

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 33/2014

Date of institution ... 03.01.2014

Date of judgment ... 18.09.2018

Amir Shah, Constable No. 4869,
Capital City Police, Peshawar.

... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and two others.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE APPELLATE ORDER DATED 04.12.2013 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS AND AGAINST THE ORIGINAL IMPUGNED ORDER DATED 18.09.2012 WHEREBY THE APPELLANT WAS AWARDED THE MINOR PUNISHMENT OF STOPPAGE OF ONE ANNUAL INCREMENT WITH CUMULATIVE EFFECT.

Mr. Noor Muhammad Khattak, Advocate.

.. For appellant.

Mr. Riaz Ahmad Paindakhel, Assistant Advocate General

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: -

Learned

counsel for the appellants present. Mr. Riaz Ahmad Paindakhel, Assistant Advocate General for the respondents also present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department and during service he was imposed minor penalty of stoppage of one annual increment with cumulative effect and the

*Mr. Riaz Ahmad Paindakhel
18.9.2018*

period he remained absent for 30 days was treated as earned leave vide order dated 18.09.2012 on the allegation of absence for thirty days. The appellant filed departmental appeal on 01.10.2012 but the departmental authority also maintained the order of competent authority vide order dated 04.12.2013 hence, the present service appeal on 03.01.2014.

3. Respondents were summoned who contested the appeal by filing written reply/comments.

4. Learned counsel for the appellant contended that the appellant was imposed minor penalty of stoppage of one annual increment with cumulative effect and the period of absence was treated as earned leave vide order dated 18.09.2012 by the competent authority and the same order was maintained by the departmental authority. It was further contended that when the competent authority treated the absence period of the appellant as earned leave than there was no justification to impose penalty of stoppage of one annual increment of the appellant by the competent authority therefore, it was vehemently contended that the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Assistant Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was absent from lawful duty. It was further contended that proper departmental proceeding was initiated against the appellant and the competent authority has rightly imposed minor penalty of stoppage of one year increment with cumulative effect and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was imposed minor penalty of stoppage of one year increment with cumulative effect and his absence period for 30 days was treated as earned leave vide order dated

*AC Anwar
18.9.2018*

18.09.2012 the same penalty was maintained by the departmental authority. Admittedly the absence period of the appellant was treated as earned leave by the competent authority than in our opinion there was no justification to impose penalty of stoppage of one annual increment with cumulative effect therefore, the impugned order regarding imposing of minor penalty of stoppage of one year annual increment with cumulative effect is illegal and liable to be set-aside. As such we accept the appeal, set-aside the impugned order. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED

18.09.2018



(HUSSAIN SHAH)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

28.03.2018

Junior to counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not available. Adjourn. To come up for arguments on 08.05.2018 before D.B



(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

08.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 24.07.2018.

24.07.2018


Reader
Learned counsel for the appellant and learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 18.09.2018 before D.B


Member


Member

18.09.2018

Learned counsel for the appellant and Mr. Riaz Ahmad Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, we accept the appeal, set-aside the impugned order. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED
18.09.2018


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

21.03.2017

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Due to non-availability of D.B arguments could not be heard. Adjourned. To come up for arguments on 21.07.2017 before D.B.


Chairman

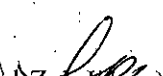
21.07.2017

Clerk of the counsel for appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 20.11.2017 before D.B.


(Gul Zeh Khan)
Member


(Muhammad Amin Khan Kundi)
Member

20.11.2017 Clerk to counsel for the appellant present. Mr. Usman Ghani District Attorney for the respondents present. Clerk to counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 24.01.2018 before D.B.


(Gul Zeh Khan)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

1.2018

Clerk of the counsel for appellant present. Mr. Kabir Ullah, Addl: AG for the respondents present. Clerk of the counsel for appellant seeks adjournment as his senior counsel is not available today. Adjourned. To come up for arguments on 28.03.2018 before D.B.


Member


Chairman

06.04.2016

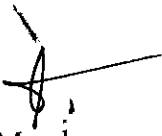
Clerk to counsel for the appellant and Mr. Arif Saleem, ASI
alongwith Mr. Ziaullah, GP for respondents present. Rejoinder not
submitted. Requested for further time for submission of rejoinder. To
come up for rejoinder and arguments on 21-7-16


Member


Member

21.07.2016

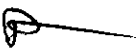
Appellant in person and Addl: AG for respondents present.
Appellant requested for adjournment. Adjournment granted. To come up
for arguments on 17.10, 2016.


Member


Member

17.10.2016

Mr. Imdad Hussain, Junior to counsel for the appellant and Mr.
Muhammad Jan, GP for respondents present. Rejoinder not submitted and
requested for further time to file rejoinder. Request accepted. To come up
for arguments on 3-2-17 before D.B. Rejoinder ⁱⁿ the meanwhile.


(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

03.02.2017

Counsel for the appellant and Mr. Ziaullah, GP for
respondents present. Rejoinder submitted and requested for
adjournment. To come up for final hearing on 21.03.2017 before D.B.


Member


Chairman

4.9.2014

Appellant with counsel and Mr. Riaz Khan, S.I.(legal) on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Written reply has not been received, and representative of the respondents stated that written reply has been prepared and got vetted from the office of learned AAG but requires signatures of the concerned authorities. Written reply/comments be filed within a fortnight, with copy for the appellant/counsel for the appellant for rejoinder on 31.12.2014.


Chairman

31.12.2014

Appellant in person and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for rejoinder on 17.04.2015.


Reader.

17.04.2015

Appellant with counsel and Mr. Hayat Muhammad, Reader to DSP alongwith Additional Advocate General for respondents present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 26.10.2015.

26.10.2015

Clerk to counsel for the appellant and Mr. Azam Shah, H.C alongwith Addl: AG for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I Khan. Therefore, the case is adjourned to 6/4/16 for arguments


Member

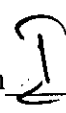
Appeal No. 33/2014.
Mr. Amin Shahi.


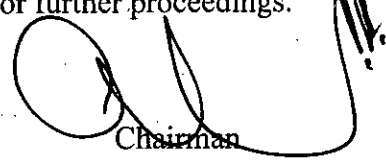
3. 06.03.2014

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 order dated 24.09.2013, he filed departmental appeal on 01.10.2012, which has been rejected on 04.12.2013, hence the instant appeal on 03.01.2014. He further contended that the impugned order dated 04.12.2013 has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules-1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply/comments on 26.05.2014.

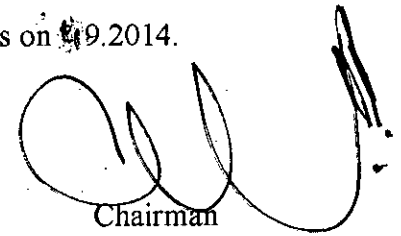
Appellant Deposited
Security & Process Fee
Rs. 180/- Bank
Receipt is Attached with File.

4. 06.03.2014

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


Member

Chairman



26.5.2014 Appellant with counsel present. Respondents are not present despite their service through concerned officials. However, Mr. Usman Ghani, Sr. GP is present and would be contacting the respondents for written reply/comments on 09.2014.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 33/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	08/01/2014	<p>The appeal of Mr. Ajmir Shah resubmitted today by Mr. Noor Muhammad Khattak 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	20-1-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>6-3-2014</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Ajmir Shah Constable No. 4869, CCP Peshawar received today i.e. on 03.01.2014 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Annexure-E of the appeal is illegible which may be replaced by legible/better one.

No. 24 /S.T.

Dt. 03/01 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Notes

Sir,

The objection on annexure E has been removed, hence resubmitted today dated 8-1-2014.

13
4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 33 /2014

AJMIR SHAH

VS

POLICE DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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5.	Reply	D	9.
6.	Impugned order	E	10.
7.	Departmental appeal	F	11.
8.	Rejection order	G	12.
9.	Vakalat nama	13.

APPELLANT

THROUGH:


NOOR MOAHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL No. 33 /2014

K.W.P. Peshawar
Case No. 13
Dated 03-01-2014

Mr. Ajmir Shah, Constable No.4869,
Capital City Police, Peshawar.....**Appellant**

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar.
- 2- The District Police Officer, District Peshawar.
- 3- The Superintendent of Police Headquarter, District Peshawar
.....**Respondents**

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE APPELLATE ORDER DATED 4.12.2013
WHEREBY THE DEPARTMENTAL APPEAL OF THE
APPELLANT HAS BEEN REJECTED ON NO GOOD
GROUND AND AGAINST THE ORIGINAL IMPUGNED
ORDER DATED 18-09-2012 WHEREBY THE APPELLANT
WAS AWARDED THE MINOR PUNISHMENT OF
STOPPAGE OF ONE ANNUAL INCREMENT WITH
COMMULATIVE EFFECT

PRAYER:

That on acceptance of this appeal the impugned orders dated 18.09.2012 and 4.12.2013 may be set aside and the respondents may be directed to release the annual increment of the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

That the appellant was enrolled as constable in the respondent Department on 19-07-2007. That since from appointment till date the appellant performed his duties quite efficiently and up to the entire satisfaction of his superiors. Copy of Appointment orders is attached as annexure **A:**

Re-submitted to ~~4/14~~
and filed,

[Handwritten signature]
8/1/14

[Handwritten signature]
3/1/14

- 2- That while serving as Constable in the respondent Department the appellant was seriously ill and after proper check up the concerned Doctor advised the appellant for complete bed rest. That appellant applied for Medical leave on the advice of the concerned Doctor but the concerned authority refused the request of the appellant with out any valid reason. Copies of Medical certificates are attached as annexure **B.**
- 3- That instead of giving Medical leave to the appellant the respondent No.3 issued Show Cause Notice dated 14-09-2012 to the appellant without following the procedure mentioned in the E&D rules 2011. That in response to the said show cause notice the appellant replied in detail. Copies of final show cause notice and reply are attached as annexure **C & D.**
- 4- That vide order dated 18-09-2012 the respondent No.3 punished the appellant by awarding Minor punishment of stoppage of one year annual increment with cumulative effect. Copy of the order is attached as annexure **E.**
- 5- That feeling aggrieved appellant filed Departmental Appeal dated 01-10-2012 and respondent No.2 rejected the said Departmental appeal on good grounds vide order dated 04-12-2013. Hence the present appeal on the following grounds amongst the others. Copies of the departmental appeal and rejection order are attached as annexure **F & G.**

GROUND:

- A- That the impugned orders dated 4.12.2013 and 18-09-2012 are against the law, facts, natural justice and materials on the record, therefore not tenable and liable to be set aside.
- B- That the appellant has not been treated in accordance with law and rules and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That no charge sheet and statement of allegations has been served on the appellant by the respondent Department before issuing the impugned order dated 18-09-2012.
- D- That no chance of personnel hearing/defense has been given to the appellant before issuing the impugned order dated 18-09-2012.

- E- That no show cause notice has been served on the appellant before issuing the adverse order dated 18-09-2012 against the appellant by the respondent Department.
- F- That no regular inquiry has been conducted against the appellant which as per Supreme Court Judgments is necessary in punitive actions against the civil servants.
- G- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

APPELLANT



AJMIR SHAH

THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE**

A-4

ENLISTMENT ORDER.

Recruit/Constable Ajmir Shah S/O Qudrat Shah

R/O H:NO.591 Afghan Colony PS Faqir Abad

Distt: Peshawar is hereby enlisted as recruit/Constable in BPS-5

as selected by the recruitment Committee w.e.f _____ and

allotted Constabulary No 4869

Height 5'-7½" Chest 33"x34½"

Education FA D/O Birth 7 / 3 / 1979

His service is purely on temporary basis and liable for termination at any time without any notice.

OB No. 2063

Dated 18/7 2007.

[Signature]
SUPERINTENDENT OF POLICE.
W/HQRS: PESHAWAR.

ATTESTED

[Signature]

① B-5

Khyber Teaching Hospital, Peshawar OUT - PATIENTS DEPARTMENT

RS: 10/-



242943
S.No:

0470210010
Name: AMIR
Sex: MALE
Age: 45
Occupation: 12-M
Address: PESHAWAR

cough
Lungs
Abnormalities

Tab Moniget 400

105 1 P1

Tab. Cotrimox -
- 300 1

Tab. Norimon 200

P.D.I.

complete bed rest for
7 days

ATTESTED

Medical Officer
Orthopedics & Traumatology Unit
Khyber Teaching Hospital, Peshawar

Khyber Teaching Hospital, Peshawar

OUT - PATIENTS DEPARTMENT

RS: 10/-



S.No: 390877

Patient ID: 6779031211
Name: AJMIR SHAH
Gender: MALE
Referred to: ENT
Date: 04-MAY-12
Address: PESHAWAR

32 YEAR
Rate: 10
Time: 10:58:21

OPD

efo Rung max

*Tab. Rigid 10mg
Nid 1/1
Ephedrin
relax drop
- 70. 10
- 1007
1+1/1*

ATTESTED

13/7

Bed rest for 09 days

DR. *[Signature]*
Orthopedics & Trauma Unit
Khyber Teaching Hospital, Peshawar

Khyber Teaching Hospital, Peshawar

OUT - PATIENTS DEPARTMENT

RS: 10/-



S.No: _____

Patient ID: 6769039214
 Name: AJMIR SHAH
 Gender: MALE
 Referred to: ENT
 Date: 19-MAY-12
 Address: PESHAWAR

OPD
 32 YEAR
 Rate: 10
 Time: 10:58:21

Nasal obstruction - off & on.

R.

*- Tab Kalanoid 500mg
 1 P 1*

*- Tab. Pexet 120mg
 1 P 1*

ATTESTED

[Signature]

Dr. Benjamin Co Inhalation

*- complete bed rest for
 (06) days*

DOCTOR ON DUTY
 Orthopedics & Traumatology Unit
 Khyber Teaching Hospital, Peshawar

C-8
3

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 Ajmir Shah No.4869 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 Ajmir Shah No.4869 while posted at PS Kotwali, Peshawar was absent from 23.04.2012 to 25.04.2012 and again absent from 04.05.2012 to 02.06.2012(30-days) without taking permission or leave. This act amounts to gross misconduct on your part and against the discipline of the force"

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

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

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

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

Jamir
SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 545 /PA, SP/HQrs: dated Peshawar the 14/9/2012.

Copy to official concerned

ATTESTED
[Signature]

Handwritten notes in Urdu script, including the date 14/9/12.

545/PA

جناب عالی / محترم خائنیل منو حاز کرٹس بڑے
 معروض ہیں کہ ہری ناک میں کوئٹہ اگہر سے
 جے سائیس لینے میں کافی سہولت پیدا ہو رہی ہے
 علیحدہ معاملہ کنٹرول اور 14 ہسپتالوں میں علیحدہ
 معاملہ EHTI وارو اور میں منظم ڈاکٹر صاحب سے
 دفعہ دفعہ بریڈر کسٹ کی ندرت کی علیحدہ معاملہ
 جملہ ڈاکٹریٹ میں سے انڈیا میں انڈیا کو
 پتہ ہے ہے۔ جو انڈیا میں مافذات کے تحت
 رہ رہے ہیں۔ جو کہ ہری ناک اور ڈیوٹی میں
 رہ رہے ہیں۔ میں نے ڈاکٹر صاحب سے علیحدہ
 ایسی ہی ہے۔
 منظم میں علیحدہ ہری ناک اور ڈیوٹی میں
 اور انڈیا میں منظم ڈاکٹر صاحب سے
 واقعہ دفعہ منظم ڈاکٹر صاحب سے
 4869 منظم ڈاکٹر صاحب سے

(D)
 PA
 AB
 & must a Annexes
 & Annual Stoppage
 increment
 cumulative
 a permit
 & one
 years
 absence
 as a
 17/9/12
 18/9/12

Superintendent
 Capital
 SP-17/9/12

17/9/12

PA
 how
 conducting
 the enquiry
 proceedings
 17/9/12

ATTESTED
 4

ORDER:

Constable Ajmir Shah No. 4869 of Capital City Police Peshawar while posted at PS Kotwali, Peshawar absented himself from duty w.e.f 23.04.2012 to 25.04.2012 and from 04.08.2012 to 02.06.2012 (30-days) without taking permission or leave.

In light of the recommendation of E.O, the alleged official could not be produce any cogent reason regarding his absence. The E.O further recommended that his absence period may be treated leave without pay vide Enquiry Report No. 49/ST dated 07.09.2012.

In view of the above, the undersigned came to the conclusion that delinquent official did not follow up the procedure for obtaining of medical leave nor produced authentic medical prescription to cover his absence period and found guilty of the charges. Therefore, in exercise of the power vested to me under Police Disciplinary Rules, 1975 he is awarded the minor punishment of stoppage of 01-years annual increments with emulative effect. Hence, the period he remained absent for 30 days is treated as earned leave. Pay is released.

**SUPERINTENDENT OF POLICE
HEADQURTER, PESHAWAR**

OB NO.3424

Dated. 18.9.2012

No. 3639-45/PA/SP/HQrs: date Peshawar the 24/09/2012.

Copies to:

DSP/HQrs: Peshawar

Pay Officer/ I/C/DAR, Peshawar.

OASI, CRC & FMC along with completed Departmental file.

Official concerned.

**SUPERINTENDENT OF POLICE
HEADQURTER, PESHAWAR**

E-10

ORDER

Constable Ajmir Shah No.4869 of Capital City Police Peshawar while posted at PS Kotwali, Peshawar absented himself from duty w.e.f 23.04.2012 to 25.04.2012 and from 04.05.2012 to 02.06.2012 (30-days) without taking permission or leave.

In light of the recommendation of E.O, the alleged official could not produce any cogent reason regarding his absences. The E.O further recommended that his absence period may be treated leave without pay vide Enquiry Report No.49/ST dated 07.09.2012.

In view of the above, the undersigned came to the conclusion that delinquent official did not follow up the procedure for obtaining of medical leave nor produced authentic medical prescription to cover his absence period and found guilty of the charges. Therefore, in exercise of the power vested to me under Police Disciplinary Rules, 1975 he is awarded the minor punishment of stoppage of 01-years annual increment with cumulative effect. Hence, the period he remained absent for 30 days is treated as earned leave. Pay is released.

S. Ahmad
SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

OB NO. 3424 /
Dated 18/9/2012

No. 3639-45 /PA/SP/HQrs: dated Peshawar the 24/09/2012.

Copies to:

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

ATTESTED

[Signature]

اسٹیبلشمنٹ بجالی انٹر سٹیٹ

40

بیتل بولسٹا

4563 F-11
01.10.12
2-10-2012

No 2443-LB

درخواست برآمد صوفی سزا ایکٹ کے تحت

3424 OB 2012-9-18
2-10-2012
بندہ نے سزا دہی کے سلسلے میں اپنی اور باجی دار شکرین کے
اور شکرین کے گھریلو کے اجنبی افراد کے حوالے سے اور دوسرے افراد کے
طریقہ آدھی سے اور اسی طرح کے دیگر افراد کے حوالے سے

کہہ آئے ہیں کہ ان کے درمیان سے درخواست نامہ
کا کوئی حصہ اس سلسلے میں حالات اور اسی طرح کے دیگر
سلسلے کے ساتھ یا دیگر چیزیں اس سزا کے تحت ہیں
کا کوئی حصہ نہیں ہے

0312-9598098
یہ سزا ہے

4869
یہ سزا ہے

CPC/FMC
Partup record R-DSP-L

R/C
for instructions
3/10/12

For comments

ATTESTED

Dy: Supdt. of Police,
Legal, CCP/Peshawar
2.10.2012

for record

ORDER

G-12

This order will dispose off departmental appeal of constable **Ajmeer Shah No. 4869** who was awarded the minor punishment of stoppage of one annual increments with cumulative effect vide OB No. 3424 dated 18/9/2012 by SP-HQRs: Peshawar.

The charges levelled against him were that he while posted to PS Kotwali absented himself from lawful duty w.e.f 23.4.12 to 25.4.12 and 4.5.12 to 2.6.12 (G.total 30-days).

Proper departmental proceedings were initiated against him and after observing all codal formalities he was awarded the above major punishment by the Competent Authority.

The relevant record has been perused along with his explanation and also heard him in person in OR on 29/11/2013 but he could not defend himself. The charge of absence stand proved against him. The undersigned seems no plausible reason to interfere in the order passed by SP-HQRs: Peshawar, hence the appeal is rejected/filed.


**CAPITAL CITY POLICE OFFICER,
PESHAWAR.**

No. 2034-39 /PA dated Peshawar the 04/12/2013.

Copies for inf: and n/a to the:-

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

ATTESTED


VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar.

OF 2014

Amir Shah

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt

(RESPONDENT)
(DEFENDANT)

I/We Amir Shah

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2013



CLIENT



ACCEPTED

NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

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

Service Appeal No.33/2014.

Ajmeer Shah No.4869 Police Peshawar.....**Appellant.**

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. District Police Officer, Peshawar.
3. Superintendent of Police, HQrs: Police line Peshawar.....**Respondents.**

Reply on behalf of Respondents No. 1, 2, & 3.

PRELIMINARY OBJECTIONS.

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

FACTS:-

- 1- Para No. 1 Pertains to record, hence no comments.
- 2- Para No. 2 is totally incorrect. The story mentioned by the appellant is tailored one. In fact the delinquent official did not follow up the procedure for obtaining medical leave, nor produced authentic medical prescription to cover his absence period and was found guilty of the charges. It is worth to mention that the appellant is habitual absentee as the appellant was also awarded minor punishment of censure vide OB No 4185 dated 19.12.2013 due to his absence from duty. (Annexed "A")
- 3- Para No. 3 is incorrect. After completion of departmental proceeding the enquiry officer found the appellant guilty and submit his findings over which the appellant was issued show cause notice to which he replied and was also heard in person but he could not satisfy the competent authority. Furthermore, the appellant also failed to follow the procedure laid down for medical leave as he did not appear before the medical officers of the police hospital, hence after fulfilling all codal formalities he was awarded minor punishment of stoppage of one year increment with cumulative effect.
- 4- Para is correct to the extent that minor punishment of stoppage of one year annual increment with cumulative effect was awarded because the delinquent official was found guilty of willfully absenting from lawful duty.

07
17.04.15


- 5- Para No. 5 is correct to the extent that departmental appeal of the appellant was rejected according to disciplinary rules as the allegations leveled against the appellant were stand proved.

GROUND:-


- A- Incorrect. The punishment order vide OB No. 3424 dated 18.09.2012 passed by the competent authority and order vide No. 2034-39/PA dated 04.12.2013 are legal and in accordance with the law.
- B- Incorrect. The appellant was treated in accordance with law/rules and no injustice or violation of law has been done.
- C- Incorrect. The appellant was issued charge sheet and summary of allegations which he duly replied, he was also heard in person by the competent authority but he could not defend himself, hence upon the findings he was served with show cause notice to which he also replied but his explanation was found unsatisfactory hence after fulfilling all codal formalities, the competent authority awarded him minor punishment of stoppage of one annual increments with cumulative effect, vide OB No 3424 dated 18.09.2014.
(Annexed as "B")
- D- Incorrect. The appellant was personally heard in person by the competent authority but he badly failed to defend himself on charges leveled against him and as a result he was awarded minor punishment of stoppage of one year annual increment with cumulative effect under the disciplinary rules.
- E- Incorrect. Para already explained in Para "C".
- F- Incorrect. A proper and impartial enquiry was conducted by SDPO Chamkani against the appellant who recorded his statement but he could not produce any cogent reason regarding his absence, hence he was awarded the minor punishment of stoppage of his one annual increment with cumulative effect.
- G- That the respondents also seek permission of this honorable Service Tribunal to raise additional grounds during the time of arguments.

PRAYERS:-

It is therefore most humbly prayed that in light of above stated facts/ submissions, the appeal of the appellant may kindly be dismissed being devoid of merit and baseless.



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



**District Police Officer,
Peshawar.**



**Superintendent of Police,
HQs: Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.33/2014.

Ajmeer Shah No.4869 Police Peshawar.....Appellant.

VERSUS.

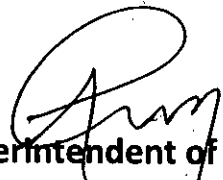
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. District Police Officer, Peshawar.
3. Superintendent of Police, HQrs: Police line Peshawar.....Respondents.

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.**


**District Police Officer,
Peshawar.**


**Superintendent of Police,
HQrs: Peshawar.**

ORDER

✓
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13

Constable Ajmeer Shah No.4869 while posted at Police Lines, Peshawar absented himself from duty with effect from 02.02.2013 to 13.02.2013 (11-days) without taking permission or leave.

In light of the recommendations of Enquiry Officer, his period of absence from 02.02.2013 to 13.02.2013 is treated as leave without pay. Furthermore, he is awarded the minor punishment of censure.

Encl
(10)

✓

OB NO. 4185
Dated 19/12/2013

No. 4121-25 / P/W/S/HQrs: dated Peshawar No. 13/19 dt. 13/12/2013.

Copies to:

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

ORDER

Constable Ajmir Shah No.4869 of Capital City Police Peshawar while posted at PS Kotwali, Peshawar absented himself from duty w.e.f 23.04.2012 to 25.04.2012 and from 04.05.2012 to 02.06.2012 (30-days) without taking permission or leave.

In light of the recommendation of E.O, the alleged official could not produce any cogent reason regarding his absences. The E.O further recommended that his absence period may be treated leave without pay vide Enquiry Report No.49/ST dated 07.09.2012.

In view of the above, the undersigned came to the conclusion that delinquent official did not follow up the procedure for obtaining of medical leave nor produced authentic medical prescription to cover his absence period and found guilty of the charges. Therefore, in exercise of the power vested to me under Police Disciplinary Rules, 1975 he is awarded the minor punishment of stoppage of 01-years annual increment with cumulative effect. Hence, the period he remained absent for 30-days is treated as earned leave. Pay is released.

g.m.
**SUPERINTENDENT OF POLICE
HEADQUARERS, PESHAWAR**

OB NO. 3424 /
Dated 18/9 /2012

No. 3639-45 /PA/SP/HQrs: dated Peshawar the 21/9 /2012.

Copies to:

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

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL 33/2014

AJMEER SHAH

VS

POLICE DEPARTMENT

REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO
THE REPLY SUBMITTED BY THE RESPONDENTS

R/SHEWETH:

PRELIMINARY OBJECTION FROM 1 – 8:

All the objections raised by the respondent are incorrect and baseless and not in accordance with law and rules rather the respondents is estopped due to their own conduct to raise any objection at this stage of the appeal.

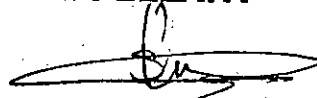
ON FACTS:

- 1- Incorrect and not replied accordingly hence denied.
- 2- Incorrect and not replied accordingly. That the appellant become seriously ill during service and the Doctor advised him complete bed rest. That when the appellant applied for leave on medical ground the concerned authority refused the same.
- 3- Incorrect and not replied accordingly. That the respondent No.3 instead of allowing Medical Leave, issued Show Cause Notice to the appellant. That the appellant replied in detail of the said Show Cause Notice.
- 4- Incorrect and not replied accordingly. That vide dated 18-09-2012 the respondent No.3 punished the appellant by awarding Minor punishment of stoppage of one year annual increment with cumulative effect.
- 5- Incorrect and not replied accordingly. That Departmental Appeal of the appellant was rejected by respondent No.2 on no good grounds vide dated 04-12-2013.

GROUNDS:

All the grounds of the main appeal are correct and in accordance with law and that of the respondents are incorrect & baseless. That, the impugned order dated 4-12-2013 & 18-09-2012 are not issued by the competent authority in accordance with law & rules and such the same are not tenable in the eye of Law, hence, liable to be set aside.

APPELLANT



AJMIR SHAH

THROUGH:



NOOR MOHAMMAD KHATTAK



**SYED IMDAD HUSSAIN SHAH
ADVOCATES**

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1925 /ST

Dated 25 /9 / 2018

To


The Superintendent of Police Headquarter,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 33/2014, MR. AJMIR SHAH.

I am directed to forward herewith a certified copy of Judgement dated 18.09.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.