

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SCANNED
KPST
Peshawar.

SERVICE APPEAL NO. 143/2018

Date of institution ... 25.01.2018

Date of judgment ... 17.04.2019

Muhammad Asif Son of Salawar Khan Ex-Police Constable
R/o Ganjano Kalay Mohallah Ali Abad Tehsil & District Hangu

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs, Civil Secretariat Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa at Peshawar.
3. Deputy Inspector General of Police, Kohat Region at Kohat.
4. District Police Officer, District Hangu.

... (Respondents)

APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT,
1974 R/W KHYBER PAKHTUNKHWA E&D RULE 2011
AGAINST THE IMPUGNED ORDER NO. 65 DATED
03.02.2009 OF RESPONDENT NO. 4 AND IMPUGNED
APPELLATE ORDER NO.58-59 DATED 03.01.2011,
WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM
HIS SERVICE.

Mr. Muhammad Ilyas Orakzak, Advocate

Mr. Kabirullah Khattak, Additional Advocate General

.. For appellant.

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

MR. HUSSAIN SHAH

.. MEMBER (JUDICIAL)

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the

appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents 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. He was imposed major penalty of dismissal from service vide order dated 03.02.2009 on the allegation of absence from

M. Amin
17.4.2019

duty. The appellant filed departmental appeal, copy of the same is not available on the record however, the same was dismissed being time barred ~~vide order~~^M vide order dated 03.01.2011 hence, the present service appeal on 25.01.2018.

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

4. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that the appellant was performing his duty with honesty and devotion till 12.05.2008 but due to high militancy and worst condition in province and especially in the District Hangu, the appellant was threatened by the terrorist due to which the appellant remained absent from duty. It was further contended that the absence of the appellant was not deliberate but it was beyond the control of the appellant. It was further contended that the appellant was imposed major penalty of dismissal from service vide order dated 03.02.2009 retrospectively i.e from the date of absence therefore, the impugned order is void and no limitation run against the void order. As such, the appeal of the appellant cannot be treated as time barred. It was further contended that neither absence notice was issued to the appellant nor any charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor opportunity of personal hearing and defence was provided to the appellant therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department but he remained absent from duty without permission of the lawful authority. It was further contended that a proper charge sheet and statement of allegation was served upon the appellant. It was further contended that the inquiry officer has

M. H. Khan
17.4.2019

mentioned in the inquiry report that the appellant was summoned for inquiry proceeding but he did not appear before the inquiry officer therefore ex-parte proceeding was initiated against the appellant. It was further contended that the appellant was dismissed from service vide order dated 03.02.2009 but he has filed departmental appeal, copy of the same is not available on the record however, the same was dismissed by the departmental authority vide order dated 03.01.2011 being time barred. It was further contended that after dismissal of departmental appeal the appellant was required to file service appeal within one month but he has filed service appeal on 25.01.2018 after a delay of seven years therefore, it was contended that the service appeal is badly time barred and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He remained absent from duty, departmental proceeding was initiated against him. He was issued charge sheet and statement of allegation but he did not appear before the inquiry proceeding therefore, ex-parte proceeding was initiated and the inquiry officer recommended him for major penalty. Accordingly on the basis of inquiry report, the appellant was imposed major penalty of dismissal from service vide order dated 03.02.2009. The record further reveals that the appellant filed departmental appeal, copy of the same is not available on the record however, the same was rejected vide order dated 03.02.2011 being time barred. Moreover, the appellant was required to file service appeal within one month from the date of dismissal of departmental appeal but the appellant has filed service appeal on 25.01.2018 after a delay of more than seven years. Though the learned counsel for the appellant contended that the impugned order was passed retrospectively i.e from the date of absence therefore, the same is void and no limitation run against the void order but the order of dismissal from service retrospectively does not make the impugned order void. Reference is made to 1998 SCMR 1890. As such, without touching

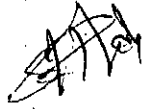
W. Amin
17.4.2019

the merit of the case, the present service appeal is dismissed being time barred.

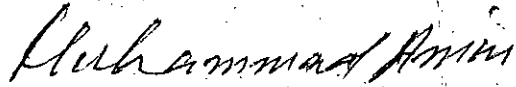
Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

17.04.2019



(HUSSAIN SHAH)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

EP 223/19
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26/8 600/3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 143/2018

Date of institution ... 25.01.2018

Date of judgment ... 17.04.2019

Muhammad Asif Son of Salawar Khan Ex-Police Constable
R/o Ganjano Kalay Mohallah Ali Abad Tehsil & District Hangu

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs, Civil Secretariat Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa at Peshawar.
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... (Respondents)

APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT, 1974 R/W KHYBER PAKHTUNKHWA E&D RULE 2011 AGAINST THE IMPUGNED ORDER NO. 65 DATED 03.02.2009 OF RESPONDENT NO. 4 AND IMPUGNED APPELLATE ORDER NO.58-59 DATED 03.01.2011 WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM HIS SERVICE.

Mr. Muhammad Ilyas Orakzak, Advocate

.. For appellant.

Mr. Kabirullah Khattak, Additional Advocate General

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents 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. He was imposed major penalty of dismissal from service vide order dated 03.02.2009 on the allegation of absence from

M. Amin
17.4.2019

duty. The appellant filed departmental appeal, copy of the same is not available on the record however, the same was dismissed being time barred ~~vide order~~^M vide order dated 03.01.2011 hence, the present service appeal on 25.01.2018.

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

4. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that the appellant was performing his duty with honesty and devotion till 12.05.2008 but due to high militancy and worst condition in province and especially in the District Hangu, the appellant was threatened by the terrorist due to which the appellant remained absent from duty. It was further contended that the absence of the appellant was not deliberate but it was beyond the control of the appellant. It was further contended that the appellant was imposed major penalty of dismissal from service vide order dated 03.02.2009 retrospectively i.e from the date of absence therefore, the impugned order is void and no limitation run against the void order. As such, the appeal of the appellant cannot be treated as time barred. It was further contended that neither absence notice was issued to the appellant nor any charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor opportunity of personal hearing and defence was provided to the appellant therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department but he remained absent from duty without permission of the lawful authority. It was further contended that a proper charge sheet and statement of allegation was served upon the appellant. It was further contended that the inquiry officer has

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17.4.2019

mentioned in the inquiry report that the appellant was summoned for inquiry proceeding but he did not appear before the inquiry officer therefore ex-parte proceeding was initiated against the appellant. It was further contended that the appellant was dismissed from service vide order dated 03.02.2009 but he has filed departmental appeal copy of the same is not available on the record however, the same was dismissed by the departmental authority vide order dated 03.01.2011 being time barred. It was further contended that after dismissal of departmental appeal the appellant was required to file service appeal within one month but he has filed service appeal on 25.01.2018 after a delay of seven years therefore, it was contended that the service appeal is badly time barred and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He remained absent from duty, departmental proceeding was initiated against him. He was issued charge sheet and statement of allegation but he did not appear before the inquiry proceeding therefore, ex-parte proceeding was initiated and the inquiry officer recommended him for major penalty. Accordingly on the basis of inquiry report, the appellant was imposed major penalty of dismissal from service vide order dated 03.02.2009. The record further reveals that the appellant filed departmental appeal, copy of the same is not available on the record however, the same was rejected vide order dated 03.02.2011 being time barred. Moreover, the appellant was required to file service appeal within one month from the date of dismissal of departmental appeal but the appellant has filed service appeal on 25.01.2018 after a delay of more than seven years. Though the learned counsel for the appellant contended that the impugned order was passed retrospectively i.e from the date of absence therefore, the same is void and no limitation run against the void order but the order of dismissal from service retrospectively does not make the impugned order void. Reference is made to 1998 SCMR 1890. As such, without touching

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17.4.2019

the merit of the case, the present service appeal is dismissed being time barred.

Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED


17.04.2019




(HUSSAIN SHAH)
MEMBER

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

01.03.2019 Mr. Kabir Ullah Khattak learned Additional Advocate General present. Due to general strike of the bar, the case is adjourned. To come up for arguments on 17.04.2019 before D.B


Member


Member

17.04.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed on file, without touching the merit of the case, the present service appeal is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
17.04.2019


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

07.08.2018

Mr. Shabir Khalil, Advocate counsel for the appellant present. Mr. Zahid Rehman, Inspector alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply on behalf of the respondents submitted which is placed on file. To come up for rejoinder and arguments on 27.09.2018 before D.B.



Chairman

27.09.2018

Clerk to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondent present. Due to general strike of the bar adjourn. To come up for arguments on 14.10.2018 before D.B.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

14.11.2018

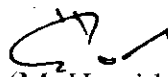
Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 01.01.2019.


Reader

01.01.2019


Appellant alongwith his counsel present. Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant seeks adjournment. Granted. Case to come up for arguments on 01.03.2019 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

17.04.2018

Counsel for the appellant and Addl: AG alongwith Mr. Zahid-ur-Rahman, Inspector for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on **02.05.2018** before S.B.


Member

02.05.2018

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Zahid-ur-Rehman, Inspector (legal) for the respondents present. The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on **25.06.2018**.


Reader

25.06.2018

Appellant absent. However his counsel present. Mr. Muhammad Jan, DDA alongwith Zahid-ur-Rahman, Inspector for the respondents present. Written reply not submitted on behalf of respondents. Representative of the respondent department requested for adjournment. Granted. To come for written reply/comments **07.08.2018** before S.B.


Chairman

12.02.2018

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was dismissed from service vide impugned order dated 03.02.2009 on the allegation of absence from duty. It was further contended that the appellant filed departmental appeal but the same was dismissed vide impugned order dated 03.01.2011 and thereafter filed the present service appeal on 25.01.2018. It was further contended that neither proper inquiry was conducted nor opportunity of personal hearing and defence was provided to the appellant. It was further contended that the appellant was dismissed from service from the date of absence i.e retrospectively therefore, the impugned order is void and limitation does not run against the void order therefore, liable to be set-aside.


Appellant Deposited
Security & Process Fee

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to limitation and all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 02.04.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

02.04.2018



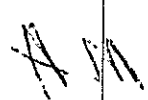
Appellant in person & Additional: AG alongwith Mr. Zahid-ur-Rahman, S.I (Legal) for the respondent present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 17.04.2018 before S.B.


(Ahmad Hassan)
Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 143/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge.
1	2	3
1	29/1/2018	<p>The appeal of Mr. Muhammad Asif resubmitted today by Mr. Muhammad Ilyas Orakzai 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</p>
2-	06/02/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/02/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: center;"></p>

The appeal of Mr. Muhammad Asif son of Salawar Khan Ex-Police Constable Distt. Hango received today i.e. on 25.01.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- ✓1- Affidavit may be got attested by the Oath Commissioner.
- ✓2- Annexures of the appeal may be flagged.
- 3- 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.
- 4- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 5- One copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 199 /S.T,


Dt. 26/01 /2018


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. M. Ilyas Orakzai Adv. Pesh..

- Note ..
- 1- Affidavit duly attested from the oath commissioner
 2. Annexures of the appeal are also properly flagged
 3. As no, charge sheet, statements of Allegations, show cause notice etc were served upon the appellant hence not attached with the appeal
 - 4- The appellant submitted the departmental appeal before the competent authority, the photocopy of which got misplaced of which he searched alot but couldn't find hence not attached
 5. one extra copy/set of the appeal along with all annexures is placed/ submitted

Resubmitted ^{on}
29-01-2018

Advocate 

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11/11

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BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Service Appeal No 143 2018

Muhammad Asif

VERSUS


Government of KP and others

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3.	Addressed of the parties	-	09
4.	Copy of the impugned order dated 03 rd February, 2009	"A"	10
5.	Copy of the impugned Appellate order dated 03-01-2011	"B"	11
6.	Wakalat Nama (in original)	-	12

Appellant

Through:


(MUHAMMAD ILYAS ORAKZAK)
Advocate,
High Court, Peshawar
Cell # 0333-9191892

Dated:-25-01-2018

①

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

In Re: Service Appeal No 143 / 2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 145

Dated 25/1/2018

Muhammad Asif son of Salawar Khan Ex-Police Constable resident
of Ganjano Kalay Mohallah Ali Abad Tehsil and District
Hangu.....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary
Home and Tribal Affairs, Civil Secretariat Peshawar
2. Inspector General of Police, Khyber Pakhtunkhwa at
Peshawar
3. Deputy Inspector General of Police, Kohat Region at Kohat
4. District Police Officer, District Hangu(Respondents)

Filed to-day

[Signature]
Registrar

20/1/18

Re-submitted to -day
and filed.

[Signature]
Registrar

29/1/18

Appeal under Section 4 of the Khyber Pakhtunkhwa
Services Tribunal Act, 1974 R/W Khyber Pakhtunkhwa
E&D Rule 2011 against the impugned order No 65
dated 03-02-2009 of Respondent No 4 and impugned
Appellate order No 58-59 dated 03-01-2011, whereby
the Appellant has been dismissed from his service

PRAYER IN APPEAL:-

On acceptance of this Appeal, the impugned order as well
as impugned Appellate order may please be set aside and
Appellant be reinstated his service with all back wages and

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benefits with such other relief as may deemed fit in the circumstances of the case may also be granted.

Respectfully Sheweth:-

- 1) That the Appellant was appointed as constable Police Department at District Hangu in the year 2007.
- 2) That the Appellant was performing his duties with honesty with devotion till 12-05-2008.
- 3) That due to the high militancy and worst condition in province and especially in the District Hangu, the Appellant was threatened by the terrorist, due to which the Appellant remained absent from the duty.
- 4) That the Appellant was dismissed from his service by the Respondent No 4 vide impugned order No 65 dated 3-2-2009 (Copy of the impugned order is attached herewith).
- 5) That against the impugned order, the Appellant submitted his departmental appeal to Respondent No 3, which was dismissed through order No 58-59 dated 03-01-2011. (Copy of the order is attached herewith).
- 6) That the Appellant feeling aggrieved from the orders, filed instant appeal before this Honourable Tribunal on the following grounds inter-alia:-

GROUNDS:-

- A) That the impugned dismissal order from service as well as the impugned Appellate order are illegal, unlawful, void ab-initio and ineffective upon the right of Appellant, hence liable to be set aside.

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- B) That the impugned order is illegal, against the law, void ab-initio as the Executive/Departmental Authority has no power to pass the order with retrospective effect. On this score alone the impugned orders are liable to be set aside.
- C) That both the impugned orders of the Respondents are illegal, non-speaking orders, ambiguous, vague; as the Appellant was not served with any show cause notice nor proper/regular inquiry was conducted, so the Appellant was condemned unheard.
- D) That the impugned orders are void, hence no limitation would run against the void order and the void order can be challenge at anytime.
- E) That both the impugned dismissal orders from service are against the principle of natural justice.
- F) That both the impugned orders are in violation of Section 25-A of the General Clauses Act, as the competent authority has failed to cite any reason or justification in said orders.
- G) That it is well established principle of natural justice, enshrined in the precedent of superior Courts as well, that where the competent authority is going to impose the penalty of removal/dismissal etc. The regular inquiry to that effect is necessary.
- H) That all the proceedings initiated against the Appellant were mala-fide and malicious and purportedly were

(4)

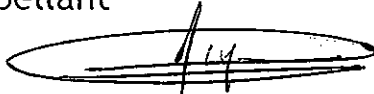
initiated in order to displace the Appellant from his post and appoint any other blue eyed.


- I) That the punishment was imposed is too harsh and is a major one.
- J) That no one shall be condemned unheard.
- K) That the other grounds not here specifically may also graciously be allowed to be raised at the time of arguments.

It is, therefore, most respectfully prayed that on acceptance of this Appeal, the impugned order as well as impugned Appellate order may please be set aside and Appellant be reinstated his service with all back wages and benefits with such other relief as may deemed fit in the circumstances of the case may also be granted.


Appellant

Through:


(MUHAMMAD ILYAS ORAKZAI)
Advocate,
High Court Peshawar
&


(MUHAMMAD SHABIR KHALIL)
Advocate,
High Court Peshawar

Dated:-25-01-2018

NOTE:-

No such appeal for the same Appellant has earlier been filed by me before this Honourable Tribunal prior to instant one.


Advocate

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BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Muhammad Asif

VERSUS

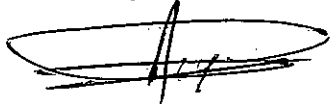
Government of KP and others

AFFIDAVIT

I, Muhammad Asif son of Salawar Khan Ex-Police Constable resident of Ganjano Kalay Mohallah Ali Abad Tehsil and District Hangu, do hereby solemnly affirm and declare on oath that all the contents of accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.


DEPONENT

Identified by:-



(MUHAMMAD ILYAS ORAKZAI)
Advocate
High Court, Peshawar



6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Muhammad Asif

VERSUS

Government of KP and others

APPLICATION FOR CONDONATION OF DELAY, IF ANY

Respectfully Sheweth:-

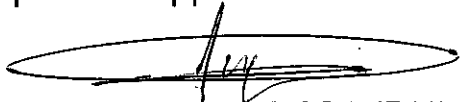
- 1) That the Applicant/Appellant is filing the instant appeal, in which no date of hearing has yet fixed.
- 2) That the Appellant was not willfully absent from his duty, but due to serious threat of the militants, due to which the Applicant/Appellant was remained absent.
- 3) That the dismissal order of the Applicant/Appellant was passed with retrospective effect, which is void in the eyes of law, hence no limitation would run against the void order.
- 4) That the delay if any in filing of instant appeal would be due of the above reason and not intentionally and willfully.
- 5) That the law favours at cases should be decided on merits not on technicalities.

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It is therefore, most humbly prayed that on acceptance of this Application, the delay in filing of appeal may kindly be condoned in the best interest of justice.

Applicant/Appellant

Through:


(MUHAMMAD ILYAS ORAKZAI)
Advocate
High Court, Peshawar

&


(MUHAMMAD SHABIR KHALIL)
Advocate,
High Court, Peshawar

Dated: -25-01-2018

8

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Muhammad Asif

VERSUS

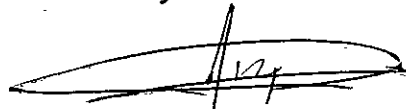
Government of KP and others

AFFIDAVIT

I, Muhammad Asif son of Salawar Khan Ex-Police Constable resident of Ganjano Kalay Mohallah Ali Abad Tehsil and District Hangu, do hereby solemnly affirm and declare on oath that all the contents of accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.


DEPONENT

Identified by:-



(MUHAMMAD ILYAS ORAKZAI)
Advocate
High Court, Peshawar



(9)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Muhammad Asif

VERSUS

Government of KP and others

ADDRESSES OF THE PARTIES

APPELLANT


Muhammad Asif son of Salawar Khan Ex-Police Constable resident
of Ganjano Kalay Mohallah Ali Abad Tehsil and District Hangu


RESPONDENTS

1. Government of Khyber Pakhtunkhwa through Secretary Home
and Tribal Affairs, Civil Secretariat Peshawar
2. Inspector General of Police, Khyber Pakhtunkhwa at Peshawar
3. Deputy Inspector General of Police, Kohat Region at Kohat
4. District Police Officer, District Hangu

Appellant

Through:


(MUHAMMAD ILYAS ORAKZAI)
Advocate,
High Court Peshawar


(MUHAMMAD SHABIR KHALIL)
Advocate,
High Court Peshawar

Dated:-25-01-2018

FEX/3290

ORDER

This order will dispose off the departmental enquiry initiated against Constable Muhammad Asif No. 646 on the basis of allegations that he while posted at Police Station Saddar absented himself from official duty with effect from 01.07.2008 up till now without prior permission or leave.

Charge sheet together with statement of allegations was issued to defaulter constable, to which he failed to reply. Inspector Muhammad Amin was appointed as enquiry officer to conduct departmental enquiry against him under NWFP Removal from Service (SPECIAL POWERS) Ordinance 2000. After completion of enquiry, the Enquiry Officer submitted findings on 01.11.2008 and held him guilty of the charges on account of his prolong absence with effect from 12.05.2008 up till now, therefore, recommended him for major punishment.

Thereafter Final Show Cause Notice was issued to the defaulter constable, which was received by his relative namely Constable Muhammad Jasim No. 714 who stated that Constable Muhammad Asif is not willing to serve further in Police Department.

The defaulter constable was summoned for Order Room but he failed to appear in O.R.

Keeping in view of the findings of the Enquiry Committee and having gone through available record, the undersigned came to the conclusion that the defaulter constable absented himself from duty and yet to day he failed to appear and defend himself, which indicates that he has not interest to serve further. Moreover in these circumstances his retention in Police Department is burden on public exchequer, therefore, I, Sajjad Khan, District Police Officer, Hangu in exercise of the powers conferred upon me, awarded him major punishment of Dismissal from Service from the date of his absence.

Order Announced.

OB No. 68

Dated 3-2 /2009.

DISTRICT POLICE OFFICER,
HANGU.

OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No. 397-400 /PA, dated Hangu, the 03/03/2009.

Copy of above is submitted to the Dy: Inspector General of Police, Kohat Region, Kohat for favour of information please.

Pay Officer, Reader, SRC & OHC for necessary action.

DISTRICT POLICE OFFICER,
HANGU.

(11) Amt - B

POLICE DEPARTMENT

KOHAT REGION.

ORDER.

The undersigned is going on to dispose of an application moved by Ex Constable Muhammad Asif No. 646 against his dismissal order from service, passed by the District Police Officer, Hangu vide his OB No .65 dated 03.02.2009.

Facts of the application are that the applicant while posted at Police Station Saddar absented him self from duty with effect from 01.07.2008 till the disposal of departmental enquiry initiated against him.

For the reasons/charges mentioned above the applicant was proceeded with departmentally under the NWFP Removal from Service (Special Powers) ordinance 2000, by the competent authority (DPO, Hangu). On conclusion of proceedings the applicant was dismissed from service by the competent authority vide his office OB: No. mentioned above.

Record requisitioned and minutely perused, which transpired that the applicant deliberately absented himself from duty with effect from 01.07.2008 till the disposal of departmental proceeding. The punishment order revealed that the applicant was served with Final Show Cause Notice, neither he replied nor appeared in Orderly Room conducted by the District Police Officer, Hangu.

The conduct of the applicant indicated that he was not interested to perform the duty. Moreover, the plea taken by the applicant is not reasonable. The application moved by Ex: Constable Muhammad Asif No ,646 being time barred and devoid of law/rules is hereby dismissed.

(M. MASOOD KHAN AFRIDI) PSP
Dy: Inspector General of Police,
Kohat Region, Kohat.

No. 58-59 /EC, dated Kohat the 08/01 /2011.

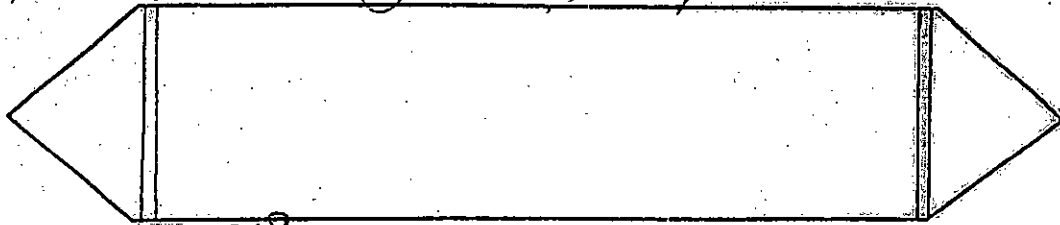
Copy of above for information and necessary action to the District Police Officer, Hangu w/r to his Memo: No. 5212/LB dated 28.11.2011. The Fauji Missal received with your above-mentioned Memo: is returned herewith which may please be acknowledged.

2.
Mohallah Ali Abad Hangu.

Ex:Constable Muhammad Asif No.646 R/O Gunjan Kalra

(M. MASOOD KHAN AFRIDI) PSP
Dy: Inspector General of Police,
Kohat Region, Kohat.

بعدالت جناب خیر بختوں خواہ سرورس سر بیرون کتب



2018ء جناب

محمد اصف بنام گورنمنٹ آف ایل اے

حصہ

موزخہ
مقدمہ
دعویٰ
ایم

باعث تحریر آنگہ

مقدمہ مشورچہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی رکھ کر وائی متعلقہ
 آج کے مقام پر _____ کیلئے تحریر کیا گیا اور کہہ دئیے اس لئے
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کابل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر رتالت ہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
 باہر ورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرا میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی براندگی اور منسوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا اوکالت نامہ لکھد یا کہ سند ہے۔

المرقوم 23 ماہ جنوری 2018

العبد گواہ العبد

ایہ منظر ہے

Handwritten signature

بمقام لیسٹ اور

محمد اصف ولد سید محمد علی

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

Service Appeal No. 143/2018

Muhammad Asif Ex Constable

..... Appellant.

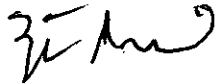
VERSUS

Govt. of Khyber Pakhtunkhwa,
Through Secretary, Home & TAs,
Civil Secretariat Peshawar

..... Respondents.

COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.



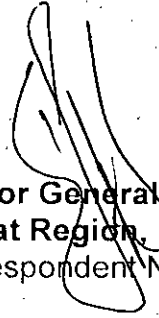
Govt of Khyber Pakhtunkhwa,
through Sectary Home & TAs
Peshawar
(Respondent No. 1)



Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 2)



District Police Officer,
Hangu
(Respondent No. 4)



Dy: Inspector General of Police,
Kohat Region, Kohat
(Respondent No. 3)

*Placed with
7.8.2018*

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

Service Appeal No. 143/2018

Muhammad Asif Ex-Constable

..... Appellant

VERSUS

Govt of Khyber Pakhtunkhwa,
through Secretary, Home & TAs,
Civil Secretariat Peshawar

..... Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectively Sheweth:

Parawise comments on behalf of respondents are submitted as under:-

Preliminary Objections:

1. That the appellant has got no cause of action.
2. That the appellant has got no locus standi.
3. That the appellant is estopped to file the instant appeal due to his own act.
4. That the appeal is not maintainable in its present form.
5. That the appeal is not maintainable due to misjoinder and non-joinder of necessary parties.
6. That the appeal is badly time barred and liable to be dismissed in limini.

Facts:

1. Pertains to record, hence no comments.
2. Incorrect, the appellant was an inefficient official.
3. Incorrect, the appellant was appointed as constable on 25.07.2007 and undergone basic recruit course ending on 05.01.2008 at Police Training College, Hangu. At the initial stage i.e within 06 months, the appellant absented himself from lawful duty and did not turn up till the decision/ disposal of departmental proceedings. In the light of above, the appellant served / posted in district Police for about 06 months.
4. The appellant willful absented himself from lawful duty vide daily diary No. 4 dated 01.07.2008, Police station Saddar. His whereabouts was not ascertain.

Therefore, there was no other option except initiating departmental proceedings against the appellant. Therefore, the appellant was dealt with departmentally and on completion of all codal formalities, the appellant was awarded major punishment of dismissal from service. Copy of DD is **annexure A**.

5. The appellant was dismissed from service on 03.02.2009 and he preferred a time barred appeal to respondent No. 3 after an unexplained delay about two years. Therefore, the department appeal was dismissed on merit and limitation as well.
6. The appellant is estopped to file the instant appeal due to his own conduct.

Grounds:

- A. Incorrect, the appellant willful absented himself from lawful duty at very initial stage of his service and also found inefficient official in view of Police Rules 12-2. Furthermore, charge sheet and final show cause notice were served upon the appellant through his home address, he was contacted on his cell number by DFCs, who informed that he is not willing to serve in Police. Copies are **annexure B, C & D**.
- B. Incorrect, the appellant remained out of service till the disposal of departmental proceedings and is not entitled for salary on the principle "when there is no duty, there is no pay".
- C. Incorrect, the appellant was unwilling to serve, therefore, on completion of all codal formalities under the law & rules, the impugned legal and speaking orders are passed by the respondent No. 3 & 4.
- D. Incorrect, the appellant has got no cause of action / locus standi and estopped to file the instant appeal due to his own conduct.
- E. Incorrect, the orders were passed in accordance with law & rules.
- F. Incorrect, the appellant was proceeded with departmentally in accordance with law & rules.
- G. Incorrect, regular inquiry has been conducted against the appellant and on the recommendation of inquiry officer a penalty has been imposed on the appellant by the competent authority.
- H. Incorrect, the appellant was dealt with departmentally in accordance with la & rules and due to his misconduct at very initial stage of his service.

I. Incorrect, the appellant absented himself from lawful duty and was unwilling to serve more. Therefore, there was no hope that the appellant will be an efficient official and his retention in service was a burden on department and public exchequer.

J. Incorrect, as submitted above, the appellant was ^{ed} ~~serve~~ upon at his home address and he was unwilling to serve. Furthermore, the conduct of the appellant i.e submission of departmental appeal and approached Honorable Tribunal after a laps of two years & about six years speaks his disinterest in service.

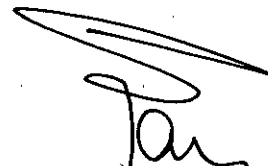
K. The respondents may also be allowed to advance other grounds during the hearing.

Prayer:

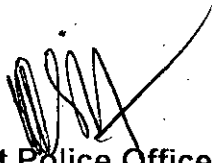
Keeping in view of the above, it is submitted that the appeal is without merit, substance and against fact and **badly time barred**, it is, therefore, prayed that the instant appeal of the appellant may kindly be dismissed with cost.



Govt of Khyber Pakhtunkhwa,
through Sectary Home & TAs
Peshawar
(Respondent No. 1)



Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar
(Respondent No. 2)



District Police Officer,
Hangu
(Respondent No. 4)



Dy: Inspector General of Police,
Kohat Region, Kohat
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No 143/2018

Muhammad Asif.....(Appellant)

VERSUS

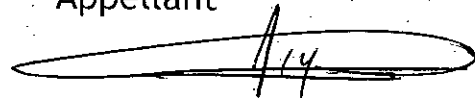
Government of KPK and others.....(Respondents)

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2.	Affidavit	-	04


Appellant

Through:



(MUHAMMAD ILYAS ORAKZAI)
Advocate,
High Court, Peshawar
Cell # 0333-9191892

Dated: -19-09-2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No 143/2018

Muhammad Asif.....(Appellant)

V E R S U S

Government of KPK and others.....(Respondents)

REJOINDER TO COMMENTS ON BEHALF OF APPELLANT

Respectfully Sheweth:-

OBJECTION TO PRELIMINARY OBJECTIONS:-

- A) All the preliminary objections from 1 to 6 are illegal, misconceived and misleading.

OBJECTION TO FACTUAL OBJECTIONS:-

- 1) Needs no rejoinder.
- 2) Incorrect. The Appellant has performed his duties diligently up-to 12-05-2008 with honesty and with full devotion.
- 3) Correct to the extent of appointment, training and posing, remaining para is incorrect. The Appellant was not willfully absent from his duty, but worst condition in province and especially in the Appellant District, the Appellant was threatened by the terrorist, due to which the Appellant remained absent from his duty.

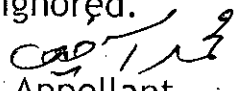
- 4) Incorrect. The Appellant was not absent from his duty willfully, already explained in para No 3. Furthermore, no show cause notice was personally served upon the Appellant, the Appellant remained unheard. No codal formalities were done in the Appellant case.
- 5) Incorrect. The Appellant has no knowledge about his dismissal, when law and order situation was normal in the Appellant District, he approached the Respondents department for rejoining of his service, but the Respondent No 4 handed over the dismissal order to the Appellant, after that the Appellant got the knowledge about his dismissal.
- 6) Incorrect. The Appellant is aggrieved from both the impugned orders of the Respondent and file the instant appeal.

OBJECTION TO REPLY ON GROUNDS:-

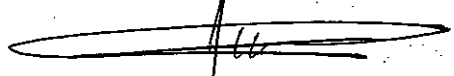
- A) Incorrect. The grounds taken in the appeal is correct, whereas that grounds taken by the Respondents is incorrect.
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- D) Incorrect. The ground taken in appeal is correct, whereas that of Respondents is incorrect.

- 4
- E) Incorrect. The impugned dismissal order was not passed in accordance with law, because the departmental/ executive authority has no right to passed the order with retrospective effect, order passed with retrospective effect is void order, so no limitation would against the void order.
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 - J) Incorrect, needs no reply.
 - K) That the Appellant with the prior leave of this Honourable Tribunal seeks permission to take other grounds as well at the time of arguments.

In the light of above facts, it is very humbly prayed for the acceptance of appeal of the Appellant with any other relief deemed fit in the circumstances of the case and the reply of the Respondents may be ignored.


Appellant
(Muhammad Asif)

Through:


(MUHAMMAD ILYAS ORAKZAI)
Advocate,
High Court, Peshawar

Dated: -19-08-2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No 143/2018


Muhammad Asif.....(Appellant)

V E R S U S

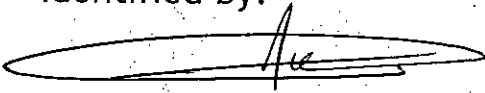
Government of KPK and others.....(Respondents)

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I, Muhammad Asif S/O Salawar Khan R/O Ganjano Kalay Mohallah Ali Abad Tehsil and District Hangu, do hereby solemnly affirm and declare on oath that all the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court willfully or deliberately.


DEPONENT
CNIC # 14101-5450924-7

Identified by:-



(MUHAMMAD ILYAS ORAKZAI)
Advocate
High Court, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No 143/2018

Muhammad Asif.....(Appellant)

VERSUS

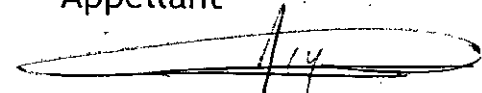
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(MUHAMMAD ILYAS ORAKZAI)
Advocate,
High Court, Peshawar
Cell # 0333-9191892

Dated: -19-09-2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No 143/2018

Muhammad Asif.....(Appellant)

V E R S U S

Government of KPK and others.....(Respondents)

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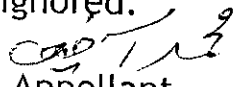
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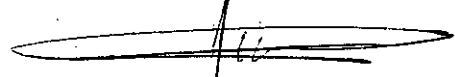
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Appellant
(Muhammad Asif)

Through:


(MUHAMMAD ILYAS ORAKZAI)
Advocate,
High Court, Peshawar

Dated: -19-08-2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In Re: Service Appeal No 143/2018

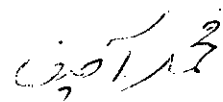
Muhammad Asif.....(Appellant)

VERSUS

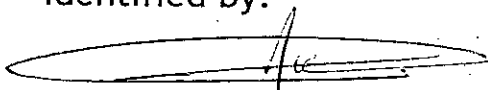
Government of KPK and others.....(Respondents)

—————
AFFIDAVIT

I, Muhammad Asif S/O Salawar Khan R/O Ganjano Kalay Mohallah Ali Abad Tehsil and District Hangu, do hereby solemnly affirm and declare on oath that all the contents of this rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court willfully or deliberately.


DEPONENT
CNIC # 14101-5450924-7

Identified by:-



(MUHAMMAD ILYAS ORAKZAI)
Advocate
High Court, Peshawar

FER = 452

F-334 ②
S/H

FINAL SHOW CAUSE NOTICE.

WHEREAS, you Constable Muhammad Asif No. 646 while posted at Kotki Pul absented yourself from the place of posting with effect from 01.07.2008 till now without any leave or prior permission, which amounts to gross-misconduct on your part.

Therefore, you were served with Charge Sheet and Summary of Allegation. An enquiry officer was appointed to conduct departmental enquiry and submit findings. The Enquiry Officer has submitted the findings on 15.12.2008 and recommended you for major punishment.


Now, therefore, I, Sajjad Khan, D.P.O, Hangu have vested the power under the NWFP Removal from Service (SPECIAL POWERS) Ordinance-2000 liable to take action against you, which will render you to a Major Punishment.

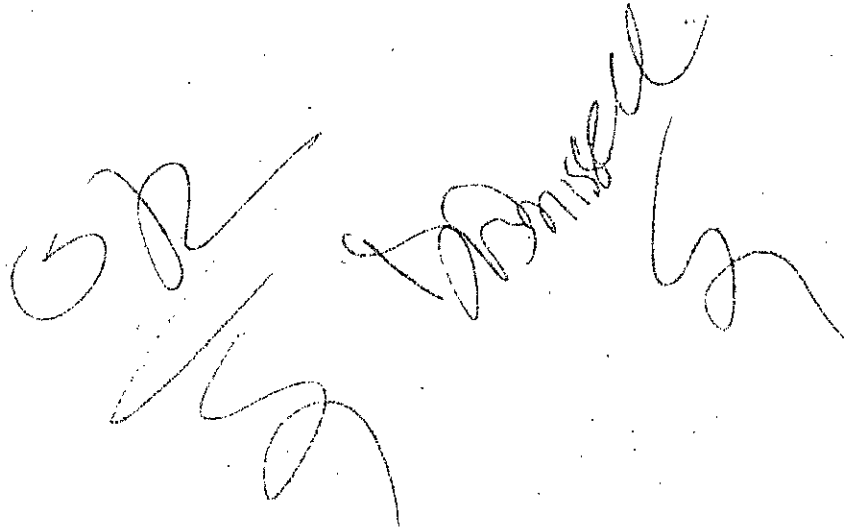
Your reply to this Final Show Cause Notice must reach to the office of the undersigned within **7 days** of the receipt of the Final Show Cause Notice. In case your reply is not received within the stipulated period otherwise, it shall be presumed that you have no defence to offer and EX-PARTE departmental action will be taken against you. Also state whether you desire to be heard in person?

(Copy of the findings of the Enquiry Committee is enclosed).

No. 372 /PA,

Dt: 03/02/2009.


DISTRICT POLICE OFFICER,
HANGU.



No. 1183 1H.
DT 15-12-2008.

(3)

DEPARTMENTAL ENQUIRY AGAINST CONSTABLE MUHAMMAD ASIF NO.646

This is Departmental enquiry against constable Muhammed Asif No.646. He was issued Charge Sheet from DPO Office vide Enclt: No.2624/PA, dated 8.11.2008, as mentioned below:-

"You constable Muhammad Asif No.646 deployed at Kotki Pul Hangu, absented yourself from place of posting with effect from 1.7.2008 to till now without any leave or prior permission.

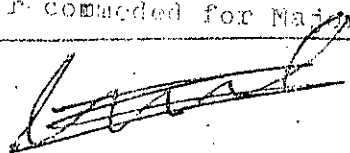
Your above kind of act shows your negligence which amounts to gross misconduct."

The undersigned was appointed as enquiry officer to conduct Departmental enquiry against the above mentioned constable.

Time & again the defaulter constable was summoned but he did not bother to attend the enquiry proceedings. Muharrir PS Sadder was summoned and recorded his statement. He clearly mentioned that the above mentioned constable has absented himself from his legal duty w.e from 1.7.2008 vide DD No.4 Roznacha PS Sadder. PS record was checked which supported the version of Muharrir PS Sadder.

CONCLUSION.

From the ^{perusal of} all available record and examination of Muharrir PS Sadder the undersigned came to the conclusion that Constable Muhammed Asif No.646 has absented himself from his duty vide DD No.4 dated 1.7.2008 Roznacha of PS Sadder. He was summoned to attend the enquiry proceedings but he did not appear before the undersigned therefore Ex-parte action is being taken against him. The act of constable Muhammed Asif No.646 is clearly shows that he is not more interested in Police Service therefore recommended for Major punishment.


Sub-Divisional Police Officer, Hangu.

Sawar

سین فمدا ہیں

فمدا ہفت بیمار گھروں کے قریب نزد کوٹلی پھول
کے ساتھ رہتا ہے۔ انہیں گھریں ہیں مگر یہ رہا تھا کہ
میں پورے کی توڑی نہیں کرتا ہوں نکال رہا ہے گھریں کو
نہیں محفوظ موجود ہیں

حضرت مولانا صاحب

سین فمدا

جیہ عالی نے کئی فمدا کے متعلق ہیں ہماری کڑی گھر عدم
موجود اور پورے کی توڑی نہیں کرتا بیان ہوا

14-4-09

جیہ عالی

اللہ تعالیٰ سے دعا ہے کہ

Ho-Hangui

14-4-09

FEB, 452 (4)

FINAL SHOW CAUSE NOTICE.

WHEREAS, you Constable Muhammad Asif No. 646 while posted at Kotki Pul absented yourself from the place of posting with effect from 01.07.2008 till now without any leave or prior permission, which amounts to gross-misconduct on your part.

Therefore, you were served with Charge Sheet and Summary of Allegation. An enquiry officer was appointed to conduct departmental enquiry and submit findings. The Enquiry Officer has submitted the findings on 15.12.2008 and recommended you for major punishment.

Now, therefore, I, Sajjad Khan, D.P.O, Hangu have vested the power under the NWFP Removal from Service (SPECIAL POWERS) Ordinance-2000 liable to take action against you, which will render you to a Major Punishment.

Your reply to this Final Show Cause Notice must reach to the office of the undersigned within **7 days** of the receipt of the Final Show Cause Notice. In case your reply is not received within the stipulated period otherwise, it shall be presumed that you have no defence to offer and EX-PARTE departmental action will be taken against you. Also state whether you desire to be heard in person?

(Copy of the findings of the Enquiry Committee is enclosed).

No. 372 /PA,

Dt: 03/02/2009.


DISTRICT POLICE OFFICER,
HANGU.

5

Respected Sir,

It is submitted that Constable Muhammad Asif No. 646 proceeded against departmentally on the basis of allegation that he while deployed at Kotki Pul, Hangu absented himself from lawful duty with effect from 01.07.2008 till now.

He was served with charge sheet together with statement of allegation to which he failed to reply. Muhammad Irshad, SDPO Hangu was appointed as Enquiry Officer to conduct departmental enquiry against him under NWFP Removal from Service (SPECIAL POWERS) Ordinance 2000. After completion of enquiry, the Enquiry Officer submitted his finding on 15.12.208, held him guilty of the charges and recommended him for major punishment as the defaulter constable is no more interested in Police Service.

Submitted for favour of perusal and further order please.

L. [Signature]
PA

W/DPO

2008 BSC.W & [Signature] properly
29/11/18

1 No. _____
DT 15-12-2008 (E)

DEPARTMENTAL ENQUIRY AGAINST CONSTABLE MUHAMMAD ASIF NO.646

This is Departmental enquiry against constable Muhammad Asif No.646. He was issued Charge Sheet from DFO Office vide Enust: No.2624/PA, dated 8.11.2008, as mentioned below:-

" You constable Muhammad Asif No.646 deployed at Kotki Pol Hangu, absented yourself from place of posting with effect from 1.7.2008 to till now without any leave or prior permission.

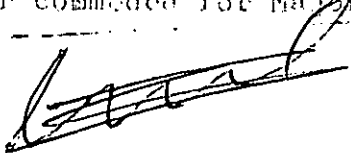
Your above kind of act shows your negligence which amounts to gross misconduct."

The undersigned was appointed as enquiry officer to conduct Departmental enquiry against the above mentioned constable.

Time & again the defaulter constable was summoned but he did not bother to attend the enquiry proceedings. Muharrir PS Sadder was summoned and recorded his statement. He clearly mentioned that the above mentioned constable has absented himself from his legal duty w.e from 1.7.2008 vide DD No.4 Roznacha IS Sadder. PS record was checked which supported the version of Muharrir PS Sadder.

CONCLUSION.

From the ^{perusal of} all available record and examination of Muharrir PS Sadder the undersigned came to the conclusion that Constable Muhammad Asif No.646 has absented himself from his duty vide DD No.4 dated 1.7.2008 Roznacha of PS Sadder. He was summoned to attend the enquiry proceedings but he did not appear before the undersigned therefore Ex-parte action is being taken against him. The act of constable Muhammad Asif No.646 is clearly shows that he is not more interested in Police Service therefore recommended for Major punishment.


Sub-Divisional Police Officer, Hangu.

Sundar

CHARGE SHEET.

I, SAJJAD KHAN, D.P.O, HANGU as competent authority, hereby charge you, Constable Muhammad Asif No. 646 as follows: -

That you, while posted Kitki Pul of PS Hangu committed the following irregularities: -

You Constable Muhammad Asif No. 646 deployed at Kotki Pul Hangu, absented yourself from place of posting with effect from 1.7.08 to till now without any leave or prior permission.

Your above kind of act shows your negligence which amounts to gross misconduct.

2. By reasons of the above, you appear to be guilty of misconduct Under Section - 3 of the NWFP (Removal from Service) Special Power, 2000, and have rendered yourself liable to all or any of the penalties specified in section - 3 of the Ordinance ibid.

3. You are, therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer / Committees, as the case may be.

4. Your written defence, if any, should reach to the Enquiry Officer / Committees within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

(SAJJAD KHAN)
DISTRICT POLICE OFFICER,
HANGU.

No. 2624 /PA,

Dt: 08/11/2008.

DISCIPLINARY ACTION

I, SAJJAD KHAN, D.P.O, HANGU as competent authority, am of the opinion that, Constable Muhammad Asif No. 646 while you posted Kitki Pul of PS Hangu has rendered himself liable to be proceeded against as he committed the following acts / omissions within the meaning of section-3 of the North - West Frontier Province Removal from Service (Special Power) Ordinance, 2000: -

STATEMENT OF ALLEGATIONS

You Constable Muhammad Asif No. 646 deployed at Kotki Pul Hangu, absented yourself from place of posting with effect from 1.7.08 to till now without any leave or prior permission.

Your above kind of act shows your negligence which amounts to gross misconduct.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry Committee consisting of the following is constituted under section - 3 of the Ordinance: -

- i. SDPC Hangu Mr. Ishtiaq Khan
- ii. _____

3. The Enquiry Committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Enquiry Committee.

(SAJJAD KHAN)
DISTRICT POLICE OFFICER,
HANGU.

A copy of the above is forwarded to: -

1. _____ The Committee for initiating proceedings against the accused under the provisions of the NWFP Removal from Service (Special Power) Ordinance, 2000.

2. _____ The concerned officer's with the directions to appear before the Enquiry Committee, on the date, time and place fixed by the Committee, for the purpose of the enquiry proceedings.

نصاب صدر

نمبر 4 روزنامہ 17/8

منہج دستور

سر 54۔ رپورٹ غیر جانبداری ASI مورخہ 17/8 اور قوت 05/08 بج۔ درجہ حکیم کنستبلان

نمبر اللہ 446 نمبر اصف 646 صحتی ڈیوٹی کرنا کی تہل نامہ مذہبی ہمراہ

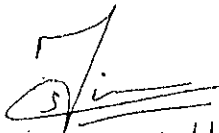
رضوان اللہ ASI کے ساتھ گمانی گئی تھی یہ دو کنستبلان لغیر اجازت خانہ خود

چلے گئے ہیں۔ قذکرہ بالا کنستبلان کے خلاف رپورٹ غیر جانبداری درج

روزنامہ کیجائی ہے۔ اور سخت سزا کی سفارش کیجائی ہے۔

صناب عالی

نقل عطا کیجائی ہے۔



17.17. Saddar
9-8-08

Six,

Forwarded



SHO - Saddar

9-8-08

محمد ناصر

بیان اذان کو در نامہ ۱۱۲

محمد ناصر

صاحب عالی

میرزا دلدار محمد ناصر سے سبیل محمد ناصر صاحب نے محمد ناصر کو الہ صریحاً
 اور نامہ ۱۱۲ سے بہ طور غیر حاضر ہے جس سے سبیل پر مکتوب دیا گیا
 کی کو سبیل سبیل کے سورا سبیل ضروریہ کو مرنے کا کواشہ
 نہیں ہے اور نہ ہی اس کی حاضر کی کوئی حسیہ ہے سبیل
 ضروریہ کے خلاف صاحب حکم صادر فرمایا جاوے یہ نظر سے غیر حاضر
 ہے۔

~~محمد ناصر~~
 محمد ناصر
 24-11-08

~~محمد ناصر~~

DFA

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

SERVICE APPEAL NO. 143/2018

Date of institution ... 25.01.2018

Date of judgment ... 17.04.2019

Muhammad Asif Son of Salawar Khan Ex-Police Constable
R/o Ganjano Kalay Mohallah Ali Abad Tehsil & District Hangu

... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs, Civil Secretariat Peshawar.
2. Inspector General of Police, Khyber Pakhtunkhwa at Peshawar.
3. Deputy Inspector General of Police, Kohat Region at Kohat.
4. District Police Officer, District Hangu.

... (Respondents)

APPEAL UNDER SECTION-4 OF SERVICE TRIBUNAL ACT,
1974 R/W KHYBER PAKHTUNKHWA E&D RULE 2011
AGAINST THE IMPUGNED ORDER NO. 65 DATED
03.02.2009 OF RESPONDENT NO. 1 AND IMPUGNED
APPELLATE ORDER NO.58-59 DATED 03.01.2011,
WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM
HIS SERVICE.

Mr. Muhammad Ilyas Orakzak, Advocate

.. For appellant.

Mr. Kabirullah Khattak, Additional Advocate General

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the
appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the
respondents 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. He was imposed major penalty of dismissal from service vide order dated 03.02.2009 on the allegation of absence from

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 132 /2018

Zahid-Ur-RehmanAppellant


V E R S U S

Superintendent of Police and Others.....Respondents

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-6
2.	Copy of FIR No 117	A	7
3.	Copy of FIR No 37	B	8
4.	Copy of Charge Sheet, Reply & Inquiry Report	C, D & E	9-16
5.	Copy of Final Show Cause Notice & Reply	F & G	17-24
6.	Copy of Order dated 05-10-2017	H	25-
7.	Copy of Departmental appeal & letter dated 24-10-2017	I	26-29
8.	Copy of letter dated 24-07-2017	J	280-31
9.	Copy of Affidavit	K	32
10.	Copy of letter dated 12-10-2017	L	33-34
11.	Walalat Nama		35

Dated:-23-01-2018


Appellant

Through


Fazal Shah Mohmand
Advocate Peshawar

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

duty. The appellant filed departmental appeal ~~but the~~ copy of the same is not available on the record however, the same was dismissed being time barred vide order vide order dated 03.01.2011 hence, the present service appeal on 25.01.2018.

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

4. Learned counsel for the appellant contended that ~~the~~ ^{the} appellant was serving in Police Department. It was further contended that the appellant was performing his duty with honesty ^{and} devotion till 12.05.2008 but due to high militancy and worst condition in province and especially in the District Hangu, the appellant was threatened by the terrorist due to which the appellant remained absent from duty. It was further contended that the ~~absence~~ ^{absence of} for the appellant was not deliberate but it was beyond the control of the appellant. It was further contended that the appellant was imposed major penalty of dismissal from service vide order dated 03.02.2009 retrospectively i.e from the date of absence therefore, the impugned order is void and no limitation run against the void order, ^{Absence} therefore, the appeal of the appellant cannot be treated as time barred. It was further contended that neither absence notice was issued to the appellant nor any charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor opportunity of personal hearing and defence was provided to the appellant therefore, the appellant was condemned unheard which has rendered the whole proceeding illegal and liable to be set-aside and prayed for acceptance of appeal.

5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department but he remained absent from duty without permission of the lawful authority. It was further contended that a proper charge sheet and statement of allegation was served

①

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2018

Zahid-Ur-Rehman Sub Inspector, District Police Hangu.

.....**Appellant**

V E R S U S

1. Superintendent of Police, Investigation Dir Lower.
2. Regional Police Officer, Malakand at Saidu Sharif Swat.
3. District Police Officer, Dir Lower.
4. Provincial Police Officer KPK Peshawar.

.....**Respondents**

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 05-10-2017 PASSED BY RESPONDENT NO 1 WHERE BY THE APPELLANT HAS BEEN REVERTED FROM THE RANK OF INSPECTOR TO THE RANK OF SUB INSPECTOR AND AGAINST WHICH THE DEPARTMENTAL APPEAL OF THE PPELLANT DATED 18-10-2017 HAS NOT BEEN RESPONDED SO FAR DESPITE THE LAPSE OF STATUTORY PERIOD OF NINTY DAYS.

PRAYER:-

On acceptance of this appeal the impugned Order dated 05-10-2017 of respondent No 1 may kindly be set aside and the appellant may kindly be ordered to be restored to his previous rank of Inspector with all back benefits.

Respectfully Submitted:-

1. That the appellant joined the respondent Department as Constable on 16-11-1978, was promoted as Head Constable 16-04-1997, was then promoted as ASI on 21-08-2009 and was promoted as Sub Inspector in the year 12-10-2011.
2. That the appellant was promoted as Inspector vide Order/Notification No 1321-E-11 dated 02-03-107, remained posted to various Police Stations and since then he performed his duties with honesty and full devotion and to the entire satisfaction of his superior officers.

upon the appellant. It was further contended that the inquiry officer has mentioned in the inquiry report that the appellant was summoned for inquiry proceeding but he did not appear before the inquiry officer therefore ex-parte proceeding was initiated against the appellant. It was further contended that the appellant was dismissed from service vide order dated 03.02.2009 but he has filed departmental appeal copy of the same is not available on the record however, the same was dismissed by the departmental authority vide order dated 03.01.2011 being time barred. It was further contended that after dismissal of departmental appeal the appellant was required to file service appeal within one month but he has filed service appeal on ^{25.1.2018} ~~31.01.2017~~ after a delay of seven years therefore, it was contended that the service appeal is badly time barred and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He remained absent from duty, departmental proceeding was initiated against him. He was issued charge sheet and statement of allegation but he did not appear before the inquiry proceeding therefore, ex-parte proceeding was initiated and the inquiry officer recommended him for major penalty. Accordingly on the basis of inquiry report, the appellant was imposed major penalty of dismissal from service vide order dated 03.02.2009. The record further reveals that the appellant filed departmental appeal, copy of the same is not available on the record however, the same was rejected vide order dated 03.02.2011 being time barred. Moreover, the appellant was required to file service appeal within one month from the date of dismissal of departmental appeal but the appellant has filed service appeal on 25.01.2018 after a delay of more than seven years. Though the learned counsel for the appellant contended that the impugned order was passed retrospectively i.e from the date of absence therefore, the same is void and no limitation run against the void order but the order of dismissal from service retrospectively does not make the impugned

3. That the appellant was posted as Chief Investigation Officer Police Station Khall District Dir Lower, was entrusted investigation of Case FIR No 117 Dated 28-12-2016 U/Ss 365/302 of the same Police Station registered regarding abduction of Mst Adila Bibi. **(Copy of FIR is enclosed as Annexure A).**
4. That the appellant according carried out investigation, arrested the both the accused namely Mst Mussarat Bibi from Peshawar and her husband Lal Shehzada and recovered the stolen articles, Purse and CNIC of the abductee. During investigation the accused Lal recorded his confessional statement before the police and at his pointation in the presence of DSP Hidayat Ullah Shah Investigation, and SHO Abdu Rehman, the dead body of deceased was also recovered, which was sent for Post Mortem Examination after preparing the relevant documentation. The appellant at the report of complainant and at the direction of DSP Hidayat Ullah Shah Khan and SHO Named above sent Murasila to PS Batkhela, upon which case FIR No 37 dated 30-01-2017 U/Ss 320/147/149 PPC was registered and three more persons were also charged. It is pertinent tom mention that Case FIR No 37 was cancelled at the Direction of Deputy Commissioner Malakand. **(Copy of FIR No 37 is enclosed as Annexure B).**
5. That it is pertinent to mention here that the senior officers of the department were intervening in the investigation. After the recovery of dead body the accused party leveled various allegations against the police through complaints and SMS. 365B-PPC was added and the CDR of the accused was also obtained and due to repeated intervention, the appellant requested the DSP concerned to constitute a special investigation team but of no use. The case was more political, as the complainant party belonged to ANP while the accused party belonged to Muslim League and Jumat Islami who were more influential and the appellant used to discuss the progress in the case on daily basis with the senior officers. The appellant recorded the statements of all relevant witnesses and even requested for identification parade which request was also not acceded to. Even despite all hurdles of the accused, the senior officers and the political pressure, the appellant carried out investigation efficiently and honestly and did what he

order void. Reference is made to 1998 SCMR 1890. As such, without touching the merit of the case, the present service appeal is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

17.04.2019

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

(HUSSAIN SHAH)
MEMBER

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was required to do and challan in the case has also been submitted.

6. That inspite of this charge sheet was issued to the appellant which was replied in detail explaining the true position, where after an illegal inquiry was conducted. **(Copy of charge sheet, reply & inquiry report is enclosed as Annexure C, D & E).**
7. That the appellant was then issued Final Show Cause Notice which was also replied refuting the allegations. **(Copy of Final Show Cause Notice & reply is enclosed as Annexure F & G).**
8. That finally the appellant was reverted from the rank of Inspector to the rank of Sub-Inspector by respondent No 1 vide order dated 05-10-2017. **(Copy of Order dated 05-10-2017 is enclosed as Annexure H).**
9. That the appellant filed Departmental appeal before respondent No 2 on 18-10-2017 which has not been responded so far despite the lapse of the statutory period of ninety. **(Copy of departmental appeal & letter dated 24-10-2017 is enclosed as Annexure I).**
10. That the impugned orders dated 05-10-2017 of respondent No 1 is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the impugned order is illegal and void ab-initio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules and the appellant did nothing that amounts to misconduct.
- C. That the impugned order is void being without jurisdiction and legal authority, as respondent No 1 is not competent authority for an inspector. It is further worthwhile to mention here that Mukhtiar Ahmad who has imposed penalty upon the appellant is serving as DSP and was nominated for 3rd Junior Command Course vide letter dated 24-