


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	16.10.2015 	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO.06/2014</p> <p style="text-align: center;">(Habibullah-vs- Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>ABDUL LATIF, MEMBER:</u></p> <p>Appellant with counsel (Mr. Muhammad Asif Yousafza, Advocate) and Mr. Ziaullah, Government Pleader for respondents present.</p> <p>2. The instant appeal has been filed by the appellant under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act-1974 against the order dated 16.12.2013 whereby the appeal against the order dated 22.01.2013 has been rejected for no good grounds. Appellant prayed that on acceptance of this appeal, the order dated 16.12.2013 and 22.01.2013 may be set aside and the appellant may be reinstated into service with all back benefits.</p> <p>3. Brief facts giving rise to the instant appeal are that the appellant remained the employee of the Police Department and served as Constable for 18 years with good record. That the appellant was proceeded against under the Police Rules, 1975 for absence from duty, despite the fact that the appellant was</p>

transferred and posted in Anticorruption Establishment Department vide order dated 30.08.2012. That on the basis of absence, charge sheet was framed, enquiry was conducted and show cause notice was framed but none of these were served on the appellant and he remained un-defended in the enquiry proceedings also. However, the appellant obtained the copy of show cause notice and enquiry report from the record to annex with the appeal. That on the basis of ex-parte action, the appellant was removed from service under the Police Rules, 1975 vide order dated 22.01.2013 by treating the same period as without pay. That the appellant filed an appeal against the said order on 21.02.2013. The comments of the DSP (Legal) was sought on the appeal of the appellant who confirmed that the final show cause notice was not served on the appellant and the same was sent on wrong address. However, on 16.12.2013 the appeal of the appellant was rejected, hence the instant appeal.

4. Counsel for the appellant argued that impugned order dated 16.12.2013 and 22.01.2013 were against the law, facts, and material on record and norms of justice, therefore, not tenable under the law. The appellant had not been treated in accordance with law and rules, he being a Civil Servant was to be treated under the Khyber Pakhtunkhwa Civil Servants (E&D) Rules, 2011 and not under the Police Rules 1975. He further argued that appellant was not associated with the enquiry, he was not given final show cause and was condemned unheard, therefore the impugned orders were not sustainable in the eyes of law. He further submitted that absence period of the appellant

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had been treated without pay therefore there remained no grounds to penalize the appellant further. He further argued that penalty of removal was not commensurate to the quantum of offence of the appellant, hence not maintainable in the eyes of law and prayed that appeal in hand may be accepted and appellant may be reinstated in service with all back benefits.

5. The learned Government Pleader resisted the appeal and argued that all codal formalities under the Police Rules, 1975 were completed and appellant was correctly punished under the rules. He contended that appellant deliberately avoided to associate himself in the enquiry, he was however served with final show cause notice and also heard in person before passing of final orders. He prayed that the appeal being devoid of any merits may be dismissed.

6. Arguments of learned counsels for the parties heard at length and record perused with their assistance.

7. From perusal of the record of the case it transpired that the appellant was not associated with the proceedings, thus he could not avail full opportunity of defense and right of fair trial as enunciated under the constitution. Record revealed that final show cause notice remained unserved as the same was missent hence, ends of justice could not be met before imposition of major penalty of removal on the appellant. The impugned order also suffered from legal infirmities as the same treated the absence period of the appellant without pay, hence rendered the

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penalty defective in the eyes of law. In the circumstances, the Tribunal is of the considered view that the case may be remitted to the respondent-department to proceed *de-novo* against the appellant strictly in accordance with law and provide full opportunity of defense before passing appropriate orders in the case. The impugned orders are accordingly set aside and appellant is reinstated in service for the purpose of *de-novo* proceedings which shall be completed within two months of the receipt of this judgment. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record.



(PIR BAKHSH SHAH)  
MEMBER



(ABDUL LATIF)  
MEMBER

ANNOUNCED  
16.10.2015

12.02.2015

Appellant in person and Mr. Riaz Ahmed, S.I (legal) on behalf of respondents alongwith Addl: A.G present. Written reply submitted. The case is assigned to D.B for rejoinder and final hearing for 24.08.2015.

  
Chairman

24.08.2015

Appellant with counsel (Mr. Muhammad Asif Yousafzai, Advocate) and Mr. Ziaullah, GP for the respondents present. Arguments heard. To come up for


~~Order~~ on 21-09-2015

  
MEMBER

  
MEMBER

21.09.2015

Appellant in person and Mr. Muhammad Jan, GP for respondents present. Since the court time is over therefore, case is adjourned to 16-10-15 for order.

  
Member

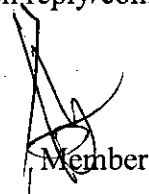
  
Member

Appeal No-6/2014  
Mr. Hafizullah.

5. 15.04.2014

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 22.01.2013, he filed departmental appeal on 21.02.2013, which has been rejected on 16.12.2013, hence the present appeal on 02.01.2014. He further contended that the appellant has been treated under wrong law. 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. To come up for written reply/comments on 27.06.2014.

Appellant Deposited  
Security & Process Fee  
Rs. 180/- Bank  
Receipts Attached with File.

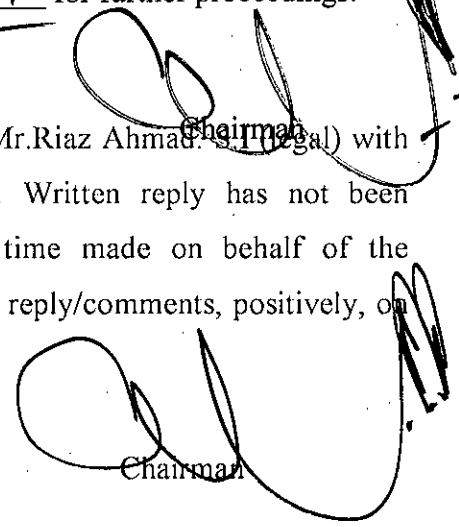
  
Member

6. 15.04.2014

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

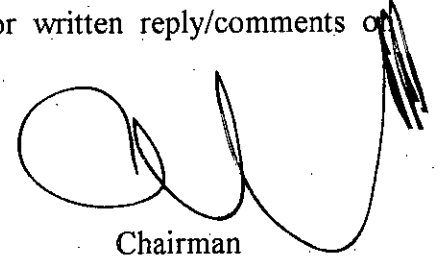
27.6.2014

Appellant with counsel and Mr. Riaz Ahmad, S.I (legal) with AAG for the respondents present. Written reply has not been received, and request for further time made on behalf of the respondents. To come up for written reply/comments, positively, on 27.10.2014.

  
Chairman

27.10.2014


Appellant with counsel and Mr. Riaz Ahmed, S.I (legal) with Mr. Muhammad Adeel Butt, AAG for the respondents present. Written reply has not been received and request for further time made on behalf of the respondents on the ground that written reply has been prepared but requires signatures of the concerned authorities. A last chance is given for written reply/comments on 12.02.2015.

  
Chairman

3.

04.03.2014


Clerk to counsel for the appellant present and requested for adjournment due to general strike of the Bar. To come up for preliminary hearing on 31.03.2014.

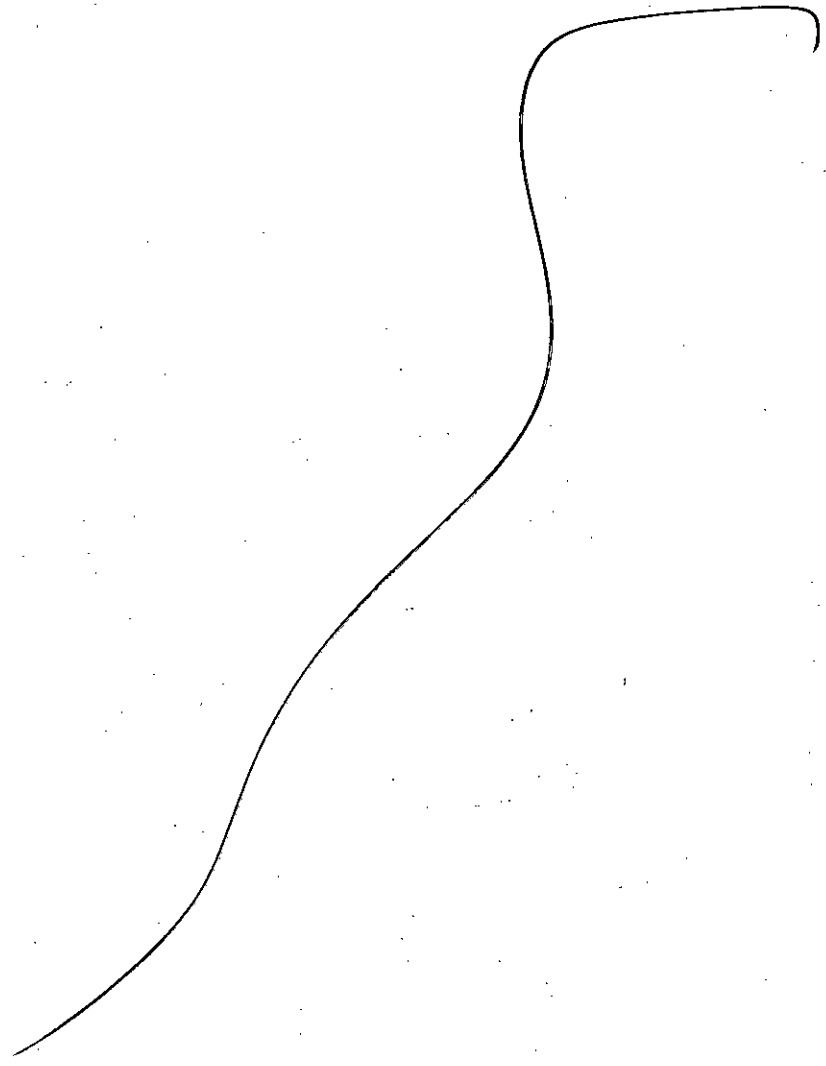
  
Member

4.

31.03.2014

Appellant in person present and requested for adjournment due to non-availability of his counsel. To come up for preliminary hearing on 15 04.2014.



  
Member



Form- A  
FORM OF ORDER SHEET

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

Case No. 06/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02/01/2014	<p>The appeal of Mr. Habibullah presented today by Mr. M. Asif Yousafzai 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	6-1-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>4-3-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>



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

Appeal No. 06 /2013/

Mr. Habibullah

V/S

PPO and Others.

**INDEX**

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-03
2.	Copy of Show Cause Notice	- A -	04
3.	Copy of Enquiry Report	- B -	05
4.	Copy of Order (22.1.2013)	- C -	06
5.	Copy of Appeal	- D -	07
6.	Copy of Comments of DSP Legal.	- E -	08
7.	Copy of Rejection Order	- F -	09
8.	Vakalat Nama	---	10

APPELLANT  
Habibullah

THROUGH:



( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

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

①

Appeal No. 06 /2013

Mr. Habibullah, Constable No.1001/4772,  
Police Line, Peshawar.

**RECEIVED**  
**10**  
**02-1-14**

**APPELLANT**

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer, K.P. Peshawar.
3. The S.P. Headquarter, Peshawar.

**RESPONDENTS**

.....

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 16.12.2013 WHEREBY THE APPEAL AGAINST THE ORDER DATED 22.1.2013 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

.....

**PRAYER:**

That on acceptance of this appeal, the order dated 16.12.2013 and 22.1.2013 may be set aside and the appellant may be reinstated into service e with all back benefits. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of appellant.

**Handwritten signature**  
**2/1/14**

**RESPECTFULLY SHEWETH:**

1. That the appellant remained the employee of the Police Department and served as Constable for 18 years with good record.
2. That the appellant was proceeded against under the Police Rules, 1975 for absence from duty, despite the

fact that the appellant was transferred and posted in Anticorruption Establishment Department vide order dated 30.8.2012.

(2)

3. That on the basis of absence, charge sheet was framed, enquiry was conducted and show cause notice was framed but none of these were served on the appellant and he remained un-defended in the enquiry proceedings also. However, the appellant obtained the copy of show cause notice and enquiry report from the record to annex with the appeal. Copies of show cause notice and enquiry report are attached as Annexure-A and B.
4. That on the basis of ex-parte action, the appellant was removed from service under the Police Rules, 1975 vide order dated 22.1.2013 by treating the same period as with out pay. Copies of Order is attached as Annexure-C.
5. That the appellant filed an appeal against the said order on 21.2.2013. The comments of the DSP Legal was sought on the appeal of the appellant who confirmed that the final show cause notice was not served on the appellant and the same was sent on wrong address. However, on 16.12.2013 the appeal of the appellant was rejected for no good grounds. Copies of Appeal, Comments of the DSP Legal and Rejection Order are attached as Annexure-D, E and F respectively.
6. That now the appellant comes to this august Tribunal on the following grounds amongst the others.

**GROUNDS:**

- A) That the impugned order dated 16.12.2013 and 22.1.2013 are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B) That the appellant has not been treated according to law and rules.

C) That the appellant being civil servant of the Provincial Government was proceeded against under the Police Rules, 1975 and not under E&D Rules 2011, therefore, the whole proceedings were liable to be struck down on this score alone.

D) That the appellant has been condemned unheard because the appellant was not associated with the enquiry proceedings and even final show cause notice was not service on him, which is also evident comments of the DSP Legal, therefore, the impugned orders are liable to be set aside under the Principles of Audi Alteram Partem.

E) That the absence period of the appellant has already been treated as without pay, therefore, there remained no grounds to penalize the appellant further.


F) That the penalty of removal from service is very harsh and does not commensurate in the guilt of appellant keeping in view long 18 years service at his credit.

G) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT  
Habibullah 

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

9      A      4

**FINAL SHOW CAUSE NOTICE**

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 Habib Ullah No.1001 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 Habib Ullah No.1001 while posted at Police Lines, Peshawar were absent from duty w.e.f 19.07.2012 till date 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. 733 /PA, SP/HQrs: dated Peshawar the 26/11/2012.

Copy to official concerned

**ATTESTED**  


ENQUIRY REPORT

10  
B  
733  
12  
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Kindly refer to your office No.733/PA SP/HQ,dated 28/08/2012 on the subject cited above.

It is a departmental enquiry against constable Habib Ullah 1001 posted at police line Peshawar absented himself from duty w.e.from 019/07/2012 to till date. His act is highly objectionable and amounts to gross misconduct. The alleged constable was put to disciplinary proceeding by the worthy SP HQ. The undersigned was appointed as enquiry officer to initiate departmental proceeding against the alleged with reference to the above mentioned allegation.

In order to scrutinize the conduct of the alleged constable called vide letter No.2687 dt 19-10-2012 and 2782 dt 31-10-012 but the above name constable does not attend the office of undersigned.

From fore going circumstances it means that the above name constable does not obey the police rules regulation nor have any solid proof to produce the enquiry officer.

Hence keeping in view the above mentioned circumstances ,the undersigned suggested major punishment.

*(Signature)*  
(Sahibzada Sajjad Khan)  
Deputy Superintendent of Police,  
Faqirabad Circle Peshawar.  
13 / 11 / 02

W/SP HEADQUARTERS  
NO S2 /E-ST  
Dated 13 / 11 / 2012

is one final  
cause notice  
show

**ATTESTED**

*(Signature)*  
Deputy Superintendent of Police  
Faqirabad Circle Peshawar  
13 / 11 / 12

ORDER

This office order relates to the disposal of formal departmental enquiry against Constable Habib Ullah No. 100174772 of Capital City Police Peshawar on the allegations that he while posted at Police Lines, Peshawar absented himself from lawful duty w.e.f 19.07.2012 till date without taking permission or leave.

In this regard, he was issued charge sheet and summary of allegations vide No.733/E/PA/SP/H.Qrs, dated 28.08.2012. SDPO Faqirabad Peshawar was appointed as Enquiry Officer. He conducted the enquiry proceedings and submitted his report that the defaulter official did not attend the enquiry proceedings. The E.O further recommended major punishment for the defaulter official vides Enquiry Report No.52-E/ST dated 13.11.2012.

Upon the finding of E.O, he was issued final show cause notice and delivered him on home address through local Police but he failed to submit his explanation within stipulated period of 07-days or appear in this office as yet.

Moreover, the report of OASI was obtained. He reported that the said official has been transferred & posted to A.C.E Department vide OB No.3197 dated 30.08.2012. Furthermore, the report of DSP/HQrs, Peshawar was also sought. He reported that the said official did not make any departure report on his transfer from Police Lines Peshawar to ACE Department and still remained absent from 17.07.2012 till date vide No.59/R dated 08.01.2013.

In view of the above and other material available on record, the undersigned came to conclusion that the alleged official found guilty of the charges and unwilling worker. Therefore, he is hereby removed from service under Police Disciplinary Rules-1975 with immediate effect. Hence, the period he remained absent from 19.07.2012 till date is treated without pay.

**SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR**

OB. NO. 328 / Dated 22/1/2013 22-1-2013  
No. 341-49 / PA/SP/dated Peshawar the 22/1/2013

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.

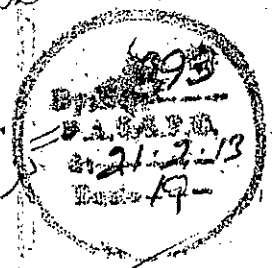
**ATTESTED**

19/1/2013

D  
7

DSP.L

For comprehensive comment.



مقام عالی! تیسری لائن میں آمینا کے نام

جو ہم غیر قانونی ہے اس کو صاف SP سے خارج کر دیا گیا۔  
No 32-A-LB  
22-2-013  
19

پولیس سائیکل کے غیر قانونی قبضہ (میرا بیٹی) کے بارے میں  
پولیس سائیکل والے والدین کو خبر ہے۔ اور دونوں بھائیوں میں  
مساختم ہے۔ جس کی دیگر کاپی اور علاج معالجے کے بارے میں  
پولیس کے غیر قانونی سرزد ہوئی ہے۔

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25/2

اور سائیکل کے قبضہ کا دائرہ کمیل ہے اور پتہ چھوڑنے کے بعد  
میں کئی بار اور افسرانہ سال کسی قسم کی شکایت کا موقع ملتا  
دیا ہے۔ بدریغ درخواست پر رد کارروائی ہوئی ہے۔  
دو بارہ لوگوں کو پتہ چلا ہے کہ ان سے منسلک نہیں ہیں

تاریخ 21-2-2013

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القاری

REC/AME  
Put in Record

DSP LEGAL  
C.C.B. DEPARTMENT

ATTESTED

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C E

**COMMENTS ON THE DEPARTMENTAL APPEAL OF EX-CONSTABLE  
HABIBULLAH NO.1001.**

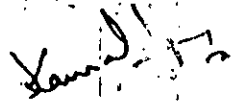
Sir,

This is a departmental appeal filed by ex-constable Habibullah No.1001 against the punishment order of Removal from Service passed by SP/H.Qrs: Peshawar vide O.B No.312 dated 22.1.2013.

Facts of the case are that the appellant while posted at Police Lines Peshawar was proceeded departmentally under the Police Disciplinary Rules 1975 on the charge of his willful absence from duty w.e.f. 19.7.2012 till the order of his Removal from Service. SDPO Faqirabad Circle Peshawar was appointed to conduct proper departmental enquiry into the allegations. The Enquiry Officer repeatedly summoned the appellant but he did not turn up and avoided to face the enquiry proceedings. The Enquiry Officer concluded enquiry and recommended him for major punishment.

On receipt of finding of the Enquiry Officer, the Competent authority issued him Final Show Cause Notice at his home addressed but he failed to submit his written reply within stipulated period.

Perusal of record reveals that FSCN was issued to the defaulter constable but it was dispatched on wrong address and was not served upon the appellant. It is unknown, why the enquiry was finalized, when the actual position was clarified in the report endorsed on the FSCN by the local police station.

  
DSP/Lega  
Peshawar

ATTESTED  


ORDER

(9) F

This office order will dispose off departmental appeal of ex-constable **Habib Ullah No. 1001/4772** who was awarded major punishment of **Removal** from service vide OB No. 312 dated 22/1/2013, under the PR 1975 by SP (HQ) Peshawar on the charge of deliberate absence from lawful duty w.e.f. **19.7.12 to 22.1.13 (6 months & 3-days)** from Police Lines Peshawar.

Proper departmental proceedings were initiated against him and DSP-F/Abad was appointed as the E.O. The Enquiry Officer repeatedly summoned the appellant to attend and face enquiry proceedings but he did not turn up. He also failed to submit reply to the FSCN. As such the competent authority awarded him above major punishment.

The relevant record has been perused along with his explanation and also heard him in person in OR on 6.12.2013. The charge of absence stand proved against him. The undersigned sees no plausible reason to interfere with the order of the SP-HQRs. Consequently the order passed by SP-HQRs is upheld and the appeal is rejected/filed.

**CAPITAL CITY POLICE OFFICER,  
PESHAWAR.**

No. 2175-80 /PA, dated Peshawar the 16 /12/13

Copies for information and n/a to the:-

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

ATTN:

(6)

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

Service Appeal No.06/2014.

Mr. Habib Ullah No. 1001/4772 Police Lines, Peshawar.....Appellant.

**VERSUS.**

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs: Peshawar..... Respondents.

**PRELIMINARY OBJECTIONS.p**

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 court 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 concealed the material facts from Honorable Tribunal.
7. That the appellant got no locus standi and cause of action to file the instant appeal.

**FACTS:-**

- 1- Para No. 1 pertains to record. Hence needs no comments.
- 2- Para No. 2 correct to the extent that the appellant was awarded Major Punishment of Removal from Service vide OB No. 312 dated 22.01.2013, under Police Rules 1975 by SP/HQrs: on the charge of deliberate absence from his lawful duty w.e.f 19.07.2012 to 22.01.2013 from police line Peshawar.
- 3- Para No. 3 is incorrect and denied. In fact the appellant was issued charge sheet and summary of allegations vide NO. 733/E/PA/SP/HQrs: dated 28.08.2013. proper enquiry was conducted by the SDPO/Faqirabad Peshawar. The appellant did not appeared before the enquiry officer. Further more Final Show Cause Notice was issued to him but he failed to submit explanation. Hence was awarded major punishment of removal from service in accordance with law/rules.
- 4- Para No. 4 is incorrect and denied. The appellant was awarded punishment after fulfilling all codal formalities. Charge Sheet, statement of allegations and final show cause notices were issued to him but he failed to submit explanation.(copies annexed as "A")
- 5- Para No. 5 correct to the extent that departmental appeal was filed by the appellant but was rejected/filed on the ground that the charges of wilful absence leveled against him were stand proved. Furthermore he was issued final show cause notice and delivered him on his home address through local police but he failed to submit his explanation within stipulated period. (copy of the


6- The punishment order is in accordance with law/rules and liable to be upheld.


**GROUND:-**

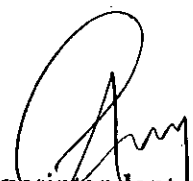
- A- Incorrect. The punishment order is in accordance with law/rules. The punishment was awarded after conducting proper enquiry and fulfilling all codal formalities.
- B- Incorrect. The appellant was treated as per law and rules. No injustice has been done to him.
- C- Incorrect. Being member of a disciplinary force, the appellant was preceeded under Police Disciplinary Rule 1975.
- D- Incorrect. Appellant was issued final show cause notice at his home address through local police but he failed to submit his explanation. Punishment was awarded by the competent authority after fulfilling all codal formalities.
- E- Incorrect. The competent authority is empowered under Police Rule 1975 to pass punishment order after conducting a thorough enquiry.
- F- Incorrect. The punishment order is in-accordance with law/rules.
- G- That the respondents also seek permission of this honorable Tribunal to raise additional grounds at the time of arguments.

**PRAYER**

Keeping in view the above facts, it is therefore prayed that the subject appeal may kindly be dismissed.

  
Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.

  
Capital City Police Officer,  
Peshawar.

  
Superintendent of Police  
HQrs: Peshawar.

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

Service Appeal No.06/2014.

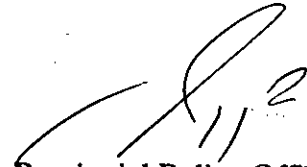
Mr. Habib Ullah No. 1001/4772 Police Lines, Peshawar.....Appellant.

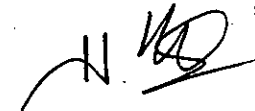
**VERSUS.**

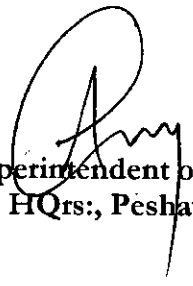
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs: Peshawar..... Respondents.

**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.

  
Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.

  
Capital City Police Officer,  
Peshawar.

  
Superintendent of Police  
HQrs., Peshawar.

5

**FINAL SHOW CAUSE NOTICE**

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 Habib Ullah No.1001 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 Habib Ullah No.1001 while posted at Police Lines, Peshawar were absent from duty w.e.f 19.07.2012 till date 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. 733 /PA, SP/HQrs: dated Peshawar the 26/11/2012.

Copy to official concerned

12

**CHARGE SHEET**

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Habib Ullah No.1001 of Capital City Police Peshawar with the following irregularities.


"That you Constable Habib Ullah No.1001 while posted at Police Lines, Peshawar were absent from duty w.e.f 19.07.2012 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.

  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

No. 52  
31/8/12

11

**DISCIPLINARY ACTION**

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Habib Ullah No.1001 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

**STATEMENT OF ALLEGATION**

"That Constable Habib Ullah No.1001 while posted at Police Lines, Peshawar absented himself from duty w.e.f. 19.07.2012 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 Sd/- Faqirabad 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.

*[Signature]*  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

No. 733 /E/PA, dated Peshawar the 28/08 /2012

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

Steno

Call Constable  
*[Signature]*

C.S.P. Faqirabad Circle  
Peshawar.

31/8/12

53  
55  
14  
2/12

OFFICER



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

Service Appeal No. 06/2014.

Habib Ulalh

VS

Police Deptt:

.....

**REJOINDER ON BEHALF OF APPELLANT**

.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

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

**FACTS:**

- 1 Admitted correct by the respondents as the service record is laying in the custody of the department.
- 2 Admitted correct by the respondents that the appellant was preceded under the Police Roles 1975 on the basis of absence from duty despite the fact that the appellant was transferred and posted in Anticorruption Establishment Department vide order dated 30.8.2012.
- 3 Incorrect. While para 3 of the appeal is correct.
- 4 No codal formalities was fulfilled by the department and on the basis of ex-parte action, the appellant was removed from service under Police Rules 1975 vide order dated 22.1.2013.
- 5 First portion of para 5 is admitted correct, hence no comments. While the rest of the para is

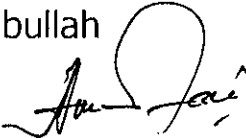
incorrect as comments of DSP Legal confirmed that the final show cause was not served to the appellant and the same was sent on the wrong address. However the appeal was rejected for no good grounds.

- 6 Incorrect. The punishment order is not in accordance with law and rules and liable to be set aside.

**GROUND:**

- A) Incorrect. While para A of the appeal is correct.
- B) Incorrect. The appellant was not treated as per law and rules.
- C) Incorrect. Being a civil servant of the Provincial Govt: the appellant should be preceded under E&D Rules 2011, and not under the Police Rules 1975.
- D) Incorrect. While para D of the appeal is correct.
- E) Incorrect. Hence denied.
- F) Incorrect. The punishment order is not in accordance with law and rules and is very harsh and does not commensurate with the guilt of the appellant.
- G) Legal.

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

Through: APPELLANT  
Habibullah  
  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

**AFFIDAVIT**

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



*Raw*  
DEPONENT

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

Service Appeal No. 06/2014

Habib Ulalh

VS

Police Deptt:

**REJOINDER ON BEHALF OF APPELLANT**

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APPELLANT  
Habibullah  
Through:   
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

**AFFIDAVIT**

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

  
DEPONENT

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 1641 /ST

Dated 22 /10 /2015

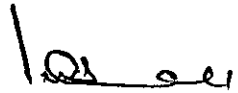
To

The Superintendent of Police,  
Headquarter, KPK Peshawar.

Subject: - Judgement.

I am directed to forward herewith certified copy of Judgement dated 16.10.2015 passed by this Tribunal on subject for strict compliance.

Encl: As above

  
REGISTRAR,  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.