

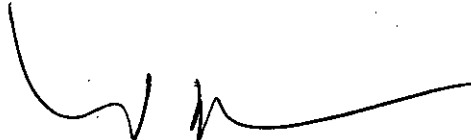
ORDER  
28.01.2022

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

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

ANNOUNCED  
28.01.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN


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

25.01.2022

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

Arguments on restoration application heard.


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

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

  
Chairman

01.03.2021

Due to COVID-19, the case is adjourned for the same on 01.06.2021 before D.B

  
READER

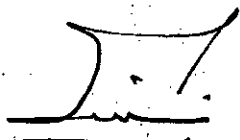
01.06.2021

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

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

*Noted  
06-6-2021*

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


  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

09.09.2021

Junior to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

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

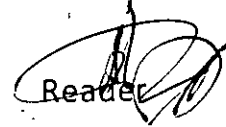
  
(Rozina Rehman)  
Member (J)

  
Chairman

\_\_\_\_\_ .2020

Due to COVID19, the case is adjourned to

12/8/2020 for the same as before.

  
Reader

12.08.2020

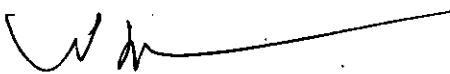
Due to summer vacations case to come up for the same on  
15.10.2020 before D.B.

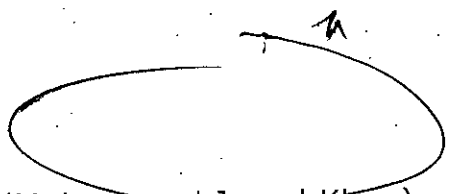
  
Reader

15.10.2020

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

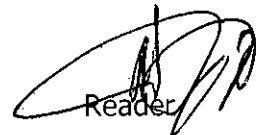
Learned counsel for the appellant is seeking adjournment. Adjourned to 09.12.2020 on which to come up for further proceedings before D.B.

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

  
(Muhammad Jamal Khan)  
Member (Judicial)

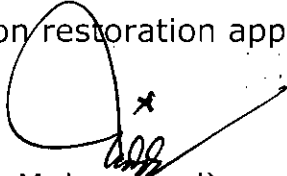
09.12.2020


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

  
Reader

20.03.2020


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


  
(Mian Muhammad)  
Member

  
(M. Amin Khan Kundi)  
Member

03.09.2019

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


  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

15.11.2019

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

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

14.01.2020


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

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

24.2.2020


The Bench is incomplete  
therefore case is adjourned  
to 20.3.2020

  
Reader

16.04.2019

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

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

31.05.2019

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

  
(Hussain Shah)  
Member

  
( M. Amin Khan Kundi)  
Member

10.07.2019

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





  
Member

  
Member

# FORM OF ORDER SHEET

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

Misc. Application No. 16/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	11/01/2019	<p>The application for restoration of Appeal No. 06/2018 submitted by Mr. Niazm Khan by Uzma Saeed Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This Misc. application be put up before DB-II Bench on <u>4-3-2019</u></p> <p style="text-align: right;"> CHAIRMAN</p>
04.03.2019		<p>Counsel for the petitioner present. Notice of restoration application be issued to the respondents. To come up for reply and arguments on restoration application on 16.04.2019 before D.B.</p> <div style="display: flex; justify-content: space-around; margin-top: 20px;"> <div style="text-align: center;">               (M. HAMID MUGHAL)              MEMBER         </div> <div style="text-align: center;">               (M. AMIN KHAN KUNDI)              MEMBER         </div> </div>



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

Restoration Application 15/19

APPEAL NO. 06/2018

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 58

Dated 11-1-2019

V/S

Deptt:

**APPLICATION FOR RESTORATION OF APPEAL NO.**  
**06/2018 WHICH WAS DISMISSED ON DEFAULT VIDE**  
**ORDER DATED 31.12.2018.**

**RESPECTFULLY SHEWETH:**

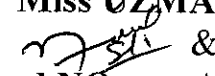
1. That the instant appeal No. 06/2018 was filed before this Honorable Tribunal.
2. That the instant appeal was in Argument stage at principle Bench Peshawar, on date 31.12.2018 the counsel for the appellant waiting for the bench. The counsel wait till 10 O' Clock but the bench-II was not started and then move to Bench-1 for Cases and the case was called for one time and dismissed on default on today 31.12.2018 between 10:15 am to 10:25.
3. That it is in the interest of justice that the appeal should be dealt on merit rather to dismiss on default.

It is therefore, most humbly prayed; that the instant appeal No. 06/2018 may be restore on the acceptance of this application.

**APPELLANT**

Through:

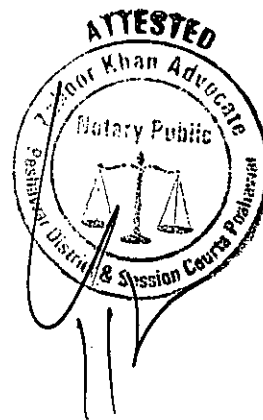
  
Miss **UZMA SYED**

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

**AFFIDAVIT**

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

*[Signature]*  
**DEPONENT**



1



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 6 /2018

Nizam Khan, EX- Constable, No. 1793  
Distt: Swat.

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1469  
Dated 28/12/2017

.....(Appellant)

**VERSUS**

1. The Deputy Inspector General police, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 18.12.2012 RECEIVED ON 29.11.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 25.02.2009 HAS BEEN REJECTED FOR NO GOOD GROUNDS.**

~~READER~~

31.12.2018

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

Member

Member

**ANNOUNCED.**  
31.12.2018

Certified to be true copy

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

07-01-19

Number of Documents 463

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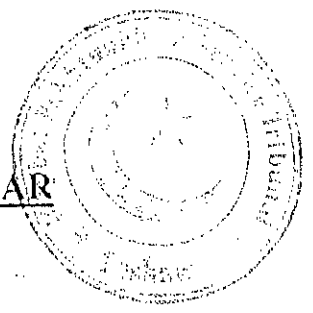
Urgent 4

Total 4

Name of Applicant [Signature]

Date of Creation of Copy 11-1-19

Date of Delivery of Copy 11-1-19



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 6 /2018

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1469

Dated 28/12/2017

Nizam Khan, EX- Constable, No. 1793  
Distt: Swat.

.....(Appellant)

**VERSUS**

1. The Deputy Inspector General police, Malakand, Saidu Sharif, Swat.
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.....(Respondents)

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**READER**

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

Member

Member

**ANNOUNCED.**  
31.12.2018

Certified to be true copy

Number of pages 402

Copying Fee 4-

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Name of the Appellant Nizam Khan

Date of Order 11-1-19

Date of withdrawal of appeal 11-1-19

07-01-19

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

Restoration Application 15/19

APPEAL NO. 06/2018

V/S

Deptt:

**APPLICATION FOR RESTORATION OF APPEAL NO.**  
**06/2018 WHICH WAS DISMISSED ON DEFAULT VIDE**  
**ORDER DATED 31.12.2018.**

**RESPECTFULLY SHEWETH:**

1. That the instant appeal No. 06/2018 was filed before this Honorable Tribunal.
2. That the instant appeal was in Argument stage at principle Bench Peshawar, on date 31.12.2018 the counsel for the appellant waiting for the bench. The counsel wait till 10 O' Clock but the bench-II was not started and then move to Bench-1 for Cases and the case was called for one time and dismissed on default on today 31.12.2018 between 10:15 am to 10:25.
3. That it is in the interest of justice that the appeal should be dealt on merit rather to dismiss on default.

It is therefore, most humbly prayed, that the instant appeal No. 06/2018 may be restore on the acceptance of this application.

APPELLANT

Through:

Miss UZMA SYED

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

**AFFIDAVIT**

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

*Uge*  
**DEPONENT**

1



**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 6 /2018

Nizam Khan, EX- Constable, No. 1793  
Distt: Swat.

Khyber Pakhtunkhwa  
Service Tribunal

Discy No. 1469

Dated 28/12/2017

.....(Appellant)

**VERSUS**

1. The Deputy Inspector General police, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 18.12.2012 RECEIVED ON 29.11.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 25.02.2009 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

READER

31.12.2018

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

Member

**ANNOUNCED.**  
31.12.2018

Member

07-01-19

Certified to be true copy

Number of Discy 462  
 Copying Fee 4-  
 Unpaid 4-  
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 Date of Copying 11-1-19  
 Date of Issuance of Discy 11-1-19

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

**Restoration Application No. 15/2019 in Service Appeal No.6/2018**

Nizam Khan Ex-Constable, No.1793, District Swat.

..... Appellant

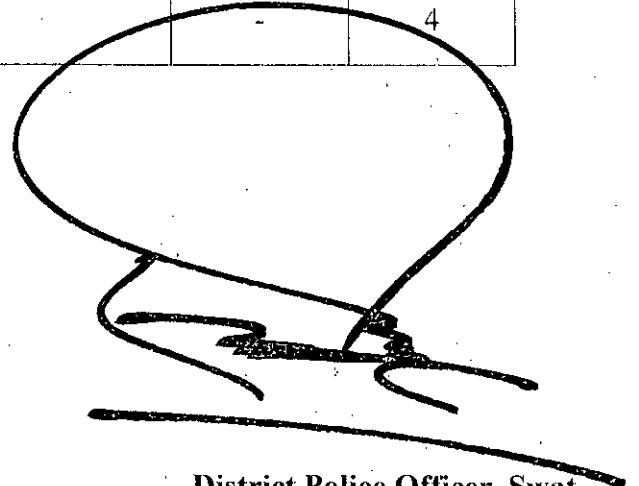
**VERSUS**

1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

..... Respondents

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**District Police Officer, Swat  
(Respondent No.02)**



①

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

**Restoration Application No. 15/2019 in Service Appeal No.6/2018**

Nizam Khan Ex-Constable, No.1793, District Swat.

..... Appellant

**VERSUS**

1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

..... Respondents

**PARAWISE COMMENTS BY RESPONDENTS**

**Respectfully Shewith,**

**Brief facts of the Applicant's case:**

Applicant Nizam Khan Ex-Constable No.1793 while posted at Police Station Mingora absented from duty without prior permission or approved leave of competent authority vide Daily Diary Report No.19 dated 03/08/2008. DSP Legal Swat was appointed as Enquiry Officer to conduct departmental enquiry against the applicant. He was charges sheeted and issued Show Cause Notice to explain his position. The Enquiry Officer in his finding report submitted that the delinquent Constable was time and again called but he did not appeared before the Enquiry Officer to record his statement, hence recommended him for major punishment. After observing all codal formalities he was dismissed from service vide OB No. 31 dated 25/02/2009.

**FACTS:**

1. Correct to the extent that appellant had filed time barred appeal No.06 in January 2018 and respondents have responded with parawise reply on several occasions.
2. Incorrect. Appellant and respondent's representative have attended the honorable Tribunal on each and every date but on 31/12/2018, appellant and his council without any reasonable cause wilfully absented from hearing in order to waste the precious time of honorable Tribunal and cause agony to the respondents through unsound/time barred appeal. The honorable Tribunal has

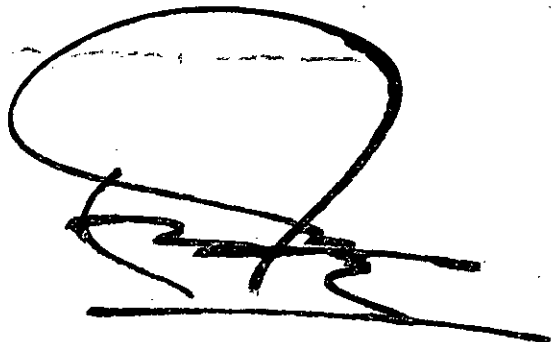
already taken lenient view by dismissing the appeal in default without imposing costs.

- 3. Incorrect. Appeal of the appellánt is badly time barred as he has wilfully absented from duty for long period without any permission/leave.

**PRAYER:**

Keeping in views the above facts and circumstances, it is humbly prayed that the restoration application of applicant being devoid of legal force, may kindly be filed/dismissed with costs.

*Regional Police Officer,*  
*Malakand Region, Swat.*  
**Deputy Inspector General of**  
**Police, Malakand Region**  
**(Respondent No. 1)**



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

**Restoration Application No. 15/2019 in Service Appeal No.6/2018**

Nizam Khan Ex-Constable, No.1793, District Swat.

..... Appellant

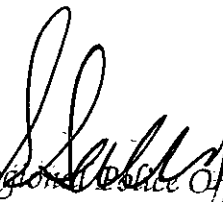
**VERSUS**

1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

..... Respondents

**AUTHORITY LETTER**

We, the above respondents do hereby authorize Mr. Mir Faraz Khan DSP/Legal & Mr. Khawas Khan SI Legal to appear before the Tribunal on our behalf and submit reply etc in connection with titled Restoration Application.

  
Regional Police Officer,  
Malakand at Saidu Sharif, Swat.

**Deputy Inspector General of  
Police, Malakand Region  
(Respondent No. 1)**

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

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

4

**Restoration Application No. 15/2019 in Service Appeal No.6/2018**

Nizam Khan Ex-Constable, No.1793; District Swat.

..... Appellant

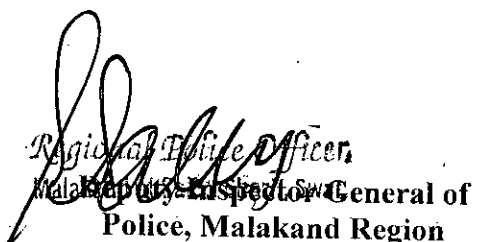
**VERSUS**

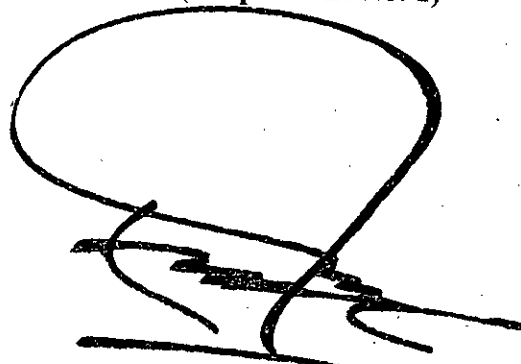
1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

..... Respondents

**AFFIDAVIT**

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

  
Regional Police Officer,  
Malakand Region  
Deputy Inspector General of  
Police, Malakand Region  
(Respondent No. 1)

  
District Police Officer, Swat  
(Respondents No.2)

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

**Restoration Application No. 15/2019 in Service Appeal No.6/2018**

Nizam Khan Ex-Constable, No.1793, District Swat.

..... Appellant

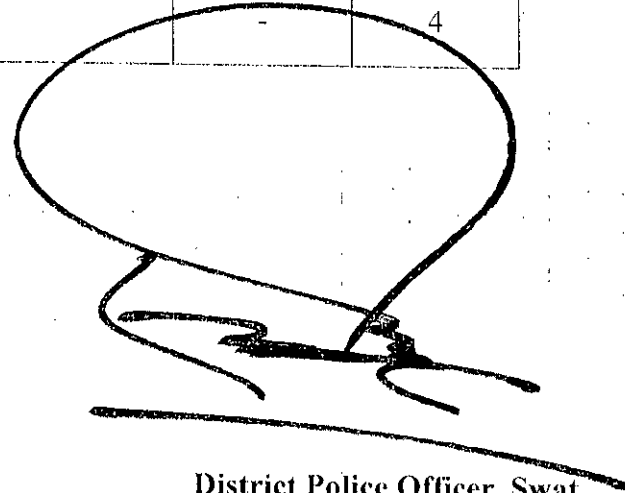
**VERSUS**

1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

..... Respondents

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**District Police Officer, Swat  
(Respondent No.02)**

(1)

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

**Restoration Application No. 15/2019 in Service Appeal No.6/2018**

Nizam Khan Ex-Constable. No.1793. District Swat.

..... Appellant

**VERSUS**

1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

..... Respondents

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**PRAYER:**

Keeping in views the above facts and circumstances, it is humbly prayed that the restoration application of applicant being devoid of legal force, may kindly be filed/dissmised with costs.

*[Signature]*  
 Regional Police Officer,  
 Malakand Region, Swat  
**Deputy Inspector General of  
 Police, Malakand Region  
 (Respondent No. 1)**

*[Signature]*  
**District Police Officer Swat  
 (Respondent No. 2)**

Restoration Application No. 15/2019 in Service Appeal No.6/2018

Nizam Khan Ex-Constable, No.1793, District Swat.

..... Appellant

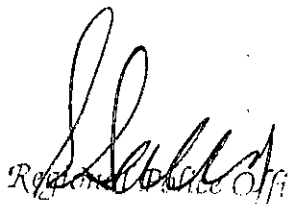
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1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

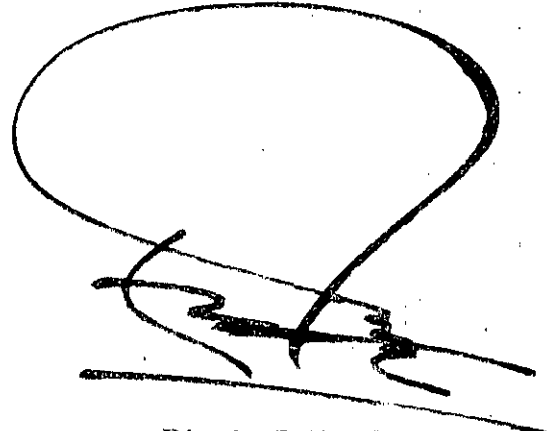
..... Respondents

**AUTHORITY LETTER**

We, the above respondents do hereby authorize Mr. Mir Faraz Khan DSP/Legal & Mr. Khawas Khan SI Legal to appear before the Tribunal on our behalf and submit reply etc in connection with titled Restoration Application.

  
Regional Police Officer,  
Malakand at Saidu Sharif, Swat.

**Deputy Inspector General of  
Police, Malakand Region  
(Respondent No. 1)**



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



**Restoration Application No. 15/2019 in Service Appeal No.6/2018**

Nizam Khan Ex-Constable, No.1793, District Swat.

..... Appellant


**VERSUS**

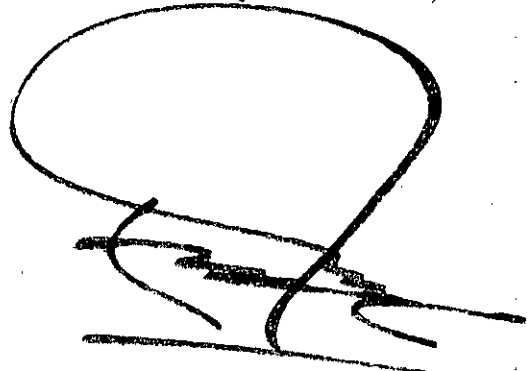
1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

..... Respondents

**AFFIDAVIT**

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

  
Regional Police Officer,  
Malakand Region  
Deputy Inspector General of  
Police, Malakand Region  
(Respondent No. 1)

  
District Police Officer, Swat  
(Respondents No.2)

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

**Restoration Application No. 15/2019 in Service Appeal No.6/2018**

Nizam Khan Ex-Constable, No.1793, District Swat.

..... Appellant

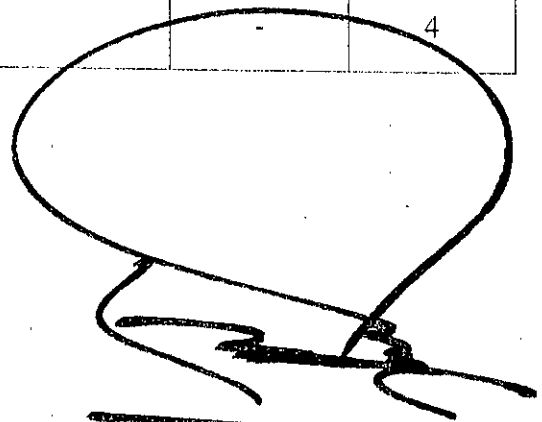
**VERSUS**

1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

..... Respondents

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<b>S.No:</b>	<b>Description of Documents</b>	<b>Annexure</b>	<b>Page</b>
1	Parawise reply	-	1-2
2	Affidavit	-	3
3	Authority Letter	-	4



**District Police Officer, Swat  
(Respondent No.02)**

①

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

**Restoration Application No. 15/2019 in Service Appeal No.6/2018**

Nizam Khan Ex-Constable. No.1793, District Swat.

..... Appellant

**VERSUS**

1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

..... Respondents

**PARAWISE COMMENTS BY RESPONDENTS**

**Respectfully Shewith,**

**Brief facts of the Applicant's case:**

Applicant Nizam Khan Ex-Constable No.1793 while posted at Police Station Mingora absented from duty without prior permission or approved leave of competent authority vide Daily Diary Report No.19 dated 03/08/2008. DSP Legal Swat was appointed as Enquiry Officer to conduct departmental enquiry against the applicant. He was charges sheeted and issued Show Cause Notice to explain his position. The Enquiry Officer in his finding report submitted that the delinquent Constable was time and again called but he did not appeared before the Enquiry Officer to record his statement, hence recommended him for major punishment. After observing all codal formalities he was dismissed from service vide OB No. 31 dated 25/02/2009.

**FACTS:**

1. Correct to the extent that appellant had filed time barred appeal No.06 in January 2018 and respondents have responded with parawise reply on several occasions.
2. Incorrect. Appellant and respondent's representative have attended the honorable Tribunal on each and every date but on 31/12/2018, appellant and his council without any reasonable cause wilfully absented from hearing in order to waste the precious time of honorable Tribunal and cause agony to the respondents through unsound/time barred appeal. The honorable Tribunal has

already taken lenient view by dismissing the appeal in default without imposing costs.

- 3. Incorrect. Appeal of the appellant is badly time barred as he has wilfully absented from duty for long period without any permission/leave.

**PRAYER:**

Keeping in views the above facts and circumstances, it is humbly prayed that the restoration application of applicant being devoid of legal force, may kindly be filed/dissmised with costs.

*[Handwritten Signature]*  
 Regional Police Officer,  
 Malakand Region Swat.  
**Deputy Inspector General of  
 Police, Malakand Region  
 (Respondent No. 1)**

*[Handwritten Signature]*  
**District Police Officer Swat  
 (Respondent No. 2)**

Restoration Application No. 15/2019 in Service Appeal No.6/2018

Nizam Khan Ex-Constable, No.1793, District Swat.

..... Appellant

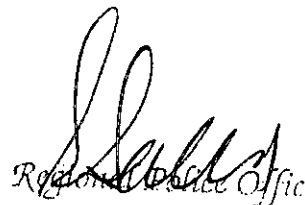
**VERSUS**

1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

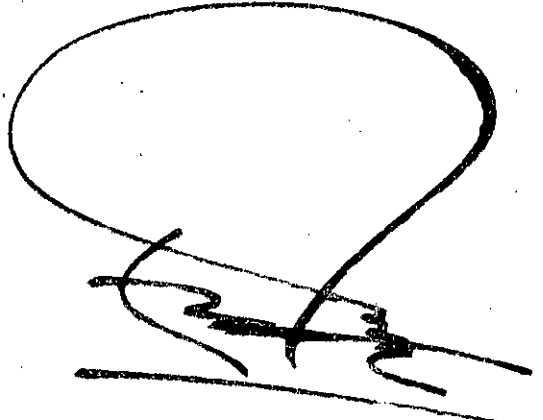
..... Respondents

**AUTHORITY LETTER**

We, the above respondents do hereby authorize Mr. Mir Faraz Khan DSP/Legal & Mr. Khawas Khan SI Legal to appear before the Tribunal on our behalf and submit reply etc in connection with titled Restoration Application.

  
Regional Police Officer,  
Malakand at Saidu Sharif, Swat.

**Deputy Inspector General of  
Police, Malakand Region  
(Respondent No. 1)**



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

**Restoration Application No. 15/2019 in Service Appeal No.6/2018**

Nizam Khan Ex-Constable, No.1793, District Swat.

..... Appellant

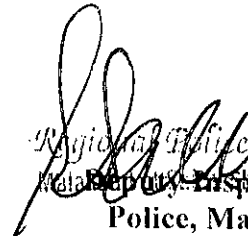
**VERSUS**

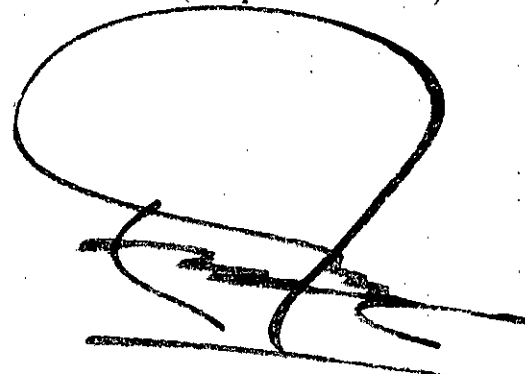
1. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer Saidu Sharif Swat.

..... Respondents

**AFFIDAVIT**


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


  
Regional Police Officer  
Deputy Inspector General of  
Police, Malakand Region  
(Respondent No. 1)

  
District Police Officer, Swat  
(Respondents No.2)

Service Appeal No. 06/2018


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

  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

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

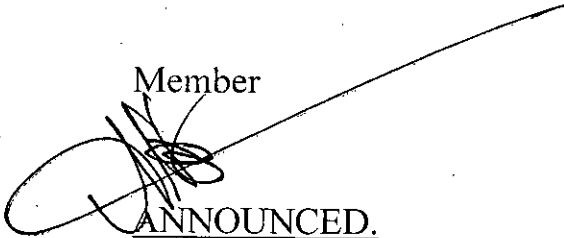
  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Kundi)  
Member

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

  
READER

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

  
Member

  
Member

ANNOUNCED.

31.12.2018

**10.04.2018**

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

  
Member


**24.04.2018**

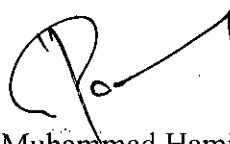
Appellant in person and Addl: AG alongwith Mr. Khawas Khan, S.I for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 11.07.2018 before D.B.

  
Chairman

**11.07.2018**

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

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member



26.02.2018

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

  
(Ahmad Hassan)  
Member(E)

13.03.2018

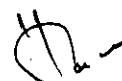
Counsel for the appellant present. Mr. Riaz Paindakhel, Assistant AG for the respondents present. Written reply not submitted. Learned Assistant AG requested for adjournment. Adjourned. To come up for written reply/comments 26.03.2018 before S.B.



(M. Hamid Mughal)  
Member

26.03.2018

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



Member

12.01.2018

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department and during service he was dismissed from service on the allegation of his absence from duty vide order dated 25.02.2009. It was further contended that the impugned order of dismissal from service was passed retrospectively from the date of his absence i.e 03.08.2008 therefore, the same is void ab-initio and limitation does not run against such void order. It was further contended that the appellant also filed departmental appeal but the same was rejected vide order dated 18.02.20012 and communicated to the appellant on 29.11.2017 hence, the present service appeal. It was further contended that since the impugned order is void ab-initio therefore, the same is liable to be set-aside.

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



Appellant Deposited  
Security & Process Fee

  
(Muhammad Amin Khan Kundi)  
Member

Form-A  
FORM OF ORDERSHEET

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

Case No. 6/2018

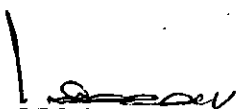
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	2/1/2018	<p>The appeal of Mr. Nizam Khan resubmitted today by Uzma Syed Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;">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

The appeal of Mr. Nizam Khan Ex-Constable No. 1793 Distt. Swat received today i.e. on 28.12.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 2- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.

No. 2773 /S.T,

Dt. 29/12 /2017

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


Uzma Syed Adv. Pesh.

Sir,

① The copy of departmental appeal is not available with Appellant, the same may be requisite from the department. The plea also taken in pleady.

② There were no charge sheet, statement of allegation, enquiry Report was served upon the appellant. It is already mention in pleady.

objections were removed & file - closed

  
2-1-2018

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 6 /2018

Nizam Khan

V/S

Police Deptt:

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

*Uzma Syed*  
**APPELLANT**

THROUGH:

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

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

**BEFORE THE KPK SERVICE TRIBUNAL SHAWAR**

APPEAL NO. 6 /2018

Nizam Khan, EX- Constable, No. 1793  
Distt: Swat.

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 1469

Dated 28/12/2017

.....(Appellant)

**VERSUS**

1. The Deputy Inspector General police, Malakandu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNALS ACT, 1974 AGA THE ORDER 18.12.2012 RECEIVED ON 29.11. WHEREBY, THE DEPARTMENTAL APPEAL OF APPELLANT AGAINST THE ORDER DATED 2009 HAS BEEN REJECTED FOR NO GOOD GRO.

**PRAYER:**

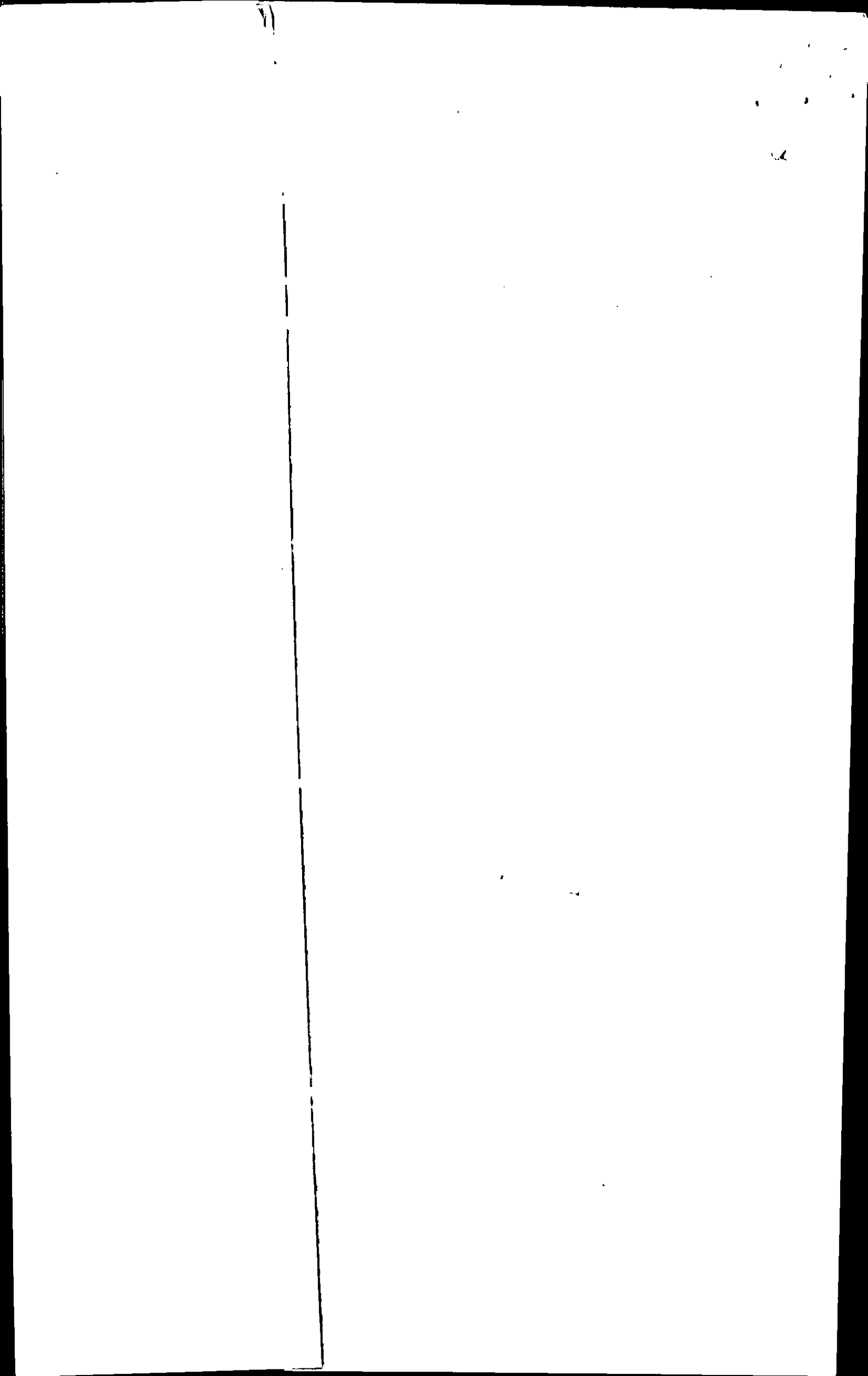
THAT ON ACCEPTANCE OF INSTANT SERVICE APPEAL, THE ORDERS DA 29.11.2017 AND 25.02.2009 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS HONOURABLE TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day

*[Signature]*  
Registrar  
28/12/17

Re-submitted to -day and filed.

*[Signature]*  
Registrar  
2/1/18



**RESPECTFULLY SHEWETH:****FACTS:**

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

1. That the appellant was the employee of the police and was on the strength of the police force Buner.
2. That during Taliban Militancy in Swat appellant was dismissed from the service by the respondent no.2 vide order dated 25.02.2009. **Copy of impugned order is attached as Annexure-A.**
3. That, neither any show cause, charge sheet, statement of allegation, inquiry, opportunity of defense, final show cause notice, opportunity of personal hearing has been served and provided respectively nor any publication has ever been made calling him for assumption of his duty.
4. That some of the colleagues of the appellant have been re-instated by the respondent no.1 vide OB NO 6421-22/E dated 1.11.2011. **Copy of order is attached as Annexure-B.**
5. That appellant upon getting knowledge of the aforesaid re-instatement order, immediately preferred departmental appeal before respondent no.1 & requested therein that case of the appellant is at par with those police officer, who have been re-instated in to service vide order dated 01.11.2011, so the appellant has also entitled to re-instatement in principle of natural justice. The copy of departmental appeal may be requisite from the department, the same is not available with the appellant.
6. That the departmental appeal of the appellant was rejected by respondent no.1 vide order dated 18.02.2012 received on 29.11.2017 for no good grounds. **Copy of rejection order is attached as Annexure-C.**
7. That appellant being aggrieved of the impugned order of respondent and having no other adequate and efficacious remedy, file this service appeal inter-alia on the following grounds amongst others.



**GROUNDS:**

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

4

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

نظام خان  
**APPELLANT**  
Nizam Khan

THROUGH:

UZMA  
**(UZMA SYED)**

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

1793

1793

(9) pages  
A B

**ORDER**

This order will dispose off the enquiry initiated against Constable Nizam No.1793, who while posted to Police Station Mingora absented himself from duty with vide DD No.19, dated 03/08/2008 and failed to report. Thus absented himself from his legitimate duty and a report to this effect was entered at Police Station Mingora vide DD No.19, dated 03/08/2008.

He was issued charge sheet with statement of allegations. Enquiry was initiated against him and DSP Legal was appointed as Enquiry Officer. The Enquiry Officer in his finding report submitted that the defaulter Constable was summoned time and again, but did not appear to record his statement. Hence he was recommended for Major punishment of the Enquiry Officer. He was issued Charge Sheet No. 693/E, dated 29/11/2008 but no reply has been received.

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

This constitutes misconduct/disinterest on his part and as such he is liable for action under section 5 Sub Section (4) of the Removal from service (Special Power) Ordinance 2000 (Amendment) Ordinance 2001 and dispose with the enquiry proceeding as laid down in the Ordinance and am further satisfied that there is no need of holding further departmental enquiry. Since the defaulter Constable has been found guilty of gross misconduct as defined in the said Ordinance, I Mr. Dilawar Khan Bangash DPO Swat as a competent authority, therefore impose major penalty by dismissing him from service from the date of absence i.e 03/08/2008.

Order announced.

*[Signature]*  
District Police Officer, Swat

O.B. No. 31

Dated. 25.2.09

*[Signature]*  
**ATTESTAD**

Annex B  
6

**ORDER**

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

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

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

S.No.	Name and No.
1.	Ex-Constable Sajjad Ali No. 32
2.	Ex-Constable Jehan Zeb No. 519
3.	Ex-Constable Shaukat Ali No. 418
4.	Ex-Constable Said Nawab Shah No. 138
5.	Ex-Constable Nawab Ali No. 188
6.	Ex-Constable Nacem No. 20
7.	Ex-Constable Irfanullah No. 620
8.	Ex-Constable Noor Zada No. 527
9.	Ex-Constable Amir Ali No. 511
10.	Ex-Constable Liaqat Ali No. 598
11.	Ex-Constable Sher Akbar No. 577
12.	Ex-Constable Inamullah No. 555
13.	Ex-Constable Samiullah No. 454
14.	Ex-Constable Sher Ghani No. 502
15.	Ex-Constable Said Imran Shah No. 529
16.	Ex-Constable Shah Aurang Zeb No. 593

Order announced.

*Handwritten signature/initials*

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

No. 6421-22 /E,  
Dated 01/11/2010.

**ATTACHED**

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

④ C

The Deputy Inspector General of Police,  
Malakand Region, Saidu Sharif, Swat.

1350

The District Police Officer, Swat.

20/2/12

1033 /E, dated Saidu Sharif, the 18/2 /2012.

Subject: APPLICATION FOR REINSTATEMENT IN SERVICE.

Memorandum:

Please refer to your Memo: No. 1837/E, dated 13/02/2012.

Application of Ex-Constable Nizam No. 1793 was examined by the  
worthy Region Chief and filed.

He may be informed accordingly.

Office Supdt:

For: Deputy Inspector General of Police,  
Malakand Region, Saidu Sharif, Swat.

\*Nagi\*

*[Handwritten signature]*  
18/2-12

Ullah  
29-11-2017  
received

OB No-59  
21-2-12

22/2/12

*[Handwritten signature]*  
ATTES IAD

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

Restoration Application

15/19

APPEAL NO. 06/2018

V/S

Deptt:

**. APPLICATION FOR RESTORATION OF APPEAL NO.**  
**06/2018 WHICH WAS DISMISSED ON DEFAULT VIDE**  
**ORDER DATED 31.12.2018.**

**RESPECTFULLY SHEWETH:**

1. That the instant appeal No. 06/2018 was filed before this Honorable Tribunal.
2. That the instant appeal was in Argument stage at principle Bench Peshawar, on date 31.12.2018 the counsel for the appellant waiting for the bench. The counsel wait till 10 O' Clock but the bench-II was not started and then move to Bench-1 for Cases and the case was called for one time and dismissed on default on today 31.12.2018 between 10:15 am to 10:25.
3. That it is in the interest of justice that the appeal should be dealt on merit rather to dismiss on default.

It is therefore, most humbly prayed, that the instant appeal No. 06/2018 may be restore on the acceptance of this application.

APPELLANT

Through:

Miss UZMA SYED

&  
Syed Noman Ali Bukhari  
ADVOCATE, HIGH COURT  
PESHAWAR.

AFFIDAVIT

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

*Ue*  
DEPONENT