

Service Appeal No. 25/2018

17.02.2020

Appellant alongwith his counsel and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of five pages placed on file, without touching the merit of the case, the present service appeal is not maintainable, hence, the same is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

17.02.2020


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 25/2018

Date of institution ... 08.01.2018
Date of judgment ... 17.02.2020

Abid, (Ex-Constable No. 2165, Police Station Garhi Kapura
Mardan) S/o Hanifullah Resident of Village Bughdada, District
Mardan. ... (Appellant)

VERSUS

1. The District Police Officer Mardan.
2. The Deputy Inspector General of Police, Mardan Region-I,
Mardan.
3. The Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
... (Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICES
TRIBUNAL ACT, 1974 AGAINST THE ORDER OF THE
DPO/RESPONDENT NO. 1, CONTAINED IN
ENDORSEMENT NO. 9093/GB(OB-170) DATED
28.09.2015, WHEREBY APPELLANT WAS DISMISSED
FROM SERVICE AND THE PERIOD OF ALLEGED
ABSENCE WAS TREATED AS LEAVE WITHOUT PAY,
ON THE ALLEGED GROUND OF DELIBERATE
ABSENCE FROM DUTY.

Mr. Muhammad Adam Khan, 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: - Appellant
alongwith his counsel and Mr. Kabirullah Khattak, Additional AG
alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for the
respondents present. Arguments heard and record perused.

M. Amin
17.2.2020

2. Brief facts of the case as per present appeal are that the appellant was serving in Police Department. He was imposed major penalty of dismissal from service by the competent authority vide order dated 28.08.2015 on the allegation of absence from duty for a period of four months and seven days. The appellant came to know about the impugned dismissal order dated 28.08.2015 on 29.10.2015 as per para-9 of the departmental appeal filed by the appellant on 15.02.2016, the same was rejected on 24.03.2016. Thereafter, the appellant filed revision petition on 28.02.2017 which was rejected on 09.10.2017. The appellant came to know about the order dated 09.10.2017 on 22.12.2017 as per para-5 of the service appeal and thereafter filed the present appeal on 08.01.2018.

3. Respondents were summoned who contested the appeal by filing 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 imposed major penalty of dismissal from service vide order dated 28.08.2015. It was further contended that the appellant also filed departmental appeal as well as revision petition but the same were also dismissed. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor the appellant was associated in any inquiry proceeding nor any final show-cause notice was issued to the appellant, therefore, the appellant was condemned unheard. It was further contended that the father

M. Amin
17.12.2020

of the appellant was seriously ill and the elder brother of the appellant was abroad, therefore, the appellant was only person who look after his father during his ailment, therefore, the absence of the appellant was not deliberate. It was further contended that the absence of the appellant was also for a period of four months, therefore, the major penalty of dismissal from service is harsh 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. It was further contended that the appellant remained absent from duty without the permission of competent authority for a period of four months. It was further contended that he was properly charge sheeted to which he submitted reply but the same was found unsatisfactory, thereafter, inquiry was conducted and the inquiry officer recommended him for major penalty and on the basis of said inquiry report, he was imposed major penalty of dismissal from service. It was further contended that the appellant was imposed major penalty of dismissal from service vide order dated 28.08.2015, the appellant filed departmental appeal on 15.02.2016 wherein he claim in para-9 that he got knowledge of the impugned order on 29.10.2015, therefore, it was contended that the appellant was required to file departmental appeal within one month after gaining knowledge but he has filed departmental appeal on 15.02.2016 after a

A. Amin
17.2.2020

period of more than three months from the alleged knowledge of the impugned order. It was further contended that the departmental appeal was rejected on 24.03.2016, therefore, he was required to file revision petition within one month but he filed revision on 28.02.2017 after a delay of eleven months, therefore, it was vehemently contended that the departmental appeal as well as revision petition are badly time barred and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He was imposed major penalty of dismissal from service vide order dated 28.08.2015 on the allegation of absence from duty for a period of four months. The appellant was required to file departmental appeal within one month but he has filed departmental appeal on 15.02.2016 wherein he claim^{ed} in para-9 that he got knowledge on 29.10.2015 of the impugned order dated 28.08.2015, therefore, if we presumed that he has got knowledge of the impugned order dated 28.08.2015 on 29.10.2015 than he was also required to file a departmental appeal within one month from the date of knowledge of the impugned order but even than he has filed departmental appeal on 15.02.2016 after a delay of more than three months from knowledge, therefore, the departmental appeal is badly time barred. Furthermore, the departmental appeal was rejected on 24.03.2016, therefore, he was required to file revision petition within one month as the appellant has not claimed anywhere in the service appeal or revision petition that the same was not communicated to him

M. J. J. J.
17.12.2020

but he has filed revision petition 28.02.2017 after a delay of eleven months, therefore, the revision petition is also badly time barred. As such, the departmental appeal as well as revision petition is time barred, therefore, without touching the merit of the case, the present service appeal is not maintainable, hence, the same is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
17.02.2020


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

DEA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 25/2018

Date of institution ... 08.01.2018

Date of judgment ... 17.02.2020

Abid, (Ex-Constable No. 2165, Police Station Garhi Kapura Mardan)
S/o Hanifullah Resident of Village Bughdada, District Mardan.

... (Appellant)

VERSUS

1. The District Police Officer Mardan.
 2. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
 3. The Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
- ... (Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICES TRIBUNAL ACT, 1974 AGAINST THE ORDER OF THE DPO/RESPONDENT NO. 1, CONTAINED IN ENDORSEMENT NO. 9093/GB(OB-170) DATED 28.08.2015, WHEREBY APPELLANT WAS DISMISSED FROM SERVICE AND THE PERIOD OF ALLEGED ABSENCE WAS TREATED AS LEAVE WITHOUT PAY, ON THE ALLEGED GROUND OF DELIBERATE ABSENCE FROM DUTY.

Mr. Muhammad Adam Khan, 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: - Appellant

alongwith his counsel and Mr. Kabirullah Khattak, Additional AG alongwith

Mr. Atta-ur-Rehman, Inspector (Legal) for the respondents present.

Arguments heard and record perused.

2. Brief facts of the case as per present appeal are that the appellant was serving in Police Department. He was imposed major penalty of dismissal from service by the competent authority vide order dated 28.08.2015 on the allegation of absence from duty for a period of four

not deem appropriate to direct that the stance of the appellant

not on the ground of fracture of leg or ailment, therefore, we do

The stance of the appellate authority was

service and absence his period was treated as leave without pay.

impugned order dated 16.04.2014 he was dismissed from

w.e.t. 18.08.2013 till framing of charge i.e. 18.08.2013 and vide

7. The appellant was proceeded against for willful absence

parties and perused the record.

6. We have heard arguments of learned counsel for the

appellant.

was imposed keeping in view the habitual absence of the

dismissed from service which penalty is not harsh and which

That the appellant was a habitual absence and was therefore,

appeal and other applications etc. submitted by the appellant,

development as no such stance taken by him in his departmental

taken by the appellant regarding his ailment was a subsequent

5. Learned Government Pleader has argued that the stance

(C.S) 1318, 2015-PLC (C.S) 117 and 2006-SCMR-1120.

Reliance was placed on case-law reported as 2007-PLC

from service.

and a very harsh penalty was imposed in the shape of dismissal

years service put in by the appellant was not taken into account

enquiry was conducted in the absence of the appellant. That 16

a position to attend his duty due to fracture of leg. That the

appellant was not deliberately absent from duty as he was not in

4. Learned counsel for the appellant has argued that the

18

months and seven days. The appellant came to know about the impugned dismissal order dated 28.08.2015 on 29.10.2015 as per para-9 of the departmental appeal filed by the appellant on 15.02.2016, the same was rejected on ^{24.3.2016} ~~09.10.2017~~, The appellant came to know about the order dated 09.10.2017 on 22.12.2017 as per para-5 of the service appeal and thereafter filed the present appeal on 08.01.2018.

3. Respondents were summoned who contested the appeal by filing 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 imposed major penalty of dismissal from service vide order dated 28.08.2015. It was further contended that the appellant also filed departmental appeal as well as revision petition but the same were also dismissed. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted nor the appellant was associated in any inquiry proceeding nor any final show-cause notice was issued to the appellant, therefore, the appellant was condemned unheard. It was further contended that the father of the appellant was seriously ill and the elder brother of the appellant was abroad, therefore, the appellant was only person who look after his father during his ailment, therefore, the absence of the appellant was not deliberate. It was further contended that the absence of the appellant was also for a period of four months, therefore, the major penalty of dismissal from service is harsh and prayed for acceptance of appeal.

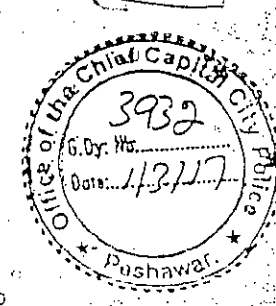
5. On the other hand, learned Additional Advocate General for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department. It was further contended that the appellant remained absent from duty without

More after the appellant filed Revision Petition on 28.2.2017 which was rejected on 9-10-2017. The appellant came to know about the same order on 22-12-2017 as per para 5 of the service appeal.

Dated 28/07/17

13
15

The Drawing & Disbursing Officer,
CAPITAL CITY POLICE OFFICER,
PESHAWAR.



SUBJ:- SEALED COMPUTATION AUTHORITY IN R/O
JAN SAID S/O ALIF SAID

Please refer to your letter No. NO.20016/11-c
dated 25.11.2016 forwarding them in pension case in respect
of above named officer / official.

You are hereby authorized to submit bill for Rs.299484.00
(IN FIGURES TWO HUNDRED NINETY-NINE THOUSAND FOUR HUNDRED EIGHTY-FOUR)
at the counter of this office for issuance of cross cheque in favour
of Mr. Mrs. Miss. Mr. Jan Said s/o Alif Said
NIC NO. 1730117135977, on account of Computation of pension. (Per.No : 00029170)

55253

Bank Name :
A/c No :

The amount involved is charged / order than charged
and debited to the Federal Govt. under the following head
of accounts:-

- 01 - General Administration.
- 011 - Fiscal Administration.
- 0111 - Pension.
- A04 - Transfer payment.
- A041 - Pensionary benefits.
- A0412 - Commuted value of pension.
- A0413 - Gratuity value of pension.

Withheld amount

Amount Payable:	299,484.00
Amount With Held:	0.00
Amount Paid:	299,484.00

Recoveries RECOVERY OF PAY & ALL RS.290000 - U/HEAD C02640.

Note:- This authority letter may please be attached with the bill in original
along with the Office order/notification of retirement. Vendor No, Name of Bank
and A/c No of payee may also be recorded on the bill

Remarks:- TOTAL RECOVERY RS.354194/- & REMAINING RECOVERY RS.64194 IN MONTHLY PEN

ACCOUNTS OFFICER (PENSION)

For information to:-
Mr. Mrs. Miss. Jan Said s/o Alif Said,
Qaziabad, Charsadda Road, Sardar Colony,
Peshawar.

ACCOUNTS OFFICER (PENSION)

CC/...
113

the permission of competent authority for a period of four months. It was further contended that he was properly charge sheeted to which he submitted reply but the same was found unsatisfactory, therefore, ^{after} inquiry was conducted and the inquiry officer recommended him for major penalty and on the basis of said inquiry report, he was imposed major penalty of dismissal from service. It was further contended that the appellant was imposed major penalty of dismissal from service vide order dated 28.08.2015, the appellant filed departmental appeal on 15.02.2016 wherein he claim in para-9 that he got knowledge of the impugned order on 29.10.2015, therefore, it was contended that the appellant was required to file departmental appeal within one month after gaining knowledge but he has filed departmental appeal on 15.02.2016 after a period of more than three months from the alleged knowledge of the impugned order. It was further contended that the departmental appeal was rejected on 24.03.2016, therefore, ^{again} he was required to file revision petition ^{within one month but he} on 28.02.2017 after a delay of eleven months, therefore, it was vehemently contended that the departmental appeal as well as revision petition are badly time barred and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He was imposed major penalty of dismissal from service vide order dated 28.08.2015 on the allegation of absence from duty for a period of ~~six months and seven days~~ ^{four months}. The appellant was required to file departmental appeal within one month but he has filed departmental appeal on 15.02.2016 wherein he claim in para-9 that he got knowledge on 29.10.2015 of the impugned order dated 28.08.2015, therefore, if we presumed that he has got knowledge of the impugned order dated 29.10.2015 than he was also required to file a departmental appeal within one month from the date of knowledge of the impugned order but even

file
Revision

28-8-2015

TMA

may be considered in denovo enquiry after re-opening of the case. The appellant was appointed in the Police Force in the year 1996 and till date of dismissal he had put in considerable service and vide impugned order of dismissal he has been deprived of the benefits of his service.

8. Keeping in view the said circumstances of the case we are of the view that the punishment in the shape of dismissal from service for the alleged absence of the appellant was harsh and that safe administration of justice would justify the modification of the said major punishment. We, therefore, partially allow the instant appeal by modifying major punishment of dismissal from service into that of compulsory retirement from service w.e.f. 16.04.2014. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

Announced
31.08.2016

Sd/- M. Azam Khan Afzali
Chairman

Sd/- P. R. Baksh Shah,
Members

05-09-2016

1600
22
22
22

05-09-2016
05-09-2016

W-2
S-2

than he has filed departmental appeal on 15.02.2016 after a delay of more than three months of ~~gaining~~ ^{from} knowledge, therefore, the departmental appeal is badly time barred. Furthermore, the departmental appeal was rejected on 24.03.2016, therefore, he was required to file revision petition within one month as the appellant has not claimed anywhere in the service appeal or revision petition that the same was ~~communicated~~ ^{not} ~~later~~ ^{before} but he has filed revision petition 28.02.2017 after a delay of eleven months, therefore, the revision petition is also badly time barred. As such, the departmental appeal as well as revision petition is time barred, therefore, without touching the merit of the case, the present service appeal is not maintainable, hence, the same is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

17.02.2020

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

(HUSSAIN SHAH)
MEMBER

OFFICE OF THE
ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA, PESHAWAR.

Better Copy Page No: 15

PEN-I/J-16/2016-17/3178-77

Dated 28/02/2017

To.

The Drawing & Disbursing Officer,
CAPITAL CITY POLICE OFFICER,
PESHAWAR.

Subject SEALED COMMUTATION AUTHORITY IN R/O JAN SAID S/O ALIF SAID

Please refer to your letter No. 20816/II-c
Dated 25.11.2016 forwarding there in pension case
in respect of above named officer/official.

2. You are hereby authorized to submitted bill for Rs. 299484.00 (Rupees: **TWO HUNDRED NINETY-NINE THOUSAND FOUR HUNDRED EIGHTY-FOUR**) at the counter of this officer for issuance of cross cheque in favour of Mr. Mrs. Mst. Jan Said s/o Alif Said (Per No: 00029170)

NIC NO. 1730117135977 on account of commutation of pension.

Band Name :

A/c No :

3. The amount involved in charged/other than charged and debt to the Federal Govt. under the following head or amounts:-

01 - General Administration	A04 - Transfer Payment.
0112 - Fiscal Administration.	A041 - Pensionary benefits.
011010- Pension.	A04102 - Commuted value of pension.
	A04103 - Gratuity value of pension.

Withheld amount

Amount Payable:	299,484.00
Amount with Held	0.00
Amount Paid:	299,484.00

Recoveries RECOVERY OF PAY & ALL: RS (290000) - U/HEAD C02640.

Note:- This authority letter may please be attached with the bill in original along with the office order/notification of retirement. Vendor No, Name of Bank and A/c No of Payee may also be recorded on the bill

Remarks: - TOTAL RECOVERY Rs. 354194/- & REMAINING RECOVERY RS. 64194/- IN MONTHLY PEN

ACCOUNTS OFFICER (PENSION)

Copy for information to:-

Mr. Mrs. Mst. Miss. Jan Said s/o Alif Said
Qaziabad, Charsadda Road, Sardar Colony
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 48/2017

Date of Institution ... 26.12.2016

Date of Decision ... 18.03.2019

Yasim son of Noor Muhammad Ex-Constable Belt No: 1130 R/O Bala
Nagar, Rawalpindi Road, Kohat. ... (Appellant)

VERSUS

District Police Officer, Kohat and two others. ... (Respondents)

Present:

Mr. Khursheed Ahmad Shahan,
Advocate. ... For appellant

Mr. Kabirullah Khattak,
Addl. Advocate General, ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER

JUDGMENT


HAMID FAROOQ DURRANI, CHAIRMAN:-

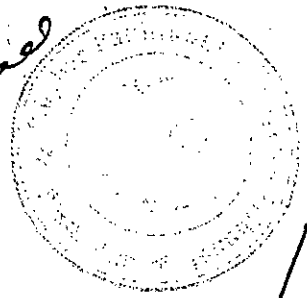
The appellant joined the service of Police Department in Kohat Region on 31.08.2008 and was removed from service on 08.01.2014 on account of absence w.e.f 09.10.2013 till the date of passing of the order. His departmental appeal and further review petition were also dismissed/rejected, hence the appeal in hand.

2. We have heard learned counsel for the appellant, learned Addl.

Advocate General on behalf of the respondents and have also gone through the available record.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



*Dismissed/
being time barred*

MAJ


MAJ

At the outset, learned AAG agitated objection regarding competency of appeal in hand on the ground that the departmental appeal of appellant was preferred on 22.09.2015 i.e. with a delay of more than 19 months. The said appeal was decided on 16.3.2016 while a review petition was preferred under Rule-11-A of the Police Rules, 1975 which was rejected on 29.09.2016, being barred by time. Learned AAG relied on judgment reported as 2015-SCMR-165, 2011-SCMR-676 and contended that in case the departmental appeal of a civil servant was barred by time his service appeal before the Tribunal was also not competent. It was further contended that the appellant was a habitual wrong doer and was earlier also dismissed from service on 21.09.2011. He was, however, reinstated subsequently on 13.12.2011 with modification of punishment to reduction in pay for a period of three years (time scale).

Learned counsel for the appellant while attempting to controvert the arguments of learned AAG referred to a judgment reported as 2008-SCMR-1666 and contended that due to the illness of appellant, the period of absence was condonable by the department.

3. On carefully examining the record, it revealed that the departmental appeal of appellant was decided in negative on 16.3.2016, also on the ground of being barred by time. It is further a matter of record that after rejection of his review petition on 29.09.2016, that too on the ground of limitation, the appeal in hand was preferred on 26.12.2016 with a delay of about two

ATTESTED




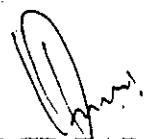
 Notary Public
 District _____
 State _____

months. An application for condonation of delay was though submitted alongwith the appeal in hand but without any cogent reason warranting the condonation. Similarly, in para-7 of the memorandum of appeal it was noted that the order of rejection of his review petition was received by the appellant on 10-12 days ago. This claim, however, would not justify the condonation of delay in submission of appeal owing to the fact that the appellant had not even given the date of receipt of the order. Admittedly, the appellant failed to submit any application for the purpose alongwith his departmental appeal or the revision petition although he had taken the pretext of his illness in the departmental representation dated 22.09.2015. On the contrary, it was not the case of appellant that he had applied for any leave on medical grounds during the course of his absence from duty.

4. For what has been stated above, we find that the appellant remained indolent all along in pursuing his legal remedies in time. The appeal in hand is, therefore, dismissed hereby.


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


 (AHMAD HASSAN)
 MEMBER


 (HAMID FAROOQ DURRANI)
 CHAIRMAN

ANNOUNCED
 18.03.2019

Date of Presentation of Application 13-6-18
 Number of Writs 1200
 Copying Fee 16-
 Urgent —
 Total 16-
 Name of Officer [Signature]
 Date of Completion of Work 26-7-18
 Date of Delivery of Copy 25-8-18

Certified to be true copy

 Secretary
 State Bar Council
 Islamabad

1993 P L C (C.S.) 10

[Lahore High Court]

Before Manzoor Hussain Sial, J

Dr. Mrs. KHALIDA RAZI

versus

FEDERATION OF PAKISTAN and others

Writ Petition No. 5565 of 1990, decided on 19th October, 1992.

(a) Civil service---

---Compulsory retirement from service---Validity---Leave availed by petitioner having been regularised later on, allegations forming basis of the charge to extent in the charge-sheet were untenable---Authorised Officer having himself lodged complaint against petitioner, was not competent to act as an Authorised Officer---Civil servant had moved application to the Authority against Authorised Officer, before she was charge-sheeted, therefore, apprehension that he was biased against her was not ill-founded---Compulsory retirement from service was thus, not warranted on that account. [p. 13] A

(b) Government Servants (Efficiency and Discipline) Rules, 1973---

---R. 4---Constitution of Pakistan (1973), Art.199---Compulsory retirement---Misconduct---Constitutional jurisdiction---Where department concerned adopted Government Servants (Efficiency and Discipline) Rules, 1973, in disciplinary matters of its employees, any action taken in derogation or violation thereof, could be set aside in Constitutional jurisdiction. [p. 13] B

Syed Mir Muhammad v. N.-W.F.P. Government through C Secretary PLD 1981 SC 176; Federation of Pakistan and 2 others v. A Razzaq 1983 SCMR 229; The Principal, Cadet College, Kohat and another v. Muhammad Shoab Qureshi PLD 1984 SC 170 and Anwar Hussain v. Agricultural Development Bank of Pakistan and another PLD 1984 SC 171 rel.

(c) Master and servant---

---Government Servants (Efficiency and Discipline) Rules, 1973, R. 4---Constitution of Pakistan (1973), Art.199---Respondent department had adopted Government Servants (Efficiency and Discipline) Rules, 1973, objection of non-maintainability of Constitutional petition on the basis of relationship of master and servant could not be pressed into service. [p. 13] C

Karachi Development Authority and another v. Wali Ahmed and others 1991 SCMR 2434 rel.

(d) Civil service---

---Constitution of Pakistan (1973), Art.199---Compulsory retirement from service---Constitutional jurisdiction---Laches---Basic order passed in proceedings conducted being without jurisdiction, no period of limitation would be reckoned against civil servant---Order of compulsory retirement, civil servant being void, no limitation would run in the matter---Civil servant, however, had been knocking at the door of every possible authority for redress of her grievance after passing of the impugned order, which in fact showed that she had been vigilant all along---Impugned order of compulsory retirement petitioner, was, thus, unwarranted under the law and was declared to be of no legal effect. [p. 14] D

(e) Civil servant---

---Government Servants (Efficiency and Discipline) Rules, 1973, R. 4---Constitution of Pakistan (1973), Art.199---Compulsory retirement---Inquiry against civil servant---Non-supply of inquiry report---Effect---Non-supply of the inquiry report to the accused officer to enable him to offer his explanation with regard to adverse finding recorded by the inquiry officer amounted to denial of providing him reasonable opportunity of defence. [p. 13] E

Syed Mir Muhammad v. N.-W.F.P. Government through C Secretary PLD 1981 SC 176 rel.

Muhammad Rashid Malik for Petitioner.
Faqir Muhammad Khokhar D.A.-G. and Ahmad Hassan Khan
Respondents Nos. 2 and 4.

Date of hearing: 22nd September, 1992.

JUDGMENT

Dr. Mrs. Khalida Razi petitioner herein, by means of Constitutional petition calls in question the validity of order dated 16th J 1979 passed by respondent No.2 whereby she was compulsorily retired from service.

The relevant facts of the case are that the petitioner was appointed on 7-9-1968 as Research Officer in the Pakistan Council of Scientific and Industrial Research (hereinafter referred to as PCSIR). She was promoted on 20th September, 1974 as Senior Research Officer. She was posted in that capacity at Peshawar PCSIR Laboratories. In 1976 she was married to Major Muhammad Razi Ullah Khan who was at the relevant time posted at Abbottabad. A year later, he was transferred to Ordinance Centre, M. Cantt., Karachi. The petitioner applied for her transfer to Karachi to join

① Limitation / void order (D)

② Adoption of Rules

③ Copy of inquiry Report (E)

A. Manzoor

void order

S. 9
belongs
invest

but her request was declined. Simultaneously she applied for leave which was initially declined but later on regularized vide letter dated 17-2-1979. Due to her illness and family circumstances, she could not pull on with her duties at Peshawar and again on 17-3-1979 applied for extraordinary leave but her application was rejected on 19-3-1979. She was charge-sheeted for misconduct by the Director, PCSIR Laboratories, Peshawar while acting as Authorised Officer under the Government Servants (Efficiency & Discipline) Rules, 1973 and on the following day viz. 20-3-1979 he appointed an Inquiry Committee for proceeding in the matter. The petitioner had earlier submitted applications to the Chairman, PCSIR expressing that the Director was inimical and biased against her and was bent upon harming her, nevertheless he was appointed as an Authorised Officer by respondent No.2 in response to letter dated 18-2-1979 sent by the former to the respondent No.2 (See Annexure D-19). The petitioner was served with another charge-sheet by the Director, PCSIR, Peshawar on 19-4-1979 for her absence and leaving the station without permission. The Inquiry Committee proceeded ex parte. The respondent No.2 vide impugned order dated 10-7-1979 compulsorily retired her from service. Afterwards, she moved several applications/representations against the aforementioned order to the various authorities including the President of Pakistan, Prime Minister of Pakistan, the Ombudsman and also filed an appeal against the aforesaid order before the Federal Service Tribunal but of no avail. Hence this petition.

2. Learned counsel for the petitioner contended that the Director, PCSIR, Peshawar (Dr. Riaz Ali Shah) who lodged complaint against the petitioner was inimical towards the petitioner and she had expressed in writing to the various authorities against his biased attitude, he was therefore not competent to act as Authorised Officer in the case. The Authorised Officer appointed the inquiry committee but did not provide her copy of the report made by the committee nor supplied copy of his recommendation for her compulsory retirement. She was therefore deprived to offer her explanation against the report of the inquiry committee recorded ex parte for consideration of the competent authority. It was contended that by non-provision of the report of the inquiry committee and recommendation of the Authorised Officer the case of the petitioner was highly prejudiced.

It was next argued that once the PCSIR adopted the provisions of Government Servants (Efficiency & Discipline) Rules, 1973, it was necessary for the Authorised Officer and the competent authority to have followed the procedure laid therein in letter and spirit but the provisions of the relevant rules were not followed in the case of the petitioner. Learned counsel relied on Syed Mir Muhammad v. N.-W.F.P. Government through Chief Secretary (PLD 1981 SC 176) and Federation of Pakistan and 2 others v. Abdul Razzaq (1983 CMR 229) in support of his submission.

Learned counsel for the contesting respondents on the other hand

stated that the writ petition suffers from laches. The petitioner compulsorily retired in 1979 but she filed the present petition in 1990. However, she did not deny, the petitioner's having moved several applications for the redress of her grievance after the impugned order was passed against her. Learned counsel, however, maintained that it was imperative for the petitioner to have approached this Court within reasonable time after the passing of the impugned order. The next contention advanced by the learned counsel for the respondent was that the PCSIR was a statutory body, the employees whereof were governed by the relationship of master and servant. The petitioner is not a civil servant, she therefore cannot invoke the Constitutional jurisdiction of this Court. She could file a suit for damages in the event she considered that her compulsory retirement was illegal. Learned counsel, however, candidly affirmed that neither the copy of the inquiry report was provided to her, nor recommendations of the Authorised Officer were supplied to her to submit explanation for consideration of the competent authority.

4. I have considered the arguments advanced by learned counsel for the parties and have thoroughly perused the documents available on the file. It is true that the leave availed by the petitioner was later on regularised and allegations forming basis of the charge to that extent in the first charge-sheet were untenable.

I am of the view that there is hardly any need for going into the merit of the charge-sheet because the disposal of case can be made on facts established on record namely that she was not provided copy of the inquiry report to tender her explanation for consideration of the competent authority. The Authorised Officer himself lodged complaint against the petitioner as such, he was not competent to act as Authorised Officer, she moved application to the authority against the Authorised Officer, before she was charge-sheeted, therefore, her apprehension that he was biased against her was not ill-founded.

The Supreme Court in Syed Mir Muhammad's case and Abdul Razzaq's case referred hereinbefore, clearly held that by non-supply of the inquiry report to the accused officer to enable him to offer his explanation with regard to adverse findings, if any, recorded by the inquiry officer amounted to denial of providing him reasonable opportunity of defence. This petition, therefore, merits acceptance on these grounds alone.

As for the contention of the learned counsel for respondent, that petitioner's case is covered by the principle of master and servant and the writ petition is not competent, it is pointed out that the PCSIR had adopted the application of the Government Servants (Efficiency & Discipline) Rules, 1973 in the disciplinary matters of its employees any action taken in derogation or in violation thereof can be set aside in writ jurisdiction.

In the case of The Principal, Cadet College, Kohat and another v.

Muhammad Shoab Qureshi (PLD 1984 SC 170) and in case of Anwar Hussain v. Agricultural Development Bank of Pakistan and another (PLD 1984 SC 194) the Supreme Court has taken the view that even an employee of a corporation can maintain a writ petition if there has been a violation of any provision of law or of any statutory rules of service. This view was re-affirmed in Karachi Development Authority and another v. Wali Ahmed Khan and others (1991 SCMR 2434). The objection of the non-maintainability of the petition on the point of relationship of master and servant, therefore, cannot be pressed into service in the instant case. The petitioner's case was grossly prejudiced and the entire proceedings of the inquiry vitiated.

As regards the question of laches, suffice it to say, that the basic order passed and proceedings held being without jurisdiction, no period of limitation therefore would be reckoned against the petitioner. The order compulsorily retiring the petitioner being void no limitation would run in the matter. It is not denied by the learned counsel for the contesting respondent that the petitioner had been knocking at the door of every possible authority for the redress of her grievance after the passing of the impugned order, which amply shows that she had been vigilant all along.

For all the reasons highlighted above, I hold that the impugned order of compulsorily retiring the petitioner was unwarranted under the law and is hereby declared to be of no legal effect.

Before parting with this case, I may observe, with regret that since 1979, the petitioner has not been paid her due dues by the respondent although she was entitled to consequential benefits even under the impugned order.

In the result, this petition is allowed, with no order as to costs.

A.A./K-56/L

Petition accepted.

1993 P L C (C.S.) 14

[Federal Service Tribunal]

Before Ch. Hasan Nawaz and Muhammad Ismail, Members

ZAKRIA KHAN BABAR

versus

GOVERNMENT OF PAKISTAN through Secretary,
Establishment Division, Islamabad and 8 others

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Nos. 149 and 308(L) of 1988 and Appeal No. 182(L) of 1991, decided
October, 1992.

Service Tribunals Act (LXX of 1973)---

Constitution of Pakistan (1973), Art. 212(3)---Judgment of Supreme

been laid down in unequivocal terms that acquittal in a criminal case in respect of the same occurrence cannot be construed to have washed off the departmental proceedings. The relevant portion of the judgment is reproduced below:-

"His mere acquittal in the criminal case in respect of the same occurrence would not help him. Such acquittal cannot be construed to have washed off the findings of the Enquiry Officer. If the departmental action was grounded on the case filed in the Criminal Court, then of course it would follow the result of the Court case and on his acquittal in the criminal case, the accused would automatically be discharged from the liability incurred by him in the departmental enquiry. That is, however, not the case here. The disciplinary action in the instant case was initiated against the appellant independently of the criminal case. Consequently, his acquittal in that case would not automatically relieve him of the charge he is found guilty in the departmental enquiry.

3. Apart from above, the departmental enquiry and the criminal case started against a civil servant in respect of same matter either simultaneously or one after the other would not necessarily lead to the same result. This is because not only the nature of the charges brought out in the two proceedings are different but also the standard of evidence required to prove these charges is not same. Obviously stronger evidence is needed to establish the case in the Court of law because if the case is proved against the accused civil servant, he would be liable to be sent to jail. But in the departmental proceedings he would at the most lose his job. Therefore, in deciding the above two proceedings totally different considerations are kept in view by the punishing authorities. For the purpose of convicting the accused civil servant, the case may not be proved in the Court, still the departmental authorities may find him guilty for awarding any of the prescribed penalties."

In this connection, the learned Tribunal also referred to the case of Deputy Inspector-General of Police, Lahore and others v. Anis-ur-Rehman Khan P L D 1985 S C 134, in which both criminal case and departmental enquiry were instituted against the accused police officials. Pending the decision of the criminal case, the accused were found guilty in departmental enquiry and were awarded penalty of dismissal. The accused approached the Service Tribunal who allowed their appeal mainly on the ground that the result of the criminal case should have been awaited before awarding the penalty of dismissal in the departmental proceedings. The Supreme Court was pleased to observe as under:-

"The Tribunal, it appears, with respect, was clearly in error in assuming that the two charges were co-extensive and inter-connected that the judicial trial was proper alternative and once having been resorted to, the departmental inquiry should not have been held and the trial should have served as a substitute for departmental inquiry."

It was further held by Honourable Supreme Court:-

"In the case before the Tribunal the judgment in the criminal case could be relevant only for reascertaining whether it was a judgment of conviction or acquittal and whether it was an honourable acquittal. The other opinions or findings, apart from these two, recorded or expressed in the judgment could not be utilised for upsetting the other proceedings

..... The scope and the law applicable to the criminal trial was different from that applicable to the departmental inquiry. The charges in the two were not identical nor substantially the same. The competent authority was not, therefore, duty bound under any provision or principle of law to await and follow the judicial verdict in the case."

In the other case: 1986 P L C 419 filed before this Tribunal, the appellant has been falsely implicated in criminal cases in which he was acquitted. He, therefore, contended that he could not be tried both judicially and departmentally on the same charges. Held that there was no bar against an official being tried both judicially and departmentally on the same charges.

The controversy, if there was any, has been brought to an end by the Supreme Court in its judgment in the case 1989 S C M R 316: Muhammad Tufail v. Assistant Commissioner/Collector, wherein it has been clearly laid down that the proceedings in criminal cases and departmental proceedings are quite different in substance and results and that despite acquittal in the criminal proceedings there should be no bar to award punishment under the E&D Rules provided there is sufficient material to justify it. We are, therefore, not persuaded to accept the plea of the appellant that the order for de novo proceedings should be set aside merely because the appellant has been acquitted in the criminal proceedings. The appeal is, therefore, dismissed with the result that the department is free to proceed against the appellant de novo provided it has sufficient material to back up the proposed punishment under the E&D Rules. The matter relating to the treatment of the period spent out of service shall be decided and will depend upon the outcome of the de novo proceedings, if held. There are no orders as to costs. Judgment be communicated to the parties.

M.Y.H./321/Sr.P

Appeal dismissed.

1991 P L C (C.S.) 565

[Supreme Court (AJ&K)]

Present: Sardar Said Muhammad Khan, C.J. and Basharat Ahmed Sheikh, J

AZIZ-UR-REHMAN---Appellant

versus

THE INSPECTOR-GENERAL OF POLICE, AZAD GOVERNMENT OF
THE STATE OF JAMMU AND KASHMIR and 2 others---Respondents

Civil Appeal No.57 of 1990, decided on 9th March, 1991.

Representative / Appeal /
Revision

Appellant

(On appeal from the judgment of the Service Tribunal, dated 25-3-1990, in Service Appeal No.397 of 1988).

Police Rules, 1934---

---R. 16.32---Azad Jammu and Kashmir Service Tribunals Act, 1975, S.4---Azad Jammu and Kashmir Interim Constitution Act (VIII of 1974), S.47---Words 'representation', 'appeal' and 'review'---Connotation---Service Tribunal dismissing civil servant's appeal on the ground that period spent by him in prosecution of revision petition filed before Inspector-General of Police, could not be deducted in computing period of limitation for purposes of appeal before Tribunal, in so much as proviso of S.4, Azad Jammu and Kashmir Service Tribunals Act, 1975, only refers to appeal, review and representation but does not mention revision---Validity of---Term 'representation' was wide enough to include revision petition and same could not be restricted to narrow interpretation which had been adopted by Service Tribunal---Unlike words 'appeal' and 'review', word 'representation' had no fixed connotation and should be liberally construed to include a revision petition---Opening part of S.4(1), Azad Jammu and Kashmir Service Tribunals Act, 1975, was controlled by part (a) of proviso, which laid down that no appeal could be filed before Service Tribunal unless departmental remedies had been exhausted---Civil servant by filing revision had, in fact, exhausted all the departmental remedies thus entitling him to deduct the time spent in revision while computing period for filing of appeal---Case was remanded to Service Tribunal for adjudication of other points involved in appeal].---Muhammad Boota v. The State 1988 P L C (C.S.) 165 dissented from]. [p. 567] A

Muhammad Boota v. The State 1988 P L C (C.S.) 165 dissented from.

Sardar Rafique Mahmood for Appellant.
Abdul Rashid Abbasi for the Respondents.

Date of hearing: 2nd March, 1991.

JUDGMENT

BASHARAT AHMED SHEIKH, J.---This appeal by leave of the Court, relates to the interpretation of section 4 of the Azad Jammu and Kashmir Service Tribunal Act which reads as follows:--

"4. Appeal to Tribunals.---(1) Any civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority, in respect of any of the terms and conditions of his service, may, within thirty days of the communication of such order to him, or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer appeal to the Tribunal:

Provided that--

- (a) where an appeal, review or representation to a departmental authority is provided under the Azad Jammu and Kashmir Civil Servants Act, 1976, or any rules, against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was so preferred;
- (b)
- (c)
- (2)

The Service Tribunal has dismissed the appeal of the present appellant on the ground that the period spent by the appellant in prosecution of the revision petition filed by him before the Inspector-General of Police, which is provided under Rule 16.32 of the Police Rules, could not be deducted in computing the period of limitation for the purposes of appeal before the Tribunal. The Tribunal has held that since the proviso reproduced above only refers to an appeal, review and representation and does not mention a revision petition, it was not necessary for the appellant to file a revision petition. In reaching the conclusion as aforesaid, the Tribunal has relied on a case decided by Service Tribunal of Sindh Muhammad Boota v. The State 1988 P L C (C.S.) 165. The Sindh Tribunal, while holding that limitation starts running from the date of Deputy Inspector-General's order and time consumed in disposal of the revision petition filed with the Inspector-General of Police would not be deducted, adopted the reasoning that the order passed by the Deputy Inspector-General of Police was the final appellate order within the meaning of section 4(1) of the Service Tribunals Act and appeal should have been filed against the Deputy Inspector-General's order within limitation.

In our view the term 'representation' is wide enough to include a revision petition and cannot be restricted to the narrow interpretation which has been adopted by the learned members of the Tribunal. Unlike the words 'appeal' and 'review', the word 'representation' does not have a fixed connotation and should be liberally construed to include a revision petition. The reasoning adopted by the Sindh Service Tribunal fails to take note of the fact that opening part of section 4(1) is controlled by part (a) of the proviso which clearly lays down that no appeal can be filed in the Service Tribunal unless departmental remedies have been exhausted. A

Consequently the order of the Service Tribunal is set aside and the case is remanded to the Tribunal for adjudication of the other points involved in the appeal filed by Aziz-ur-Rehman appellant.

A.A./301/S.C.A.

Case remanded.

appointment on officiating basis in the years 1995-1998 could not have agitated the matter in the year 2001---Civil servants seemingly had accepted their appointment on officiating basis---Appeal filed by civil servants seeking regularization of their promotion was dismissed accordingly. [pp. 169, 170, 171] A, D, E & F

Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan PLD 1970 Quetta 115 distinguished.

(d) Service Tribunals Act (LXX of 1973)---

---S. 4---Departmental representation, filing of---Limitation period---Appeal filed before Service Tribunal--- Limitation period and competency---When a departmental representation was barred by time then without disclosing any sufficient reason for delay, no subsequent order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed before the Service Tribunal would be incompetent. [p. 171] G

Abdul Wahid v. Chairman, Central Board of Revenue, Islamabad and others 1998 SCMR 882 and NED University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453 ref.

Saif ul Malook, Advocate Supreme Court for Appellants (in all cases).

Respondents in person.

Mudassir Khalid Abbasi, A.A.-G. for Government of Punjab

Date of hearing: 13th November, 2014.

JUDGMENT

IJAZ AHMED CHAUDHRY, J.---These appeals by leave of Court have been directed against the judgment dated 25-11-2011 passed by the learned Punjab Service Tribunal, Lahore, whereby the appeals filed by the appellants were dismissed.

2. Briefly stated the facts of the matter are that the appellants were possessing B.Sc. Engineering Degree were promoted to the post of Assistant Engineer/SDO in BS-17 on officiating basis between the years 1995 to 1998 whereas the respondents who were holding B.Tech (Honorary) Degree were promoted in the year 2001 to the same post on officiating basis. Appellants filed Constitution petitions before the High Court challenging the promotion of the respondents. The learned High Court while dismissing the writ petitions directed the Department to decide the controversy in accordance with law after hearing both the

Appellants challenged the said order in Intra Court Appeal as also before this Court but remained unsuccessful. Thereafter, the Secretary, Communication and Works Department, Government of Punjab, took up the matter and vide the order dated 18-12-2002 he regularized the appointment of the appellants on the advice of the Regulating Wing of S&GAD and on the ground that regular posts were available in the year 1995-1998 at the time of promotion of the appellants on officiating basis. Consequently, the promotion of the respondents was converted as officiating. The respondents assailed this order before the learned Punjab Service Tribunal by filing Appeals. The learned Service Tribunal vide the order dated 10-12-2003 accepted the appeals and set aside the order dated 18-12-2002 of the Competent Authority and directed fresh hearing of the matter after hearing all concerned within a period of 60 days. Pursuant to the direction of the learned Service Tribunal, the Department again took up the matter and vide the order dated 27-7-2005 the Competent Authority decided that officiating promotion of the appellants could not be treated as regular. Feeling aggrieved, the appellants filed departmental appeals but as the same were not decided within the statutory period of 90 days, therefore, they filed the impugned appeals before the Punjab Service Tribunal. During the pendency of appeals before the Service Tribunal, it came to the notice of the learned Tribunal that one Section Officer in the office of Secretary C&W Department, Lahore, instead of putting departmental appeals before the Appellate Authority/Chief Secretary Punjab opted to decide these appeals of his own on 28-12-2005. On this, the learned Tribunal directed the Appellate Authority to decide the departmental appeals of the appellants within 60 days. Pursuant to this direction of the Tribunal, the Chief Secretary/Appellate Authority finally decided the matter and rejected the departmental appeals of the appellants. The learned Service Tribunal vide the impugned judgment also dismissed the appeals filed by the appellants. Thereafter, the appellants filed Civil Petitions Nos. 164 to 172, 230 to 236 and 240 of 2012 before this Court, out of which have arisen the instant appeals, in which leave was granted on 15-3-2012, which reads as under:--

"Leave to appeal is granted in all these listed petitions, inter alia, to examine if an official/officer has been authorized to be competent authority to hold a post against a clear vacancy in officiating capacity, whether it would tantamount to his promotion because an employee cannot be allowed to continue on officiating position for an indefinite period; subject to all just exceptions, keeping in view the case of Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan (PLD 1970 Quetta 115), wherein the identical issue regarding a Superintendent in the Geological Survey of Pakistan has been discussed."

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3. Learned counsel for the appellants has contended that appointment of a duly qualified person against a permanent vacancy could not be described as officiating as the same could be deemed regular under section 2(2) of the Punjab Civil Servants Act, 1974; that the learned Service Tribunal while dismissing the appeals of the appellants has not taken into consideration the law laid down by this Court; that the learned Service Tribunal has wrongly relied upon the judgments of this Court reported at *Tariq Aziz ud Din and others* (2010 SCMR 1301) and *Dr. S.M. Inkisar Ali v. Government of Sindh* (2011 SCMR 121) and the unreported judgment passed in Civil Petition No.1583-L of 1998; that even if the case is not covered by Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, even then an appointment made in the prescribed manner could not be treated, as officiating; that during the period 1995-1998 the relevant qualification of the respondents for promotion was lacking; that long temporary service was to be considered as regular due to flux of time and that the competent authority had passed a detailed order on 18-12-2002, therefore, the same provided valid and legal basis for declaring the promotion of appellants as regular. Learned counsel in support of the contentions has relied on *Jafar Ali Akhtar v. Islamic Republic of Pakistan* (PLD 1970 Quetta 115), *Muhammad Tahir v. Secretary, Communication and Works Department, Government of Punjab etc.*, (2009 PLC(C.S.) 527), *Khalid ur Rehman Khan, SP, Khanewal v. Muhammad Ali Mirza* (1992 SCMR 989), *Luqman Zareen and others v. Secretary Education N.-W.F.P. etc.* (2006 SCMR 1938), *Irfan Majeed v. University of Karachi etc.* (2010 PLC (C.S.) 1118) and *Muhammad Amjad v. Dr. Israr Ahmed etc.* (2010 PLC (CS) 760).

4. Respondent Muhammad Farooq Malik, who appeared in person, submits that the appellants had accepted their promotion on officiating basis and never challenged the same before any forum for about 6 years that there was no question of ineligibility or lack of qualification on the part of the respondents because the matter stood finally decided by the competent authority that B.Tech. (Hons.) Degree be treated at par with B.Sc. (Engineering) Degree; that in view of Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, officiating promotion neither confers any right of promotion on regular basis nor any such promotee could claim the same as regular; that since 1995 to 2002 three seniority lists have been issued and in all these lists, appellants were shown as officiating SDOs but they never challenged the same; that in the presence of express provisions of Rule 13 of the *ibid* Rules, 1974, the provisions of section 2(2) of the Rules being deeming clause could not be given effect to and that as the appellants were admittedly junior to the

2015] Muhammad Asif Chaiha v. Chief Secretary, Government of Punjab (Ijaz Ahmed Chaudhry, J) 169

respondents and were not eligible for such promotion on regular basis, they were rightly ignored and their promotion was rightly treated as on officiating basis.

5. Learned Assistant Advocate-General, who appeared on behalf of the Government of Punjab has supported the impugned judgment.

6. We have heard learned counsel for the appellants, respondent in person, as also learned Assistant Advocate General at some length and have perused the record.

7. The questions involved in these appeals are three fold; (i) whether the appointment of appellants on officiating basis was valid; (ii) whether the respondents were rightly promoted on regular basis in the year 2001; and (iii) Whether the appeals before the Service Tribunal were time-barred?

8. After the enforcement of Punjab Civil Servants Act, 1974, as well as Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, the legal position is clear, the Punjab Civil Servants Rules were framed by the Government pursuant to the powers conferred under section 23 of the Punjab Civil Servants Act, 1974. In terms of section 13 of the Rules, the Government conferred power on the appointing authority to make appointment by promotion against such post on officiating basis. It would be relevant to reproduce the said Rule, which is as under:--

13. Appointment on officiating basis.---(i) Where a post falls vacant as a result of deputation, posting outside cadre, leave, suspension or appointment on acting-charge basis of the (regular) incumbent or is reserved under the rules to be filled by transfer, if none is available for transfer, the appointing authority may make appointment by promotion against such post on officiating basis.

Provided that a post reserved for regular promotion; on deferment of a civil servant due to any reason, may be filled by promotion on officiating basis.

(ii) *No person shall be promoted on officiating basis unless he possesses the qualifications and experience prescribed for the post and his promotion as such is approved by the chairman of the appropriate selection authority.*

(iii) *An officiating promotion shall not confer any right of promotion on regular basis but shall be liable to be terminated as soon as a person becomes available for promotion on regular basis.*

(iv) *Officiating promotion shall be made on the same terms and conditions as to pay as are prescribed for regular appointment by promotion.*

9. From the bare perusal of the above provisions, it is clear that the appointing authority is empowered to make appointments on officiating basis. This leads us to the question as to whether at the time of promotion of the appellants on officiating basis, were there permanent posts available or not? We have found that regarding this matter, three inquiries have been held in order to resolve the issue. First was held on 10-9-2002 and vide the order dated 18-12-2002, the appellants were declared to be promoted on regular basis. Second was dated 27-7-2005 whereby it was mainly held that there is no ground for considering the officiating promotion of appellants as on regular basis on the ground that promotion cannot be granted with effect from an early date. Third inquiry was carried out by a committee headed by Additional Chief Secretary on the direction of the Chief Secretary. The Committee after detailed deliberation on 27-10-2010 held that the prayer of the appellants for promotion on regular basis is not legally tenable and is liable to be rejected and that there were no permanent posts available at the time of appointment of the appellants on officiating basis. Except the order dated 18-12-2002 which was passed without hearing some of the parties, it is the consistent stand of the Department that the appellants could not have been promoted on regular basis. Whether at that time permanent posts were available or not is also a question of fact, which cannot be gone into in these proceedings. This Court in *Tariq Aziz-ud-Din case* reported at 2010 SCMR 1301 has specifically cleared that appointment on acting charge basis does not confer any vested right for regular promotion, as is evident from Rule 8-B of the Civil Servants (Appointments, Promotion and Transfer) Rules, 1973. It is important to note here that the said Rule 8-B is *pari materia* to Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974. It is also noteworthy that the appellants never challenged the conditions of 'officiating' for a long period of about 6 years. It was for the first time in the year 2001 when they agitated the matter before the learned High Court when the respondents were promoted as Assistant Engineers/SDOs on regular basis. Besides, since 1995 three seniority lists were issued showing the appellants not only junior to the respondents but also on officiating basis but they kept mum and never challenged the said lists. Learned counsel tried to argue that the effect of order of remand dated 24-1-2002 passed by the learned High Court was that the entire controversy stood revived, therefore, no question of limitation can be raised. We have noted that the learned High Court had merely remanded the matter to decide the controversy afresh in accordance with law and had not condoned the delay. If we keep in mind the words 'in accordance

2015] Muhammad Asif Chatha v. Chief Secretary, Government of Punjab (Ijaz Ahmed Chaudhry, J) 171

with law', then the question of limitation is also a question of law. The appellants after their appointment on officiating basis in the years 1995-1998 could not have agitated the matter in the year 2001. It seems they had accepted their appointment on officiating basis. It is by now a well-settled principle of law that if a departmental representation is barred by time, then without disclosing any sufficient reason for delay, no subsequent, order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed by the civil servant before the Tribunal would be incompetent. Reliance in this regard has been placed on *Abdul Wahid v. Chairman, Central Board of Revenue, Islamabad etc.* (1998 SCMR 882) and *NED University of Engineering and Technology v. Syed Ashfaq Hussain Shah* (2006 SCMR 453). The question of limitation being basic requirement has to be strictly dealt with. So far as the eligibility of respondents is concerned, we find that the Federal Government had issued a policy letter dated 26-10-1973 holding that B.Tech (Hons) degree be treated at par with B.Sc. (Engineering) degree. Pursuant to this decision, the Government of Punjab also issued a notification on 1-2-1981 declaring B.Tech. (Hons.) degree in particular specialization equivalent to corresponding B.Sc. (Engineering) degree. The Government of Punjab also amended the Rules of (i) Communication and Works Department, (ii) Irrigation and Power Department, and (iii) Housing Physical and Environmental Planning Department for promotion of Sub-Engineers. As a result several persons were promoted. Despite the above said amendment, several employees of Physical and Environmental Planning Department were not allowed promotion on the ground that B.Tech (Hons) degree is not equivalent to B.Sc. (Engineering) degree. Pakistan Engineering Council also refused to recognize B.Tech. (Hons.) degree equivalent to B.Sc. (Engineering) degree. The matter ultimately then came up before this Court in Civil Petition No.216 of 1991 but this Court dismissed the same on 5-12-1992. However, this Court in *Suo Motu Review Petition No. 52 of 1993* reopened the matter and while recalling its earlier order directed the competent authority to consider the case of B.Tech (Hons) degree holders for promotion to BS-17. Pursuant to this Direction of this Court the service rules of Assistant Engineers were amended on 16-12-2000 whereby B.Tech. (Hons.) degree holders also became eligible for their promotion as Assistant Engineers/SDO. Even otherwise, it has been brought to our notice through C.M.A. No.4341 of 2012 that on humanitarian grounds, the Chief Minister has allowed 27 reverted officiating Assistant Engineers/SDOs including the present appellants to continue on officiating basis as a special dispensation in relaxation of Rule 13 till their regular promotion on seniority cum fitness basis vide the order dated 22-2-2011 that a meeting of Departmental Promotion Committee was convened on 16-12-2011 in which six appellants/officiating AEs/SDOs were also considered, out of which three have

been promoted on regular basis vide order dated 27-12-2011 whereas cases of three have been deferred due to their incomplete service; that since the last DPC, four more posts against 15% quota have fallen vacant and the appellants will be considered on their turn in the forthcoming meetings of Departmental Promotion Committee. The case reported as *Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan* (PLD 1970 Quetta 115) on the basis of which leave was granted is distinguishable as it relates to the period before the enforcement of Punjab Civil Servants Act, 1974 and the Rules framed thereunder. The learned Punjab Service Tribunal has passed a well-reasoned judgment which is unexceptionable.

10. For what has been discussed above, we do not find any merit in these appeals, which are accordingly dismissed.

MWA/M-52/SC.

Appeal dismissed.

2015 S C M R 172

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali,
Iqbal Hameedur Rahman and Qazi Faez Isa, JJ

THE CHAIRMAN, NATIONAL ACCOUNTABILITY
BUREAU---Appellant

versus

FEHMIDA BEGUM and others---Respondents

Civil Appeal No. 1038 of 2000, decided on 25th November, 2014.

(On appeal from judgment of Lahore High Court, Lahore, dated 30-6-2000, passed in Writ Petition No. 914 of 2000)

National Accountability Ordinance (XVIII of 1999)---

---S. 5(o)---"Person"---Definition---Person standing as guarantor for a loan obtained by the company---Company defaulting in payment of loan---Such person/guarantor liable for prosecution before Accountability Court---Scope---Any person may be a director or employee of the company while at the same time be a guarantor as well---Employee/director in question was the surety or guarantor of the loan facilities etc., availed by the company---According to the terms of the guarantee, employee/director's responsibility under the guarantee was that of a principal debtor and he was liable under

the guarantee until all moneys due from the company had been paid, therefore, once the company defaulted in its liability to repay the loan amount, it was the obligation of the said employee/director to repay the loan amount---High Court was not right in holding that said employee/director, despite being a guarantor, was not liable for prosecution before the Accountability Court---Judgment of High Court was set aside in circumstances---Appeal was allowed accordingly. [p. 176] A, B & C

Raja M. Ibrahim Satti, Senior Advocate Supreme Court and Fauzi Zaffar, Additional DPG NAB for Appellant.

M. A. Siddiqui, Advocate Supreme Court for Respondents Nos. 1 and 2.

Ex parte Respondents Nos. 3 to 8.

Date of hearing: 10th November, 2014.

JUDGMENT

ANWAR ZAHEER JAMALI, J.---This civil appeal with leave of the Court in terms of the order dated 16-8-2000, is directed against the judgment dated 30-6-2000, passed by a five member Bench of the Lahore High Court, in Writ Petition No. 914 of 2000, whereby the said petition filed by respondent No. 1 was allowed and consequently the pending proceedings in Reference No. 8 of 2000, against respondent No. 2, Mukhtar Hussain, the husband of the petitioner, were quashed with a majority of three to two.

2. The controversy involved in the said petition revolved around the interpretation of "person" as defined in subsection (o) of section 5 of the National Accountability Bureau Ordinance, 1999 (in short "the NAB Ordinance"), which at the relevant time read as under:--

(o) "Person" includes in the case of a corporate body, the sponsors, Chairman, Chief Executive, Managing Director, elected Directors, by whatever name called, and guarantors of the company or any one exercising direction or control of the affairs of such corporate body, but will not include employees appointed and designated as Director or Chief Executive; and in the case of any firm, partnership or sole proprietorship, the partners, proprietor or any person having interest in the said firm, partnership or proprietorship concern or direction or control thereof."

As per the majority view of the Lahore High Court, respondent being employee of the Company, despite being a guarantor, was

innocence, the cause of his involvement projected by him is some political rivalry. But the evidence produced by the prosecution in bringing home the guilt does fully support and justify his involvement in the commission of offence, who has rightly been convicted for taking an innocent life of a child in a merciless and cruel manner for no fault of the minor boy. He does not deserve any leniency.

7. In view of the above, the appeal being without merit is dismissed accordingly.

N.H.Q./G-21/SC

Appeal dismissed.

2011 S.C.M.R. 676

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J.
Raja Fayyaz Ahmed and Ch. Ijaz Ahmed, JJ.

RAJA KHAN---Petitioner

versus

MANAGER (OPERATION) FAISALABAD ELECTRIC SUPPLY
COMPANY (WAPDA) and others---Respondents

Civil Petition No. 636 of 2009, decided on 21st May, 2009.

(Against the judgment dated 11-2-2009 passed by the Federal Service Tribunal, Islamabad, in Appeal No. 445(R) CE of 2005).

(a) *Removal from Service (Special Powers) Ordinance (XVII of 2000)*---

---Ss. 34 & 10---Constitution of Pakistan, Art. 212(3)---Compulsory retirement from service---Dismissal of first departmental appeal for being time barred---Dismissal of second departmental appeal as not competent---Dismissal of appeal by Service Tribunal on merits as well as its being time barred---Validity---Petitioner had filed appeal before Tribunal without fulfilling mandatory requirement of S. 4 of Service Tribunals Act, 1973 in regard to limitation---Court could not compromise on limitation---Petitioner during four years of service had been punished for unauthorized absence as many as eight times---Petitioner by his subsequent conduct had accepted punishment compulsory retirement by getting his pension claim and monthly pension regularly---Supreme Court refused to grant leave to appeal in circumstances. [pp. 679, 680, 681, 682] A, B, F, H, I, M & N.

2011] Raja Khan v. Manager (Operation) Faisalabad Electric Supply Company (Ch. Ijaz Ahmed, J) 677

Haji Ghulam Rasul's case PLD 1971 SC 376; Mst. Amina Begum's case PLD 1978 SC 220 and Nawab Syed Raunaq Ali's case PLD 1973 SC 236 rel.

(b) *Constitution of Pakistan*---

---Art. 212(3)---Service Tribunal, finding of---Validity---Such finding being finding of fact would not call for interference by Supreme Court. [p. 680] C

Ch. Muhammad Azim's case 1991 SCMR 255 rel.

(c) *Constitution of Pakistan*---

---Art. 212(3)---Concurrent findings of fact by Appellate Authority and Service Tribunal---Validity---Supreme Court would not interfere with such findings. [p. 680] D

Iftikhar Ahmed Malik's case 2005 SCMR 806 rel.

(d) *Service Tribunals Act (LXX of 1973)*---

---S. 4---Departmental appeal being time-barred---Effect---Appeal before Service Tribunal would not be competent. [p. 680] E

Chariman PIA and others v. Nasim Malik PLD 1990 SC 951; Muhammad Aslam v. WAPDA and others 2007 SCMR 513 and Government of Pakistan through Secretary, Establishment Division v. Bashir Ahmad Khan PLD 1985 SC 309 rel.

(e) *Limitation*---

---Appeal, if required to be dismissed for being time-barred, then its merits need to be discussed. [p. 681] G

Khan Sahib Sher Muhammad Mir's case 1987 SCMR 92 rel.

(f) *Constitution of Pakistan*---

---Art. 212(3)---Constitutional jurisdiction under Art. 212(3) of the Constitution---Discretionary in character. [p. 682] J

(g) *Constitution of Pakistan*---

---Arts. 185(3) & 212(3)---Grant of leave to appeal by Supreme Court---Discretionary. [p. 682] K

Ghulam Qadir Khan's case 1986 SCMR 1386 rel.

AAU

(h) Constitution of Pakistan---

---Arts. 199 & 212(3)---Void order---Constitutional jurisdiction of High Court and Supreme Court---Scope---Such jurisdiction might be refused, if same was meant to enable petitioner to circumvent provisions of law of limitation or if he was stopped by his conduct from challenging order. [p. 682] L

Muhammad Ismail's case 1983 SCMR 168; Abdur Rashid's case 1969 SCMR 141 and Wali Muhammad's case PLD 1974 SC 106 rel.

Haider Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Nemo for Respondents.

ORDER

CH. IJAZ AHMED, J.---Raja Khan, petitioner, seeks leave to appeal against the impugned judgment dated 11-2-2009 whereby the learned Federal Service Tribunal, Islamabad, dismissed his appeal on merits as well as time-barred.

2. Detailed facts have already been mentioned in the impugned judgment. However, necessary facts out of which the present petition arises are that petitioner was appointed as Chowkidar with the respondents establishment from April, 1985. Show cause notice dated 23-2-2004 under section 5(4) of the Removal from Service (Special Powers) Ordinance, 2002 along with statement of allegations was served upon the petitioner containing the following charges:--

- (1) Whereas you Mr. Raja Khan, Chowkidar PESCO (WAPDA) Jhang Circle Jhang are charged with misconduct as per statement of allegations attached.
- (2) And whereas on the basis of documentary evidence available, it is not considered necessary to have formal inquiry against you and that proceedings are being initiated under section 5(4) of the Removal from Service (Special Powers) Ordinance 2002 which might entail imposition of a major penalty of dismissal from service as specified in section 3 of the said ordinance.
- (3) Now, therefore, you are required to show cause within 15 days from the date of receipt of this notice as to why the proposed action should not be taken against you.
- (4) If no response is received from you within the time stipulated above, it would be presumed that either you have no defence to

2011] Raja Khan v. Manager (Operation) Faisalabad Electric Supply Company (Ch. Ijaz Ahmed, J) 679

offer and/or you have willfully declined to do so. The case shall then be decided on 'ex parte' without further reference.

Whereas you Mr. Raja Khan, Chowkidar, PESCO Jhang Circle Jhang are charged with gross misconduct, inefficiency, corruption and mal practices for the following charges and other relevant circumstances.

As per report of Mr. Shahzad Nasir, Telephone Attendant and Mr. Ghulam Abbas Bhatti Telephone Attendant PESCO Jhang Circle Jhang. You are absent from duty w.e.f 6-2-2004 to 17-2-2004 without intimation/prior permission/sanction leave from the Circle Superintendent/Technical Officer/and by the undersigned.

If any mishap/incident create in Circle office, who are responsible. You are already so many times directed to present in the office after closing hours but you have failed in official duties."

Petitioner submitted reply to the show cause notice and admitted that he was absent from duty on account of illness. The competent authority after providing him personal hearing awarded major penalty of compulsory retirement from service w.e.f. 31-3-2004 vide order dated 29-3-2004. Petitioner being aggrieved filed departmental appeal on 6-4-2004 before the appellate authority who dismissed the same as time barred vide order dated 10-11-2004. Thereafter the petitioner filed another appeal before the Managing Director Power on 8-12-2004 which was dismissed vide order dated 4-2-2005 on the ground that there is no provision of second appeal "further appeal" under the rules. Petitioner being aggrieved filed Appeal No. 445(R)CS/2005 in the Federal Service Tribunal, Islamabad, on 12-4-2005 which was dismissed vide impugned judgment dated 11-2-2009. Hence the present petition.

3. Learned counsel for the petitioner submits that the impugned order of dismissal of the petitioner dated 29-3-2004 was passed by incompetent authority, therefore, the same was coram non judge and without lawful authority. He further urges that impugned order of the department was void, therefore, no limitation would run against such type of order. It can be agitated at any time and could be ignored being a void order. Learned Service Tribunal had not adverted to this aspect of the case, therefore, the impugned judgment was passed by the learned Service Tribunal without application of mind.

4. We have given our anxious consideration to the contentions of the learned counsel of the petitioner and perused the record. It is an admitted fact that show cause notice was served upon the petitioner

under the provisions of Removal from Service (Special Powers) Ordinance, 2002 wherein it is specifically provided under the provisions of the Ordinance that petitioner has to file departmental appeal within the prescribed period of 15 days. The order of compulsory retirement was passed by the competent authority on 29-3-2004. The petitioner filed departmental appeal on 6-4-2004 which was dismissed as time barred on 10-11-2004. Thereafter the petitioner filed second appeal before the Managing Director on 8-12-2004 which was also dismissed on 4-2-2005 in the following terms:--

"It is to inform you that your appeal under reference does not merit consideration as there is no provision of second appeal "further appeal" under the rules."

5. The learned Service Tribunal had rightly come to the conclusion that appellate authority was justified to dismiss his appeal as time-barred and second appeal was also dismissed with cogent reasons on account of non availability of any provision under the rules to file second appeal to higher authority after dismissal of the first appeal. We have also re-examined the material on record with the assistance of the learned counsel of the petitioner. We do not find any infirmity or illegality with regard to the conclusion arrived at by the learned Service Tribunal with regard to the finding mentioned in para 7 of the impugned judgment. It is settled principle of law that finding of service tribunal having findings of fact would not call for interference by this Court as law laid down by this Court in Ch. Muhammad Azim case (1991 SCMR 255). Even otherwise this Court does not interfere with the concurrent findings of fact arrived at by the departmental authorities and learned service Tribunal while exercising the power under Article 212(3) of the Constitution. See Itikhar Ahmed Malik case, (2005 SCMR 806). It is settled proposition of law that when an appeal of the employee was time barred before the appellate authority then the appeal before the Tribunal was also not competent in view of the various pronouncements of this Court. See Chairman PIA and others v. Nasim Malik (PLD 1990 SC 951) and Muhammad Aslam v. WAPDA and others (2007 SCMR 513). The question of law with regard to the representation has already been decided by this Court in Government of Pakistan through Secretary Establishment Division v. Bashir Ahmad Khan (PLD 1985 SC 309). The relevant observation is as follows:--

"He challenged his first compulsory retirement through a review application filed on 23rd of October, 1974, which was decided on 3-6-1975. This was the final order passed on review. It could be challenged within 30 days, before the Tribunal under section 4 of the Service Tribunals Act. If the appellant chose not to file an appeal but only to repeat a representation before the same

authority who had decided the review, that by itself would not give him another cause of action to file an appeal under section 4. The period spent in making the representation this second or any other representation after the decision of the review application, could not be excluded as of right in counting the period of limitation The review petition filed by the respondent in that behalf was decided on 13-6-1978. Instead of filing an appeal before the Tribunal under section 4 within 30 days of this final order passed on review, he made another representation which caused further delay. The period consumed during the processing of the subsequent representation could not be excluded as of right. And there being no condonation on any good ground by the Tribunal, the appeal filed on 14-1-1979, was clearly time barred and should have been dismissed accordingly."

6. The appeal of the petitioner before Service Tribunal is incompetent under section 4(1)(b) of the Service Tribunal Act, 1973. Since the petitioner has filed appeal before the Service Tribunal without fulfilling the mandatory requirement of section 4 in regard to limitation and court cannot compromise on the limitation. See:--

Muhammad's case (1998 SCMR 1354)

Messrs Raja Industries' case (1998 SCMR 307)

Mst. Sirajun-Munira's case (1998 SCMR 785)

7. It is admitted fact that appeal is obviously time barred and it has been held by this Court in Khan Sahib Sher Muhammad Mir's case (1987 SCMR 92) that when an appeal is required to be dismissed on limitation, its merits need not be discussed. In spite of the aforesaid law laid down by this Court the learned Service Tribunal has considered the case on merits and the appeal was also dismissed on merits. It is pertinent to mention here that the competent authority awarded penalty of compulsory retirement vide order dated 29-3-2004. The petitioner had accepted the punishment awarded by the respondents due to his conduct on the basis of subsequent events as the petitioner applied for payment of his pensionary benefit to the respondents. Petitioner got settled his pension claim within three months after his retirement and received Rs. 155,733 as well as monthly pension. He also received his monthly pension regularly. Petitioner preferred appeal before the Service Tribunal on 12-4-2005. This fact was also noted in the impugned judgment in para 10. Even on merits the learned Service Tribunal was justified to dismiss his appeal on the well known principal of "approbate and reprobate." See Haji Ghuilm Rasul's case (PLD 1971 SC 376). The learned Service Tribunal was justified to dismiss his appeal on the well

known principle of estoppel keeping in view subsequent events. See *Mst. Amina Begum's case* (PLD 1978 SC 220).

8. The conduct of the petitioner has been highlighted by the Service Tribunal in para 10 of the impugned judgment which is reproduced herein below:--

"We have seen placed on the record a number of documents which indicate the service record of the appellant. From 1989 to 27-3-2003, the appellant has been punished for unauthorized absence as many as eight times. The punishment included censure, stoppage of one annual increment for one year (1983), reduction to three lower stage in time scale for a period of three years (1990), stoppage of one annual increment for one year (1993) and stoppage of annual increment for one year (1995)."

9. It is settled principle of law that constitutional jurisdiction under Article 212(3) is discretionary in character. It is settled law that grant of leave to appeal is discretionary. See *Ghulam Qadir Khan's case* (1986 SCMR 1386). It is also settled law that constitutional jurisdiction against void order may be refused if it was meant to enable petitioner to circumvent provisions of law of limitation or if he was estopped by his conduct from challenging of order. See:--

Muhammad Ismail's case (1983 SCMR 168)

Abdur Rshid's case (1969 SCMR 141)

Wali Muhammad's case (PLD 1974 SC 106)

10. Keeping in view the conduct of the petitioner mentioned herein above in para 10 of the impugned judgment we are not inclined to exercise our discretion in favour of the petitioner on the well known maxim that he who seeks equity must come with clean hands as law laid down by this Court in *Nawab Syed Raunaq Ali's case* (PLD 1973 SC 236).

11. In view of what has been discussed above we do not find any infirmity or illegality in the impugned judgment. Even otherwise the learned counsel has failed to raise any question of public importance in the present case as contemplated under Article 212(3) of the Constitution. The petition has no merit and the same is dismissed. Leave refused.

S.A.K./R-7/SC

Leave refused

2011 S C M R 683

[Supreme Court of Pakistan]

Present: *M. Javed Buttar, Muhammad Farrukh Mahmud
and Muhammad Sair Ali, JJ*

GHULAM SHABBIR AHMED and another---Appellants

versus

THE STATE---Respondent

Criminal Appeal No. 265 of 2005, decided on 28th May, 2009.

(On appeal against the judgment dated 24-10-2002 passed by the Lahore High Court, Multan Bench in CrI. A. No. 34 of 2002):

(a) *Penal Code (XLV of 1860)---*

---S. 302(b)---*Re-appraisal of evidence---Double murder---Prompt F.I.R.---Ocular account supported by medical evidence---Identity of accused was not disputed at all and he had been described by name and by his deeds in promptly lodged F.I.R.---Statements of prosecution witnesses were fully supported by medical evidence and corroborated by the facts---Matter was reported to police within 45 minutes and postmortem of both the deceased were conducted on the same night within six hours of their death---Motive as given in F.I.R. also stood proved and was corroborated by ocular account---Ocular account was also supported from report of Forensic Science Laboratory which revealed that empties recovered from spot were fired from one weapon---Statements of defence witnesses did not help the accused---Effect---Prosecution had successfully proved its case beyond doubt against accused and he was rightly convicted under S. 302(b), P.P.C.---Sentence of death awarded to accused by Trial Court and maintained by High Court was not interfered with by Supreme Court---Appeal was dismissed. [p. 687] A*

(b) *Penal Code (XLV of 1860)---*

---S. 302(b)---*Qanun-e-Shahadat (10 of 1984), Art. 22---Re-appraisal of evidence---Identification of accused in Court---Photographs of accused---Accused was not previously known to prosecution witnesses and was only described by features, who was arrested after two years of the occurrence---Prosecution witnesses had seen accused for very short time and they did not identify him during identification parade but identified him at the time of recording of his statement in Court---Effect---Such identification in Court was meaningless as by that time accused was already known to prosecution witnesses as only that*

26.08.2019

Appellant in person present. Addl: AG alongwith Mr. Atta ur Rehman, SI for respondents present. Appellant seeks adjournment due to general strike on the call of Peshawar Bar Association. Adjourn. To come up for arguments on 03.10.2019 before D.B.


Member


Member

03.10.2019

Appellant in person present. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Appellant seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 12.12.2019 before D.B.


Member


Member

12.12.2019


Appellant in person present and seeks adjournment. Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 17.02.2020 before D.B.



Member


Member

05.03.2019


Learned counsel for the appellant Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant request for adjournment. Adjourn. To come up for arguments on 29.04.2019 before D.B.



Member


Member

29.04.2019

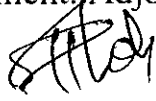
Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Atta Ur Rehman SI for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 01.07.2019 before D.B.


Member


Member

01.07.2019


Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 26.08.2019 for arguments before D.B.

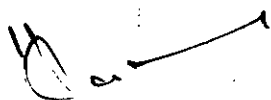

(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

03.08.2018


Appellant in person present. Learned counsel for the appellant is absent. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, S.I (legal) for the respondents present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 28.09.2018 before D.B.



(Ahmad Hassan)
Member (E)


(Muhammad Hamid Mughal)
Member (J)

28.09.2018

Appellant in person present. Mr. Atta ur Rehman, SI alongwith Mr. Muhammad Riaz Paindakhel, Asst; AG for respondents present. Appellant seeks adjournment. Granted. Case to come up for arguments on 14.11.2018 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

14.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 02.01.2019.


Reader

02.01.2019

Appellant in person and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Atta urReman S.I legal present. Appellant seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 05.03.2019 before D.B.


Member


Member

19.04.2018

Counsel for the appellant and Addl: AG for respondents present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that he was dismissed from service vide order dated 28.09.2015. He preferred departmental representation on 15.302.2016 which was rejected on 24.03.2016. Another petition was preferred to the appellate board on 28.02.2017, which was rejected on 09.10.2017. The said order was never communicated to the appellant. He got the knowledge about it on 22.12.2017 and service appeal was filed on 08.01.2018. Apparently the appeal is time barred and issue of successive appeal is also involved vide order sheet dated 22.01.2018. Pre-admission notice was given to the learned AAG. During the hearing the case was argued at length by both the parties.

Points urged need consideration. Admit, subject to limitation. The appellant is directed to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 07.06.2018 before S.B.

Appellant Deposited
Security & Process Fee


(AHMAD HASSAN)
MEMBER

07.06.2018

Appellant in person present. Mr. Kabir Ullah Khattak, Addl: AG alongwith Mr. Shafiq Khan, Inspector for official respondents present. Written reply submitted. To come up for rejoinder and arguments on 03.08.2018 before D.B.


Member


13.02.2018

Clerk of the counsel for appellant present and requested for adjournment as counsel for the appellant is not available today due to strike of the Bar. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Adjourned. To come up for preliminary hearing on 07.03.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member (J)

07.03.2018

Appellant in person present and requested for adjournment on the ground that learned counsel is not in attendance today. Adjourned. To come up for preliminary hearings on 05.04.2018 before S.B


(Gul Zeb Khan)
Member

05.04.2018



Appellant absent. Learned counsel for the appellant absent. Adjourn. To come up for preliminary hearing on 19.04.2018 before S.B

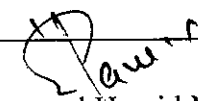

Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 25/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	8/1/2018	<p>The appeal of Mr. Abid Ex- Constable presented today by Mr. Muhammad Adam Khan 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 8/1/18</p>
2-	11/01/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>22/01/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	22.01.2018	<p>Learned counsel for the appellant present. Preliminary arguments heard.</p> <p>The appellant (Ex-Constable) was dismissed from service vide order dated 28.08.2015. (The departmental appeal was rejected vide order dated 24.03.2016. The present service appeal was filed on 08.01.2018 hence apparently time barred. Learned counsel for the appellant stated that the appellant also filed petition to the appellate board which was rejected on 09.10.2017. And the application for condonation of delay is annexed with appeal) This Tribunal has held in a number of cases that second/successive appeal/petition cannot enlarge the period of limitation. In the interest of justice pre admission notice is issued to the respondent party for 13.02.2013. To come up for preliminary hearing on the date fixed.</p>


(Muhammad Hamid Mughal)
MEMBER

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, PESHAWAR

Appeal No. 25 / 2018.

Abid VS The DPO and others

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10.	Vakalat Nama. <i>10. Medical records - 9 to 11</i>	----	15	

Total: - 15

Dated:- 5.01.2018

Appellant
Abid shah
(Abid)

Through:
Adnan
Muhammad Adam Khan
Advocate High Court
at District Courts Mardan.

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 25 / 2018.

Abid, (Ex-Constable No. 2165, Police Station Garhi Kapura Mardan) S/o Hanifullah Resident of Village Bughdada, District Mardan.

(Appellant)

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 17

Dated 08-01-2018

VERSUS

1. The District Police Officer Mardan.
2. The Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. The Inspector General of Police, K.P.K Peshawar.

(Respondents)

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF THE DPO / RESPONDENT No. 1, CONTAINED in ENDORSEMENT No. 9093 / GB(OB-170) DATED 28-09-2015, WHEREBY APPELLANT IS DISMISSED FROM SERVICE AND THE PERIOD OF ALLEGED ABSENEC IS TREATED AS LEAVE WITHOUT PAY, ON THE ALLEGED GROUND OF DELIBERATE ABSENCE FROM DUTY.

FACTS:-

1. That the Appellant, while posted as Constable in the Police Station Garhi Kapura Mardan was dismissed from service vide OB No.1720 / Endorsement No.9093 / GB dated 28.09.2015.

(Copy Annexure- "A").

2. That the Appellant preferred representation there-against to the D.I.G / Respondent No.2 on 15.02.2016.

(Copy Annexure- "B").

3. That the D.I.G / Respondent No.2 rejected the same vide Letter No.2356 / ES dated 24.3.2016.

(Copy Annexure- "C").

Filed to-day

Registrar

2/1/18

4. That the Appellant preferred, the Petition date 28.2.2017 to the Appellate Board, which was rejected vide Letter No. S / 6729-38/ 17 dated 09.10.2017, as endorsed by the I.G.P / Respondent No.3.

(Copy Annexure- "D" & "E").

5. That said order dated 09.10.2017, was never dispatched to Appellant. He learnt about it, on 22.12.2017 and obtained the copy thereof, on the same day.

The impugned orders are unjustified, illegal and against the principals of natural justice. The same are liable to be set-aside on the following amongst many other grounds: -

GROUNDS:

1. That the Appellant is condemned unheard, as he was not provided the opportunity of proper defence.
2. That Appellant was not communicated the charge sheet and the statement of allegations, according to the relevant rules.
3. That Appellant was not informed about the holding of the enquiry proceedings. He learnt about it, through private source, on the day, fixed for holding enquiry and he visited the office of the A.DSP (H-Q) / the Enquiry officer. Where the reader of the A.DSP delivered to Appellant the charge sheet. He/the Reader wrote the reply thereto himself and made the Appellant to sign the same.
4. That the said reader took the charge sheet from Appellant back in original. Even, he did not allow the Appellant to make copies thereof for Appellant record.
5. That no enquiry was conducted in Appellant,s presence, nor any witness was examined in his presence.
6. That the Appellant approached the R.T.I for obtaining the copies ~~of~~ the ~~the~~fore-mentioned records. But, the same is still awaited.
7. That which will be submitted when received from there.
(The copy of application is Annexure- " F ").
8. That Appellant is condemned unheard throughout.
9. That Appellant was not served with final show cause notice nor supplied the copies of the enquiry report and the relevant records.
10. That the material fact was not taken into consideration that the father

of Appellant was chronic patient of cardiac disease, as well as, daebities, who died of it.

(Copies of Medical records are Annexure-“ G to U “).

11. That Appellant not conveyed the impugned order. The Appellant learnt about it privately on 22.10.2015 and the same was supplied to him on Appellant application.
12. That Appellant remained confined to bed on account of illness till 14.2.2016.
13. That the impugned orders are too harsh in the circumstances.
14. That the Appellant has been out of job throughout, after the impugned order.
15. That the Appellant seeks leave of this Honourable Court to claim further grounds also.

It is prayed that on acceptance of this Appeal, the impugned orders may be set-aside and the Appellant may be re-instated into service with back service benefits.


The costs of this appeal may also be awarded in favour of Appellant against the Respondents.

Dated : 5.01.2018

Appellant


(Abid)

EX-Constable No. 2165,
Police Station, GarhiKapura,
Mardan.

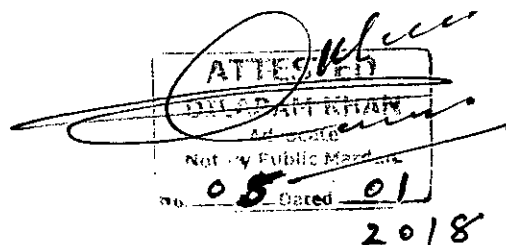
Through: 
Muhammad Adam Khan
Advocate High Court
at District Courts Mardan.

AFFIDAVIT

I, Abid / the Appellant, do hereby state on solemn affirmation that the contents of the above Appeal are true and correct to the best of my knowledge and belief and that nothing is concealed from this Honourable Tribunal, in this respect.

Deponent: _____

Abid



BEFORE THE PROVINCIAL SERVICE TRIBUNAL, PESHAWAR.

Appeal No. _____ /2018.

Abid VS The DPO and others

APPLICATION ON BEHALF OF APPELLANT FOR REQUISITIONING OF SHOW CAUSE NOTICE AND ITS REPLY.

1. That the officer of the SDPO / Respondent No. 1 had taken back the show cause notice with the defense reply. Even, the Appellant was not allowed to obtain the copies thereof.
2. That the presence of the aforementioned documents is necessary before this Honourable Tribunal for the just and final adjudication of the above Appeal.

It is prayed that the Respondent No. 1 may be directed to provide the copies of the above captioned documents with written comments.

Dated:- 05.01.2018

Appellant

(Abid)
(Abid)

Through:

(Muhammad Adam Khan)

Muhammad Adam Khan
Advocate High Court
at District Courts Mardan.

AFFIDAVIT

I, Abid / the Appellant, do hereby stated on solemn affirmation that the contents of the above Application are true and correct to the best of my knowledge and belief and nothing is concealed from this Honourable Tribunal.

(Signature)
ATTESTED
MUSHAM KHAN
Advocate
Notary Public, Mardan.
No. 05 Dated 01
2018

Deponent:

(Abid)
Abid

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, PESHAWAR.

Appeal No. _____ / 2018.

Abid VS The DPO and others

APPLICATION FOR CONDONATION OF DELAY, IF ANY:-

1. That the captioned Appeal is instituted today.
2. That no doubt that the Appellate order (A) was rejected on 28-09-2016, the Appellant challenged the same before the I.G.P on 08-02-2017.
3. That the I.G.P / Respondent No.3 rejected the same on 09-10-2017. But, the same was not communicated to Appellant not endorsed to him. Hence he could not learn about the same till 22-12-2017, when he learnt about it, while pursuing the fate of his case.
4. That Computing the period of limitation from 22-12-2017, the captioned Appeal is within time.
5. That even the impugned order is void and limitation does not run against the same.
6. That valuable rights of Appellant are attached with the case, and the same needs adjudication on merits.
7. That even if the Appeal in question is considered as time barred, delay so happened is liable to be condoned in favour of Appellant.

It is prayed that the delay if any in the institution of the Appeal, the same may be condemned favourably.

Dated:- 05.01.2018

Appellant
(Abid)

Through:

Adam
Muhammad Adam Khan
Advocate High Court
at District Courts Mardan.

AFFIDAVIT

I, Abid / the Appellant, do hereby stated on solemn affirmation that the contents of the above Application are true and correct to the best of my knowledge and belief and nothing is concealed from this Honourable Tribunal.

Adam
ATTESTED
MUMHAMMAD KHAN
Advocate
Notary Public Mardan.
No. 05 dated 01/01/2018

Deponent: *(Abid)*
Abid

Attested
ADAM KHAN
MARDAN DISTRICT

POLICE DEPARTMENT

2165

ORDER

My this order will dispose of the departmental inquiry, which is conducted against Constable Abid No. 2165, on the allegations that he, while posted at Police Station Garhi Kapoora, Mardan deliberately absented himself for 04 months, 07 days (Total 128 days). He was marked absent vide DD No. 10 dated 03.02.2015 and resumed duty vide DD No. 06 on 11.06.2015. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.

In this connection, Constable Abid No. 2165, was issued charge sheet vide this office No. 995/R, dated 13.07.2015 and also proceeded against departmentally through the Haroon Badshah A.DSP/HQrs: Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 242/DSP/HQrs: dated 31.08.2015 as the allegations have been established against him and recommended him for major punishment.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Abid No. 2165, is hereby dismissed from service with immediate effect, while his absence period treated as leave without pay in exercise of the power vested in me under the above quoted rules.

Order announced
O.B No. 1720
Dated 28/8/2015

(Faisal Shanzad) PSP
District Police Officer,
Mardan.

No. 9093 /GB dated Mardan the 28/8/2015

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs: Mardan.
4. The Pay Officer (DPO) Mardan.

A

16 7



ANNEXURE

B

To

The D.I.G, Police,
Mardan Region-1,
Mardan.

ATTESTED

ADAM KHAN

Through proper Channel.

Subject:- Appeal against the order of the D.P.O, Mardan, regarding dismissal of Appellant from service.

Sir,

With reference to the order of the D.P.O, Mardan, as contained in O.B. No. 1720 dated 28.09.2015 (Endorsement No.9093/GB dated 28.09.2015), whereby I am dismissed from service.

Copy attached.

It is submitted that the impugned order is illegal, unjustified and against the law on the subject. The same is liable to be set-aside on the following amongst many other grounds:-

1. That I am condemned unheard, as I was not provided the opportunity of proper hearing.
2. That I was not communicated the charge sheet and the statement of allegations, according to the relevant rules.
3. That I was not informed about the holding of the enquiry proceedings. I learnt about it, through private source, on the day, fixed for holding enquiry and I visited the office of the A.DSP (H-Q)/the Enquiry officer. Where the reader of the A.DSP, delivered to me the charge sheet. He wrote the reply thereto himself and asked me to sign the same.
4. That the said reader took the charge sheet from me back in original. Even, he did not allow me to make copies thereof for my record.
5. That no enquiry was conducted in my presence, as mentioned in the impugned order, nor any witness was examined in my presence.

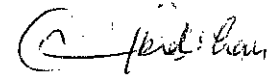
B

- 8
- (8)
6. That I am condemned unheard throughout.
 7. That I was not served with final show cause notice nor supplied the copies of the enquiry report and the relevant records.
 8. That the material fact was not taken into consideration that my father was suffering with cardiac disease, as well as, diabetes, who died of it. Copies of his Medical record ^{are} attached.
 9. That I was not conveyed the impugned order. I learnt about the impugned order on 29.10.2015 and the same was supplied to me on my application.
 10. That I remained confined to bed till yesterday.
 11. That the impugned punishment is too harsh in the circumstances.

It is requested that setting aside the impugned order, I may kindly be re-instated into service with back service benefits and oblige.

Dated: 15.02.2016.

Your s Obediently.


(Abidkhan)

Ex-Constable No. 2165,
Police Station, GarhiKapura, Mardan.

No - 1728/SS
Dt - 1-3-16

DPO/Mardan

ADTESTED
Adil

ORDER.

ADAM KHAN

This order will dispose-off the appeal preferred by Ex-Constable Abid Khan No. 2165 of Mardan District Police against the order of District Police Officer, Mardan wherein he was dismissed from service vide OB No. 1720 dated 28.09.2015.

Brief facts of the case are that he, while posted at Police Station Garhi Kapoora, Mardan deliberately absented himself for 04 months, 07 days (Total 128 days). He was marked absent vide daily diary No. 10 dated 03.02.2015 and resumed duty vide daily diary No. 06 on 11.06.2015. His this attitude adversely reflected on his performance, while discharging his official duty which is an indiscipline act and gross misconduct on his part. In this connection, he was issued charge sheet and also proceeded against departmentally through the Haroon Badshah A.DSP/HQrs: Mardan, who after fulfilling necessary process, submitted his findings to the District Police Officer, Mardan as the allegations have been established against him and recommended him for major punishment. The District Police Officer, Mardan agreed with the findings of enquiry officer and the alleged Constable was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 16.03.2016, but he failed to justify his absence and could not produce any cogent reason about his absence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith being time barred.

ORDER ANNOUNCED.

07c
 (MUHAMMAD SAEED)PSP
 Deputy Inspector General of Police,
 Mardan Region-I, Mardan. *Ab*

No. 2356 /ES, Dated Mardan the 24/03 /2016.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 153/LB dated 09.03.2016. Her service roll is returned herewith for record in your office.

(*****)

C

درخواست / اپیل نمبر

جناب عالی

آدھی

درخواست حسب ذیل ہے

1. ہم کم سائل / اپیلٹ خیر خواہوں کے

کے طور پر ڈیوٹی سرانجام دیتا تھا

دہلیت داری اور امانت داری میں ڈیوٹی کرتے

2. ہم کم سائل کے والد کے باڈن میں انکشن (injection)

ہو گیا تھا۔ جو اسے ایسے ہیاب خطرناک شکل اختیار کر گیا۔

3. ہم کم سائل کا بڑا بھائی ملک سے باہر مزدوری کیے گئے تھے اور

اس کی بہاداری اور خدمت کیے گئے گھرانے کے علاوہ گھر میں کوئی

اور موجود نہ تھا۔

4. ہم کم سائل اپنے والد کے علاج کے سلسلے میں اس کے سالانہ

دن رات مختلف ڈاکٹروں اور ہسپتالوں میں گھومتا رہا۔ اور

ہم سلسلہ زوری 2015ء میں شروع ہو کر تقریباً چار مہینے

اس کا علاج میں ملوث رہا۔ لیکن آخر میں اس کے

باڈن کاٹنا پڑا۔ اور پھر نکلنے کا مورخہ 15-6-11 کو ڈیوٹی

پر حاضر ہوا۔ (پیدائش کے کاغذات لفظی)

5. ہم کم ڈسٹرکٹ پولیس افسر نے لٹریچر R/995 مورخہ 15-7-13

کو جاری شیٹ دیا گیا۔ جس کی رو سے سائل کو سر دس سے

پر حاضری کیا گیا۔

6. سائل کے والد کو دل کی بیماری سے آگھیرا۔ اور اس کی خدمت

میں دوبارہ ٹنگ گیا۔ اور ڈیپریفٹ میں اپیل کا وقت نہ ملا۔

اور پھر صبر سے والد کی فونٹل ہوئی۔

7. سائل نے بعد میں ڈیپریفٹ ہیل پولیس کو درخواست دی۔

جو Time barred کی وجہ سے نامنتظر ہو کر سائل کی برخاستگی

پر قرار رکھی گئی۔

(ارڈر کی کاپی لفیجے)

8. سائل ایک نریب گھونٹے سے لگا رکھے تھے۔ اور سائل

اپنے گلو کے چولہے کو جلانے کے لیے در بدر دو سو سے شتروں

میں مزدوری کرتا رہا۔

لہذا آپ صہبان سے التماس ہے۔ کہ منظور اپیل / درخواست

سائل کی برخاستگی کے حکم کو ختم کر کے سائل کو نوٹری

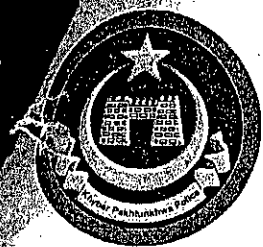
پر بحال کرنے کے احکامات صادر فرمایا جائے۔

تاریخ 28/2/17

العالمی

کامپلٹنگ کلر 2165 مردان

(Signature)



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA ANNEXURE
Central Police Office, Peshawar

No. S/6729-38 /17, Dated Peshawar the 09/06/2017

ADAM KHAN

- To:
1. The Capital City Police Officer, Peshawar.
 2. The Addl: IGP/Commandant, Elite Fore, Khyber Pakhtunkhwa, Peshawar.
 3. The District Police Officer, Nowshera.
 4. The District Police Officer, Mardan.
 5. The District Police Officer, DIKhan.
 6. The District Police Officer, Lakki Marwat.

Subject:- **APPEALS**

Memo:

Applications are submitted by the following Ex-Constables have been examined in the Appellate Boards meetings held on 18.05.2017 & 25.05.2017 and filed being badly time barred. The applicants may please be informed accordingly:-

S. No.	Name of Petitioners
1.	Ex-FC Haider Ali No. 1079.
2.	Ex-FC Farhat Ali Shah No. 1146
3.	FC-FC Raees Khan No. 1878
4.	Ex-FC Usama No. 1990
5.	Ex-FC Rifat Ullah No. 1014
6.	Ex-FC Abid Khan No. 2165 ✓
7. ✓	Ex-FC Adnan No. 1040 ✓
8.	Ex-FC Jamil Khan No. 979

Recd

11/8/17

(ARIF SHAHBAZ KHAN)
AIG Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

Endst: No. & date even.

Copy of above is forwarded to the:-

1. Addl: IGP/Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region, Mardan.
3. Deputy Inspector General of Police, Bannu Region, Bannu.
4. Deputy Inspector General of Police, DIKhan Region, DIKhan.

P/13

ANNEXURE

"F"

To

ARRESTED
Held

ADAM KHAN

The Registrar,
Right to Information Commission,
Govt. of U.P.K.

7th Floor Tasneem Plaza 6th Saddar Road,
Peshawar Cantt.

Subject: Requisitioning of records of service.

Sir,

I was serving as Constable and posted at Police Station, Garhi Hafiza Mardan, when I was dismissed from service vide DB No. 1720/Endorsement No. 909/98 dated 28.09.2015.

I was shown the Charge Sheet by the Reader of The A.D.S.P (H.Q.) / The enquiry officer (Mardan), who wrote the reply thereof himself. But, he did not allow me to take copies thereof.

Now, I need the copies of the said documents for submission to The Service Tribunal Peshawar, with my Appeal. But, the said officers are reluctant to provide me the copies thereof.

It is requested that the aforesaid documents may be requisitioned from the office of the D/O Mardan and supplied to me, for submission to The Service Tribunal, Peshawar.

Dt 30.12.2018

Yours obediently

(Abid)
Ex Constable no 2165
village Bughdada,
Mardan.

Dr. Pir Alam Said

M.B.B.S, Dip. Diab
Diabetologist

14
هوالتانی

ANNEXURE
ATTESTED

Adam

ADAM KHAN

ڈاکٹر پیر عالم سید

ایم بی بی ایس

ڈپلومہ ڈی آئی اے بی

ماہر امراض شوگر

Name

Haji Hanif Ullaha

Age

Sex

♂

Date

30/12/13

Clinical Record

DM 44y

HTN 44y

BP 120/80

Rx

Inj Insuman Carbo 25

20

رات 10

Insulin

Syringes B D

Tab Om

10

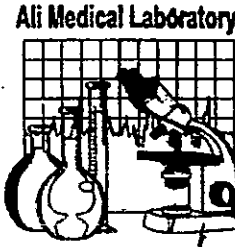
رات 10

Dase +

Tab

ALI MEDICAL LABORATORY

Opp: D.I.G. House Aman Plaza,
College Chowk Mardan
Ph: 0301-8338481
0313-9215067



15
ATTESTED
ADAM

علی میڈیکل لیبارٹری
بالمقابل ڈی.آئی. جی ہاؤس
امان پلازہ کالج چوک مردان
فون: 0301-8338481
0313-9215067

Patient Name Hafiz Ullah - Ukinid Date 2012-13

Referred by: Dr. Amir Alam Said Sh Sex M

HEMATOLOGY		
Test		Normal Range
Hb		F: 12 - 16 G/dl M: 14 - 18 G/dl
TLC		4000-11000/cmm
DLC		
Polys		40% -75%
Lymphos		20% -45%
Mons		2% -10%
Eosins		1% -6%
Mp		
Platelets		150,00-400000/cmm
Bleeding Time		2-7 Min
Clotting Time		5-11 Min
ESR		Up to 0.07 mm/ hour

Remarks: _____

URINE EXAMINATION	
Test	Result
Colour	
PH	
Sp Gravity	
Sugar	
Albumin	
RBC,s	
Pus Cells	
Crystals	
Costs	
Epithelial Cell	
Pregnancy	

SEROLOGY

Test	Result
WIDAL	
TO _____	TH _____
AO _____	AH _____
BO _____	BH _____

BRUCELLA

Abortus _____
Melitensis _____

Blood Group

RH Factor _____

Toxoplasma _____

R.A Factor _____

ASO Titre _____

ANF _____

VDRL _____

Typhidot _____

Typhidot Igm _____

Typhidot igG _____

HCV Ab _____

HBS Ag _____

Hiv _____

H. Pylori _____

CHEMISTRY

Test	Result	Normal Range
Sugar (F)		65-100 mg/dl
Sugar (R)	<u>295</u>	100-180 mg/dl
S. Bilrubin		0.1-1.3 mg/dl
SGPT (ALT)		8-44 u/l
Alk. Phosphatase		Upto 220 mg/dl
Urea		10-45 mg/dl
S. Creatinine		0.6-1.3 mg/dl
Uric Acid		M: 2.4 - 7.0 mg/dl F: 2.4 - 6.0 mg/dl
Cholestrol		150-250 mg/dl
S. Triglycerides		Upto 220 mg/dl
S. Amylase		Upto 220 mg/dl
S. Calcium		8-10 mg/dl

Remarks: _____

Lab. Incharge

Dr. Pir Alam Said

M.B.B.S, Dip. Diab
Diabetologist



16

ANNEXURED I

ADAM KHAN
ڈاکٹر پیر عالم سعید

ایم بی بی ایس

ڈیپلومیڈی آئی اے بی

ماہر امراض: شوگر

Name Haji Hanifullah Age 70 Sex ♂ Date 22/2/14

Clinical Record

DM 4yr
HTN 4yr
B.P. 120/80

Rx

Inj Humulin 70/30

C 20

رات 10

~~Inulin~~

Carteys 70/30 (01)

Tab Resin
رات 10

Tab Dax
رات 10

SURGEON

Dr. Abdur Rehman Khilji

M.B.B.S (Pesh)
M.C.P.S (Surgery), F.C.P.S-II (Surgery)Surgical SpecialistMardan Medical Complex Mardan.
Cell. 0333-9867267

سرحدی ڈاکٹر عبدالرحمن خیلجی
ایم بی بی ایس (پشاور)
ایم سی پی ایس (سرجری)، ایف سی پی ایس (II-سرجری)

مردان میڈیکل کمپلکس مردان
Mob. 0333-9867267

Patient's Name

Habibullah

Age

Date

2-2-15

Clinical Record

Rx

D.M Sycos

BP 120/70

Advall

HBS/negtor
HCVRBS
180 mg

if needed

$$\frac{8}{20} \text{ رات } | 10$$

Tab Ceftriaxone 3mg

1-1

if Cefdem I am (10)

① روزانہ

Cap. vobosef 300mg

1-1

Handwritten signature/initials

18

Al-Falah Clinical laboratory

ANNEXURE

K
ATTESTED

AFCL

Murad Market Bughdada chock Mardaa
Mob:0304-7602600

lab Incharge

Sadiq Rahim
BKMC Mardan
MMCT H Mardaa

ADAM KHAN

PATIENTs NAME .	Haaf uillah	LAB ID.	48
ADVISED.	Self	AGE.	Yrs
DATED.	9/02/2015	SEX.	m
SPECIMEN.	BLOOD		
TEST REQUIRED.	FBS		

REPORT

Tests	Results	Units	Normal Range
B.SUGER (FASTING)	148Mg/DL		80 - 120 MG/DL

REMARKS :-Glucose level Is High


Signature



MARDAN MEDICAL COMPLEX

Teaching Hospital Mardan KPK

OUT PATIENTS DEPARTMENT

RS-10

EXURE

ATTESTED
Adam Khan

ADAM KHAN

Name: ADAM KHAN Sex: Male

Department: Cardiology Address: Mardan

OPD No. 113031954 Date: 02-11-2019

R/- Entered by: GHAFAR / 11:13:31 AM

History

Clinical Examination

Provisional Diagnosis

Investigations Required

PM
ATN

Chest pm
180/100
ECG
ECHO
RBS

D. Sabir

20

ATTESTED
Anwar ANNEXURE "M"

PATHOLOGY DEPARTEMENT MMCH, MARDAN

ENTITLED FREE

PATIENTNAME Atorif Ullah

DATE 03/3/15

SEROLOGY			BOI-CHEMISTRY			
Tests	Report	Tests	Report	N. Range		
Blood Group		Sugar Fasting		60-- 115mg/dl		
H.Pylori		Sugar Random	176	70-- 130mg/dl		
R A Factor		Blood Urea		10--- 48mg/dl		
ASO Titer		Serum Creatinine		Upto 1.0mg/dl		
HBS Antigen		Serum Uric Acid		3.5- 7.7mg/dl		
Anti HCV		SGPT (ALT)		Upto 40u/l		
HIV		T. Billirubine		Upto 1.0mg/dl		
VDRL		D. Billirubine		<0.3mg/dl		
ANF		In. Billirubine		<0.7mg/dl		
TYPHIDOT	IgG	Alkaline phosphates		120250U/L		
	IgM	Serum Cholesterol		120- 200mg/dl.		
TAXOPLASMA	IgG	Triglycerides		120- 200mg/dl		
	IgM	Total lipids		450- 850mg/dl		
WIDAL	TO	ELECTOLYTS				
	TH				Na+	135-145mEq/l
	AO				K+	3.5--5.1mEq/l
	BO				Cl-	98--106mEq/l
BRUCELLA	Ab					
	Mel					

Remarks.....

Lab.Tech.....

Cheif.Pathologist.....

73



MARDAN MEDICAL COMPLEX TEACHING HOSPITAL MARDAN
 CARDIOLOGY DEPARTMENT
 ECHOCARDIOGRAPHY REPORT

Patient Name: Hanifullah

Age: 65 years

Sex: Male

Date:

03-Mar-15

Weight: Adull

Ref-By: OPD

Address:

Mardan.

M-Mode / 2D Measurements	Observed	Normal	Doppler Study	Gradient mm HG		Regurgitation
				Peak	Mean	
Left Vent Diastolic Dimension	5.2	5.7	Mitral Valve Peak	0	0	+1
Left Vent Systolic Dimension	3.8		Tricuspid Valve Peak	0	0	---
Left Atrial Dimension	3.7	4.0	Aortic Valve Peak	0	0	---
Right Vent Dimension	2.3	2.6	Pulmonic Valve Peak	0	0	---
Aortic Root Dimension	2.3	3.7	VSD(G)	0		---
Inter Vent Septal Thickness	0.9	1.1	RVSP	0		---
Left Vent Post Wall Thickness	0.9	1.1	MV	0.0		---
VSD Size	0.0	---				
LPA Size	0.0	---				
RPA Size	0.0	---				
LV Fractional Shortening %	27.1	✓				
LV Ejection Fraction %	5	---				
Mitral Valve Area (2D)	0.0	---				

Comments on M-Mode / 2D:

LA / LV / RV are normal in size.

Normal valvular structures.

Preserved LV systolic function.

No definite segmental wall motion abnormality seen.

No pericardial effusion seen.

No MVP seen.No ASD / VSD seen.

Comments on Doppler:

E and A ratio across mitral is reversed.

MR documented.

Final Impression:

LV diastolic dysfunction.

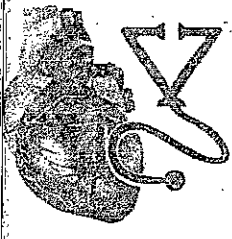
Mild MR.

Signature

Dr. Muhammad Israr

M.B.B.S., Dip. Card, PIC
Consultant Cardiologist
Mardan Medical Complex Teaching Hospital
Member Pakistan Cardiac Society

Heart Clinic



ڈاکٹر محمد اسرار

ایم بی بی ایس، ڈپ کارڈ، پی آئی سی
کنسلٹنٹ کارڈیالوجسٹ
مردان میڈیکل کمپلیکس ٹیچنگ ہسپتال
ممبر پاکستان کارڈیک سوسائٹی

09 MAR 2016
Date _____

Hassan

Slimet
S. B. S.

155

DM

CA

Card
2.5

probable
16.68

Re: pacc
1. 0. 0. 5

Non-plest-1

Qa220

چھٹی بروز اتوار

اوقات کار: عصر سے عشاء تک

23

P

ATTENDED
Ashraf

ADA

PATHOLOGY DEPARTEMENT MMCTH, MARDAN

PATIENTNAME.....*Farid*.....DATE.....*15/3*.....

SEROLOGY		BOI-CHEMISTRY		
Tests	Report	Tests	Report	NI Range
Blood Group		Sugar Fasting		60-- 115mg/dl
H.Pylori		Sugar Random	<i>260</i>	70-- 130mg/dl
R A Factor		Blood Urea	<i>27</i>	.10-- 48mg/dl
ASO Titer		Serum Creatinine	<i>0.92</i>	Upto 1.0mg/dl
HBS Antigen		Serum Uric Acid		3.5- 7.7mg/dl
Anti HCV		SGPT (ALT)		Upto 40u/l
HIV		T. Billirubine		Upto 1.0mg/dl
VDRL		D. Billirubine		< 0.3mg/dl
ANF		In. Billirubine		<0.7mg/dl
TYPHIDOT	IgG	Alkaline phosphates		120250U/L
	IgM	Serum Cholesterol		120- 200mg/dl
TAXOPLASMA	IgG	Triglycerides		120- 200mg/dl
	IgM	Total lipids		450- 850mg/dl
WIDAL	TO	ELECTOLYTS		
	TH	Na+		135-145mEq/l
	AO	K+		3.5--5.1mEq/l
	BO	Cl-		98--106mEq/l
BRUCELLA	Ab			
	Mel			

Remarks.....*W*.....

Lab.Tech.....*W*.....Chief Pathologist.....

SURGEON

Dr. Abdur Rehman Khilji

M.B.B.S (Pesh)

M.C.P.S (Surgery), F.C.P.S-II (Surgery)

Surgical Specialist

Mardan Medical Complex Mardan.

Cell. 0333-9867267



ANNEX UNTESTED

سرور جن ڈاکٹر عبدالرحمن خلیجی

ایم بی بی ایس (پشاور)

ایم سی پی ایس (سرجری)، ایف سی پی ایس (II-سرجری)

سرور جن ڈاکٹر عبدالرحمن خلیجی

مردان میڈیکل کمپلکس مردان

Mob. 0333-9867267

Patient's Name

Hamidullah

Age

Date

25-3-15

Clinical Record

Rx

DM Severe

BP 120/70

Adx

RBS
180 mg

ij metard

$$\frac{B}{E} / \frac{20}{10}$$
Tab. Creatyl young
1 + 1ij velosefory
1 + 1Tab. Adalomat
1 + 1cap. Evion young
1 + 1

Khalid

Mob: 0300-9177689
0345-9334989

کلینک: واجد علی میڈیکل کمپنی بلڈ مقابلہ DHQ، ہسپتال حارث مارکیٹ گجوان روڈ مردان۔

25

"R"
ANNEXURE ALTESTED

Dr. Wazir Ahmad Khan

M.B.B.S (KMC)

Dr of Medicine

D.H.Q Hospital Mardan

Ph: 0333-9865728



ڈاکٹر وزیر احمد خان

ایم۔بی۔بی۔ایس (KMC)

ڈاکٹر آف میڈیسن

D.H.Q ہسپتال مردان

فون: 0333-9865728

Haji Muhammad Khan

15-4-15

D.M syone

HTN - syone

B.P. 130/110
mild

1mg Atenolol 2/30

15/25
15

TWO
deluzo

RBS/FBS
300 / 160

ESR 45

1mg Clozemil 2/30

15/25
15

1mg Metoprolol 2/30

15/25
15

1mg Kelsan - D

15/25
15

Handwritten signature

مدیحہ مدیکوز شکرى بابا کاٹلنگ

Dr. Wazir Ahmad Khan**M.B.B.S (KMC)****Dr of Medicine****D.H.Q Hospital Mardan****Ph: 0333-9865728****ڈاکٹر وزیر احمد خان**

ایم۔ بی۔ بی۔ ایس۔ (KMC)

ڈاکٹر آف میڈیسن

D.H.Q ہسپتال مردان

فون: 0333-9865728

Haji Hamza Khan

27/4/15

D.M syone

HTN syone

B.P = 120/80

Anurad

RBS 230

or by Havelukha 70/30

$$\frac{120}{80} / 28$$

$$120 / 15$$

or by Cymen 80/60

or Cymen 80/60

or Cymen 80/60

اشفاق میڈیکل اینڈ گائنی سنٹر

لیڈی ڈاکٹر نرہمت اشفاق
 ایم بی بی ایس . آر ایم پی . پی ایم ڈی سی
 سابق ہاؤس فزیشن اینڈ سرجن
 لیڈی ریڈنگ ہسپتال، پشاور
 الرٹراساؤنڈ سپیشلسٹ



0345-9700786

ڈاکٹر محمد اشفاق
 ایم بی بی ایس (پشاور)
 ایم سی پی ایس (میڈیسن)
 ڈپلومہ ان الرٹراساؤنڈ (اسلام آباد)
 میڈیکل سپیشلسٹ

معالجہ امراض نسوان، زچہ و بچہ

Name Hanumrah Age 50 Sex ♀ Date 3/5/15

Clinical Features

Rx

Cl
 DM
 HTN
 4 leg
 amputator
 done
 on clo
 polyuria
 polydipsia
 polyphagia
 150/110 Hg
 101 G
 Ad

Tab. Aspirin 70/30
 200
 Tab. norgestrel 400
 10
 Tab. Dapson 200
 20
 Tab. yaldon 200
 20
 Tab. Depro 10
 10
 Tab. Detralex 200
 30
 Tab. furosemide 100
 20

اشفاق میڈیکل اینڈ گائنی سنٹر

لیڈی ڈاکٹر نرہت اشفاق
ایم بی بی ایس - آر ایم بی - پی ایم ڈی سی
سابق ہاؤس فزیشن اینڈ سرجن
لیڈی ریڈنگ ہسپتال، پشاور
الٹراساؤنڈ سپیشلسٹ

ڈاکٹر محمد اشفاق
ایم بی بی ایس (پشاور)
ایم سی پی ایس (میڈیسن)
ڈپلومہ ان الٹراساؤنڈ (اسلام آباد)
میڈیکل سپیشلسٹ



0345-9700786

معالج امراض نسوان، زچہ و بچہ

Name Hanif Jach Age 50 Sex ♂ Date 27/5/15

Clinical Features

Rx

cl
2
H/O
non
cl
Jan
limbs
ok
120/90
L

1/2/20
200
Lab. Hpt
10
Lab. Fedu
20
G.U. 1/1
Lab. Lengh
600
20
Lab. Hpt
20
Lab. Uric
20
Lab. non-renal
20
Lab. urea
20

VAKALAT NAMA

In the Court of Service Tribunal, Peshawar.

Appeal No. _____ of 2018

Abid

(Petitioner)
(Plaintiff)
(Appellant)

VERSUS

The Police Deptt etc;

(Respondent)
(Defendant)

I/We Abid the

above noted Appellant do

hereby appoint and constitute **Muhammad Adam Khan, Advocate Mardan** as Counsel in subject proceedings and authorize him to appear, plead etc., compromise, withdraw or refer to arbitration for me/us, as my/our Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated: 03-01-2018

(Signature)
(Signature of Client)
(Abid)

MUHAMMAD ADAM KHAN,
Advocate,
District Courts, Mardan.

(Signature)
Accepted

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 25/2018.

Abid (Ex-Constable No. 2165).....Appellant.

VERSUS.

District Police Officer, Mardan
& others.....

Respondents.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.
7. That the instant appeal is barred by law & limitation.

REPLY ON FACTS.

1. Correct, hence, no comments.
2. Incorrect. The appellant preferred departmental representation to respondents No. 2 on 01.03.2016 (date endorsed on the impugned appeal) which was too late. Hence, his appeal was termed badly time-barred by the departmental appellate authority. **(Copies of appeal & IGP rejection order are attached as Annexure-A & B).**
3. Correct and detailed in Para-2 above.
4. Pertains to record, however, the appellant, under rules/law, had right of only one appeal (i.e to respondent No. 2) which he delayed & was declared badly time-barred besides his failure to justify his prolong absence.
5. Incorrect. The appellant has been dealt under rules/law and provided all that he required or requested. **Besides**, it is self-admitted that he himself did not turn even a single stone to inquire about his application/appeal to worthy IGP & its destination at CPO Peshawar. This shows his laziness & disinterest in service. The impugned orders, being in accordance with principles of natural justice, are justified & legal, hence, tenable in the eyes of law.

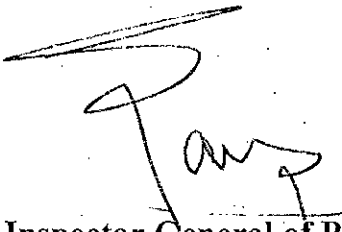
REPLY ON GROUNDS:-

1. Incorrect. The appellant was summoned & heard by the inquiry officer & even the departmental appellate authority i.e respondent No. 2. **(Copy of appeal rejection order by DIG Mardan and inquiry are attached as Annexure- C & D)**
2. Incorrect. The appellant has been communicated the impugned charge sheet on 10.08.2017 & his signature in this regard is endorsed on the back thereof. **(Copy of served charge sheet is attached as Annexure-E)**

3. **Incorrect.** The appellant was summoned by the inquiry officer, whereat, he himself submitted his written statement which is placed on inquiry file. **(Copy of statement to charge sheet is attached as Annexure-F).**
4. **Incorrect.** A copy of the impugned charge sheet was delivered upon him in person, duly signed/endorsed by him on the back of Original Charge Sheet.
5. **Incorrect.** Proper departmental inquiry under rules/law was conducted & there was every documental proof/evidence against him on record. His previous record, which is filled with a series of red/bad entries, also speaks of against him. **(Copies of red/bad entries are attached as Annexure-G).**
6. **Incorrect.** The appellant might have applied on a very belated stage to the Right To Information & there is nothing on record in this regard.
7. **Incorrect, hence, denied.**
8. **Incorrect & baseless, hence, denied.**
9. **Incorrect.** The appellant was dealt under rules/law, hence, denied.
10. **Incorrect** as the rules/law lays down proper procedure to earn leave, casual or otherwise, which the appellant did not adopt. Hence, absented deliberately.
11. **Incorrect, hence, denied.**
12. **Incorrect, hence, denied.**
13. **Incorrect.** The impugned orders are in accordance with rules/law.
14. The appellant was treated as per rules/law.
15. The respondents also seek permission to raise additional grounds at the time of arguments.

PRAYER:-

The prayer of the appellant, being baseless & devoid of merits, is liable to be dismissed with costs.



**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)**



**Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)**



**District Police Officer,
Mardan
(Respondent No. 03)**

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

Service Appeal No. 25/2018.

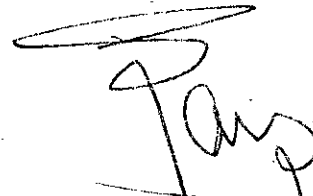
Abid (Ex-Constable No. 2165).....Appellant.

VERSUS.

District Police Officer, Mardan
& others.....Respondents.

COUNTER AFFIDAVIT.

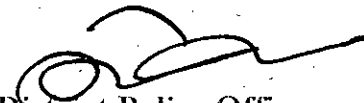
We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.



**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)**



**Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)**



**District Police Officer,
Mardan
(Respondent No. 03)**

درخواست / اپیل عہدہ بحالی

8

جناب عالی

درخواست حسب ذیل ہے۔

1. ہم کم سنائل / ایڈلٹ خیر حکموا پولیس میں کانسٹیبل کے طور پر ڈیوٹی سرانجام دیتا تھا۔ اور سنائل نہایت دلچسپ داری اور ایما داری اس کی ڈیوٹی کرتا تھا۔
2. ہم کم سنائل کے والد کے پاؤں سے انفکشن (Infection) شروع ہو گیا تھا۔ جو ایسے ایسے نہایت خطرناک سنائل اختیار کرتا تھا۔
3. ہم کم سنائل کا بڑا بھائی ملک سے باہر مزدوری کیلئے گیا تھا۔ اور اُس کی بھاری داری اور خدمت کیلئے سنائل کے علاوہ گھر میں کوئی اور موجود نہ تھا۔
4. ہم کم سنائل نے والد کے علاج کے سلسلے میں اُس کے سالانہ دن رات مختلف ڈاکٹروں اور ہسپتالوں میں گھرنا رہا۔ اور ہم سلسلہ فوری 2015ء میں شروع ہو کر تقریباً چار مہینے اُس کا علاج میں مصروف رہا۔ لیکن آخر میں اُس کی پاؤں کاٹنا پڑا۔ اور پھر بعد کا مورخہ 15-6-11 کو ڈیوٹی پر حاضر ہوا۔ (بیمار کے حالات لکھے)
5. ہم کم ڈسٹرکٹ پولیس افسر کے لٹریچر 995/R مورخہ 13-7-15 کو خارج شپ دیا گیا۔ جس کی رو سے سنائل کو سروس سے برخواست کیا گیا۔

6. سائل کے والد کو دل کی بیماری سے آگہرا - اور

میں دوبارہ تک گیا - اور ڈیپارٹمنٹ میں اپیل کا وقت
اورڈر میں والد کی فوٹو بھی ہو گئی -

7. سائل نے بعد میں ڈیپارٹمنٹ میں اپیل کو درخواست دیا

جو Time barred کی وجہ سے نامنظور ہو کر سائل کی برخاستگی
مقرر رکھی گئی -

(ارڈر کی کاپی لکھی)

8. سائل ایک نریب گھر سے لگے رکھے ہیں - اور سائل

اپنے گھر کے چولہے کو جلد سے لگے رکھے در بدر دوسرے شہروں
میں مزدوری کرتا رہا -

لہذا آپ صاحبان سے التماس ہے - کہ منظوری اپیل / درخواست

سائل کی برخاستگی کے حکم کو ختم کر کے سائل کو نوٹری
پر بحال کرنے کے احکامات صادر فرمائے جائے -

سورج 28/2/17

الغافل

ماسٹر علی محمد 5165 فردان -

(Signature)

12
OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. S/6729-38 /17, Dated Peshawar the 09/10/2017.

To:

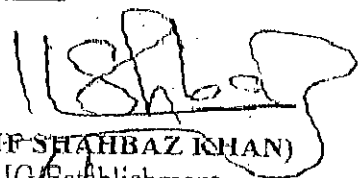
1. The Capital City Police Officer, Peshawar.
2. The Addl: IGP/Commandant, Elite Fore, Khyber Pakhtunkhwa, Peshawar.
3. The District Police Officer, Nowshera.
4. The District Police Officer, Mardan.
5. The District Police Officer, DIKhan.
6. The District Police Officer, Lakki Marwat.

Subject:- APPEALS

Memo:

Applications are submitted by the following Ex-Constables have been examined in the Appellate Boards meetings held on 18.05.2017 & 25.05.2017 and filed being badly time barred. The applicants may please be informed accordingly:-

S. No.	Name of Petitioners
1.	Ex-FC Haider Ali No. 1079.
2.	Ex-FC Farhat Ali Shah No. 1146
3.	FC-FC Races Khan No. 1878
4.	Ex-FC Usama No. 1990
5.	Ex-FC Rifat Ullah No. 1014
6.	Ex-FC Abid Khan No. 2165 ✓
7. ✓	Ex-FC Adnan No. 1040 ✓
8.	Ex-FC Jamil Khan No. 979


(ARIF SHAHBAZ KHAN)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

Endst: No. & date even.

Copy of above is forwarded to the:-

1. Addl: IGP/Commandant, Elite Force, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region, Mardan.
3. Deputy Inspector General of Police, Bannu Region, Bannu.
4. Deputy Inspector General of Police, DIKhan Region, DIKhan.

CHARGE SHEET UNDER KPK POLICE RULES 1975

I, Gul Afzal Khan District Police Officer, Mardan as competent authority charge you Constable Abid No. 2165, as follows.

That you constable, while posted at Police Station Sheikh Maltoon Mardan, deliberately absented yourself from the lawful duty vide DD No. 10 dated 03.02.2015 to DD No. 06 dated 11.06.2015 without any leave / permission of the competent authority. You are recommended for departmental action by DSP/SMT vide his office letter No. 131/R dated 19.06.2015.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to 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, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in person.


(GUL AFZAL KHAN)
District Police Officer,
Mardan

Handwritten signature: *Carl F. ...*

Handwritten text: *8165 ...*

Handwritten signature: *Carl F. ...*

Handwritten text: *10/1/...*

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 995 /R/D.A-P.R-1975.

Dated 13-07- /2015

DISCIPLINARY ACTION UNDER KPK POLICE RULES - 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority am of the opinion that Constable **Abid No. 2165**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.

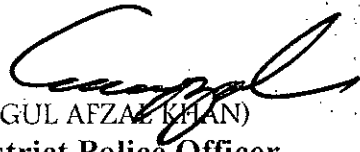
STATEMENT OF ALLEGATIONS

That Constable **Abid No. 2165**, while posted at Police Station ^{Gashu Kaydura} ~~Sheikh~~ Maltoon Mardan, deliberately absented himself from the lawful duty vide DD No. 10 dated 03.02.2015 to DD No. 06 dated 11.06.2015 without any leave / permission of the competent authority. He is recommended for departmental action by DSP/SMT vide his office letter No. 131/R dated 19.06.2015.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Mr: Haroon Badsha A.DSP/HQrs: Mardan** 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 official, 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.


(GUL AFZAL KHAN)
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 995 /R, dated Mardan the 13-7- /2015.

Copy of above is forwarded to the:

1. A.DSP/HQrs: Mardan for initiating proceedings against the accused official / Officer namely Constable **Abid No. 2165**, under Police Rules, 1975.
2. Constable **Abid No. 2165**, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

***** !!! *****

جزا - عالی

حوالہ چارج شیٹ نمبری 995/R حضرت مولانا صاحب
13-07-5

سائل ایک غریب گھرانے سے تعلق رکھتا ہے۔ کہ سال گھر کا ایک
 ذمہ دار بندہ ہے۔ سائل نے بوجہ مجبوری غیر حاضر کیا ہے۔ کیونکہ سائل
 کے گھر پر والد صاحب کیسے بیماری میں مبتلا تھا۔ جسکی بیماری
 اور علاج کرنا سائل کا فرض تھا۔ سائل نے اپنے والد صاحب کی علاج
 و تبت سے جھگڑوں سے کئی۔ لیکن پہلے شوگر کی بیماری بوجہ سے
 ایک ماؤں کاٹی گئی۔ غیر علاج حالے ایسا ہی ہے۔ ان کے سائل
 سے فرما رہا تھا۔ تقریباً 6.5 مہینے میں سائل کیسے بیماری میں والد صاحب
 کا علاج حالے فرما رہا تھا۔ جن سائل نے تقریباً ایک ماہ پر مہینے
 اپنی جائزہ چھٹا لینے آئین بازار سے لی۔ مگر بعد میں بوجہ مجبوری
 غیر حاضر کرنا پڑھا۔ جن سائل نے تبت کو کھینچا کہ بیماری کی تبت
 بیماری ایسا حد تک پہنچا۔ کہ آخر میں سائل کا والد صاحب
 فوت ہوا۔ ایسے میں سائل جو غیر حاضر کیا ہے۔ قصداً نہیں
 بلکہ بوجہ مجبوری کیا ہے۔ کیونکہ سائل نے علوہ گھر پر کوئی ذمہ دار
 نہ ہو کر رہا تھا۔ ایسے ہذا کو لینے آئین بازار سے التماس فرماتا ہے۔
 کہ سائل نے خلاف جو چارج شیٹ غیر حاضر کیا ہے۔ سائل نے
 غرضی بوجہ نظر رکھے ہوئے سائل نے خلاف چارج شیٹ بلکہ کسی اور
 داخل دفتر کرنے کا حکم صادر کیا ہے۔

المعارض

2165 حسب نفاذ لکھنؤ
 حوالہ نمبر 5921408 0300

SUPERINTENDENT OF POLICE, HEADQUARTERS &
TRAFFIC, MARDAN

dated vide Order No. 995/R/D.A-P.R-1975 dated 13 July 2015.

Constable Abid No. 2165 of this district while posted in Police Station Kapoora, Mardan absented himself for 4 months , 7 days. (Total 128 Days.). He was marked absent vide D.D No 10 dated 03-02-2015 and resumed duty vide D.D No 06 on 11-06-2015.

INQUIRY & FINDINGS:

The accused official submitted his written statement that he proceeded on leave and since his father had cancer and he engaged himself in his treatment therefore he had to absent himself. The accused was asked if he applied for another term of leave to which he denied. He has 25 bad entries and no good entry in service record. His officers speak very low about his discipline and conduct.

RECOMMENDATIONS

Since the previous record of the accused is not ^{and} his period of absence is not justifiable as he did not apply for leave. It is therefore recommended that he is awarded a MAJOR PENALTY admissible under the rules.


(M. Haroon Badsha)
DSP/HQrs & Traffic

No. 242 /DSP/HQrs & Traffic dated 31 Aug 2015.

Constable Abid No. 2165, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

16. LEAVE, ABSENCE AND IN SERVICE

All periods not counting "approved service" to entered in red ink.

1		2			3	4
DATE		EXTENT			No. of District Order	Description of leave i.e. Privilege, hospital, sick leave, or furlough, or of absence, or forfeiture of approved service. All entries to be initialed, by Superintendent of Police.
	To	Years	Months	Days		
				(2)	1631 29/8/09	leave as per [] DPo/MIR
				(2)	2373 3/11/09	do DPo/MIR
				(4)	2744 2/12/09	do DPo/MIR
				(2)	944 20-3-10	do DPo/MIR
				(3)	1014 27-3-10	do DPo/MIR
				(11)	1054 30-3-10	do DPo/MIR
				(2)	1083 1-4-10	do DPo/MIR
				(3)	1579 10-5-10	do DPo/MIR
				(1)	1251 25-5-10	do DPo/MIR
				(1)	1877 27-5-10	do DPo/MIR
				(15)	1951 2-6-10	do DPo/MIR
				(8)	2801 4-6-10	do DPo/MIR

2165

ORDER

My this order will dispose of the departmental inquiry, which is conducted against Constable Abid No. 2165, on the allegations that he, while posted at Police Station Garhi Kapoora, Mardan deliberately absented himself for 04 months, 07 days (Total 128 days). He was marked absent vide DD No. 10 dated 03.02.2015 and resumed duty vide DD No. 06 on 11.06.2015. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.


In this connection, Constable Abid No. 2165, was issued charge sheet vide this office No. 995/R, dated 13.07.2015 and also proceeded against departmentally through the Haroon Badshah A.DSP/HQrs: Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 242/DSP/HQrs: dated 31.08.2015 as the allegations have been established against him and recommended him for major punishment.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Abid No. 2165, is hereby dismissed from service with immediate effect, while his absence period treated as leave without pay in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 1720

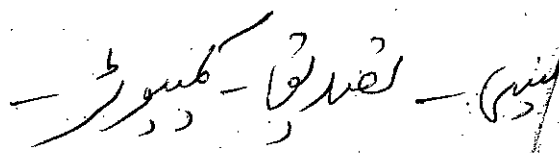
Dated 22/9 /2015


(Faisal Shahzad)PSP
District Police Officer,
Mardan.

No. 9093 /GB dated Mardan the 28/9 /2015

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs: Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OHC (DPO) Mardan.



7



"B"

Arum

The D.I.G, Police,
Mardan Region-1,
Mardan.

Through proper Channel.

Subject:- Appeal against the order of the D.P.O, Mardan, regarding
dismissal of Appellant from service.

Sir,

With reference to the order of the D.P.O, Mardan, as contained in
O.B. No. 1720 dated 28.09.2015 (Endorsement No.9093/GB dated
28.09.2015), whereby I am dismissed from service.

Copy attached.

It is submitted that the impugned order is illegal, unjustified
and against the law on the subject. The same is liable to be set-aside on the
following amongst many other grounds:-

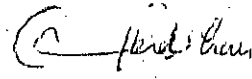
1. That I am condemned unheard, as I was not provided the opportunity of
proper hearing.
2. That I was not communicated the charge sheet and the statement of
allegations, according to the relevant rules.
3. That I was not informed about the holding of the enquiry proceedings. I
learnt about it, through private source, on the day, fixed for holding
enquiry and I visited the office of the A.DSP (H-Q)/the Enquiry officer.
Where the reader of the A.DSP, delivered to me the charge sheet. He
wrote the reply thereto himself and asked me to sign the same.
4. That the said reader took the charge sheet from me back in original.
Even, he did not allow me to make copies thereof for my record.
5. That no enquiry was conducted in my presence, as mentioned in the
impugned order, nor any witness was examined in my presence.

- 8
- (8)
- That I am condemned unheard throughout.
7. That I was not served with final show cause notice nor supplied the copies of the enquiry report and the relevant records.
8. That the material fact was not taken into consideration that my father was suffering with cardiac disease, as well as, daebities, who died of it. Copies of his Medical record ^{are} is attached.
9. That I was not conveyed the Impugned order. I learnt about the impugned order on 29.10.2015 and the same was supplied to me on my application.
10. That I remained confined to bed till yesterday.
11. That the Impugned punishment is too harsh in the circumstances.

It is requested that setting aside the impugned order, I may kindly be re-instated into service with back service benefits and oblige.

Dated: 15.02.2016.

Your s Obediently.


(Abidkhan)

Ex-Constable No. 2165,
Police Station, GarhiKapura, Mardan.

No - 1788/SS

Dt - 1-3-16

DPO/Mardan

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9

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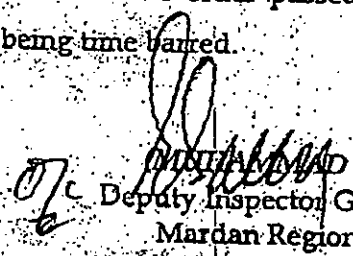
ORDER.

This order will dispose off the appeal preferred by Ex-Constable Abid Khan No. 235 of Mardan District Police against the order of District Police Officer, Mardan wherein he was dismissed from service vide OB No. 1720 dated 28.09.2015.

Brief facts of the case are that he, while posted at Police Station Garhi Kapoora, Mardan deliberately absented himself for 04 months, 07 days (Total 128 days). He was marked absent vide daily diary No. 10 dated 03.02.2015 and resumed duty vide daily diary No. 06 on 11.06.2015. His this attitude adversely reflected on his performance, while discharging his official duty which is an indiscipline act and gross misconduct on his part. In this connection, he was issued charge sheet and also proceeded against departmentally through the Haroon Badshah A.DSP/HQrs: Mardan, who after fulfilling necessary process, submitted his findings to the District Police Officer, Mardan as the allegations have been established against him and recommended him for major punishment. The District Police Officer, Mardan agreed with the findings of enquiry officer and the alleged Constable was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 16.03.2016, but he failed to justify his absence and could not produce any cogent reason about his absence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith being time barred.

ORDER ANNOUNCED.


MUHAMMAD SAEED (PSP)
Deputy Inspector General of Police,
Mardan Region-I, Mardan. *AM*

No. 2356 /FS Dated Mardan the 24/03 /2016.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 153/LB dated 09.03.2016. Her service roll is returned herewith for record in your office.

(.....)

C

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

Service Appeal No. 25/2018.

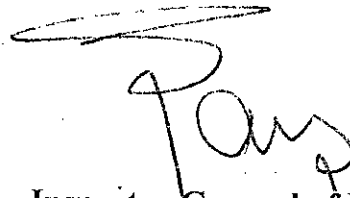
Abid (Ex-Constable No. 2165).....Appellant.

VERSUS.

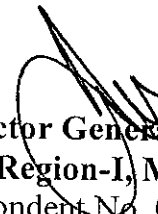
District Police Officer, Mardan
& others.....Respondents.

AUTHORITY LETTER.

Mr. Atta-ur-Rahman Sub-Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.



**Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 01)**



**Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 02)**



**District Police Officer,
Mardan
(Respondent No. 03)**

BEFORE THE SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL No.25/2018. Hearing 28.09.2018.

Abid V/S The Police Deptt; etc;

Rejoinder :-

Pry; Objections:-

All the preliminary objections are incorrect, false, misleading and based on malice.

Facts:-

1. No reply.
- 2 & 3. Incorrect and misleading. Denied. The impugned order was not conveyed to Appellant and even, the same is not endorsed to Appellant.
4. As per para-2 & 3 Above.
5. incorrect and misleading .Denied.

Grounds:-

- i. No Reply.
- ii. Incorrect & false. Denied. Even, the Appellate order inquestion was not sent to Appellant.
- iii. Need, No reply.
- iv. Para-4 is incorrect and misleading. Denied.
- v. to vii. Para-5 to 7 are incorrect and misleading Denied .The impugned order, as well as, The Appellats order contain that the departmental inquiry had been conducted. But, neither the Appellant was called to participate any such inquiry proceedings nor the copy of such inquiry report was supplied to Appallant.Hence, the said lecuna on the part of Respondent has made the impugned order, as void. While, the Appellant was not

proceeded against on basis of red/bad entries. This point is introduced in the comments for the first time in order to mislead this Honourable Tribunal. The Respondent were duty-bound to supply the requisite documents to the Appellant, enabling him to defend his case properly. The copy of inquiry report annexed with the comments contains that the officers of the Appellant speak very low about his discipline and conduct. But the same is not supported by any document nor statement of such officers. While, the statement of a witness not subjected to the test of cross examination, has no legal force.

Xiii To X : Para Nos. 8 to 10 of the comment are incorrect and false .Denied. But, the Respondents were reluctant to supply the relevant document. While, copy of reply to the charge Sheet is still not annexed with the comments.

xi. to xiii. Para 11 to 13 of Appeal are true and Correct. Denial there from is based on malice on the part of Respondents.

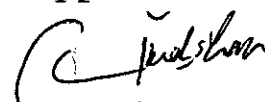
xiv. Para-14 is malafidely denied.

xv. No further reply.


It is prayed that on acceptance of the captioned Appeal, setting aside the impugned order, the Appellant may be re-instated into service with retrospective effect and back service benefits & also the costs of this Appeal.

Dated: 24-09-2018.

Appellant


(Abid)

Through :-


Muhammad Adam Khan
Advocate Mardan.

MUHAMMAD ADAM KHAN
B.A LLB Advocate
High Court Mardan

3

BEFORE THE SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL No.25/2018.

Abid V/S The Police Deptt; etc;

Affidavit

I, Abid S/O Hanif Ullah/The Appellant do hereby state on Solemn affirmation that the contents of this Rejoinder are true and correct to the best of my knowledge and belief.

Deponent

Abid Khan

(Abid)

