

S.A No. 1323/2018, Rashid Gul

26.11.2018

Counsel for the appellant present.

The appellant was employed as Constable in the respondent department who, due to his illness, remained away from his duty. That after completion of treatment he attempted to join his duty, however, was handed over an order dated 25.04.2009 whereby, on award of major punishment, he was dismissed from service from the date of absence. An undated departmental appeal was preferred by the appellant which also did not find favour with the respondents and was rejected on 19.09.2018.

I have heard learned counsel for the appellant whose main thrust was to the effect that the appellant was held back from performance of duty due to his poor health and upon recovery immediately went to resume duty but was not allowed.

The record shows that the appellant absented himself from training/duty since 25.11.2008 while the impugned order was passed, on completion of enquiry, on 25.4.2009. After more than 9 years departmental appeal was preferred by appellant which was in clear violation of Rule 17 of Khyber Pakhtunkhwa Government Servants (E&D) Rules, 2011. It is also a fact that the appellant failed to bring forward any evidence of his purported illness at the stage of departmental appeal or on the brief of instant appeal. As a matter of fact, "domestic problem" was mentioned as a reason for absence in the former appeal.

The appeal in hand is, therefore, without merit hence dismissed in limine. File be consigned to the record room.

  
Chairman

Announced:  
26.11.2018

DFA

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9/11/18

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Chairman

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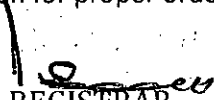

Announced:  
26.11.2018

Form- A

FORM OF ORDER SHEET

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

Case No. 1322/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/10/2018	<p>The appeal of Mr. Rashid Gul presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;">                       REGISTRAR 19/10/18                 </p>
2-	17-11-2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26-11-18</u>.</p> <p style="text-align: right;">                       CHAIRMAN                 </p> <p style="text-align: center; margin-top: 20px;"> <i>Handwritten note:</i> Set for 26-11-18                 </p>

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

**APPEAL NO. 1323 /2018**

**RASHID GUL**

**VS**

**POLICE DEPTT:**

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**APPELLANT**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK,**  
**ADVOCATE**

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

Khyber Pakhtunkhwa  
Service Tribunal

**APPEAL NO.** 1323 /2018

Diary No. 1543

Dated 19-10-2018

Mr. Rashid Gul, Ex-Constable No.239,  
Police Lines, District Hangu..... **APPELLANT**

**VERSUS**

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Regional Police Officer, Kohat Region at Kohat.
- 3- The District Police Officer, District Hangu.

..... **RESPONDENTS**

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 25.4.2009 WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND AGAINST THE APPELLATE ORDER DATED 19.09.2018 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS**

**PRAYER:**

That on acceptance of this appeal the impugned orders dated 25.04.2009 and 19.09.2018 may very kindly be set aside and the respondents may be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

1- That appellant was the employee of the respondent Department and had served the respondent Department as Constable No.239 for quite considerable period efficiently and up to the entire satisfaction of his superiors.

2- That during service the appellant moved an application for medical leave but the same was turned down by the respondent No.3 on no plausible reason. That due to illness the appellant absented himself from his lawful duty. That after gaining health the appellant approached the concerned quarter for joining of his duty but the respondent No.3 handed over the impugned dismissal order dated 25.04.2009 to the appellant. Copy of the impugned order is attached as annexure.....**A.**

3- That appellant feeling aggrieved from the impugned order dated 25.04.2009 preferred Departmental appeal before the respondent No.2 but the same has been rejected vide order dated 19.09.2018 on

Filed to-day

Registrar

19/10/18

1 - 71-114

10/10/18

no good grounds. Copies of the Departmental appeal and rejection order are attached as annexure.....**B & C.**

- 4- That appellant feeling aggrieved and having no other remedy but to file the instant appeal on the following grounds amongst the others.

**GROUND:**

- A- That the impugned orders dated 25.04.2009 and 19.09.2018 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That no charge sheet and statement of allegation has been issued to the appellant before issuing the impugned order dated 25.04.2009.
- D- That no show cause notice has been served on the appellant before issuing the impugned order dated 25.04.2009.
- E- That no chance of personal hearing/defense has been provided to the appellant and as such the appellant has been condemned unheard.
- F- That no publication whatsoever has been made before passing the impugned order dated 25.04.2009 which is mandatory as per Supreme Court Judgment before taking punitive action against the civil servant.
- G- That the absentia on the part of the appellant has neither intentionally nor deliberate but caused due to illness, therefore the impugned order dated 25.04.2009 is not tenable in the eye of law hence liable to be set aside.
- H- That the impugned order dated 25.4.2009 is void ab initio on the score that the same has been imposed on the appellant with retrospective effect.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 19.10.2018

APPELLANT

  
RASHID GUL

THROUGH:

  
NOOR MOHAMMAD KHATTAK

&  
  
SHAHZULLAH KHAN YOUSAFZAI  
ADVOCATE



**ORDER**

A-4

This order will dispose of the departmental enquiry initiated against Constable Rashid Gul No. 239 on the basis of allegations that he while undergoing Elite Course at Punjab Regiment Mardan, absented himself from training/duty with effect from 25.11.2008 till now.


Charge sheet together with statement of allegation was issued to him, to which he failed to submit his reply. An Enquiry Committee comprising Inspector Said Khan and SI Naik Dara Jan was constituted to conduct departmental enquiry against him under NWFP Removal from Service (SPECIAL POWERS) Ordinance 2000. Consequent upon the transfer of Enquiry Officer, the enquiry was entrusted to Mr. Shah Jehan, DSP/HQrs, Hangu for further proceedings. After completion of enquiry, the Enquiry Committee submitted findings on 21.4.2009 and recommended him for suitable punishment.

Thereafter, Final Show Cause Notice was issued to him, which was received by Rashid Khan s/o Amir Khan r/o Khairshah Banda Hangu, who stated that Constable Rashid Gul proceeded abroad and is not willing to serve further. He was also called in Orderly Room but he failed to appear on 24.04.2009.

Keeping in view of above and having gone through available record, the undersigned has come to the conclusion that the defaulter constable absented himself from duty, failed to appear and defend himself, which indicates that he was not interested to serve further and reportedly gone abroad. Moreover, in these circumstances his retention in Police Department is burden on public exchequer, therefore, I, Sher Akbar, PSP, S.St District Police Officer, Hangu in exercise of the powers conferred upon me, awarded him major punishment of Dismissal from Service from the date of his absence.

Order Announced.

OB No. 326  
Dated 25-4/2009.

  
(SHER AKBAR)  
PSP, S.St,  
DISTRICT POLICE OFFICER,  
HANGU.

**ATTESTED**

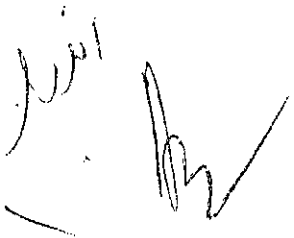


**OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.**

No. 2874-78/PA, dated Hangu, the 28/04/2009.

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

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



  
DISTRICT POLICE OFFICER,  
HANGU.

B-5

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE KOHAT  
REGION, KOHAT

SUBJECT: APPEAL AGAINST THE ORDER OF DPO HANGU  
ISSUED VIDE OB NO. 326 DATED 25-4-2009  
WHEREBY THE APPELLANT EX-CONSTABLE  
RASHID GUL NO. 239 WAS DISMISSED FROM  
SERVICE FROM THE DATE OF HIS ABSENCE

RESPECTFULLY SHESETH,

With veneration, the appellant submits the instant appeal for favorable and sympathetic consideration on the following facts and grounds.

FACTS: Allegation against the appellant was that he absented himself from training at Punjab Regiment Mardan while undergoing elit course w-e-f 25-11-2008. He was proceeded against departmentally and dismissed from service vide the impugned order. Hence this appeal.

GROUND:

- A. That the appellant has served for about ten years in the police department.
- B. That the appellant during his service, qualified drill course, Bomb disposal course, karatay course and is well qualified police officer.
- C. That due to serious domestic problems, the appellant could not attend to his official duties.
- D. That no charge sheet and final show cause notice was served upon the appellant.
- E. That the appellant is willing to serve the police department and assure the seniors that the appellant shall not give any chance of complaint against him to his seniors.

PRAYER:- In view of the above submissions, it is requested that the appellant may kindly be re-instated in service w.e.f the date of his dismissal or in the alternative the impugned order may kindly be converted into compulsory retirement please.

Yours Obediently

*Rashid*

Ex- Constable Rashid Gul No.239  
Distt: Police Hangu S/O Gul Sarwar  
R/O Malak Abad Eidgah, Hangu.

ATTACHED  
*[Signature]*

Phone No: 9260112.  
Fax No: 9260114.

F-1-16/18 C-6

From: - The Regional Police Officer,  
Kohat Region, Kohat.

To: - The District Police Officer, Hangu.

No. 10012 /EC, Dated Kohat the 19/09 /2018.

Subject: - APPEAL.

MEMO:

An appeal, preferred by Ex-FC Rashid GUI No. 329 of Hangu district Police, was examined and filed by W/RPO Kohat being badly time-barr about 09-years.

He may be informed accordingly please.

*[Signature]*  
Regional Police Officer,  
Kohat Region  
18/9/2018

*Bu file 19/9/18*

ATTESTED

*[Signature]*

*DPO Hangu*

11

1920

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**VAKALATNAMA**

Before the Khyber Pakhtunkhwa Service Tribunal  
Peshawar

\_\_\_\_\_ OF 2018

Rashid Gul

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Police Deptt.

(RESPONDENT)  
(DEFENDANT)

I/We Rashid Gul

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

Dated. \_\_\_\_/\_\_\_\_/2018

[Signature]  
CLIENT

[Signature]  
ACCEPTED  
NOOR MOHAMMAD KHATTAK  
&

MUHAMMAD MAAZ MADNI  
ADVOCATES

OFFICE:  
Flat No.3, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.  
Phone: 091-2211391  
Mobile No.0345-9383141

[Signature]  
Shahzad Khan Yousafzai  
Advocate