

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1031/2018

Date of Institution ... 17.08.2018

Date of Decision ... 05.10.2021

Zia Ullah Khan S/o Bawaray R/o Jehan Abad, Tehsil Charbagh, District Swat (Ex-Constable B.No.2868)

... (Appellant)

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa, at CPO Peshawar and two others.

... (Respondents)

Zia Ullah Khan
Appellant

... Pro Se

Asif Masood Ali Shah,
Deputy District Attorney

... For Respondents

ROZINA REHMAN
ATIQU-UR-REHMAN WAZIR

...
...

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU UR REHMAN WAZIR MEMBER (E): Brief facts of the case are that

the appellant while serving as constable in police department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 20-07-2017, against which the appellant filed departmental appeal, which was rejected vide order dated 12-3-2018. The appellant filed review petition, which was also rejected vide order dated 31-07-2018, hence the instant service appeal with prayers that the appellant may be reinstated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law and impugned order has been passed in flagrant violation of law and rules, tainted with mala fide and is therefore not

sustainable in the eye of law; that absence of the appellant was not intentional but was due to compelling situation, which was beyond control of the appellant; that the disciplinary proceedings were conducted at the back of the appellant and the appellant was not afforded any opportunity of defense; that no charge sheet/statement of allegations as well as show cause notice was served upon the appellant; that no inquiry was conducted against the appellant nor the appellant was associated with such proceedings, hence the appellant was condemned unheard; that copy of the dismissal of the appellant was not provided to the appellant well in time, so that the appellant could knock at the door of the proper forum; that the appellant was not heard properly and no weightage was given to his stance in defense neither it was deemed necessary by respondents, which totally violates every corner of justice that prevails; that the appellant was dismissed from service as well as his period of absence was treated as leave without pay, which is illegal.

W/m
03. Learned Deputy District Attorney for the respondents has contended that the appellant absented from duty without permission of the competent authority, consequently, he was proceeded against as per law and rule; that proper charge sheet/statement of allegations was served upon the appellant and inquiry to this effect was also conducted against the appellant and upon recommendations of the inquiry officer, the appellant was dismissed from service under the relevant law.

04. We have heard learned counsel for the parties and have perused the record.

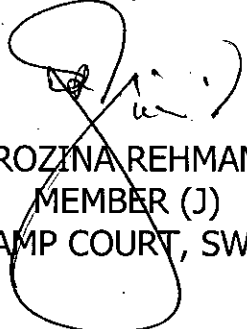
05. Record reveals that the appellant has not been treated in accordance with law as record is silent as to whether any charge sheet/statement of allegations was served upon the appellant. Similarly, no inquiry report is available on record to ascertain as to what were recommendations of the inquiry officer, upon which the appellant was dismissed from service. Record is also silent as to whether any opportunity of defense was afforded to the appellant. Most importantly we have

also observed that the appellant was proceeded against on the ground of absence for the mentioned period, however the authority has treated the mentioned period as leave without pay, as such the very ground, on the basis of which the appellant was proceeded against, has vanished away. Wisdom in this respect derived from the judgment of the august supreme court of Pakistan, reported as 2006 SCMR 434 and 2012 TD (Services) 348.

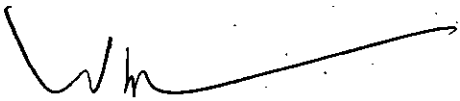
06. In view of the foregoing, the instant appeal is accepted and the appellant is re-instated in service, however the intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED.

05.10.2021



(ROZINA REHMAN)
MEMBER (J)
CAMP COURT, SWAT



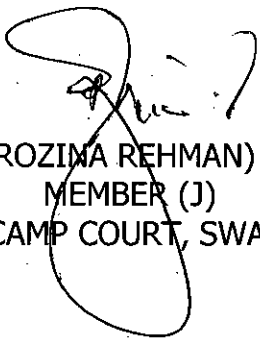
(ATIQ UR REHMAN WAZIR)
MEMBER (E)
CAMP COURT, SWAT

ORDER
05.10.2021

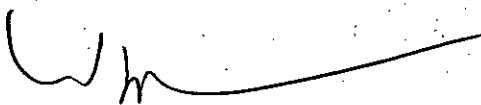
Appellant in person present. Mr. Asif Masood Ali Shah,
Deputy District Attorney for respondents present. Arguments heard
and record perused.

Vide our detailed judgment of today, separately placed on
file, the instant appeal is accepted and the appellant is re-instated
in service, however the intervening period is treated as leave
without pay. Parties are left to bear their own costs. File be
consigned to record room.

ANNOUNCED.
05.10.2021



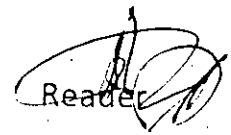
(ROZIMA REHMAN)
MEMBER (J)
CAMP COURT, SWAT



(ATTIQ-UR-REHMAN WAZIR)
MEMBER (E)
CAMP COURT, SWAT

4-1 .2020

Due to COVID19, the case is adjourned to
01/3 /2020 for the same as before.

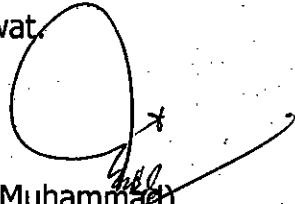
Reader 

01.03.2021

Appellant in person present.

Noor Zaman Khan Khattak learned District Attorney for respondents present.

Former made a request for adjournment as his counsel is busy before Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 04.05.2021 before D.B at Camp Court, Swat.


(Mian Muhammad)
Member (E)
Camp Court, Swat


(Rozina Rehman)
Member (J)
Camp Court, Swat

*Due to covid,19 therefore to
come up for the same on 05/10/21*

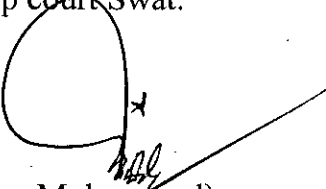

Rehman

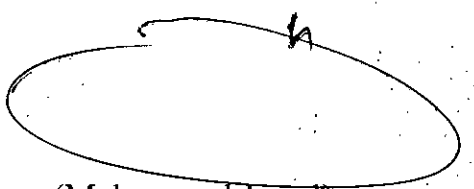
07.10.2020

Appellant was present and the appeal was called for hearing in the morning but at the moment 2:07 PM he has not forth come. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents present.

According to the information furnish by the Reader of the court that the appellant had told him that due to death of his near relative, he is proceeding to his home, therefore, the appeal is ^{to be} adjourned.

Adjourned to 02.11.2020 for arguments before D.B at camp court Swat.


(Mian Muhammad)
Member (E)

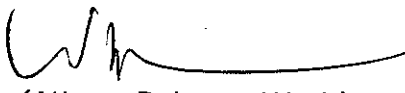

(Muhammad Jamal)
Member (J)
Camp Court Swat


02.11.2020

Appellant in person present.

Muhammad Jan learned Deputy District Attorney Assistant for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 04.01.2021 for arguments, before D.B at Camp Court, Swat.


(Atiq ur Rehman Wazir)
Member (E)
Camp Court, Swat


(Rozina Rehman)
Member (J)
Camp Court, Swat

02.06.2020 Due to Covid-19, the case is adjourned. To come up for the same on 07.07.2020, at camp court Swat.



Reader

07.07.2020 Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 08.09.2020, at camp court Swat.




Reader


08.09.2020 Appellant present in person.

Mr. Muhammad Jan learned Deputy District Attorney for respondents present.

Former requests for adjournment as his counsel is busy before Darul-Qaza; granted. To come up for arguments 07.10.2020 before D.B at Camp Court, Swat.



(Attiq ur Rehman)
Member (E)
Camp Court, Swat



(Rozina Rehman)
Member (J)
Camp Court, Swat

06.01.2020

Appellant in person and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Mir Faraz, DSP (Legal) for the respondents present. Representative of the department submitted para-wise reply. The same is placed on record. Case to come up for rejoinder, if any, and arguments on 02.03.2020 before D.B at Camp Court Swat.

MA
(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

02.03.2020

Appellant in person present. Mr. Riaz Paindakheil learned Assistant Advocate General present. Appellant seeks adjournment as his counsel is not available. Adjourn. To come up for arguments on 07.04.2020 before D.B at Camp Court, Swat.

[Signature]
Member

[Signature]
Member
Camp Court, Swat.

*Due to corona virus
tour to camp court swat
has been cancelled. To
come up for the same on
2/6/20*
[Signature]

Service Appeal No. 1031/2018

07.11.2019

Counsel for the appellant Zia Ullah Khan present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department. He was imposed major penalty of dismissal from service vide order dated 20.07.2017 on the allegation of absence from duty. It was further contended that the appellant filed departmental appeal on 05.12.2017 which was rejected vide order dated 12.03.2018 thereafter, the appellant filed revision petition to Inspector General of Police which was rejected on 08.08.2018 hence, the present service appeal on 17.08.2018. Learned counsel for the appellant further contended that the appellant was imposed major penalty of dismissal from service on the allegation of absence from duty. It was further contended that the appellant was having seven years service in his credit. It was further contended that neither any absence notice was issued to the appellant at his home address nor any show-cause notice was advertised in the newspaper as required under Government Servants (Efficiency & Discipline) Rules, 2011. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor he was provided opportunity of defence and personal hearing nor show-cause notice was issued to the appellant therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 06.01.2020 before S.B at Camp Court Swat.

Appellant Deposited
Security & Process Fee

(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

01.07.2019

Clerk to counsel for the appellant present and submitted application for adjournment. Adjourn. To come up for preliminary hearing ~~including arguments on the issue of~~ maintainability of present appeal on 04.09.2019 before S.B at Camp Court Swat.



Member
Camp Court, Swat.

04.09.2019

Learned counsel for the appellant present and seeks adjournment. Adjourn. To come up for preliminary hearing including hearing on the issue of maintainability of the present service appeal, on 09.10.2019 before S.B at Camp Court, Swat.



Member
Camp Court, Swat.

09.10.2019


Clerk of counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned to 07.11.2019 for preliminary hearing including hearing on the issue of maintainability of the present service appeal before S.B at Camp Court Swat.



(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

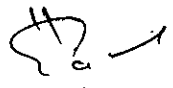
03.04.2019

Appellant in person present and seeks adjournment on the ground that his counsel is not available today. Adjourn. To come up for preliminary hearing 08.05.2019 before S.B at Camp Court Swat.


(M. Hamid Mughal)
Member
Camp Court Swat

08.05.2019

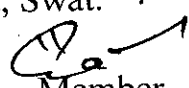
Appellant in person present and seeks adjournment on the ground that his counsel is not available. Adjourn. To come up for preliminary hearing on 12.06.2019 before S.B at Camp Court Swat.


Member
Camp Court, Swat.

12.06.2019

Learned counsel for the appellant present.
Heard.

The departmental appeal of the appellant to RPO Malakand appears to be time barred. Learned counsel for the appellant seeks adjournment to render proper assistance. Adjourn. To come up for preliminary arguments including arguments on the issue of ~~maintainability~~ on 03.07.2019 before S.B at Camp Court, Swat.


Member
Camp Court, Swat.

09.11.2018


Due to retirement of the Hon'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 11.01.2019 at camp court Swat.



Reader

11.01.2019

Clerk of counsel for the appellant present and requested for adjournment on the ground that learned counsel for the appellant is busy before Hon'ble Dara-ul-Qaza, Swat. Adjourned. To come up for preliminary hearing on 08.03.2019 before S.B at Camp Court Swat.




(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

08.03.2019

Appellant alongwith Mr. Muhammad Javed Khan, Advocate present.

Learned counsel submitted Wakalatnama ~~on~~ ~~the strength~~ and requested for adjournment as he had not prepared the brief due to recent engagement.

Adjourned to 03.04.2019 before S.B at camp court, Swat.

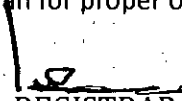

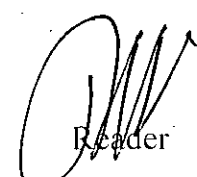


Chairman
Camp court, Swat

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1031/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/08/2018	<p>The appeal of Mr. Ziz Ullah Khan presented today by Mr. Shabir Ahmad Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 17/8/18.</p>
2-	18/08/18	<p>This case is entrusted to touring S. Bench at Swat for preliminary hearing to be put up there on <u>07-09-2018</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	07.09.2018	<p>Appellant Ziaullah Khan in person present and made a request for adjournment. Granted. Case to come up for preliminary hearing on 09.11.2018 before S.B at camp court Swat.</p>
09.11.2018		<p>Due to retirement of the Hon'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 11.01.2019 at camp court Swat.</p> <p style="text-align: right;"> Reader</p>

**BEFORE KHYBER PAKHTUNKHWAH
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1031 of 2018

Zia Ullah Khan

Vs

Provincial Police Officer Khyber Pakhtunkhwa at CPO

Peshawar and others

SERVICE APPEAL

INDEX

S.No.	Descriptions	Annexure	Page No.
1.	Memo of Appeal		1-7
2.	Affidavit		8
3.	Memo of Addresses		9
4.	Copy of charge sheet 54/EB dated 05/04/2017	"A"	10-11
5.	Copy of dismissal order of respondent No. 3 dated 20/07/2017	"B"	12
6.	Copy of departmental appeal	"C"	13
7.	Copy of order of respondent No.2 dated 12/03/2018	"D"	14
8.	Copy of application to the review committee board	"E"	15-16
9.	Copy of order of review committee board of respondent No.1	"F"	17
10.	Wakalat Nama		18

Appellant

Through Counsel

Shabir Ahmad Khan
Advocate, High Court

Office Address: Hamza Law Chamber,
Allah - o - Akbar Building, Makan
Bagh Chowk, Mingora, District Swat
Cell: 0341-5666363 , 0333-9499466

Dated: 17/08/2018

**BEFORE KHYBER PAKHTUNKHWAH
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 1031 of 2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1293

Dated 17/8/2018

Zia Ullah Khan S/o Bawaray R/o Jehan Abad,
Tehsil Charbagh, District Swat (Ex-Constable
B.No. 2868)

...Appellant

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa
at CPO Peshawar
2. Regional Police Officer Malakand R-III at
Saidu Sharif, District Swat
3. District Police Officer Swat

.....Respondents

Filed to-day

Registrar

17/8/18

SERVICE APPEAL U/S 4 OF THE KPK SERVICE
TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
ORDER OF RESPONDENT NO. 3 DATED 20/07/2017,
WHEREBY RESPONDENT NO.3 DISMISSED THE
APPELLANT FROM SERVICE. AGRIEVED FROM
THE ORDER OF RESPONDENT NO.3 APPELLANT
PREFERRED A DEPARTMENTAL APPEAL BUT THE
SAME WAS ALSO FILED BY RESPONDENT NO.3
THEN THE APPELLANT MOVED AN APPLICATION
TO THE REVIEW COMMITTEE OF RESPONDENT
NO.1 BUT THE SAME WAS REJECTED BY REVIEW
COMMITTEE BOARD OF RESPONDENT NO.1

Respectfully Sheweth:

Facts arising to the present appeal are as under;

- 1) That appellant was initially recruited on 21/12/2010 as police constable in police department.
- 2) That from the day of appointment the appellant performed his duty with honesty, zeal and enthusiasm yet.
- 3) That the appellant was absented by line officer Iqbal Shaheed Police Line on 08/02/2017. The respondent No.3 then issued charge sheets No. 54/EB dated 05/04/2017 and another charge sheet No. 174/EB dated 19/08/2016 also issued to appellant but the photocopy of charge sheet was not handed over to the appellant that's why not attached with the present service appeal. Both the inquiries were entrusted to SDPO Khwazakhela and SDPO City for conducting inquiry against the appellant.
(Copy of charge sheet No. 54/EB dated

05/04/2017 is attached herewith as annexure "A")

4) That the inquiry officers submitted their finding report and recommended the appellant for warning and major punishment respectively. On the recommendation of the inquiry officers the respondent No. 3 without giving opportunity of hearing to the appellant dismissed the appellant from service. (Copy of dismissal order of respondent No. 3 dated 20/07/2017 is attached herewith as annexure "B")

5) That the appellant preferred a departmental appeal to respondent No.2 but without providing reasonable opportunity of hearing to the appellant, the respondent No.2 filed the appeal then the appellant moved an application to the review committee board of respondent No.1 but the same was also rejected by the review committee board of the respondent No.1 hence, the instant service appeal. (Copy of departmental, order of respondent No.2 dated

12/03/2018 and application to the review committee board and order of review committee board of respondent No.1 are attached herewith as annexure "C,D,E and F" respectively.

- 6) That aggrieved from the orders of respondents, The present appeal is submitted on the following amongst other grounds.

GROUND:-

- i. That the appellant was not absented from duty intentionally but due to domestic problem that the house of the appellant was badly cracked fully because of catastrophic rainfalls and soon after the house was totally fallen on the ground and was totally demolished.
- ii. That as the appellant comes from a poor and deprived class, the family of the appellant had no shelter to escape from the rainfalls

5

and thus the home privacy was vulnerable and at stake.

iii. That the appellant was compelled to re-build the fallen house under the doctrine of unavoidable necessity to provide shelter and safety to the family.

iv. That after reporting back on the duty, the attendance of the appellant was not marked and he was none of the times guided properly about the procedure to adopt.

v. That the appellant helplessly ran from office to office and was never heard and every time returned hopeless after spending the whole day at the waiting rooms every time.

vi. That the appellant was not even provided with the copy of order of dismissal so that the appellant could knock the door of the proper forums.

vii. That the appellant was not heard properly and no weightage was given to his stance in defence neither was it deemed necessary by the respondents which totally violates every corner of justice that prevails.

viii. That the appellant was not treated in accordance with law and rules on the subject and the impugned order has been passed in flagrant violation of law and rules tainted with mala-fide intention and is therefore not sustainable and is liable to be set aside.

ix. That the universal cannon of natural justice have been set aside and no ample opportunity of presenting the delinquent stance / version has been given.

x. That the constitutional and fundamental requirements of "Equal protection and equality before law" have bluntly been violated.

xi. The impugned order is unreasonable, arbitrary and is liable to be set aside.

xii. That other important points will be raised during the course of arguments with prior permission of this Honorable Tribunal.

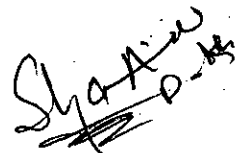
Therefore, it is humbly prayed that by the acceptance of this service appeal, the impugned order of respondents may kindly be set aside and the appellant may be reinstated into service with all back benefits.

Any other relief as deemed appropriated in the circumstances of the case and not specifically prayed for may also be granted to appellant.

Appellant



Through Counsel



Shabir Ahmed Khan
Advocate, High Court

Dated: 17/08/2018

8

**BEFORE KHYBER PAKHTUNKHWAH
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. _____ of 2018

Zia Ullah Khan

Vs

Provincial Police Officer Khyber Pakhtunkhwa at CPO
Peshawar and others

SERVICE APPEAL

Affidavit

I Zia Ullah Khan S/o Bawaray R/o Jehan Abad, Tehsil Charbagh, District Swat (Ex-Constable B.No. 2868), do hereby states on oath that all the contents of this Service appeal are correct and true to the best of my belief and knowledge and nothing has been concealed from this Honorable Tribunal.

Deponent


Zia Ullah Khan

ATTESTED


Fazal Amin Advocate,
Oath Commissioner,
S/O: 1015... Date: 16/8/18
District Courts Gulikada Swat.

9

**BEFORE KHYBER PAKHTUNKHWAH
SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. _____ of 2018

Zia Ullah Khan

Vs

Provincial Police Officer Khyber Pakhtunkhwa at CPO
Peshawar and others

SERVICE APPEAL

MEMO ADDRESSES

ADDRESS OF THE APPELLANT:

Zia Ullah Khan S/o Bawaray R/o Jehan Abad, Tehsil
Charbagh, District Swat (Ex-Constable B.No. 2868)

CNIC No. 15602-4473869-1

Cell No. 0344-9816113

ADDRESSES OF THE RESPONDENTS:

1. Provincial Police Officer Khyber Pakhtunkhwa
at CPO Peshawar
2. Regional Police Officer Malakand R-III at
Saidu Sharif, District Swat
3. District Police Officer Swat

Appellant

Through Counsel

Shabir Ahmad Khan

Advocate, High Court

DISCIPLINARY ACTION

A

I, Muhammad Ijaz Khan PSP District Police Officer, Swat as competent authority, is of the opinion that he Constable Ziaullah No.2868 while posted to JIS Police Lines has rendered himself liable to be proceeded against departmentally as he has committed the following acts/omissions as defined in Rule 2 (ii) of Police Rules 1975 with amendments 2014 vide Notification No.3859/Legal, dated 27-08-2014 of the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar, as per Provincial Assembly of Khyber Pakhtunkhwa Notification No. PA/Khyber Pakhtunkhwa/ Bills/ 2011/4905 dated 16/09/2011 and C.P.O. K.P.K Peshawar Memo: No. 3037-62/Legal, dated 19/11/2011.

STATEMENT OF ALLEGATIONS


It has been reported that he while posted to JIS Police Lines committed the following act / acts, which is / are gross misconduct on his part as defined in Rules 2 (iii) of Police Rules 1975:

That he Constable Ziaullah No.2868 while posted to JIS Police Lines has absented himself from duty without prior permission or leave vide DD No.38, w.e.f. 31-08-2016 up till now as per report of Lines Officer, JIS Police Lines dated 08-02-2017.

2. For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, SDPO/Khwaza Khela Circle is appointed as Enquiry Officer.

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

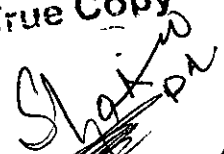
4. The accused officer shall join the proceedings on the date, time and place fixed by the enquiry officer.

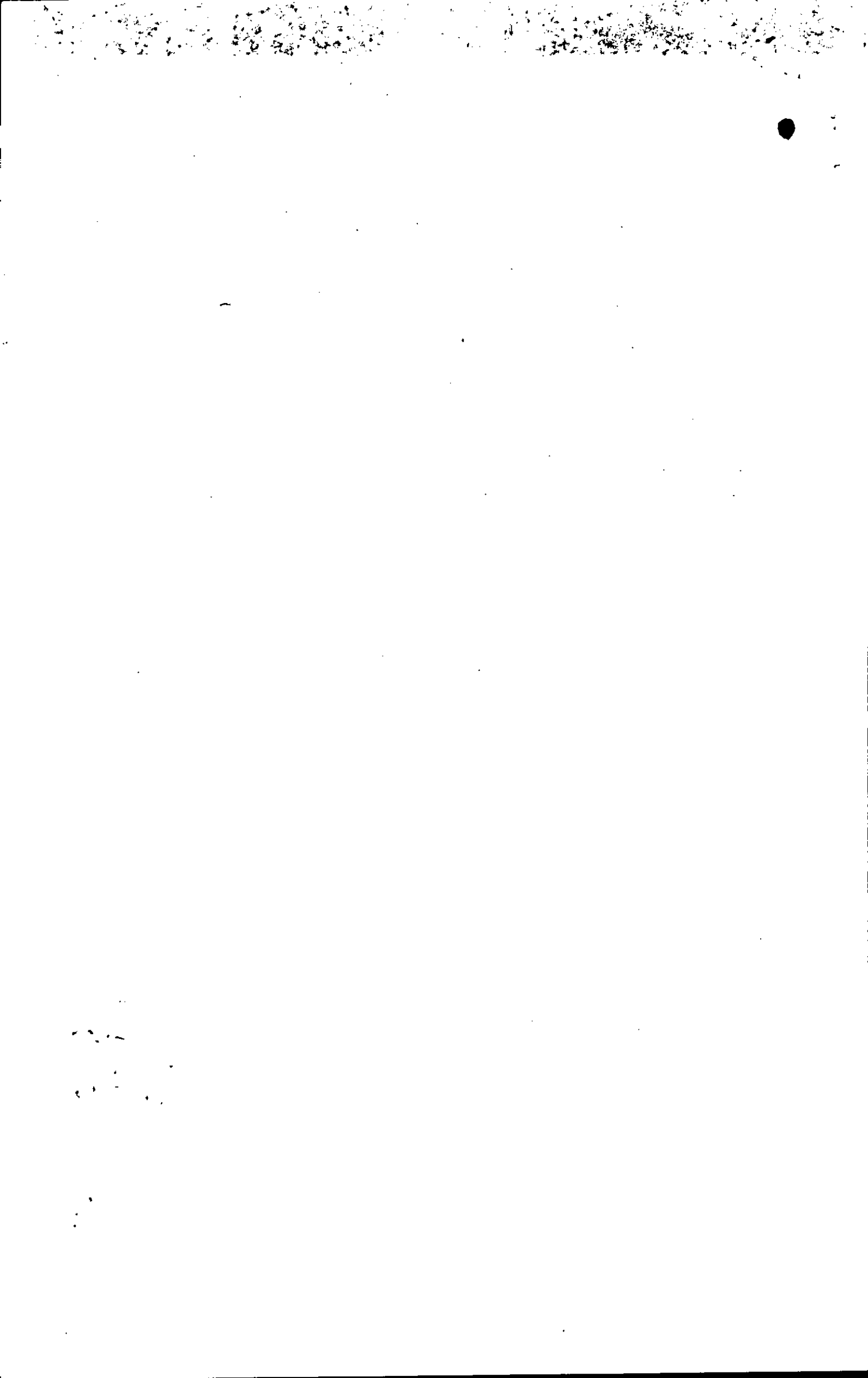

District Police Officer, Swat

No. 59 /EB, Dated Gulakada the, 05-04 2017.

Copies of above to:-

1. SDPO/Khwaza Khela Circle for initiating proceeding against the accused Officer/ Official namely Constable Ziaullah No.2868 under Police Rules, 1975.
2. Constable Ziaullah No.2868.
With the direction to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer for the purpose of enquiry proceeding.

ATTESTED
To be...
True Copy

Shabir Ahmed Khan
Advocate
District Courts Swat.



CHARGE SHEET

I, Muhammad Ijaz Khan, PSP District Police Officer, Swat as a competent authority, hereby charge you, Constable Ziaullah No.2868 while posted to JIS Police Lines as follows:-

You committed the following act/acts, which is/are gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules 1975 with amendments 2014 vide Notification No.3859/Legal, dated 27-08-2014 of the Inspector-General of Police, Khyber Pakhtunkhwa, Peshawar.

You Constable Ziaullah No.2868 while posted to JIS Police Lines have absented yourself from duty without prior permission or leave vide DD No.38, w.e.f. 31-08-2016 up till now as per report of Lines Officer, JIS Police Lines dated 08-02-2017.


2. By reasons of the above, you appear to be guilty of misconduct and rendered yourself liable to all or any of penalties specified in Rule-4 of the Disciplinary Rules 1975.

3. You are, therefore, required to submit your written reply within seven (7) days of the receipt of this Charge Sheet to the Enquiry officer.

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

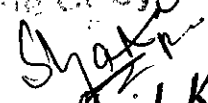
5. Intimate as to whether you desire to be heard in person or not.

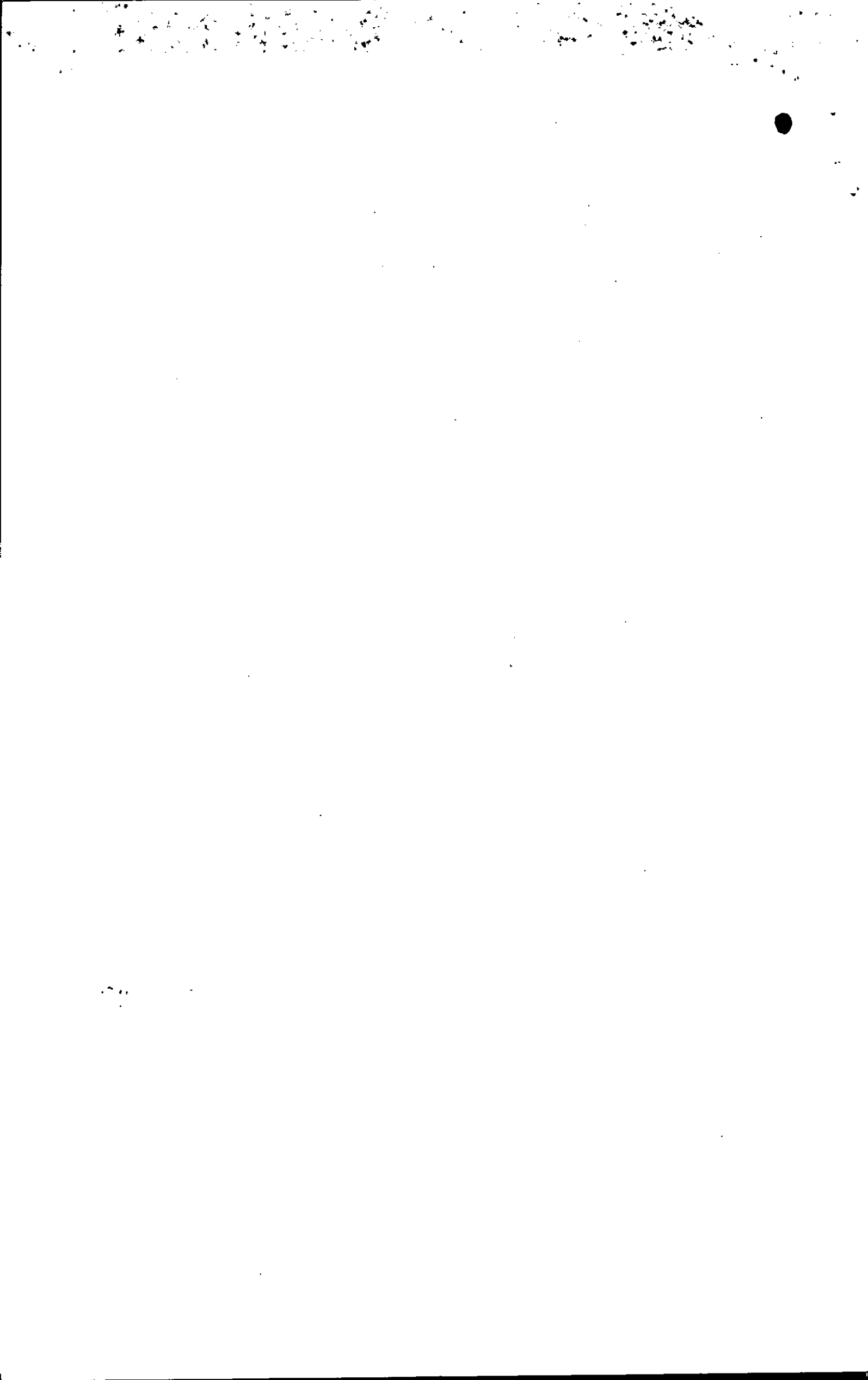
6. A statement of allegations is enclosed.


District Police Officer, Swat

No. 54 /E,

Dated 05-04 /2017.

ATTESTED
To be
True Copy

Shabir Ahmad Khan
Advocate
District Court Swat.



ORDER

This order will dispose of the departmental enquiry conducted against Constable Ziaullah No.2868 that he while posted to JIS Police Lines has absented himself from duty without prior permission or leave vide DD No.62 w.e.f. 13-07-2016 to 31-08-2016 for 01 month and 17 days and again vide D.D. No.38 w.e.f. 31-08-2016 up till now as per report of Lines Officer, JIS Police Lines dated 08-02-2017.

He was issued Charge Sheets coupled with Statement of Allegations vide this office No.174/EB, dated 19-08-2016 and No.54/EB, dated 05-04-2017. and SDPOs/City and Khwaza Khela Circles were deputed as Enquiry Officer. The Enquiry Officers conducted proper departmental enquiries against the delinquent Constable and recorded the statements of all concerned. The Enquiry Officers has provided ample opportunity to the delinquent Constable to defense the absence rendered by him. After conducting proper departmental enquiry, the Enquiry Officers SDPOs/City and Khwaza Khela Circles submitted their findings wherein they intimated that the allegations leveled against the above named delinquent Constable are proved during enquiry and recommended him for warning and major punishment respectively. Consequently he was issued Final Show Cause Notice vide this office No.6406/EB, dated 08-05-2017 thereafter he reported his arrival at JIS Police Lines vide DD No.08 dated 17-05-2017 after absence of 08 months and 16 days. He was also called in Orderly Room but he did not appear to present plausible defense for his absence.

Having perused his service record, it was patently evident that the delinquent officer Constable Ziaullah No.2868 is addicted to a chronic absentee and this act shows that he is not interested to continue his service further. Forgoing in view the undersigned is of considered opinion that there are no chances that Constable Ziaullah No.2868 will rejoin his services and also becomes an efficient Police Officer. His further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, Muhammad Ijaz Khan, PSP, District Police Officer, Swat as a competent authority, am constrained to take Ex-Parte action and award him the major punishment of Dismissal from service with immediate effect and his total absence period of 10 months and 03 days is treated as leave without pay.

Order announced.

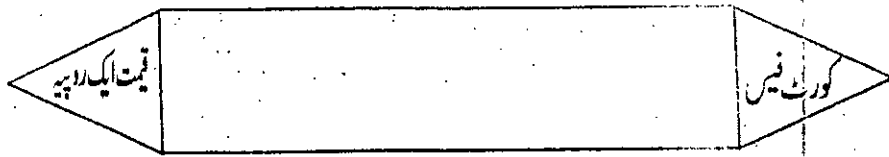
O.B. No. 121
Dated 20/07/2017.

District Police Officer, Swat

ATTESTED
To be
True Copy

Shahir Ahmad Khan
Shahir Ahmad Khan
Advocate
District Courts Swat.

بعد الت سروس ٹریبونل لیسٹ اور کیس کورٹ جٹام کل عدہ سوات



مورخہ 08 مارچ 2019ء منجانب سائل اور ریسپنڈنٹ

مقدمہ ضیاء اللہ بنام حلقہ پولیس

دعویٰ Petition No 1013/2018

جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام سروس ٹریبونل لیسٹ اور کیس کورٹ سوات سے لے کر جٹام کل عدہ سوات

مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل

اختیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب

دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔

نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل

یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔

اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ

برداشتہ منظور قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ ہر جانہ التوا ایے مقدمہ کے

سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے

وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل

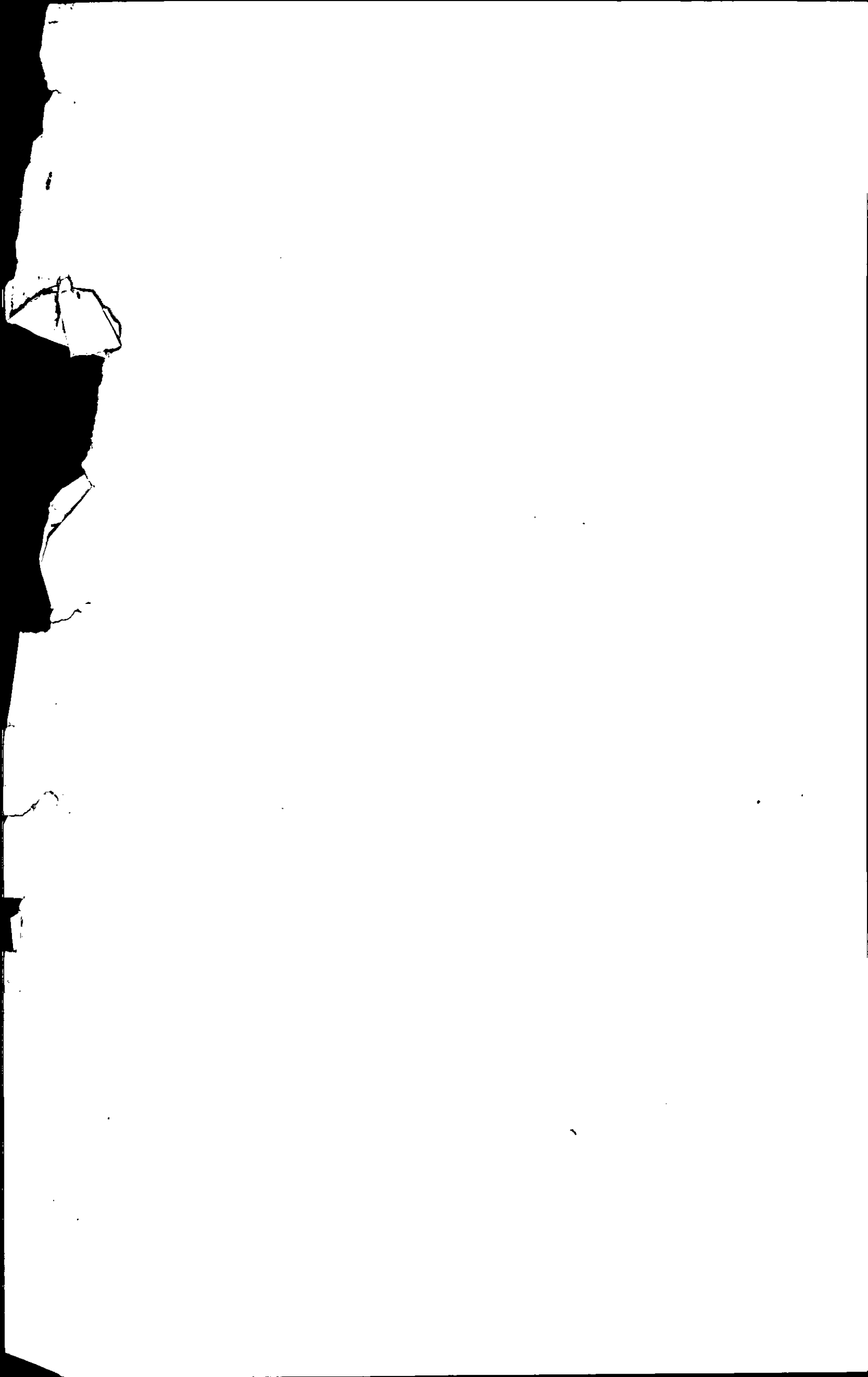
صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند ہے

الرقوم 08 ماہ مارچ 2019ء

العبد گواہ شدہ العبد

بمقام عدل کورٹ سوات کے لئے منظور ہے

Muhammad Javaid Khan
Advocate of Supreme Court
Mob 0343 960 7492



خدمت جناب ریجنل پولیس افسر ملاکنڈ (مقام سدھو شریف)
درخواست ہمدرد دوبارہ بحال حکم پولیس

جناب عالی!

Annexure
C

معروض خدمت یوں۔ کہ سائیل حکم پولیس
ضلع سوات میں مورخ 12/21/2016 کو جسٹری ہوکسر
سائیل نے بہت ایمانداری اور دیانتداری سے ڈیوٹیاں
سراجام دی ہے۔ سرویس کے دوران آفسران بالا
کو کسی قسم کی شکایت کا موقع نہیں دیا ہے۔ ہمیشہ
خوش اسلوبی کو شعار بنایا ہے۔ سائیل کا
رہائشی مکان بوسیدہ ہو چکا تھا۔ جو کہ رہنے
کے بالکل قابل نہیں تھا۔ سائیل کے گھر
وایے بے گھر ہو گئے تھے۔ جس کی وجہ سے سائیل
نے از سر نو تعمیر شروع کر کے ہر وقت موجود
رہتا تھا۔ بدین وجہ سائیل غیر حاضر ہوا آفسران
بالا نے حکم پولیس سے بحوالہ آرڈر نمبر 121
مورخ 20/07/2017 ڈسمن کیا ہے۔ سائیل کی غیر مافی
از حد مجبوری کی وجہ سے ہوئی ہے۔

استدعا ہے کہ سائیل پر رحم فرمائے
حکم پولیس میں دوبارہ بحال کرنے کا حکم
صادر فرمائے تاکہ مزاحمت نہ ہو۔

الحاضر

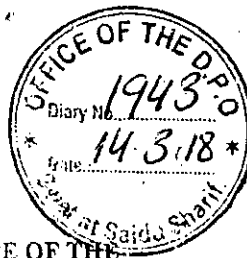
ضیاء اللہ سالقہ نمبر 2868

مورخ 05/12/2017

Mob:- 0344 9816113

TESTED
To be
True Copy

Shahin
Shahin Ahmad Khan
Advocate
District Courts Swat.



14



**OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND**

AT SAIDU SHARIF SWAT.

Ph: 0946-9240381-83 & Fax No. 0946-9240390

Email: digmalakand@yahoo.com

Annexure

D

ORDER:

This order will dispose off appeal of Ex-Constable Zia Ullah No. 2868 of Swat District for reinstatement in service.

Brief facts of the case are that Ex-Constable Zia Ullah No. 2868 while posted to JIS Police Lines absented himself from lawful duty w.e.f 13/07/2016 to 31/08/2016 total 01 month and 17 days and again remained absent from 31/08/2016 to 20/07/2017 without prior permission or approved leave. He was issued Charge Sheet coupled with statement of allegations and SDPOs City and Khwazakhela Circle were deputed as Enquiry Officer. The Enquiry Officers conducted proper departmental enquiry against the delinquent Constable and recorded statements of all concerned. After conducting proper departmental enquiry, the enquiry Officers submitted their finding reports and found the allegations leveled against the above named delinquent Constable have been proved during enquiry hence recommended him for warning and major punishment respectively. Being found guilty of the charges the District Police Officer, Swat under Rules 2(iii) of Police Disciplinary Rules 1975 dismissed him from service vide his office OB No.121 dated 20/07/2017.

He was called in Orderly Room on 06/03/2018 and heard him in person. The appellant could not produce any cogent reason in his defense. Therefore, his appeal for reinstatement in service is hereby filed.

Order announced.

(Signature)
(AKHTAR HAYAT KHAN)
Regional Police Officer,
Malakand, at Saidu Sharif Swat
12/3/18

No. 2511 /E,

Dated 12-03- /2018.

Copy to District Police Officer, Swat for information and necessary action with reference to his office Memo: No. 2642/E, dated 24/01/2018.

ATTEST
To be
True Co

(Signature)
Shahid Ali
District Police Officer
Swat.

(Signature)
OBJECTION
13/3

OB.No.47
18.3.18

District Police Officer
13/3
SWAT.

حضرت آقا صاحب السیّد عبدالرشید صاحب کفایت فرادہ۔

Annexure

E

مذکورہ دست

بابت ڈیسمبل سائنس از کالج پورنیہ صوبہ بنگالہ اور اسی

اپریل سائنس کوالیفائیڈ
2511
12.3.18

صاحب گزشتہ صاحب سائنس اہل

1. یہ سائنس جہاں آباد کیں طوائف صلح صورت نام لکھی ہے۔ صبح سائنس میں
میٹرک کا امتحان بھی ہوا ہے۔ سائنس کالج پورنیہ صوبہ بنگالہ
میں 12/2510 کو کوئی نوکر سائنس اہل ڈیویڈنٹ سائنس کالج
سے سرانجام دے کر گیا۔

2. یہ کم سائنس پورنیہ میں ڈیویڈنٹ سرانجام دے کر گیا۔ کم سائنس کو
گورنمنٹ سے اخراج دیا۔ کم سائنس کا امتحان پورنیہ میں ہوا ہے
اور منقریب گورنمنٹ سے سائنس کالج پورنیہ
صاحب اور صاحب کی طرف سے سائنس کالج پورنیہ میں لیا

3. یہ سائنس کے ہیں پورنیہ اور پورنیہ کالج پورنیہ کا سائنس کالج پورنیہ
سائنس کالج پورنیہ اور پورنیہ کالج پورنیہ کو رزولوشن 13/7/16
121/20-7-17 کو فورس سے ڈیسمبل کر دیا گیا

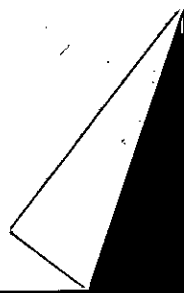
4. یہ سائنس کے ہیں صاحب و ڈیویڈنٹ کالج پورنیہ کو رزولوشن 13/7/16
سائنس کالج پورنیہ کو رزولوشن 13/7/16 سائنس کالج پورنیہ
کو رزولوشن 13/7/16 سے ڈیسمبل کر دیا گیا اور سائنس کالج پورنیہ میں لیا

ATTESTED
To be
True Copy

Shabir Ahmad
Shabir Ahmad Kha
Advocate
District Court Swat.

11224

TESTED
ad 87
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اور نہ ہی اس کی کوئی دوسرا ذیلی ہے کہ سہیل نے سند حاصل کی ہے
محترمہ خدیجہ بنتی عقیقہ محمدیہ سے اس کی بیٹی اور بیٹی بنتی ہیں عاقبت سے
کئے سے کی ہے

سید احمد علی صاحب نے سہیل کے ساتھ
مجموعہ فرما کر سہیل کو قلم لکھیں میں دوبارہ کی جانے والی کا حکم ہے
انہوں نے سہیل سے بیٹی اور بیٹی بنتی ہیں عاقبت سے
دیوانہ سرکار کا حکم ہے
5/5

شاہد احمد خان
سہیل 2868
سہیل

ولادت نامہ ہے
سید محمد بن احمد
0344-9816113

TESTED
To be
True Copy

Shahid Ahmad Khan

Shahid Ahmad Khan
Advocate
District Muzaffargarh





OFFICE OF THE
INSPECTOR-GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. SI 3149 /18. dated Peshawar the 31/07/2018. 18/07/18
e. 31/07/18

17

Annexure

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Constable Zia Ullah No. 2868. The petitioner was dismissed from service by DPO, Swat vide OR No. 121, dated 20.07.2017 on the charge of absence from duty w.e.f 13.07.2016 to 31.08.2016 and from 31.08.2016 till date of dismissal from service i.e. 20.07.2017 for a period of 01 year and 08 days.

His appeal was filed by Regional Police Officer, Malakand vide order Endst: No. 2511/18, dated 12.03.2018.

Meeting of Appellate Board was held on 19.07.2018 wherein petitioner was heard in person. During hearing petitioner contended that his absence was not deliberate but due to domestic problems.

Perusal of record reveals that petitioner was dismissed from service on the charges of long absence from duty for 01 year and 08 days vide order dated 20.07.2017 passed by DPO Swat and his departmental appeal was filed vide order dated 12.03.2018 of RPO Malakand. He has earned 15 bad entries on charges of absence from duty which establishes that he is habitual absentee and there are no prospects of mending his ways. His appeal is also time barred. Therefore, the Board decided that his petition is hereby rejected.

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

ATTESTED
To be
True Copy

[Signature]

(IRFAN ULLAH KHAN)
AIG/Establishment
For Inspector General of Police
Khyber Pakhtunkhwa,
Peshawar.

No. SI 3150-56 /18.

Copy of the above is forwarded to the:

No. 6924 IE
dt 08-08-18

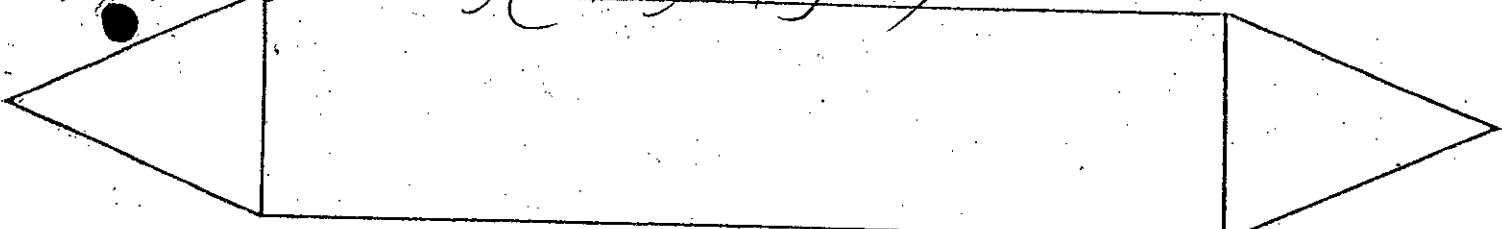
1. Regional Police Officer, Malakand at Swat. Service Roll, Fauji Missal containing complete enquiry file of the above named Ex-Constable received vide your office Memo: No. 5809/18, dated 27.06.2018 is returned herewith for your office record.
2. District Police Officer, Swat.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

EC DPO Swat
For Malakand. Service roll, Fauji Missal and complete enquiry file is returned herewith for record in your office please.

[Signature]
Regional Police Officer
Malakand at Swat
18/07/18

18

بعدالت سروس ٹریڈنگ سٹور (سوار) کیس نمٹوانے کے لیے۔



مورنہ 17 اگست 2018ء منجانب اسپتال
 مقدمہ شہداء اللہ خان بنام شکر لہ لیس
 دعویٰ SERVICE APPEAL
 مجرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دیکھ کر
 کارروائی متعلقہ آن مقام سٹور کے لئے شہداء اللہ خان
 مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ برحلف دیے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور وصولی چیک نہ روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمد اور
 منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت
 مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے
 تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور
 اس کا ساختہ پرداخت منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے
 سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہوں گے۔ نیز بقایا و خرچہ کی وصولی کرنے کا
 بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہے تو وکیل صاحب پابند نہ ہوں
 گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

شہداء اللہ خان

20

ماہ

الرقوم

Shahab Ali
 Shabir Ahmad Khan
 Advocate
 District Courts Swat.

العبد گواہ نشد العبد

بمقام شہداء اللہ خان کے لئے منظور ہے۔

17/8/18

Handwritten mark or signature

District Court
District Court
District Court

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1031/2019

Ziaullah khan S/O Bawaray R/o Jehan Abad, Thesil Charbagh, District Swat
(EX-ConstableB.NO.2868)

..... Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. Regional Police Officer Malakand at Saidu Sharif, District Swat
3. District Police Officer Swat.

....Respondents

INDEX

S.No:	Description of Documents	Annexure	Page
1	Para-wise Comments	-	1-3
2	Affidavit	-	4
3	Authority Letter	-	5
4	Copy of list of punishment	"A"	6
5	Copy of Charge Sheet	"B"	7
6	Copy of Statement of allegations	"C"	8


District Police Officer, Swat
(Respondent No. 3)

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1031/2019

Ziaullah Khan S/O Bawaray R/o Jehan Abad, Thesil Charbagh, District Swat
(EX-Constable B.NO.2868)

..... Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. Regional Police Officer Malakand at Saidu Sharif, District Swat
3. District Police Officer Swat.

....Respondents

PARAWISE REPLY BY RESPONDENTS

Respectfully Shewith,

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by Law & limitation.
2. That the appellant has got no Cause of action and locus standi to file the present appeal.
3. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
4. That the appellant has not come to the Tribunal with clean hands.
5. That the instant appeal is not maintainable in its present form.
6. That the appellant has concealed the material facts from this Hon'ble Tribunal.

FACTS:

1. Pertains to record, hence needs no comments.
2. Incorrect. During service the appellant willfully absented from duty on several occasions and 02 minor punishments were imposed upon him. (List enclosed as annexure- "A")
3. Correct to the extent that the appellant wilfully absented himself from official duty for long time i.e approximately one year and 16 days. Consequently, Charge Sheet coupled with statement of allegation was served upon him and a regular enquiry was conducted against the appellant. (Copy of Charge Sheet and Statement of allegations are enclosed as annexure "B" and "C")
4. Incorrect. That appellant was dismissed from service after the recommendation of Enquiry officer, wherein the charges were proved and observing all codal formalities under Khyber Pakhtunkhwa Police Rules-1975.

Sir,
checked
N. Hamid
2
msp: legal cpo
10-12-19

A.G., legal.

Attach all
annexures
12/12/19

- 5. Incorrect. Departmental appeal of the appellant was thoroughly examined by the respondent No.02 and the same was filed after providing all opportunities of personal hearing and self defence to the appellant.
- 6. The appellant has wrongly challenged the legal and valid orders of the respondents before the honorable Tribunal through unsound reasons/grounds.

GROUNDS:

- i. Incorrect. The appellant willfully absented himself from official duty for long period without any prior permission or approved leave.
- ii. Incorrect. No report of District Administration/revenue department has been placed on file nor produce to the respondent during absence period.
- iii. Incorrect. As explain above.
- iv. Incorrect. The appellant was treated in accordance with law/rules and was dismissed from service after completing all codal formalities under the rules and no law/rules have been violated by the respondents during passing the order of dismissal from service.
- v. Incorrect. All the opportunities of personal hearing and self defence were provided to the appellant during the course of enquiry.
- vi. Incorrect. The appellant was dismissed from service on the charges of wilfull absence from duty. Respondents have observed all codal formalities under the Law/rules while awarding punishment to the appellant and no requirements of the constitutional and fundamental law have been violated by the respondents.
- vii. Incorrect. The fake plea of the appellant has no legal value in the eyes of Law. The respondents have provided all opportunities of personal hearing and self defence to the appellant during the course of enquiry.
- viii. Incorrect. The appellant has been treated in accordance with KPK Police Rules 1975 and the orders of the respondents are based on facts, justice and in accordance with law.
- ix. Incorrect. Respondents have fulfilled/observed all the codal formalities and principal of natural justice during course of departmental proceedings.
- x. Incorrect. No constitutional/fundamental requirements of equal protection and equality before law have been violated by the respondents. The appellant has been treated in accordance with facts and law.

- xi. Incorrect. The orders of respondents are based on facts, justice, legal and in accordance with law/rules.
- xii. That the respondents may be allowed to add more grounds at the time of arguments.

PRAYER:

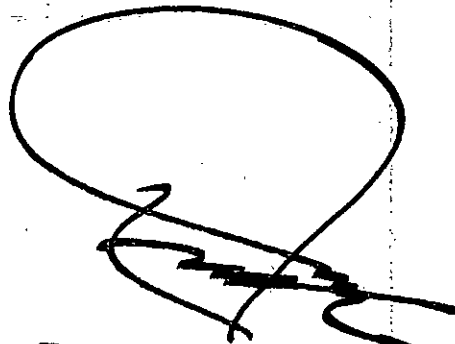
Keeping in views the above facts and circumstances, it is humbly prayed that the appeal of appellant being devoid of legal force may kindly be dismissed with costs.



**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.01)**



**Regional Police Officer,
Malakand at Saidu Shikohi, Swat
Regional Police Officer
Malakand Region
(Respondent No.02)**



**District Police Officer Swat
(Respondent No.03)**

(4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1031/2019

Ziaullah khan S/O Bawaray R/o Jehan Abad, Thesil Charbagh, District Swat (EX-ConstableB.NO.2868)

..... Appellant

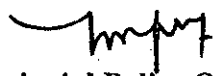
VERSUS

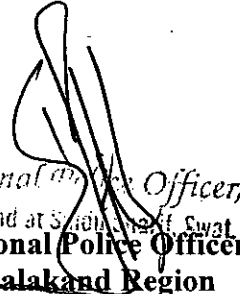
1. Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. Regional Police Officer Malakand at Saidu Sharif, District Swat
3. District Police Officer Swat.

....Respondents

AFFIDAVIT

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


**Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
(Respondents No.1)**


**Regional Police Officer,
Malakand at Saidu Sharif, Swat
Regional Police Officer
Malakand Region
(Respondents No.2)**


**District Police Officer, Swat
(Respondents No.3)**

Service Appeal No. 1031/2019

Ziaullah khan S/O Bawaray R/o Jehan Abad, Thesil Charbagh, District Swat
(EX-ConstableB.NO.2868)

..... Appellant

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, at CPO Peshawar.
2. Regional Police Officer Malakand at Saidu Sharif, District Swat
3. District Police Officer Swat.

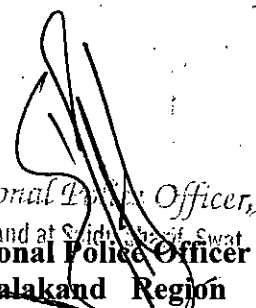
....Respondents

AUTHORITY LETTER

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



**Provincial Police officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1)**



*Regional Police Officer,
Malakand at Saidu Sharif, Swat*
**Regional Police Officer
Malakand Region
(Respondent No. 2)**



**District Police Officer Swat
(Respondent No. 3)**

Annex A

6

Bad Entries/Minor Punishment detail of(EX Constable) Ziaullah Swat
Police

Sr.No	Misconduct	Nature of punishment
01	Absented from duty w.e.f 07/04/192011 to 11/04/2011	Without pay .
02	1/4/2013 to 3/04/2013	Extra drill two days
03	5/04/2013 to 7/04/2013	Extra drill two days
04	08/05/2013 to 20/05/2013	Extra drill two days
05	29/09/2013 to 30/09/2013	One day absentee
06	14/10/2013 to 15/10/2013	Five days extra drill
07	20/10/2013 to 23/10/2013	Three days without pay

✓ Establishment Clerk

[Handwritten signature]
/ 024

CHARGE SHEET

I, Muhammad Ijaz Khan, PSP District Police Officer, Swat as a competent authority, hereby charge you, Constable Ziaullah No.2868 while posted to JIS Police Lines as follows:-

You committed the following act/acts, which is/are gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules 1975 with amendments 2014 vide Notification No.3859/Legal, dated 27-08-2014 of the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

You Constable Ziaullah No.2868 while posted to JIS Police Lines have absented yourself from duty without prior permission or leave vide DD No.38, w.e.f. 31-08-2016 up till now as per report of Lines Officer, JIS Police Lines dated 08-02-2017.

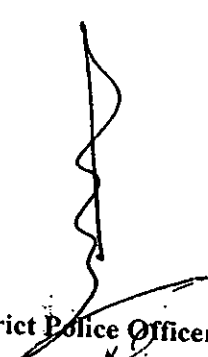
2. By reasons of the above, you appear to be guilty of misconduct and rendered yourself liable to all or any of penalties specified in Rule-4 of the Disciplinary Rules 1975.

3. You are, therefore, required to submit your written reply within seven (7) days of the receipt of this Charge Sheet to the Enquiry officer.

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

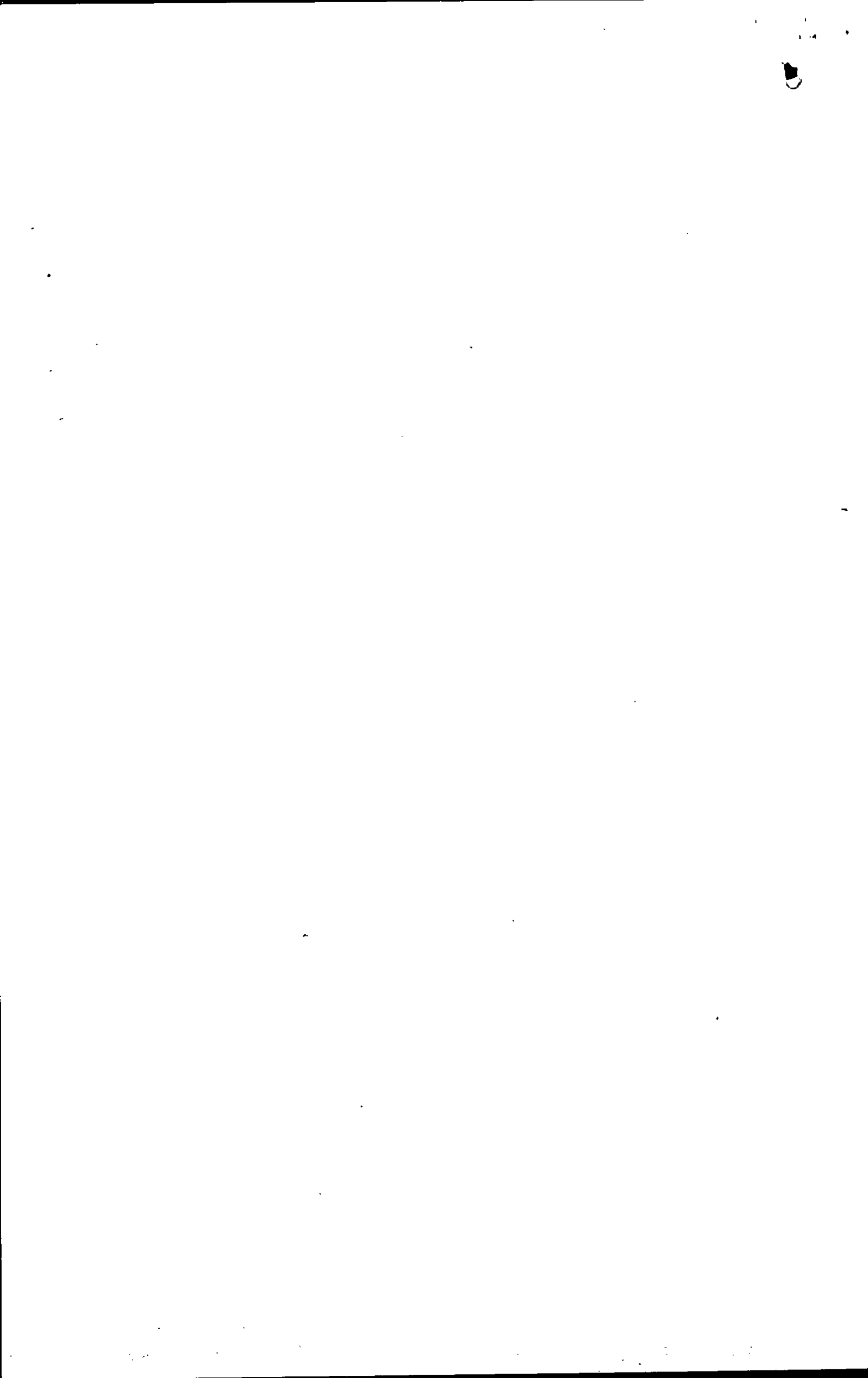
5. Intimate as to whether you desire to be heard in person or not.

6. A statement of allegations is enclosed.


District Police Officer, Swat

No. 59 /E,

Dated 05-04 /2017.



Annex C

(8)

DISCIPLINARY ACTION

I, **Muhammad Ijaz Khan PSP District Police Officer, Swat** as competent authority, is of the opinion that he **Constable Ziaullah No.2868** while posted to **JIS Police Lines** has rendered himself liable to be proceeded against departmentally as he has committed the following acts/omissions as defined in Rule 2 (iii) of Police Rules 1975 with amendments 2014 vide Notification No.3859/Legal, dated 27-08-2014 of the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar, as per Provincial Assembly of Khyber Pakhtunkhwa Notification No. PA/Khyber Pakhtunkhwa/ Bills/ 2011/44905 dated 16/09/2011 and C.P.O, K.P.K Peshawar Memo: No. 3037-62/Legal, dated 19/11/2011.

STATEMENT OF ALLEGATIONS

It has been reported that he while posted to **JIS Police Lines** committed the following act / acts, which is / are gross misconduct on his part as defined in Rules 2 (iii) of Police Rules 1975.

That he **Constable Ziaullah No.2868** while posted to **JIS Police Lines** has absented himself from duty without prior permission or leave vide DD No.38, w.e.f. 31-08-2016 up till now as per report of Lines Officer, JIS Police Lines dated 08-02-2017.

2. For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, **SDPO/Khwaza Khela Circle** is appointed as Enquiry Officer.

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

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


District Police Officer, Swat

No. 59 /EB, Dated Gulkada the, 05-04 2017.

Copies of above to:-

1. **SDPO/Khwaza Khela Circle** for initiating proceeding against the accused Officer/ Official namely **Constable Ziaullah No.2868** under Police Rules, 1975.
2. **Constable Ziaullah No.2868.**
With the direction to appear before the Enquiry Officer on the date, time and place fixed by the Enquiry Officer for the purpose of enquiry proceeding.

2008 P L C (C.S.) 252

[Punjab Service Tribunal]

Before Arshad Bin Ahmed, Member-III

MUHAMMAD TASLEEM SHOUKAT

Versus

S.S.P: BATTALION COMMANDER NO.1, LAHORE P.C., ABBAS LINES and another

Appeal No.150 of 2007, decided on 27th June, 2007.

Punjab Removal from Service (Special Powers) Ordinance (IV of 2000)---

---Ss. 3, 5 & 10---Punjab Service Tribunals Act (IX of 1974), S.4---Dismissal from service---Appeal against---Appellant was dismissed from service after issuing him show-cause notices, but without holding any regular inquiry against him on ground of wilful absence from duty---Both show-cause notices were suffering from a grave lacunae in that, no mention of dispensation of regular inquiry was made therein as required under S.5 of the Punjab Removal from Service (Special Powers) Ordinance, 2000---Authorities vide original impugned orders, upheld by Appellate Authority, without any modification, had treated the period of absence as "leave without pay"---Period of absence treated as leave without pay, amounted to condonation of the absence---Said legal infirmities were so serious that same could not be ignored as those had rendered the impugned orders ineffective liable to be set aside---Impugned orders were set aside and appellant was reinstated in service to face fresh proceedings including regular inquiry under the law---Period of absence and that which appellant had spent out of service, would be decided by the competent authority as an outcome of the fresh proceedings.

2006 SCMR 846; 2006 SCMR 434 and 2006 SCMR 1653 rel.

Rizwana Anjum Mufti for Appellant.

Mian Javed Ismail, District Attorney and Rashid Nawaz, Assistant, Departmental Representative for Respondents.

Date of hearing: 27th June, 2007.

JUDGMENT

ARSHAD BIN AHMAD (MEMBER-III).---Muhammad Tasleem Shoukat, Ex-Constable, Punjab, Constabulary, Abbas Lines, Lahore while posted in Lahore was issued two show-

cause notices, dated 29-7-2005 and 16-9,2005 for wilful absence from duty from 3-7-2005. Since no replies were received, ex parte proceedings were taken under the Punjab Removal from Service (Special Powers) Ordinance, 2000 and the appellant was dismissed vide impugned order, dated 19-10-2005 passed by the respondent No.1. The departmental representation filed by the appellant, dated 10-11-2005 was rejected vide impugned appellate order, dated 9-12-2006 by the Appellate Authority/ respondent No.2.

2. Learned counsel for the appellant contended that, the absence was not wilful and that, the appellant was seriously ill on account of severe backache. It was contended that, the appellant had applied for leave prior to proceeding on leave in anticipation as allowed under the Leave Rules. As proof of his illness he had submitted medical certificates which could have been got verified if the respondents had any doubt. It was further contended that, no regular inquiry was held in the matter and that, ex parte proceedings culminated in the imposition of major penalty of dismissal without considering his appeal. It was also contended that, though the appellant's absence was of lesser duration, two other colleagues namely constables Tariq Ali and Muhammad Asif, who were absent from duty for 165 and 263 days respectively, and were similarly awarded major penalties, were reinstated by the Appellate Authority and their penalties were converted into minor penalties. Thus, a discriminatory treatment was meted out to the appellant. In support, copy of application, dated 3-7-2005 submitted by the appellant for sanction of 30 days leave on the basis of medical certificates issued by a private Medical Centre was shown. Reliance was placed on 2006 SCMR 846, 2006 SCMR 434 and 2006 SCMR 1653.

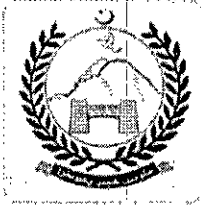
3. Learned District Attorney relying on the parawise comments of the respondents opposed the contentions raised saying that, absence from duty worked out to 130 days. It was also contended that, medical certificates attached with the appeal were not valid as these were issued by a private practitioner.

4. Heard the parties and perused the record. It was found that, both the show-cause notices were suffering from a grave lacunae in that, no mention of dispensation of regular inquiry was made therein as required by the provisions under section 5 of the Punjab Removal from Service (Special Powers) Ordinance, 2000. It was also found that, the respondents vide original impugned orders, dated 19-10-2005, upheld by the Appellate Authority without any modification, had treated the period of absence as "leave without pay". As held by the honourable apex Court and this Tribunal in various judgments the period of absence treated as leave without pay, amounts to condonation of the absence. The aforesaid legal infirmities are so serious that, these cannot be ignored as these have rendered the impugned orders, ineffective, liable to be set aside.

5. Without going into merits and demerits of the case, in view of the aforesaid legal infirmities, the impugned orders are set aside and appellant is reinstated in service to face fresh proceedings including regular inquiry under the law. The period of absence and that which he spent out of service, shall be decided by the competent authority as an outcome of the fresh proceedings. No orders as to cost. Consigned to record.

H.B.T./58/PST

Order accordingly.



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 2141 /ST

Dated: 26/10 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262


To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Swat.

Subject: JUDGMENT IN APPEAL NO. 1031/2018, MR. ZIA ULLAH KHAN.

I am directed to forward herewith a certified copy of Judgement dated 05.10.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR