alleged official did not appear before the Enquiry Officers so taking ex-parte action he was recommended for major punishment by the Enquiry Officers. The District Police Officer, Mardan agreed with the findings of the Enquiry Officers and the alleged Constable was dismissed from service.

He was called in orderly room held in this office on 18.10.2017 and heard him in person, but he did not produce reasonable explanation about his long absence. Therefore, I find no grounds to intervene the order passed by District Police Officer, Mardan. However the words, leave without pay have no legal grounds, therefore rectifying the lacuna in the punishment order, the appellant is dismissed from service from the date of absence i.e 17.01.2016.

ORDER ANNOUNCED.

(Signature)
O/C (Muhammad Alam Shinwari) PSP
Regional Police Officer,
Mardan

No. 7884 /ES, Dated Mardan the 23 - 10 - /2017.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 576/LB dated 12.10.2017. The Service Record is returned herewith.

(*****)

BEFORE THE PROVINCIAL POLICE OFFICER KPK, PESHAWAR

Subject: MERCY PETITION AGAINST THE ORDER OF DISTRICT POLICE OFFICER MARDAN, ISSUED VIDE HIS OFFICE ENDORSEMENT NO. 2910-14 DATED 13-03-2017 WHERE BY THE PETITIONER WAS AWARDED THE PUNISHMENT "DISMISSAL FROM SERVICE" AND REJECTION OF APPEAL BY DIG MARDAN (REGION-1) VIDE HIS OFFICE ORDER NO. 7884/ES DATED 23-10-2017

R/Sir,

It is submitted that:

The DPO Mardan had issued the following charge sheets with the allegations:-

- A. He while posted at police lines, Mardan, deliberately absented himself from lawful duty vide DD No.5 dated 17-01-2016 to DD No. 24 dated 29-06-2016 police lines, Mardan.
 - B. He while posted at police station Lund Khwar deliberately absented himself from lawful duty vide DD No. 04 dated 30-06-2016 till the date of dismissal.
1. That for the period of absence at 02 different occasions, 02 separate charge sheets were issued, DSP rural Mardan and DSP Katlang Mardan were appointed as inquiry officer respectively. Both the inquiry officers have sent their inquiry findings to the office of DPO Mardan. The DPO Mardan took an ex-parte action against the petitioner and dismissed him from the service on account of his absence for 420 days vide his office endorsement No. 2910-14 dated 13-03-2017. (Copy enclosed)
 2. That the petitioner filed an appeal before the DIG Mardan (Region-1) against the order of punishment vide dated 13-03-2017, which was rejected by the DIG Mardan vide his office endorsement No. 7884/ES dated 23-10-2017 (Copy enclosed).
 3. That the facts behind the alleged period of absence are that during in the year 2016, the petitioner transferred to P.P Dubai Adda of PS Choorra. During patrolling, the petitioner was bitten by mad Dog severely on left leg. The petitioner informed the Moharrar of the P.P regarding the said incident. Meanwhile, the petitioner was transferred to police lines Mardan. The petitioner requested the Moharrar of the police lines for granting leave to make his treatment but his request was turned down. The petitioner left the police lines Mardan for DHQ Mardan, where he started his initial treatment of biting by mad Dog. After then, the petitioner continued his treatment at National Institute of Health (NIH), Islamabad. During this period, it was learnt to the petitioner that he has been marked as absent. (Medical documents are enclosed with the inquiry file).

Shoukat
Shoukat

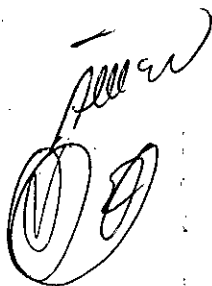
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Anx - c

4. That the petitioner was transferred to police station Lund Khwar and on 29-06-2016, the petitioner reported his arrival at PS Lund-Khwar and assumed his charge of duty. Due to the continuous chronic disease of (Biting by mad Dog), the petitioner was not in a good state of affairs, rather he was mentally disturbed. The petitioner left the police station for his village and visited different spiritual Quarters for treatment which is continued till now.
5. That in the period of absence, no any kind of charge sheet was served upon the petitioner and the petitioner was kept totally untouched during the course of alleged departmental inquiries.
6. That the petitioner was not given any opportunity to put forward his defense / version before the inquiry officer and thus an ex-parte action was taken against him. As per principles of justice, no one can be condemned unheard.
7. That there is no denying that the appeal is time barred but this was due to the mental agony of the petitioner faced to him by a chronic disease mad Dog bite, furthermore, it is well settled principle of law that procedural technicalities should not be allowed on dispensation of substantial justice. Procedural laws are meant to advance the cause of justice and not to thwart it. The supreme court of Pakistan in criminal original petition No. 90/2009 has further emphasized that while deciding cases, principles of natural justice "Audi alteram partem" and other fundamental rights should be observed which guarantee the right of the petitioner.

Prayer:

It is requested that the mercy petition of the petitioner may kindly be accepted and order of the punishment be set aside on the following grounds:-

- A. The allegations i.e. the alleged absence was not intentional but was due to the chronic disease/mental agony of the petitioner.
- B. The petitioner was not given an opportunity of self defense, neither any charge sheet was served upon the petitioner nor the petitioner was examined during the course of inquiries. An ex-parte action was taken against him which is against the principle of law that no one can be condemned unheard.
- C. The petitioner was not given any opportunity of "Personal Hearing" by the competent authority at the time of passing of impugned punishment order, which is contrary to the Police rules 1975, hence great injustice was extended.





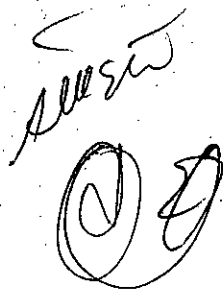
- D. The appellant was not given "Final Show Cause Notice" by the competent authority, which was the necessary requirement as per relevant rules and thus the illegal order was passed. (12)
- E. In addition to the above facts, the I/O has also made certain irregularities and has dashed the rules and regulations to the ground. The present inquiry, so far conducted is just an eye wash and amounts to fill in the blanks.
- F. The petitioner performed his duties efficiently, honestly, with great zeal and never showed any inefficiency and negligence during his service except the mere charge of absence.

Keeping in view, the facts and circumstance mentioned above, it is humbly requested that the mercy petition of the petitioner may kindly be accepted and the impugned order passed by DPO Mardan may kindly be set aside.

Yours Obediently,

Ex-Constable Waleed No. 3606
District Police Mardan
(Now Dismissed from service)

Dated: November, 2017

Waleed




OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 283 /18, dated Peshawar the 15/0/2018.

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-FC Waleed No. 3606. The petitioner was dismissed from service w.e.f 17.01.2016 by DPO Mardan vide OB No. 678, dated 13.03.2017 on the charge of absence from duty for 420 days.

Meeting of Appellate Board was held on 28.12.2017 wherein petitioner was heard in person. During hearing petitioner contended that his absence was not deliberate but he was bitten by mad dog on left leg.

Perusal of record revealed that Waleed Ex-Constable No. 3606 was dismissed from service on charges of wilful and deliberate absence from duty for long period of 420 days vide order dated 13.03.2017 of DPO Mardan and his departmental appeal was filed vide order dated 23.10.2017 of RPO Mardan.

Petitioner was heard in detail but he failed to advance any plausible explanation in rebuttal of the charges.

In view of the willful absence of petitioner for long period, the Board decided that his petition is hereby rejected.

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

(AHSAN SAIFULLAH)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. S/ 284-90 /18,

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan.
2. District Police Officer, Mardan.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar. *
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

Handwritten signature and initials

871



NATIONAL INSTITUTE OF HEALTH
Public Health Laboratories Division
Department of Virology

WHO Collaborative Center for Research & Training in Viral Diagnostics
WHO Regional Reference Laboratory for the Polio Eradication Initiative
Tel: (051) 9255110-14 (Ext. 3152,3247) Fax: (051) 9255099

Name: WALEED	Age/Sex: 28/Male	
Address:	Ref. By: NIH	
Reception No: NE - 10267	Lab. No: 1373	
Date of receipt: 02.10.2015	Specimen: BLOOD	
Date of report: 13.10.2015	Examination required: RAT	
LABORATORY REPORT		
Parameter/Test	Technique	Result
Rabies antibodies titer	Enzyme immuno assay (EIA)	> 4.00 IU/ml

Interpretation: Any person having a level of 0.5 IU/ ml of antirabies antibodies is considered "Immunized against rabies" according to WHO criteria.

Comments (if any):

for Igme Rashid

Head of Department/ Authorized Signature

Physician

Dr. Fazali Rabbi

Registrar - Medical Unit

District Headquarter Hospital Mardan

Not valid for Court

رجسٹرار، میڈیکل یونٹ ڈسٹرکٹ ہیڈ کوارٹر ہسپتال مردان

ماہر امراض:

معدہ، جگر، ہیماٹائٹس بی سی، بلڈ پریشر، قلب، فالج، شوگر، دمہ، گردہ

Name _____ Address _____ Date 20/2/16

Clinical Record

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ایک گولی روزانہ

0300-5735980

0301-8938665

نوٹ مریض نمبر لینے کیلئے اس نمبر پر رابطہ کریں۔

بہادر میڈیکل سنٹر بالقابل ڈی ایچ کیو ہسپتال شمشی روڈ مردان

کلینک

Dr. Shakeel Ahmad

MBBS (Pesh)

MCPS (Medicine)

FCPS-II (Gastroenterology)

Physician & Gastroenterologist
Lady Reading Hospital Peshawar



32
ڈاکٹر شکیل احمد

ایم بی بی ایس (پشاور)

ایم سی پی ایس (میڈیسن)

ایف سی پی ایس - II (گیسٹرو انٹرنالوجی)

فزیویشن و ماہر امراض معدہ، آنت اور جگر (یرقان)

لیڈی ریڈنگ ہسپتال پشاور

Pt's Name

جینٹ

Age 34y Sex M

Date 20 - 11 - 016

Clinical Record

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1-3-7-14-18

Tab Nizket 600
1-7

Tab Chymorab 750
1-21

Tab Pensyl 75
1-21

Tab Calome 7
1-7

Shakeel

جنرل فزیشن

ڈاکٹر محمد اقبال

ایم۔ بی۔ بی۔ ایس (ڈاؤمیڈیکل کالج، کراچی)

ار۔ ایم۔ پی

ایف۔ سی۔ پی۔ ایس (پارٹ 1)



کارڈیالوجسٹ
ڈاکٹر الطاف حسین (33)

ایم۔ بی۔ بی۔ ایس (ایوب میڈیکل کالج)

پی۔ جی۔ اے۔ کارڈیالوجی (انگلینڈ)

نیوٹریشن (انگلینڈ)

ڈائیزمن (انگلینڈ)

Name: Umeed Age: 29 Sex: M Date: 27-01-17

Clinical Record

Rx

Hof

Dog Bite

Depression

Anxiety

Tab - Tegretol 200

ایس۔ ایس۔ ایس

Tab - Acaby

ایس۔ ایس۔ ایس

Cap - Calber

ایس۔ ایس۔ ایس

Tab - vedolal

ایس۔ ایس۔ ایس

One month follow up - 11

موبائل: 0344-9885541
0344-9885542

کلینک: نزد پشاور میڈیکل لیبارٹری اینڈ ایکس رے، بالمقابل سول ہسپتال بونیر ناوہ گئی

AHMAD PHARMACY

Dr. Muhammad Shahab

M.B.B.S, (Pesh), MCPS (Surgery)
FCPS-II (Urology)

Institute of Kidney Disease

L.R.H Peshawar



NOT VALID FOR
MEDICO LEGAL USE

ڈاکٹر محمد شہاب

ایم بی بی ایس (پشاور)، ایم سی پی ایس (سرجری)

ایف سی پی ایس-II (یورالوجی)

ماہر امراض: گردہ، مثانہ، پراسٹیٹ

اسٹیشن روٹ آف کڈنی ڈیزیز اینڈ ریڈنگ ہسپتال پشاور

Pt's Name

ولید خان

Age

34

Sex

♂

Date

03-4-017

Clinical Record

Rx

H of

Dog Bite

Anxiety

Depression

Temp 99.7

puls / Rapid

B.P 140/90

Pulse Rapid

Temp 99.7

Tab - Tegrol 200

Tab - Minoxidil 40

Tab - Suxbeta 2

Tab - Safran 10 mg

Tab - Laxolam 3 mg

Cap. celbes 20

اپنے پرانے نسخے اور ایکس رے وغیرہ ہمراہ لائیں

نوٹ: دوبارہ معائنہ کیلئے..... دن بعد تشریف لائیں۔

C

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 296/2018.

Waleed Ex-Constable No. 3606.....

211/AA9
15-5-18
Appellant.

VERSUS.

District Police Officer, Mardan & others.....Respondents.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.

REPLY ON FACTS.

1. Incorrect. The appellant was enrolled as constable (BPS-5) in Police Department on 07.12.2011.
2. Correct to the extent of appellant's dismissal from service on the ground of prolonged and deliberated absence, counted as 420 days. Hence, the impugned order is legal and in accordance with facts and law.
3. Correct to the extent of dismissal of his departmental appeal on 15.01.2018 by the competent authority on legal/factual grounds, hence, sustainable in the eyes of law.
4. Correct and appellant's departmental appeal was rejected by respondents No. 2 & 3 on the grounds of his failure to produce any plausible reasons in rebuttal of his deliberated and prolonged absence as being member of a disciplined force. **(Copies of Rejection Orders are attached as Annexure-A & B).**
5. Incorrect. The impugned orders are legal and in accordance with rules/law and facts, hence, tenable in the eyes of law.

REPLY ON GROUNDS:-

- A. Incorrect and baseless. The appellant if was, infact, bitten by a mad dog then he was required to have had adopted proper procedure for earning leave, medical or casual, from the competent authority. Besides, the appellant was summoned time and again by the Enquiry Officer but he did not bother to appear or at least recorded his statement. Hence, the plea of his being bitten by a mad dog is not reliable at this, though belated stage.
- B. Incorrect. The appellant was properly charge sheeted vide respondent No. 4 office order.No. 29/R dated 09.03.2016. Hence, denied. **(Copies of Statement of Allegations, Charge Sheet & Enquiry are attached as Annexure-C, D & E)**
- C. Correct as the appellant intentionally avoided to appear before the Enquiry Committee, hence, left with no alternative than ex-parte action against him.
- D. Incorrect. The impugned orders are legal and in accordance with rules/law and facts.
- E. Incorrect. The appellant is a member of Police Force and is subject to Special Law i.e the Police Rules. He was, therefore, dealt under Police Rules, 1975.
- F. Incorrect as Police Rules, 1975 is still in practice and is being used against Police Officials if found guilty of misconduct.

G. Pertains to record, hence, no comments.

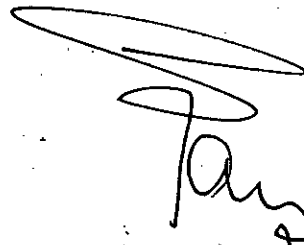
H. Incorrect. The absence was willful which is supported by the fact of his non-appearance before the Enquiry Committee.

I. Incorrect. All codal formalities has been complied with. Hence, denied.

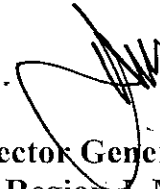
J. Incorrect. The appellant has absented for (420) days and therefore, he cannot be paid for the period he not performed duty and is based on the principle of "No Work No Pay". Hence, denied.

PRAYER:-

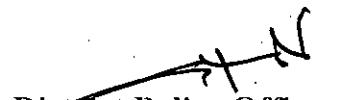
The prayer of the appellant, being baseless & devoid of merits, is liable to be dismissed with costs.



**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 02)**



**Deputy Inspector General of Police,
Mardan Region-1, Mardan
(Respondent No. 03)**



**District Police Officer,
Mardan
(Respondent No. 04)**

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 296/2018.

Waleed Ex-Constable No. 3606.....Appellant.

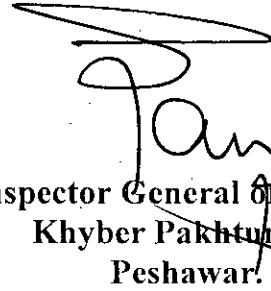
VERSUS.

District Police Officer, Mardan

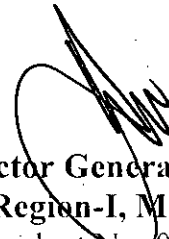
& others.....Respondents.

COUNTER AFFIDAVIT.

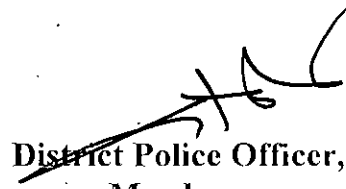
We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.



**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.**
(Respondent No. 02)



**Deputy Inspector General of Police,
Mardan Region-I, Mardan**
(Respondent No. 03)



**District Police Officer,
Mardan**
(Respondent No. 04)

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

Service Appeal No. 296/2018.

Waleed Ex-Constable No. 3606.....Appellant.

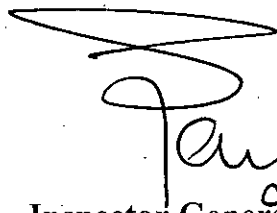
VERSUS.

District Police Officer, Mardan

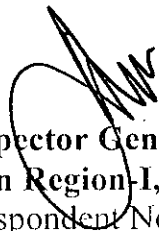
& others.....Respondents.

AUTHORITY LETTER.

Mr. Atta-ur-Rahman Sub-Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 02)**



**Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 03)**



**District Police Officer,
Mardan
(Respondent No. 04)**

ORDER

This order will dispose-off departmental inquiries, which have been conducted against **Constable Walced No. 3606**, on the allegations that:

1. He while posted at Police Lines Mardan, deliberately absented himself from lawful duty vide DD No. 25 dated 17.01.2016 to DD No. 24 dated 29.06.2016 Police Lines, Mardan.
2. He while posted at Police Station Lund Khwar, deliberately absented himself from lawful duty from dated DD No. 04 dated 30.06.2016 to till-date without any leave / permission of the competent authority.

This attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975. Therefore he was recommended for departmental action.


In this connection, **Constable Walced No. 3606**, was charge sheeted vide this office No. 129/R, dated 29.03.2016 and Charge Sheet No. 238/R, dated 28.07.2016. To scrutinize his conduct **Mr. Ikhtiraz Khan, DSP/Rural Mardan** and **Mr. Ijaz Khan, DSP/Katlang Mardan** were appointed as Enquiry Officers, whom after fulfilling necessary process, submitted their findings to the undersigned vide his office endorsement No. 382/St/R, dated 27.04.2016 and Endorsement No. 235/KTG, dated 07.03.2016 respectively. The alleged official did not appear before the EOs so that an ex-parte action was taken against him and recommended for major punishment by the Enquiry Officers.

The undersigned agreed with the findings of the enquiry officers and the alleged **Constable Walced No. 3606**, is hereby awarded major punishment of "Dismissal from Service" while his (420)-days absence period is counted as leave without pay, with immediate effect in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 678

Dated 13 / 3 / 2017.


Dr. Mian Saeed Ahmed (PSP)
District Police Officer,
M a r d a n.

No. 28/0-14 / dated Mardan the 13-3- /2017.

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
2. The S.P Operations, Mardan.
3. The Pay Officer (DPO) Mardan.
4. The E.C (DPO) Mardan.
5. The OSI (DPO) Mardan.

*****!!!*****

This order will dispose-off the appeal preferred by Ex-Constable Waheed No. 3606 of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded Major punishment of dismissal from service vide OB No. 678 dated 13.03.2017.

Brief facts of the case are that, the appellant while posted at Police Lines Mardan, deliberately absented himself from lawful duty from 17.01.2016 to 29.06.2016 and while posted at Police Station Lund Khawar, absented himself from lawful duty with effect from 30.06.2016 till the date of his dismissal without any leave / permission of the competent authority. Consequently he was charge sheeted and Mr. Ikhtiraz Khan, the then DSP/Rural Mardan and Mr. Ijaz Khan, DSP/Katlang Mardan were appointed as Enquiry Officers. The Enquiry Officers after fulfilling necessary process, submitted their findings to the District Police Officer, Mardan stating therein that the alleged official did not appear before the Enquiry Officers so taking ex-parte action he was recommended for major punishment by the Enquiry Officers. The District Police Officer, Mardan agreed with the findings of the Enquiry Officers and the alleged Constable was dismissed from service.

He was called in orderly room held in this office on 18.10.2017 and heard him in person, but he did not produce reasonable explanation about his long absence. Therefore, I find no grounds to intervene the order passed by District Police Officer, Mardan. However the words, leave without pay have no legal grounds, therefore rectifying the lacuna in the punishment order, the appellant is dismissed from service from the date of absence ie 17.01.2016.

ORDER ANNOUNCED.

(Muhammad Alam Shinwari)PSP
Regional Police Officer,
Mardan

No. 7884 /ES, Dated Mardan the 23 - 10 - /2017.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 576/LB dated 12.10.2017. The Service Record is returned herewith.

(*****)

OB/ES/10/15;
10/10/17

9628
24.10.17

OB-2449

23.10.17

Mr. Min

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 129 /R/D.A-P.R-1975.

Dated 29-3- /2016

DISCIPLINARY ACTION UNDER KPK POLICE RULES - 1975

I, **Faisal Shahzad** District Police Officer, Mardan as competent authority am of the opinion that **Driver constable Waleed No. 3602**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.

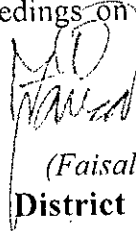
STATEMENT OF ALLEGATIONS

That **Driver constable Waleed No. 3602**, while posted at Police Lines Mardan, deliberately absented himself from lawful duty vide DD No. 25 dated 17.01.2016 to till date.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Ikhteraz Khan DSP/Rural Mardan** is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(Faisal Shahzad) PSP
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 129 /R, dated Mardan the 29-3- /2016.

Copy of above is forwarded to the:

1. DSP/Rural Mardan for initiating proceedings against the accused official / Officer namely **Driver constable Waleed No. 3602**, under Police Rules, 1975.
2. **Driver constable Waleed No. 3602**, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

***** !!! *****

CHARGE SHEET UNDER KPK POLICE RULES 1975

I, **Faisal Shahzad** District Police Officer, Mardan as competent authority hereby charge you **Driver constable Waleed No. 3602**, as follows.

That you Constable, while posted at Police Lines Mardan, deliberately absented yourself from lawful duty vide DD No. 25 dated 17.01.2016 to till date.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.



(Faisal Shahzad) PSP
District Police Officer,
Mardan.

DEPARTMENTAL INQUIRY AGAINST CONSTABLE
WALTEED NO. 3606 OF POLICE LINES, MAIDAN

No. 3824 /R.
Dated, 27-4-2016.

ALLEGATIONS:

Constable Walteed No. 3606, while posted at Police Lines, Maidan, delinquently absented from the lawful duty vide DD No. 25 dated 17.01.2016 to till date without any leave / permission of the competent authority.

The Charge sheet with statement of allegation were issued to and served upon the alleged official and the inquiry was entrusted to the undersigned for proper probe.

PROCEEDINGS:

As per Departmental Inquiry No. 129/R/D/A.P.R-1975, dated 29.03.2016, the inquiry proceedings were initiated. The accused constable was summoned and a copy of the Charge sheet with Statement of Allegations was delivered to him.

The delinquent Official (Constable Walteed No. 3606 was summoned to the office of the undersigned but he is not interested to appear before the undersigned and record the statement of otherwise. The residential address and contact number of the delinquent Constable Walteed No. 3606 was obtained from PS Par Hat, he was contacted on his cell-13.04.2016, a Parwana was served upon him through SHO PS Par Hat for hearing on 13.04.2016. Similarly, on 15.04.2016, a second Parwana was served upon him through SHO PS Par Hat for appearing before the undersigned on 18.04.2016 but so far as he did not appear before the undersigned, (62-Parwanas served upon PS Walteed are enclosed in report).

FINDINGS:

From the record, it came to lime light that the alleged Constable Walteed No. 3606 was enlisted on 07.12.2011, during his services he earned 04 half-centuries with no good entry and has remained absented for 03 days.

Now he remained absented vide DD No. 25 dated 17.01.2016 PS Par Hat to till date, total 98-days absent from his lawful duty.

During the enquiry, the following points were also noticed that:


That the delinquent Constable Walteed No. 3606 was absented from the lawful duty for (98) days without leave / permission of his superior and still not reporting his arrival to PS.

That he did not appeared before the enquiry officer, as he was summoned 02-times to the office of the undersigned through his home Police Station and 01-time on his cell-phone.

- Being a responsible Police official, he did not inform his concern Police Station.
- That he is not interested in his service, as he has earned 04-bad entries and remained absented for total (101)-days during his 5/6 years service.

Keeping in view the above facts and circumstances, it is recommended that ex-parte action may kindly be taken against the alleged Police Official namely Constable Walced No. 3606 and may be awarded major punishment, if agreed.

Encl: (07)


Deputy Superintendent of Police,
Rural Circle, Mardan.

OR
|

S
26/02/10

dismissal from service

S
11/03/12

تاریخ:

س 29/6/16

46

لوہی لائن

نقلہ - 25 مذناہ 17/01/06

اپورٹ
عنبر حافری

فصل مائے بیت 09130 بج مورفہ 17/01/06 درج قبیلہ

نام MTO نے تحریر کیا کہ ڈرائیور، نکل ولبر 3602 جو
عموم موجود پائر سپرست قبیلہ خلاف اپورٹ عنبر حافری درج
مذناہ پر نقلہ علیحدہ سرپ کے بغیر ہی مناسب کاروائی
افسران کے کی ضرورت میں ارسال ہوگی

مناجیاتی!
نقل مطابق اصل سے
MUM PL MARD
17/01/06

Sd/- Forwarded
Lo P/L Mardan
09.2.2016

مذا علی
نکل ولبر 3602 بہ سورا غرام
مذناہ پر نقلہ
کی سفارش کی جا رہی ہے

MUM PL MARD
9.2.2016

Forwarded PL
Ri / Line / Mardan
18-2-16

ولبر لوہی لائن مذناہ پر نقلہ 3602 کے ساتھ ارسال ہوگی

0313-5731353

از دفتر DSP رسول

جنرل سٹیشن 540 کھانا پارہ پھولوں رسول

پروانہ بنا کر ولید ولد یوسف خان کے اہول بابا ڈاگ شاہ پارہ پھولوں

تعداد سہ ماہ تک چاہا ہے کہ کیا ولید 3602 جو کہ مورخ 17/16 پولیس رسول
مروان سے بدستور غیر حاضر ہے۔ حکو لڈریج جو بائیل نمبر 5731353-0313 میں بار اولہ عم
دعا کی ہے۔ چونکہ کیا مذکورہ بالا جو کہ ایسے علامت اختیار کار بائیل ہے۔ جسکو
لڈریج پیش میں بھی لڈریج مقرر ہے۔ کہ مورخ 14/16 لوقت 10:00 بج دفتر
میں پیش میں پیش میں پیش میں پیش میں پیش میں پیش میں پیش میں پیش میں

نوٹ: اہول لڈریج پروانہ جو 3602 DSP رسول کھانا پارہ پھولوں رسول

DSP
DSP / رسول رسول
13-4-16

صاحب
صاحب
صاحب
صاحب
صاحب
Shah Parhota

ولید 3606 ولد یوسف خان مکندہ افول بابا ڈاگ شاہ

صوبال منر 5731353-0313 ولید

نقل 24 مورخ 15-16-4
برائے لڈریج - 18-16-4

16101-490820174 شافقی گلار منر

**MENTAL ENQUIRY AGAINST CONSTABLE WALID NO.3606, WHILE POSTED AT
POLICE STATION LUNDKHWAR MARDAN.**

ALLEGATION:-

Constable Walid No.3606, while posted at Police Station Lundkhwar Mardan, deliberately absented himself vide DD No.04 dated 30.06.2016 to-date without any leave/permission of the competent authority.

Charge sheet with statement of allegations were issued to and served upon the alleged official and the enquiry was marked to the undersigned.

PROCEEDINGS:-

Inquiry proceedings were initiated. In this connection MHC Police Station Lundkhwar Mardan, was called to inform the Constable Walid No.3606, for recording his statement to the undersigned.

STATEMENT OF ALLEGED CONSTABLE:

The alleged Constable did not attendance the office of undersigned for recording his statement even after calling him through telephone contacts and call letter issued from the office of undersigned time and again.

OBSERVATIONS:-

During the course of inquiry it was observed that:-

1. The defaulter Constable has remained absent from duty due without any pre-information and permission of the high ups.
2. Service Record of the defaulter Constable revealed that he was enlisted on 07.12.2011, during this period he has earned 04 bad entries with 0 good entries. Moreover he has been absented for 10 days in his past service.

FINDINGS:-

Keeping in view the above facts and circumstances, it is stated that Constable Walid No.3606, his absent days may be considered as **Leave without pay and recommended for minor punishment** please.

Submitted please.


Dy: Superintendent Of Police,

KTG-Circle, Mardan.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

In re:

S.A.No.296/2018

Waleed.....Appellant

VERSUS

District Police Officer, Mardan and others ..Respondents

REPLICATION ON BEHALF OF THE APPELLANT

Sir,

PRELIMINARY OBJECTION

That all the preliminary objections are incorrect, misconceived, denied.

ON FACTS

1. That Para-1 of appeal is correct , while that of reply is incorrect, hence denied. Respondents admit appointment as Constable (BPS-05) on 07.12.2011.
2. That Para-2 of appeal has been admitted as correct to the extent of dismissal order.
3. That Para-3 is regarding dismissal of appeal, which has been admitted as correct on 23.10.2017.
4. That Para-4 of appeal has been admitted to the extent of dismissal of appeal under Rule 11-A on 15.01.2018.
5. That Para-5 of appeal is correct and that of reply is incorrect, hence denied.

GROUNDS

- A. Respondent admitted disease of appellant as bitten by mad dog and prescriptions and admitted in hospital then appearance before Inquiry Officer or performance of duty was beyond his control, thus absence is not willful.
- B. Because ground "B" of appeal is correct as not denied specifically service of charge sheet.
- C. Because respondent didn't deny specifically assertion in ground "C". Moreover, no service of summon from Inquiry Officer.
- D. Because ground "D" of appeal is correct and reply is incorrect, hence denied.
- E. Because ground "E" of appeal is correct and reply is incorrect, hence denied.
- F. Because ground "F" of appeal is correct and reply is incorrect, hence denied.
- G. Because respondent didn't deny past clean record.
- H. Because ground "H" of the appeal is correct, while that of reply is incorrect.
- I. Because ground "I" of the appeal is correct, while that of reply is incorrect.
- J. Because ground "J" of the appeal is correct, while that of reply is incorrect. Absence can be treated as leave without pay as leave is available at the credit of appellant. Respondent didn't deny the double

punishment and moreso, when absence is treated as
leave without pay.

PRAYER

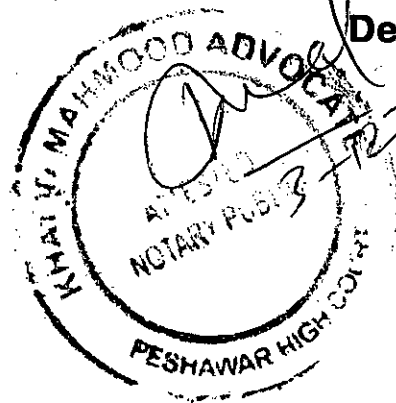
It is, therefore, humbly requested that appeal may
please be accepted.

Appellant
Through


Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare as per information
furnished by my client that the contents of the
accompanying Rejoinder are true and correct and nothing
has been concealed from this Hon'ble Court.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

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S.A.No.296/2018

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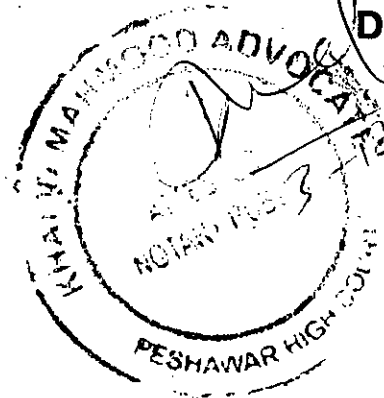
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TRIBUNAL, PESHAWAR

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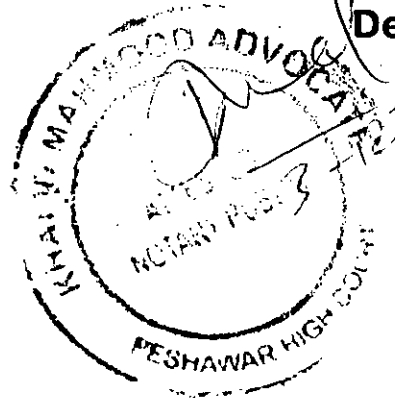
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TRIBUNAL, PESHAWAR

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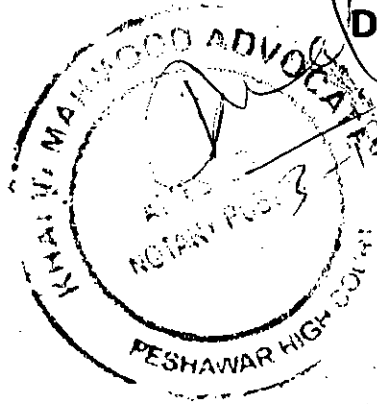
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Deponent

The seal is circular with the text 'KHALID MAHMOOD ADVOCATE' around the top edge and 'PESHAWAR HIGH COURT' around the bottom edge. In the center, it says 'NOTARY PUBLIC'. There is a handwritten signature over the seal and the number '172-18' written to the right.

(32) App. 1

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 975/2018

Date of Institution ... 07.08.2018

Date of Decision ... 04.06.2021



Ashfaq Ali No. 182, Ex-Constable
S/o Mir Ali Khan R/o Ako Dheri, P/o Lund Khwar,
Tehsil Takht Bhai, District Mardan.

... (Appellant)

VERSUS

Inspector General of Police/Provincial Police Officer, Khyber
Pakhtunkhwa Peshawar and three others.

... (Respondents)

Mr. AMJID ALI,
Advocate

--- For appellant.

MR. RIAZ AHMAD PAINDAKHEIL,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN

MEMBER (JUDICIAL)

MR. ATIQ-UR-REHMAN WAZIR

MEMBER (EXECUTIVE)

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGEMENT:

SALAH-UD-DIN, MEMBER:- The appellant has filed the instant service appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 16.07.2018, whereby the departmental appeal of the appellant was rejected and the wrong and illegal order of his dismissal dated 09.11.2017 was upheld.

2. Precisely stated the facts are that the appellant was serving as Constable, who was charged in a criminal case bearing FIR No. 492/2017 under sections 419, 420, 468, 471 and 171 PPC read with section 15AA registered at Police Station Lund Khwar Mardan. The appellant was issued show-cause notice, charge sheet as well as statement of allegations by Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar

and after conducting of inquiry against the appellant, he was issued final show-cause notice by the Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar. The appellant submitted reply to the show-cause notice and after providing him an opportunity of hearing, the appellant was dismissed by the Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar vide order dated 09.11.2017. The appellant impugned the afore-mentioned order dated 09.11.2017 by way of filing departmental appeal to the Inspector General of Police Khyber Pakhtunkhwa, which was rejected vide order dated 16.07.2018, hence the instant appeal.

3. Mr. Amjid Ali, Advocate, representing the appellant has contended that the show-cause notice, charge sheet and statement of allegations were issued by Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar, who also passed order of dismissal of the appellant, rendering the whole inquiry proceedings as nullity in the eye of law because as per Schedule-I of Police Rules 1975, Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar being Appellate Authority was not the Authority competent under the law to proceed himself against the appellant. He next contended that the whole inquiry proceedings were conducted in a hurried manner, without providing the appellant an opportunity of cross examination of the witnesses examined during the inquiry. He further argued that the appellant is quite innocent and has been condemned unheard, therefore, the impugned order may be set-aside and the appellant be re-instated into service by extending him all back benefits.

4. On the other hand, Mr. Riaz Ahmad Paindakheil, learned Assistant Advocate General has argued that the appellant was found involved in criminal activities and an FIR was also registered against him, therefore, after conducting of inquiry against the appellant, he was dismissed from service. He also argued that the inquiry was conducted in a legal manner by providing opportunity of hearing to the appellant. He next contended that after conducting of proper inquiry against the appellant, the inquiry committee came to the conclusion that the charges against the appellant were proved, therefore, he has been rightly dismissed from service and his departmental appeal was also rightly dismissed.

5. We have heard the arguments of both the sides and have perused the record.

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Khyber Pakhtunkhwa
Government

(34) (33)

6. The show-cause notice, charge sheet as well as statement of allegations were issued to the appellant by Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar and after conducting of the inquiry by Mr. Fazl-e-Hamid SSP/Int & Sur CTD and Mr. Quaid Kamal DSP HQrs: CTD Khyber Pakhtunkhwa, final show-cause notice was issued to the appellant by Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar. Similarly, the order of dismissal of the appellant was also passed by Deputy Inspector General of Police (CTD) Khyber Pakhtunkhwa Peshawar. Keeping in view the Police Rules 1975, the action taken by Deputy Inspector General of Police Khyber Pakhtunkhwa Peshawar was illegal, without jurisdiction and void ab-initio because he was the Appellate Authority, therefore, he could not have taken upon himself the role of the Authority competent to proceed against the appellant and award him the punishment.

7. One Mr. Niaz, Inspector CTD Mardan was also charged in the same FIR, which resulted in initiation of disciplinary action against the appellant as well as Mr. Niaz, Inspector CTD Mardan. Thus in light of Schedule-I of Police Rules 1975, officer of the rank of DPO/SSP, being Authority competent to award punishment to the appellant, can legally take disciplinary action against the appellant.

8. In view of the foregoing discussion, the impugned order of dismissal of the appellant stands set-aside. The appellant is re-instated into service and the matter is remanded back to the department for de-novo inquiry against the appellant in accordance with law. It is directed that the de-novo inquiry proceeding shall be completed within a period of one month from the date of receipt of copy of this judgment. The appeal in hand stands disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

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

ANNOUNCED
04.06.2021
Certified to be true copy

Khyber Pakhtunkhwa
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