


07.01.2019

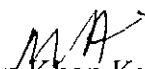
Appellant in person present. Mr. Anees-ur-Rehman, Inspector (Legal) alongwith Mr. Mian Amir Qadir, District Attorney for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 01.04.2019 for arguments before D.B at Camp Court Swat.



(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member
Camp Court Swat

01.04.2019

Counsel for the appellant and Mr. Mian Ameer Qadir, District Attorney for the respondents present. Arguments heard. To come up for order on tomorrow i.e 02.04.2019 before D.B at Camp Court Swat.


(M. Amin Khan Kundi)
Member
Camp Court Swat



(M. Hamid Mughal)
Member
Camp Court Swat

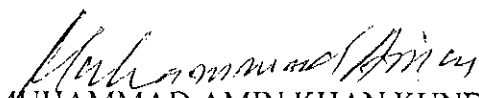
02.04.2019

Learned counsel for the appellant present. Mr. Mian Ameer Qadir, District Attorney for the respondents present. Arguments heard and record perused.

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

ANNOUNCED
02.04.2019

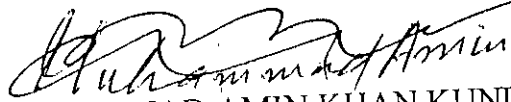

(MUHAMMAD HAMID MUGHAL)
MEMBER
CAMP COURT SWAT


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT SWAT

barred on 29.11.2017. It was contended that the departmental appeal is badly time barred therefore, service appeal is not maintainable 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 removal from service vide order dated 02.01.2009 on the allegation of absence from duty. The record further reveals that the charge sheet, statement of allegation was framed and the appellant was summoned through local police for inquiry proceeding but he did not appear therefore, ex-parte inquiry proceeding was initiated against the appellant and the appellant was recommended for major penalty of removal from service. The record further reveals that the impugned order of removal from service was passed on 02.01.2009 but the appellant has filed departmental appeal on 29.11.2017 after a delay of more than eight years therefore, the departmental appeal of the appellant is badly time barred. Though the impugned order of removal from service of the appellant was passed retrospectively from the date of absence but the same does not make the impugned order illegal and void. Reference is made to SCMR 1998 page 1890. The appellant has also not filed application for condonation of delay therefore, the departmental appeal of the appellant is badly time barred. As such, the present service appeal is not maintainable hence, without touching the merit, the appeal is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.04.2019


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT SWAT

(MUHAMMAD HAMID MUGHAL)
MEMBER
CAMP COURT SWAT

barred on 29.11.2017 but the appellant filed present service appeal on 08.01.2018 therefore, it was contended that the departmental appeal is badly time barred therefore, it was contended that the departmental appeal is badly time barred and prayed for dismissal of appeal.

6. Perusal of the record reveals that the appellant was serving in Police Department. He was imposed major penalty of removal from service vide order dated 02.01.2009 on the allegation of absence from duty. The record further reveals that the charge sheet, statement of allegation was framed and inquiry was initiated by the inquiry officer against the appellant but the appellant did not appear before the inquiry committee therefore, therefore, ex-parte

proceeding was initiated against the appellant. The record further reveals that the impugned order of removal from service was passed on 02.01.2009 but the appellant has filed departmental appeal on 29.11.2017 after a delay of more than eight years therefore, the departmental appeal of the appellant is badly time barred. Though the impugned order of removal from service of the appellant was passed retrospectively from the date of absence but the same does not make the impugned order illegal and void. Reference is made to SCMR 1998 page 1890. The appellant has also not filed application for condonation of delay therefore, the departmental appeal of the appellant is badly time barred. As such, 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
02.04.2019

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT SWAT

(MUHAMMAD HAMID MUGHAL)
MEMBER
CAMP COURT SWAT

inquiry and the appellant was recommended for major Penalty of removal from service

and the appellant must be directed to appear. The appellant should have appeared in the local Police for inquiry for removal. The present appeal is not maintainable.

4. Learned counsel for the appellant contended that the appellant was serving in Police Department since 2002. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 02.01.2009 on the allegation of absence from duty retrospectively i.e. ~~from the date of absence~~ *from the date of absence* ~~10.08.2008~~ *2017*. It was further contended that the appellant filed departmental appeal on 15.11.2015 which was rejected vide order dated 29.11.2017 and communicated to the appellant on ¹³14.12.2017. It was further contended that since the impugned order was passed retrospectively therefore, the impugned removal order of the appellant is void and no limitation run against the impugned order. It was further contended that the other colleagues of the appellant were also removed from service on the allegation of absence from duty but they were reinstated in service by the department. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted and the appellant was condemned unheard therefore, the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal with all back benefits.

5. On the other hand, learned District Attorney 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 permission of the higher authority. It was further contended that the inquiry committee has also mentioned in the inquiry report that the appellant was summoned through local police to appear before the inquiry committee but the appellant failed to appear before the inquiry committee therefore, ex-parte proceedings was conducted against the appellant. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 02.01.2009 but the appellant has filed departmental appeal on 15.11.2017 after a delay of more than eight years. It was further contended that departmental appeal was rejected being time

DFA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT SWAT

SERVICE APPEAL NO. 27/2018

Date of institution ... 08.01.2018

Date of judgment ... 02.04.2019

Tauseef Ahmad (Police Constable No. 258)
R/O Village Chakesar Tehsil Alpuri, Shangla

... (Appellant)

VERSUS

1. District Police Officer, Shangla.
 2. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
 3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif, Swat.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
OFFICE ORDERS DATED 02.01.2009 & 29.11.2017.

Mr. Shams-ul-Hadi Advocate.

Mr. Mian Ameer Qadir, District Attorney

.. For appellant.
.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
Mr. MUHAMMAD HAMID MUGHAL

.. MEMBER (JUDICIAL)
.. MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Learned counsel

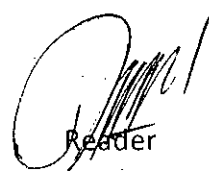
for the appellant present. Mr. Mian Ameer Qadir, District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department. He was imposed major penalty of removal from service on the allegation of absence from duty by the competent authority vide order dated 02.01.2009. The appellant filed departmental appeal on 15.11.2017 which was rejected vide order dated 29.11.2017 ^{and communicated to the appellant on} hence, the present service appeal on 08.01.2018.

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

07.08.2018

Clerk to counsel for appellant and Raees khan Inspector for respondent present. Due to summer vacations, the case is adjourned. To come up for the same on 05.09.2018 at camp court Swat.


Reader

05.09.2018

Appellant Habib ur Rehman in person present. Mr. Raees, Inspector alongwith Mr. Usman Ghani, District Attorney for respondents present. Written reply on behalf of respondents submitted copy of which was also handed over to the appellant. Case to come up for rejoinder, if any, and arguments on 06.11.2018 before D.B at camp court Swat.


Chairman
Camp Court Swat

06.11.2018

Due to retirement of the Hon'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 07.01.2019 at camp court Swat.


Reader

Service Appeal No. 27/2018

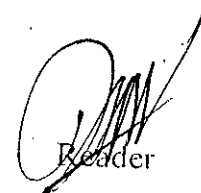
04.04.2018

Appellant in person and Mr. Usman Ghani, District Attorney for the respondents present. Written reply not submitted. Learned District Attorney seeks further adjournment. Granted. To come up for written reply/comments on 09.05.2018 before S.B at Camp Court, Swat.


Chairman
Camp court, Swat


09.05.2018

The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 06.06.2018 before the S.B at camp court, Swat.


Reader

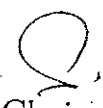
06.06.2018

Neither the appellant nor his counsel present. Mr. Usman Ghani, District Attorney for the respondents present. Written reply not submitted. Learned District Attorney requested for further adjournment. Granted. To come up for written reply/comments on 03.07.2018 before S.B at Camp Court Swat.


Chairman
Camp Court, Swat

03.07.2018

Mr. Khurshid clerk of the counsel for the appellant present. Mr. Usman Ghani learned District Attorney for the respondents present. Written reply not submitted. Adjourned by way of last chance. To come up for written reply/comments on 07.08.2018 before S.B. at camp court Swat.


Chairman
Camp Court, Swat


02.02.2018

Learned counsel for the appellant present. Preliminary arguments heard and case file perused.

Learned counsel for the appellant argued that initially the appellant joined the respondent/department in the year 2002 and performed his duties with zeal and zest and till date no complaint whatsoever has been recorded from any quarter. That due to some compelling circumstances the appellant could not perform his duty for certain period in 2008, whereafter, the appellant reported for duty, but he was informed about his dismissal from service by respondent No. 3, vide impugned order dated 02.01.2009 with effect from the date of absence i.e. 10.09.2008. That appellant filed departmental appeal dated 15.11.2017 which was rejected on 29.11.2017, being long time barred. That the impugned order is void order as retrospective order is not acceptable in the eyes of law. That in similar cases belonging to Malakand Region the appellants were reinstated in service. That no limitation runs against void orders and similarly placed persons. Learned counsel also relied on the judgment reported as 2002 PLD (C.S) 268.

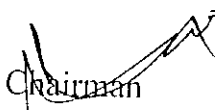
Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is also directed to deposit security and process fee within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 08.03.2018 before S.B at Camp Court, Swat.

Appellant Deposited
Security & Process Fee


(Gul Zeb Khan)
Member
Camp Court Swat.

08.03.2018

Clerk to counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 04.04.2018 before S.B at camp court, Swat.




Chairman
Camp court, Swat

Form-A

FORM OF ORDERSHEET

Court of _____

Case No. 27/2018

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. Tauseef Ahmad presented today by Mr. Shamsul Hadi 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-	11-1-2018	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>02-02-2018</u></p> <p style="text-align: right;">  CHAIRMAN </p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT SWAT

SERVICE APPEAL NO. 27/2018

Date of institution ... 08.01.2018

Date of judgment ... 02.04.2019

Tauseef Ahmad (Police Constable No. 258)
R/O Village Chakesar Tehsil Alpuri, Shangla

... (Appellant)

VERSUS

1. District Police Officer, Shangla.
2. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif, Swat.
... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
OFFICE ORDERS DATED 02.01.2009 & 29.11.2017.

Mr. Shams-ul-Hadi Advocate.

.. For appellant.

Mr. Mian Ameer Qadir, District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

Mr. MUHAMMAD HAMID MUGHAL

.. MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Learned counsel

for the appellant present. Mr. Mian Ameer Qadir, District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department. He was imposed major penalty of removal from service on the allegation of absence from duty by the competent authority vide order dated 02.01.2009. The appellant filed departmental appeal on 15.11.2017 which was rejected vide order dated 29.11.2017 and communicated to the appellant on 13.12.2017 hence, the present service appeal on 08.01.2018.

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

M. Amin
2.4.2019

4. Learned counsel for the appellant contended that the appellant was serving in Police Department since 2002. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 02.01.2009 on the allegation of absence from duty retrospectively i.e 10.09.2008 from the date of absence. It was further contended that the appellant filed departmental appeal on 15.11.2017 which was rejected vide order dated 29.11.2017 and communicated to the appellant on 13.12.2017. It was further contended that since the impugned order was passed retrospectively therefore, the impugned removal order of the appellant is void and no limitation run against the impugned order. It was further contended that the other colleagues of the appellant were also removed from service on the allegation of absence from duty but they were reinstated in service by the department. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted and the appellant was condemned unheard therefore, the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal with all back benefits.

5. On the other hand, learned District Attorney 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 permission of the higher authority. It was further contended that the inquiry committee has also mentioned in the inquiry report that the appellant was summoned through local police to appear before the inquiry committee but the appellant failed to appear before the inquiry committee therefore, ex-parte proceedings was conducted against the appellant. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 02.01.2009 but the appellant has filed departmental appeal on 15.11.2017 after a delay of more than eight years. It was further contended that departmental appeal was rejected being time

M. Amin
2.4.2019

barred on 29.11.2017. It was contended that the departmental appeal is badly time barred therefore, service appeal is not maintainable 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 removal from service vide order dated 02.01.2009 on the allegation of absence from duty. The record further reveals that the charge sheet, statement of allegation was framed and the appellant was summoned through local police for inquiry proceeding but he did not appear therefore, ex-parte inquiry proceeding was initiated against the appellant and the appellant was recommended for major penalty of removal from service. The record further reveals that the impugned order of removal from service was passed on 02.01.2009 but the appellant has filed departmental appeal on 29.11.2017 after a delay of more than eight years therefore, the departmental appeal of the appellant is badly time barred. Though the impugned order of removal from service of the appellant was passed retrospectively from the date of absence but the same does not make the impugned order illegal and void. Reference is made to SCMR 1998 page 1890. The appellant has also not filed application for condonation of delay therefore, the departmental appeal of the appellant is badly time barred. As such, the present service appeal is not maintainable hence, without touching the merit the appeal is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

02.04.2019



(MUHAMMAD HAMID MUGHAL)
MEMBER
CAMP COURT SWAT




(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT SWAT

07.01.2019


Appellant in person present. Mr. Anees-ur-Rehman, Inspector (Legal) alongwith Mr. Mian Amir Qadir, District Attorney for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 01.04.2019 for arguments before D.B at Camp Court Swat.



(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member
Camp Court Swat

01.04.2019

Counsel for the appellant and Mr. Mian Ameer Qadir, District Attorney for the respondents present. Arguments heard. To come up for order on tomorrow i.e 02.04.2019 before D.B at Camp Court Swat.


(M. Amin Khan Kundi)
Member
Camp Court Swat



(M. Hamid Mughal)
Member
Camp Court Swat

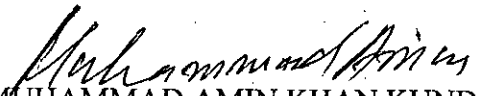
02.04.2019

Learned counsel for the appellant present. Mr. Mian Ameer Qadir, District Attorney for the respondents present. Arguments heard and record perused.

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

ANNOUNCED
02.04.2019



(MUHAMMAD HAMID MUGHAL)
MEMBER
CAMP COURT SWAT


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT SWAT

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ANNOUNCED
02.04.2019


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT SWAT

(MUHAMMAD HAMID MUGHAL)
MEMBER
CAMP COURT SWAT

DFA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
AT CAMP COURT SWAT

SERVICE APPEAL NO. 27/2018

Date of institution ... 08.01.2018

Date of judgment ... 02.04.2019

Tauseef Ahmad (Police Constable No. 258)
R/O Village Chakesar Tehsil Alpuri, Shangla

... (Appellant).

VERSUS

1. District Police Officer, Shangla.
2. Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region, Saidu Sharif, Swat.
... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED
OFFICE ORDERS DATED 02.01.2009 & 29.11.2017.

Mr. Shams-ul-Hadi Advocate.

.. For appellant.

Mr. Mian Ameer Qadir, District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

Mr. MUHAMMAD HAMID MUGHAL

.. MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Learned counsel for the appellant present. Mr. Mian Ameer Qadir, District Attorney for the respondents present. Arguments heard and record perused.

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department. He was imposed major penalty of removal from service on the allegation of absence from duty by the competent authority vide order dated 02.01.2009. The appellant filed departmental appeal on 15.11.2017 which was rejected vide order dated 29.11.2017/hence, the present service appeal on 08.01.2018.

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

and communicated to the appellant on 13.12.17

XVI. That the impugned order has been passed at the back of Appellant. Neither any regular enquiry has been conducted nor was a fair opportunity provided to him to defend his case, therefore, the impugned order is illegal, without lawful authority being violative of principle of natural justice.

XVII. That the Appellant was continuously serving the department having more than two and half years service at his credit without any complaint which accrued vested rights in his favour which could not be taken away or withdrawn by the authority under the principle of *locus poenitentiae*.

XVIII. That in case of any defect in the appointment of Appellant is existed for which only the respondent authority is responsible and not the Appellant, therefore, the action of the Respondent-3 is not warranted under the law and rules and the impugned order is illegal and of no legal effect.

XIX. That Appellant is permanent and confirmed employee of the department and performing his respective duties efficiently since his date of appointment during which he was provided all the benefits and privileges attached with his post including annual increments. Now the Appellant has crossed the upper age limit, supporting a family with his children who are getting education in various schools, thus, in such circumstances, the Respondent-3 has no legal justification to hold the appointment of Appellant as illegal. Therefore, the act and action of the Respondent-3 is tainted with *mala fide* intention, unlawful and not operative against the vested rights of Appellant.

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR**

In Re: Service Appeal No. _____/2014

Abdullah Noor s/o Haji Shulozan

(Sub-Engineer, Public Health Engineering Department, Peshawar)

R/o House No. 911, Street No. 25, Section E-5,

Phase-VII, Hayatabad, Peshawar

.....*Appellant*

Versus

1. **Government of Khyber Pakhtunkhwa**

through Chief Secretary,
Civil Secretariat, Peshawar

2. **Secretary**

Public Health Engineering Department, Peshawar
Government of Khyber Pakhtunkhwa

3. **Chief Engineer (South)**

Public Health Engineering Department, Peshawar
Government of Khyber Pakhtunkhwa

.....*Respondents*

Affidavit

I, Abdullah Noor s/o Haji Shulozan, Appellant do hereby solemnly affirm that contents of this Appeal are true and correct to the best of knowledge and belief and nothing has been concealed intentionally from this honourable Tribunal.

Abdullah Noor
Deponent

Identified By:

Isaac Ali Qazi

Isaac Ali Qazi
Advocate



~~barred on 29.11.2017 but the appellant filed present service appeal on 08.01.2018 therefore, it was contended that the departmental appeal is badly time barred therefore, it was contended that the departmental appeal is badly time barred and prayed for dismissal of appeal.~~
therefore service appeal is not maintainable

6. Perusal of the record reveals that the appellant was serving in Police Department. He was imposed major penalty of removal from service vide order dated 02.01.2009 on the allegation of absence from duty. The record further reveals that the charge sheet, statement of allegation was framed ~~and inquiry was initiated by the inquiry officer against the appellant but the appellant did not appear before the inquiry committee therefore,~~ *and the appellant was* therefore, ex-parte proceeding was initiated against the appellant. *and the appellant was* The record further reveals that the impugned order of removal from service was passed on 02.01.2009 but the appellant has filed departmental appeal on 29.11.2017 after a delay of more than eight years therefore, the departmental appeal of the appellant is badly time barred. Though the impugned order of removal from service of the appellant was passed retrospectively from the date of absence but the same does not make the impugned order illegal and void. Reference is made to SCMR 1998 page 1890. The appellant has also not filed application for condonation of delay therefore, the departmental appeal of the appellant is badly time barred. As such, the present service appeal is not maintainable hence, *without touching the merits of appeal* the same is dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
02.04.2019

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
CAMP COURT SWAT

(MUHAMMAD HAMID MUGHAL)
MEMBER
CAMP COURT SWAT

inquiry and the appellant was recommended for major penalty of removal from service


and the appellant was summoned through local Police for inquiry for security must be done not otherwise.

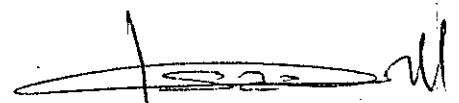
XX. That it is humbly submitted that in view of the order dated 28.04.2014 of august Supreme Court of Pakistan in CP No. 551/2014, this honourable Tribunal instead of earlier order dated 15.01.2014 of the august Supreme Court in CP No. 2026/2013 and CP No. 2029/2013, is under obligation to **“decide the appeal as mandated in law”** as ordained by the later order dated 28.02.2014 of the Bench headed by the Honourable Chief Justice of Pakistan.

XXI. That Appellant craves to take / raise any other ground with permission of this Honourable Tribunal which is necessary for just decision of the Appeal in hand.

Prayer: Considering the above submissions, it is, therefore, most respectfully prayed that by way of acceptance of this Appeal, this honourable Court may please set aside the impugned order of the termination and reinstate the Appellant with all back benefits.

Or any other relief deemed appropriate by this Honourable Tribunal under the circumstances may please also be granted.


Appellant
through



Isaac Ali Qazi
Advocate

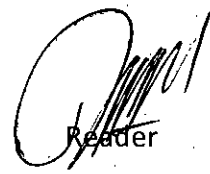
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Phone 5817132, 5818446, Mobile: 0300 8594555
Email: isaac.ali.qazi@gmail.com
www.isaacclaw.org

4. Learned counsel for the appellant contended that the appellant was serving in Police Department since 2002. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 02.01.2009 on the allegation of absence from duty retrospectively i.e. ~~from the~~ *date of absence from the date of absence* 10.09.2008. It was further contended that the appellant filed departmental appeal on 15.11.2015 which was rejected vide order dated 29.11.2017 and communicated to the appellant on ¹³14.12.2017. It was further contended that since the impugned order was passed retrospectively therefore, the impugned removal order of the appellant is void and no limitation run against the impugned order. It was further contended that the other colleagues of the appellant were also removed from service on the allegation of absence from duty but they were reinstated in service by the department. It was further contended that neither charge sheet, statement of allegation was served upon the appellant nor proper inquiry was conducted and the appellant was condemned unheard therefore, the impugned order is illegal and liable to be set-aside and prayed for acceptance of appeal with all back benefits.

5. On the other hand, learned District Attorney 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 permission of the higher authority. It was further contended that the inquiry committee has also mentioned in the inquiry report that the appellant was summoned through local police to appear before the inquiry committee but the appellant failed to appear before the inquiry committee therefore, ex-parte proceedings was conducted against the appellant. It was further contended that the appellant was imposed major penalty of removal from service vide order dated 02.01.2009 but the appellant has filed departmental appeal on 15.11.2017 after a delay of more than eight years. It was further contended that departmental appeal was rejected being time

07.08.2018

Clerk to counsel for appellant and Raees khan Inspector for respondent present. Due to summer vacations, the case is adjourned. To come ur for the same on 05.09.2018 at camp court Swat.


Reader

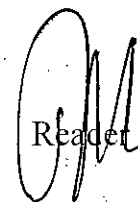
05.09.2018

Appellant Habib ur Rehman in person present. Mr. Raees, Inspector alongwith Mr. Usman Ghani, District Attorney for respondents present. Written reply on behalf of respondents submitted copy of which was also handed over to the appellant. Case to come up for rejoinder, if any, and arguments on 06.11.2018 before D.B at camp court Swat.


Chairman
Camp Court Swat

06.11.2018

Due to retirement of the Hon'ble Chairman Service Tribunal is incomplete. Tour to Camp Court Swat has been cancelled. To come up for the same on 07.01.2019 at camp court Swat.


Reader

Service Appeal No. 27/2018

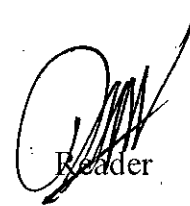
04.04.2018

Appellant in person and Mr. Usman Ghani, District Attorney for the respondents present. Written reply not submitted. Learned District Attorney seeks further adjournment. Granted. To come up for written reply/comments on 09.05.2018 before S.B at Camp Court, Swat.


Chairman
Camp court, Swat


09.05.2018

The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 06.06.2018 before the S.B at camp court, Swat.


Reader


06.06.2018

Neither the appellant nor his counsel present. Mr. Usman Ghani, District Attorney for the respondents present. Written reply not submitted. Learned District Attorney requested for further adjournment. Granted. To come up for written reply/comments on 03.07.2018 before S.B at Camp Court Swat.


Chairman
Camp Court, Swat

03.07.2018

Mr. Khurshid clerk of the counsel for the appellant present. Mr. Usman Ghani learned District Attorney for the respondents present. Written reply not submitted. Adjourned by way of last chance. To come up for written reply/comments on 07.08.2018 before S.B at camp court Swat.


Chairman
Camp Court, Swat


02.02.2018

Learned counsel for the appellant present. Preliminary arguments heard and case file perused.

Learned counsel for the appellant argued that initially the appellant joined the respondent/department in the year 2002 and performed his duties with zeal and zest and till date no complaint whatsoever has been recorded from any quarter. That due to some compelling circumstances the appellant could not perform his duty for certain period in 2008, whereafter, the appellant reported for duty, but he was informed about his dismissal from service by respondent No. 3, vide impugned order dated 02.01.2009 with effect from the date of absence i.e.10.09.2008. That appellant filed departmental appeal dated 15.11.2017 which was rejected on 29.11.2017, being long time barred. That the impugned order is void order as retrospective order is not acceptable in the eyes of law. That in similar cases belonging to Malakand Region the appellants were reinstated in service. That no limitation runs against void orders and similarly placed persons. Learned counsel also relied on the judgment reported as 2002 PLD (C.S) 268.


Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is also directed to deposit security and process fee within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 08.03.2018 before S.B at Camp Court, Swat.

Appellant Deposited
Security & Process Fee


(Gul Zeb Khan)
Member
Camp Court Swat.

08.03.2018



Clerk to counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 04.04.2018 before S.B at camp court, Swat.


Chairman
Camp court, Swat

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 27/2018

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. Tauseef Ahmad presented today by Mr. Shamsul Hadi 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-	11-1-2018	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>02-02-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. 27 /2018.

Tauseef Ahmad.....Appellant

V E R S U S

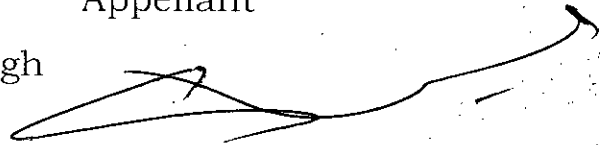
District Police Officer, Shangla and others.....Respondents

INDEX

S.N	Description of Documents	Annex	Pages
1.	Memo of Appeal.		1-3
2.	Affidavit.		4
3.	Addresses of the Parties.		5
4.	Copy of impugned order dated:02.01.2009.	A	6-
5.	Copy of Departmental appeal and order dated:29.11.2017.	B	7-9
6.	Copy of Judgment	C	10-12
7.	Wakalat Nama		13

Appellant

Through



Shams ul Hadi

Advocate, Peshawar.

Office: Near Al-Falah Mosque, Hayat

Abad, Mingora.

Cell No. 0347-4773440.

Dated: 03/01/2018.

**BEFORE THE KHYBER PAKHTOON KHWA SERVICES
TRIBUNAL, PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 27 /2018.

Diary No. 13

Dated 08-01-2018

Tauseef Ahmad (Police Constable No.258)

R/O Village Chakesar Tehsil Alpuri, Shangla.....Appellant

V E R S U S

1. District Police Officer, Shangla.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region,
Saidu Sharif, Swat..... Respondents

**APPEAL UNDER SECTION 4 OF KHYBER
PUKHTUNKHWA SERVICES TRIBUNAL ACT
1974 AGAINST THE IMPUGNED OFFICE
ORDERS DATED: 02.01.2009 & 29/11/2017.**

PRAYER IN APPEAL:

On acceptance of this appeal the impugned Orders dated: 02.01.2009 and 29/11/2017 regarding major penalty i-e Removal from service of appellant may kindly be set aside and the appellant may kindly be re-instated to his service with all back benefits of service.

Respectfully Sheweth:

1. That initially the appellant joined the respondent/department in the year 2002 and as such performed his duties with zeal and zest and till date no compliant what so ever has been recorded from any quarter.
2. That in the year 2009, the appellant due militancy could not continued his services and as such the appellant remained absent from service for a short period.

Filed to-day
Registrar
2-1-18

3. That thereafter without observing legal formalities, the appellant was dismissed from through impugned order dated:02.01.2009 and as such the appellant was retrospectively dismissed from service from the date of his absence i-e 10.09.2008.(Copies of impugned office order dated:02.01.2009 is annexure-A)
4. That when the respondents re-instated some of his colleagues in similar circumstances so against the said removal order, the appellant filed departmental appeal before the Resp No.3 where the same was rejected vide order dated:29.11.2017 but the same was communicated on 13.12.2017.(Copy of Departmental appeal and order dated:29.11.2017 are annexure-B)

That being aggrieved from the impugned orders, the appellant approached this Hon'ble Tribunal on the following grounds amongst other inter alia:

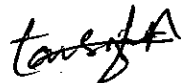
GROUND:

- A. That the impugned office orders are against the facts, law and procedure, hence, untenable being unjust and unfair.
- B. That the appellant was removed from service retrospectively which is a void order and now it is settled preposition of law that no limitation runs against void order nor the same has any legal sanctity.(Copy of recent judgment passed by this august court is annexure-C)
- C. That the appellant was not treated in accordance with law and rules, thus acted in violation of the relevant laws laid down for the purpose.
- D. That the whole departmental proceedings against the appellant was based on personal ill will and with ill intention a harsh and illegal penalty was imposed on the appellant.

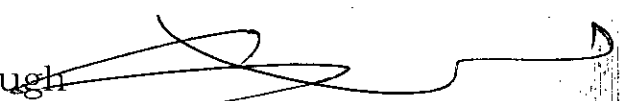
- E. That no opportunity in shape of personal hearing was afforded to the appellant and nor statement of allegation and show cause notices were communicated to the appellant, So legal formalities were ignored by the respondents and a harsh penalty was imposed upon appellant.
- F. That any other ground may be adduced during the course of argument, with the kind permission of this Hon'ble Court.

It is, therefore, most humbly prayed that On acceptance of this appeal, impugned Orders dated: 02.01.2009 and 29/11/2017 regarding major penalty i-e Removal from service of appellant may kindly be set aside and the appellant may kindly be re-instated to his service with all back benefits of service.

Appellant



Tauseef Ahmad (Police Constable No.258)

Through 

Shams ul Hadi

Dated: 03/01/2018

Advocate, Peshawar.

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2018.

Tauseef Ahmad.....Appellant

V E R S U S

District Police Officer, Shangla and others.....Respondents

AFFIDAVIT

I, **Shams ul Hadi**, Advocate, Peshawar do hereby as per information conveyed to me by my client solemnly affirm and declare that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



ADVOCATE

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. _____/2018.

Tauseef Ahmad.....Appellant

V E R S U S

District Police Officer, Shangla and others.....Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Tauseef Ahmad (Police Constable No.258)

R/O Village Chakesar Tehsil Alpuri, Shangla

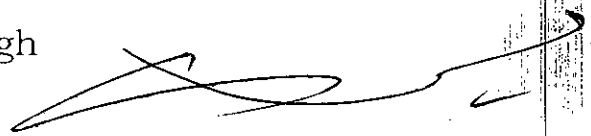
Cell No.

RESPONDENTS:

1. District Police Officer, Shangla.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Deputy Inspector General of Police, Malakand Region,
Saidu Sharif, Swat.

Appellant

Through



Shams ul Hadi

Advocate, Peshawar.

Dated: 03/01/2018

(6) Annex
FA,

ORDER:-

Constable Tawseef Ahamd No.253 was deputed for ATS instructor course at Nowshera vide OB No.103 Dated 23.08.2008, but he failed to attend the training and absented himself from 10.09.2008 to date.

He was served with Charge Sheet and Statement of allegation. Mr: Riaz Hussain DSP Alpuri and Bahrudin Khan ASDPO Puran were appointed as Enquiry officers to conduct proper Departmental Inquiry against the defaulter Constable. The inquiry officers in their Finding Report recommended the defaulter Constable for Removal from service and period of absence is counted as leave without pay.

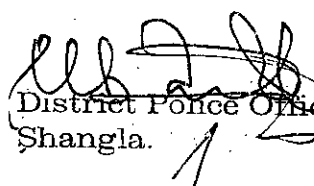
A Final Show Cause Notice was issued to the defaulter on 18.11.2008. Reply of Final Show Case Notice is received, that he did not want to continue his service in Police Department.

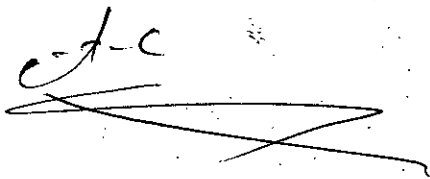
Therefore, I Muhammad Iqbal Khan Marwat, District Police Officer Shangla, as a competent authority exercising the Power vested in me under N.W.F.P Removal from service Special Power Ordinance 2000, awarded to him a Major punishment i.e Removal form service with effect form the date of his absence from 10.09.2008.

Order announced.

OB No. 01

Dated. 02 / 01 / 2009


District Police Officer,
Shangla.



F

Annex
B

بھنخور جناب ریجنل پولیس آفیسر صاحب ملاکنڈ بمقام سید و شریف ضلع سوات۔
رحم درخواست بابت بحالی بحیثیت ریگولر کنسٹیبل محکمہ پولیس ضلع شانگلہ۔

عنوان :-

جناب عالی!

گزارش ہے کہ سائل محکمہ پولیس ضلع شانگلہ میں مورخہ 16-12-2002 کو بحیثیت کنسٹیبل بلٹ نمبر 253 بھرتی ہو کر ابتدائی ریکروٹ کورس PTC ہنگوں میں مکمل کی۔ سال 2006ء میں ATS کورس جبکہ سال 2007ء میں WVIP کورس بھی کامیابی کیساتھ مکمل کی۔ سال 2008ء میں A-I امتحان اچھے نمبروں سے پاس کر کے جس کے سرٹیفکیٹ ہمراہ لف درخواست ہذا ہے۔

سال 2009ء میں ملاکنڈ دیویژن میں سیکورٹی سورتحال خراب ہو کر جس کے شدت ضلع شانگلہ میں دوسرے علاقوں کے نسبت زیادہ تھی۔ اور پولیس اپنے تھانہ جات تک محدود ہو کر رہ گئی تھی۔ اسی دوران سائل نے دلجمی اور خلوص نیت سے اپنے فرائضی منصبی انجام دہی میں مصروف عمل تھا۔ لیکن مقامی طالبان کے حملوں اور دھمکیوں سے بچھنے کیلئے اپنے بال بچ کو محفوظ مقام پر منتقل کرنے کے بعد واپس اپنی ڈیوٹی پر جا رہا تھا۔ تو جگہ بہ جگہ دہشت گردوں کے ناکہ بندیاں اور کبی پر پاک آرمی کے طرف سے کر فیونافذ تھا۔ بدیں وجہ اپنی جائے تعیناتی کو بروقت نہ پہنچ سکا۔ اس غیر یقینی صورتحال کے دوران سائل کی والدہ صاحبہ بیمار پڑ گئی۔ والدہ صاحبہ کی خدمت اور تیمارداری کے خاطر مختلف ہسپتالوں کے چکر لگاتا رہا۔ اور اخیر کار 5/6 ماہ کی طویل علالت کے بعد سائل کی والدہ صاحبہ بقضاء الہی وفات پا گئی۔ اس کے بعد سائل نے اپنے جائے تعیناتی جا کر جہاں پر معلوم ہوا۔ کہ سائل کے خلاف یکطرفہ کارروائی ہو کر محکمہ پولیس سے برخاست کیا گیا ہے۔

محکمہ پولیس میں نوکری جو سائل کا کل اثاثہ اور رزق حلال کی کمائی کا واحد ذریعہ تھا۔ برخاست ہونے اور والدہ صاحبہ کے اچانک موت سے شدید صدمہ کے وجہ سے بروقت افسران بالا صاحبان کو اپنی دل کی آواز پہنچانے میں کامیاب نہ ہو سکا۔ جسکا احساس آج تک شدید سے محسوس کر رہا ہوں۔ حالانکہ اسی دوران کافی تعداد میں برخاست شدہ اہلکاران افسران بالا کے رحم کرم پر بحال ہو چکے ہیں۔

اب چونکہ سائل کے برخاستگی کا کافی سارا عرصہ گزر چکا ہے۔ لیکن سائل کو اپ صاحبان کے شفقت اور رحم دلی کے نسبت معلومات ہو کر اپ صاحبان کے خدمت میں رحم درخواست گزار رہا ہوں۔ جو کہ اسی صورت میں رہا ہوں۔

لہذا بذریعہ درخواست استدعا ہے کہ سائل کے عرصہ ملازمت اور سائل کے چھوٹے چھوٹے بچوں کو مد نظر رکھ کر سائل کو محکمہ پولیس میں دوبارہ بحال کرنے کا موقع فراہم کریں۔ تو سائل تاحیات دعاگوں رہیگا۔

توصیف احمد ولد جهان دراز (مرحوم) ساکن چکیسر تحصیل اپوری مورخہ 15/11/2017
ضلع شانگلہ۔ CNIC نمبر 9-15503-5857661

موبائل نمبر 0346-8737674

تاریخ: 15/11/2017



OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
AT SAIDU SHARIF SWAT.

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

Email: digmalakand@yahoo.com

ORDER:


The following Ex-Constables / Ex-SPF of the Districts noted against each, submitted applications for reinstatement in Service. Their applications were thoroughly examined and found long time barred having no legal justification to consider, hence hereby filed:-

S. No	Name and No	District	Date of Dismissal
1.	Ex-Constable Noor-ul-Amin No. 75/RR	Swat	12/10/2009
2.	Ex-Constable Naseer Ullah Khan No. 1428	Swat	26/01/2009
3.	Ex-Constable Ubaid Ullah No. 1662	Swat	12/12/2008
4.	Ex-Constable Saeed Ullah No. 1655	Swat	05/12/2008
5.	Ex-Constable Muhammad Ibrahim No. 399	Swat	15/02/2003
6.	Ex-Constable Bakht Zaman No. 1719	Dir Lower	16/01/2013
7.	Ex-Constable Atta Ullah No. 568	Dir Lower	05/05/2008
8.	Ex-Constable Tahir Khan No. 781	Dir Lower	07/07/2009
9.	Ex-Constable Ruhul Amin No. 1012	Buner	01/09/2014
10.	Ex-Constable Aurang Zeb No. 390	Buner	30/05/2009
11.	Ex-Constable Tawseef Ahmad No. 258	Shangla	02/01/2009
12.	Ex-Constable Sher Wali No. 1050	Dir Upper	01/07/2016
13.	Ex-Constable (SPO) Nihar Muhammad No. 381	Buner	15/08/2016
14.	Ex-Constable (SPO) Imtiaz Ur Rehman No. 474	Buner	10/08/2017
15.	Ex-Constable (SPO) Zafar Ali No. 319	Buner	02/02/2017
16.	Ex-Constable (SPO) Muhammad Tariq No. 97	Buner	14/03/2016
17.	Ex-Constable (SPO) Lajbar Khan No. 279	Buner	14/03/2016
18.	Ex-Constable (SPO) Bakhtawar Zeb No. 474	Dir Lower	11/01/2013
19.	Ex-Constable (SPO) Muhammad Rafiq No. 162	Dir Lower	09/02/2016
20.	Ex-Constable (SPO) Shah Fahad No. 245	Dir Lower	11/01/2017
21.	Ex-Constable (SPO) Naik Amal No. 817	Dir Lower	16/09/2016
22.	Ex-Constable (SPO) Rahmatullah No. 459	Dir Lower	03/02/2017
23.	Ex-Constable (SPO) Muhammad Darwish No. 398	Dir Lower	24/02/2017
24.	Ex-Constable (SPO) Nadar Khan No. 2358	Swat	14/06/2017
25.	Ex-Constable (SPO) Umar Rahman No. 2828	Swat	07/12/2016
26.	Ex-Constable (SPO) Sher Ali No. 2001	Swat	30/10/2012

A-c

27.	Ex-Constable (SPO) Muhammad Rahim No. 2417	Swat	26/04/2017
28.	Ex-Constable (SPO) Khan Muhammad No. 2353	Swat	05/11/2015
29.	Ex-Constable (SPO) Taj Muhammad No. 714	Swat	24/05/2012
30.	Ex-Constable (SPO) Muhammad Ghafoor No. 3053	Swat	16/12/2016
31.	Ex-Constable (SPO) Muhammad Zahir Shah No. 2045	Swat	27/11/2013
32.	Ex-Constable (SPO) Hadi Khan No. 1902	Swat	10/04/2017
33.	Ex-Constable (SPO) Kishwar Ali No. 3080	Swat	18/09/2015
34.	Ex-Constable (SPO) Muhammad Alam No. 1965	Swat	19/04/2017
35.	Ex-Constable (SPO) Nazir Muhammad No. 3016	Swat	03/12/2013
36.	Ex-Constable (SPO) Taj Muhammad No. 2108	Swat	19/08/2013
37.	Ex-Constable (SPO) Waheed Gul No. 896	Swat	26/10/2016
38.	Ex-Constable (SPO) Hazrat Umar No. 2132	Swat	25/01/2016
39.	Ex-Constable (SPO) Syed Hassan No. 1194	Dir Lower	04/06/2015

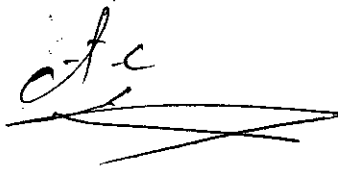
The applicants of your respective Districts may be informed accordingly, please.


 (AKHTAR HAYAT KHAN)
 Regional Police Officer,
 Malakand, at Saidu Sharif Swat
 Naqi
 30/11

No. 13714-19 /E.

Dated 29-11 /2017.

Copy to All District Police Officers, in Malakand Region for information and necessary action. The applicants of your respective District may be informed accordingly please.



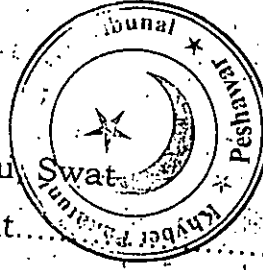
(10) *Amended*

10

BEFORE THE KHYBER PAKHTOON KHWA SERVICES
TRIBUNAL, PESHAWAR

Service Appeal No. 165 /2016.

Rashid Ahmad (Ex-CT) GHS Dehairai Swat
R/O Village Kuz Bandy District Swat



H.W.F. Province
Service Tribunal

Diary No. 138

Dated 25/2/2016

Appellant

V E R S U S

1. District Education Officer (Male) Swat.
 2. Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar
- Respondents

APPEAL UNDER SECTION 4 OF KHYBER
PUKHTUNKHWA SERVICES TRIBUNAL ACT
1974 AGAINST THE IMPUGNED OFFICE
ORDERS DATED: 18.05.2011 & 02.02.2016.

PRAYER IN APPEAL:

On acceptance of this appeal the impugned Orders dated 18.05.2011 and 02.02.2016 regarding major penalty i.e removal of service of appellant may kindly be set aside and the appellant may kindly be re-instated to his service with all back benefits of service.

Respectfully Sheweth:

1. That initially the appellant joined the respondent/department on 11.03.1993 as C.T and as such performed his duties with zeal and zest.
2. That during his service the appellant requested for long leave and as such the same was granted for 1090 days (without pay) from 06.10.2004 to 30.09.2007 vide office order dated: 13.10.2004. (Copies of office order dated: 13.10.2004 and service book are annexure-A)

Filed to file
5/2/16

ATTESTED

[Signature]
ATTORNEY
Khyber Pakhtunkhwa
Services Tribunal,
Peshawar

[Signature]

1

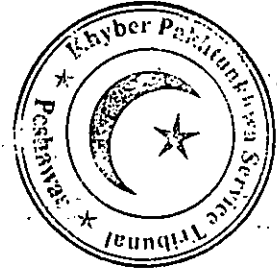
(11)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No. 165/2016

Date of Institution... 25.02.2016

Date of decision... 07.12.2017



Rashid Ahmad (Ex-CT) GHS Dehairai, Swat R/O Village Kuz Bandy, District Swat. ... (Appellant)

Versus

1. District Education Officer (Male) Swat and another. ... (Respondents)

MR. SHAMSUL HADI,
Advocate

For appellant.

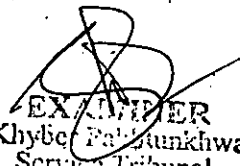
MR. KABIRULLAH KHATTAK,
Addl Advocate General

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL,

CHAIRMAN
MEMBER

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

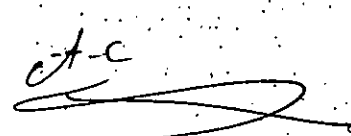
NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant was removed from service on 18.05.2011 against which he filed departmental appeal on 14.12.2015 which was rejected on 02.02.2016 and thereafter the present service appeal on 25.2.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that the impugned order has been made effective from a back date which is a void order. He further argued that no limitation shall run against void order. He relied upon a judgment reported in



1985-SCMR-1178 and argued that void order cannot be sustained in the eyes of law.

4. On the other hand the learned Addl. Advocate General argued that the present appeal is hopelessly time barred as the departmental appeal was filed after almost 5 years of the original order. That the department has fulfilled all the codal formalities.

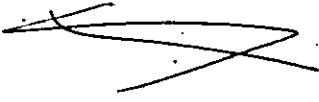
CONCLUSION


5. Admittedly the removal order has been given retrospective effect and in view of so many judgments delivered by this Tribunal on the basis of judgment reported in 1985-SCMR-1178, the retrospective order is a void order and no limitation shall run against void order. Presuming that all other elements of due process have been complied with, the void order cannot be sustained on this score alone.

6. As a sequel to the above discussion, the present appeal is accepted and the appellant is reinstated in service. The department is however, at liberty to hold denovo proceedings in accordance with law within a period of ninety days. The intervening period shall be subject to the final outcome of the denovo proceedings within a period of ninety days. Parties are left to bear their own costs. File be consigned to the record room.

Announced Sd/- Niaz Muhammad Khan,
07-12-2017 Chairman
Camp Court Secret

Sd/- M. Hamid Nughal
Member

A-C


Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar


Date of Presentation of Application 14-12-17
Number of Volumes 200
Copying Fee 8
Urgent ✓
Total 10
Number of Copies 200
Date of Completion 14-12-17
Date of Delivery of Copy 14-12-17

Part of book
14-12-17

(13) بعدالت

سروس کے بیونل شاہور

کورٹ فیس

قیمت ایک روپیہ

مورخہ

مقدمہ

دعویٰ

جرم

3 جنوری 2018ء منجانب
لوہینا بنام گورکھ سنگھ و سہ

باعث تحریر آنکہ

مقدمہ مندرجہ بالا میں اپنی طرف سے واسطے پیروی و جواب دہی و کل کاروائی متعلقہ آن مقام سروس کے بیونل سے شمس الہادی اور دیگر مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل احتیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ ڈائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ بصورت ضرورت مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برواختہ منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ و ہر جانہ التوائے مقدمہ کے سبب سے ہا گا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا ک سند ہے

وصیف احمد ولد صاحبان دار
کلیں

المرقوم 3 ماہ جنوری 2018ء

العبد گواہ شدہ العبد
بمقام سروس کے بیونل

کے لئے منظور ہے

Attested and accepted
by Shams-ul-Haq Adh

(01)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
(CAMP COURT AT SWAT)

SERVICE APPEAL NO. 27/2018

Ex Constable Tawseef Ahmad (Police Constable) No. 258)
r/o Chakisar Tehsil Besham District Shangla

(Appellant)

VERSUS

1. The District Police Officer, Shangla
2. The Provincial Police Officer, Khyber Pakhtunkhwa
3. The Deputy Inspector General of Police, Malakand at Swat (Respondents)

INDEX

S. No.	Description	Annexure	Page No.
1	Opening Sheet	-	01
2	Para Wise Comments	A to F	02-03
3	Affidavit	-	04
4	Authority letter	-	05
Total Pages		06	11

DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
(CAMP COURT AT SWAT)

SERVICE APPEAL NO. 27/2018

Ex Constable Tawseef Ahmad (Police Constable) No. 258)
r/o Chakisar Tehsil Besham District Shangla

(Appellant)

VERSUS

1. The District Police Officer, Shangla
2. The Provincial Police Officer, Khyber Pakhtunkhwa
3. The Deputy Inspector General of Police, Malakand at Swat (Respondents)

WRITTEN REPLY ON BEHALF O RESPONDENTS

Respectfully Sheweth,

Written reply on behalf of respondents is furnished as under:-

I) Preliminary Objections:

1. That the present service appeal is not maintainable in its form
2. That the appellant has not come to this August Tribunal with clean hands
3. That the present appeal is badly time barred.
4. That the Honorable Service Tribunal has no jurisdiction to entertain the present service appeal.
5. That the appellant has got no cause of action or locus standi.
6. That the appellant has suppressed he material facts from this honorable tribunal.

II) Factual objections:

1. That Para No. 1 is pertaining to service record of the appellant is need not to be dismissed.
2. That Para No. 2 is incorrect. The appellant was deputed for ATS Instructor Course at Nowshera vide OB No. 103, dated 23/08/2008, but he failed to attend the training and absented himself from 10/09/2008.
3. That Para No. 3 is incorrect. Proper charge sheet and memo of allegations were issued to the appellant and Enquiry Committee was constituted in accordance with law. The appellant in reply to the final show cause notice had himself stated that he did not want to continue his service in police department, therefore, he had been removed from service vide order dated 02/01/2009. Complete enquiry documents containing 08 pages is attached with the reply. (As Annex A-F)
4. That Para NO. 4 is incorrect. Cases of other reinstated officials were not similar to that of the appellant. The appellant on over hand has given written request that he is not interested in police service and on the other hand he remained silent for a period of complete 08 years. Law provide specific time for appeal against such order while the appellant has failed to comply with. Therefore, the appeal is badly time-barred and cannot be discussed at such belated stage.

III) GROUNDS:

- A) Ground 'A' is incorrect, the order is in accordance with the law, facts and procedure.
- B) Ground 'B' is also incorrect. The appellant has been removed from service from the date of his absence from duty in accordance with law and rules.
- C) That Ground 'C' is also incorrect, the appellant had been treated as per law and rules on the subject.
- D) That Ground 'D' is also incorrect, there was no ill will of anybody with the appellant neither he objected/complained to any authority at the time of the enquiry proceedings.
- E) Ground 'E' is also incorrect, proper charge sheet memo of allegations and final show cause notice were issued and the reply to the final show cause notice, the appellant had himself requested in writing that he did not want to continue police service, therefore, he was removed from service.

It is, therefore, humbly prayed that the appeal may very kindly be dismissed with cost

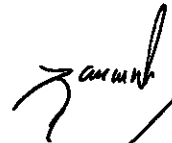


Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar
(Respondents No. 2)



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

Regional Police Officer,
Malakand at Saidu Sharif, Swat.



District Police Officer,
Shangla

(Respondents No. 1)

District Police Officer,
SHANGLA,

Annex (A)

ORDER:-

Constable Tawseef Ahamd No.253 was deputed for ATS instructor course at Nowshera vide OB No.103 Dated 23.08.2008, but he failed to attend the training and absented himself from 10.09.2008 to date.

He was served with Charge Sheet and Statement of allegation. Mr: Riaz Hussain DSP Alpuri and Bahrudin Khan ASDPO Puran were appointed as Enquiry officers to conduct proper Departmental Inquiry against the defaulter Constable. The inquiry officers in their Finding Report recommended the defaulter Constable for Removal from service and period of absence is counted as leave without pay.

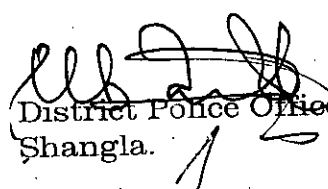
A Final Show Cause Notice was issued to the defaulter on 18.11.2008. Reply of Final Show Case Notice is received, that he did not want to continue his service in Police Department.

Therefore, I Muhammad Iqbal Khan Marwat, District Police Officer Shangla, as a competent authority exercising the Power vested in me under N.W.F.P Removal from service Special Power Ordinance 2000, awarded to him a Major punishment i.e Removal from service with effect from the date of his absence from 10.09.2008.

Order announced.

OB No. 01

Dated. 02 / 01 / 2009


District Police Officer,
Shangla.

Annex (B)

FINDING.

This enquiry report relates to the allegations leveled against Constable Tawseef Ahmad NO. 253. The allegations is that he was deputed for A.T.S Instructor Course at Nowshera vide OB NO. 103 dated 23.08.2008, but he failed to attend the training and absented himself from 10.09.08 to date.

To scrutinize the conduct of the above accused constable with reference to the above mentioned allegations a committee comprising the undersigned was constituted by the District Chief under the N.W.F.P Removal from Service (Special Powers) Ordinance 2000 vide letter NO. 35/E, dated 18.10.208.

During the course of enquiry the accused constable was summoned through the local police, P.S/Chakisar vied DD. NO. 5 dated 31.10.08 and DD NO.6 dated 03.11.2008 to appear before the enquiry committee, but he failed to do so, vide the Daily Diary reports NO. 7 and 10 dated 05.1.08 P.S/Chakisar (copies duly attested by the SHO attached)

From the absence of the accused constable without permission and non appearance before the enquiry committee the committee has reached to the conclusion that the accused constable is no more interested to continue his service in Police Department.

The committee; therefore, recommend that the accused constable may be Removed from Service and his absence period be counted as earned leave or as your good self deem fit.

(Bahrudin Khan)

Bahrudin Khan
A.S.D.P.O/Puran

(Riaz Hussain)

Riaz Hussain
S.D.P.O/Alpuri

Sir,
may issue final show
cause notice.

For order, Please.

W/APO/SHB!

Final sent.

[Signature]

15/11

سین کپٹل توصیف احمد نمبر 253 حال گاؤں چکیسر اسٹیشن
تحریر کے رو سے اقرار کر کے لکھ دیتا ہوں۔ کہ میں محکمہ پولیس
میں بحیثیت کپٹل ڈیوٹی سر انجام دے رہا تھا لیکن ناگزیر
وجوہات کی بناء پر میں نوکری سے عہدہ چھوڑ کر آج گھر
خود میں موجود ہوں۔ اور محکمہ پولیس میں مزید نوکری نہیں
کرنا چاہتا ہوں۔ تحریر ہوا۔ تاکہ آفسران بالا کے نوٹس
میں آجائے۔

دستخط انگریزی

الح

توصیف احمد نمبر 253 حال چکیسر

جناب عالی! معروض خدمت ہوں کہ کپٹل توصیف احمد سے نوکری کرنے یا نہ کرنے
کے بارے میں مفصل بیان لیا جا کر قابل ملاحظہ ہے۔ مذکورہ کپٹل
محکمہ پولیس میں مزید نوکری نہیں کرنا چاہتا ہے۔ اصل ہذا امراد مناسب
حکم و ایسہ پیشہ خدمت عرض ہے۔

دستخط انگریزی

IHC-PS-Chakiser.
27-11-2008

جناب عالی!

سین کپٹل توصیف احمد 253 سے مفصل بیان بذریعہ
نثار احمد IHC لیا جا کر رپورٹ IHC سے مفصل

اور قابل ملاحظہ ہے۔ اصل ہذا بغرض مناسب حکم و ایسہ ارسال
خدمت ہے۔

دستخط انگریزی
SHO PS Chakiser
27-11-2008

Annex (C)

میں لکھنؤ میں واقعہ 253 حال گاؤں جلیہ میں قریب
کے درجہ اقدار کے ساتھ ساتھ میں قریب
میں لکھنؤ میں واقعہ 253 حال گاؤں جلیہ میں قریب
میں لکھنؤ میں واقعہ 253 حال گاؤں جلیہ میں قریب
میں لکھنؤ میں واقعہ 253 حال گاؤں جلیہ میں قریب

محمد علی
قریباً 253 حال

محمد علی

خواجہ محمد علی صاحب
معرض قدرت میں قریب
میں لکھنؤ میں واقعہ 253 حال گاؤں جلیہ میں قریب

محمد علی صاحب
قریباً 253 حال
محمد علی صاحب
قریباً 253 حال

محمد علی
112 ps. chakera
27.11.2008

Better copy

Annex D(i)

FINAL SHOW CASE NOTICE

I Muhammad Iqbal Khan Marwat District Police Officer, Shangla as Competent authority under the NWFP Removal from Service (Spl: Power) ordinance, 2000 do hereby serve you Constable Tawseef Ahmad No. 253 follow:-

1. i) The Consequent upon the completion of inquiry conducted against you by the inquiry constable for which you given opportunity of hearing vide this office No. 35/2008 dated 18.10.2008.
- ii) On going through the findings, recommendations of the Inquiry committee, the material on record and other connected papers including your defence the committee.

I am satisfied that you have committed the following acts/ omission specified in section -3 of the said Ordinance.

You constable Tawseef Ahmad No. 253 was Deputed for (ATS) instructor course at nowshehra vide this office OB No . 103 dated 23.08.2008, but you failed to attend the training center and found absented your self from 10.09.2008 to till date without permission. Your this act amount gross misconduct on your part.

2. As a result thereof, I as competent authority, have tentatively decided to impose upon you the penalty of Major Punishment.
3. You are, therefore, requited to show cause as to why the aforesaid penalty should not be imposed upon you also intimate whether you desire to be heard in person.
4. If no reply to this notice is received within fifteen days of its delivery in the normal course of circumstances, it shall be presumed that you has no defence to put in that case as expartee action shall be taken against you.
5. The copy of the findings of the inquiry Committee is also enclosed.

FINAL SHOW CAUSE NOTICE.

I Muhammad Iqbal Khan Marwat District Police Officer, Shangla as competent authority under the WOFF Removal from Service (Spl:Power) Ordinance, 2000 do hereby serve you Constable Tawseef Ahmad NO.253 follow:-


1. i) The consequent upon the completion of Inquiry conducted against you by the Inquiry committee for which you given opportunity of hearing vide this office NO.35/2008 dated 18.10.2008.
- ii) On going through the findings, recommendations of the Inquiry Committee, the material on record and other connected papers including your defence the committee.

I am satisfied that you have committed the following acts/ omission specified in Section-3 of the said Ordinance.

You Constable Tawseef Ahmad NO.253 was deputed for (APS) instructor course at Nowshera vide this office CB NO.103 dated 23.08.2008, but you failed to attend the training Centre and found absented your self from 10.09.2008 to till date without permission. Your this act amount gross misconduct on your part.

- 2) As a result thereof, I as competent authority, have tentatively decided to impose upon you the penalty of Major Punishment.
- 3). You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you also intimate whether you desire to be heard in person.
- 4). If no reply to this notice is received within fifteen days of its delivery in the normal course of circumstances, it shall be presumed that you has no defence to put in that case as exparte action shall be taken against you.
- 5). The copy of the findings of the Inquiry Committee is also enclosed.

no 35 / E3
Dt. 18/10/2008


District Police Officer, Shangla.
(Obaid)
17/10/08
ec

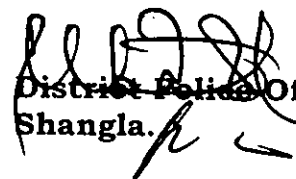
Annex (E)

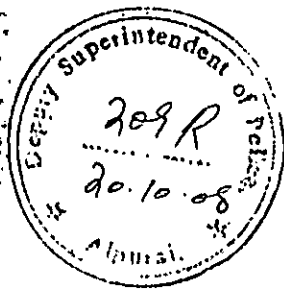
CHARGE SHEET

I Mr: Muhammad Iqbal Marwat District Police Officer Shangla as competent authority hereby charge you Constable Tawsef Ahmad No.253 as follow: -

You Constable Tawsef Ahmad No. 253 was deputed for (ATS) instructor course at Nowshehra vide this office O.B No. 103 Dated 23.08.2008 but you failed to attend the training center and found absented your self from 10.09.2008 till date without permission. Your this act amount gross misconduct on your part.

7. By reasons of the above, you appear to be guilty of misconduct under Section-3 of NWFP Removal from Service (Special Power-Ordinance, 2000) and have rendered yourself liable to all or any of the penalties specified in Section-3 of the Ordinance, 2000.
8. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.
9. Your written defense, if any, should reach the Enquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put in and that expartee action shall follow against you.
10. Intimate whether you desire to be heard in person.
11. A statement of allegations is enclosed.


District Police Officer,
Shangla.



Annex (F)

DISCIPLINARY ACTION


I Muhammad Iqbal District Police Officer Shangla as competent authority, is of the opinion that Constable Tawsef Ahmad No.253 has rendered himself liable to be proceeded against as he committed the following acts / omissions within the meaning of Section 3 of the North-West Frontier Province Removal from Service (Special Powers Ordinance, 2000)

STATEMENT OF ALLEGATION

You Constable Tawsef Ahmad No.253 was deputed for (ATS) instructor course at Nowshehra vide this office O.B No. 103 Dated 23.08.2008 but you failed to attend the training center and found absented your self from 10.09.2008 to till date without permission. Your this act amount gross misconduct on your part.

For the purpose of scrutinizing the conduct of said accused with the reference to the above allegation. Mr. Riaz Hussian DSP Alpuri and Mr. Bahrudin Khan ASDPO Puran, is appointed as Enquiry Officer. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make within 25 days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.

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


District Police Officer,
Shangla.

No. 35 /E, dated 18-10-2008.

Copy of above is sent to: -

7. Mr. Riaz Hussian DSP Alpuri.
8. Mr. Bahrudin Khan ASDPO/Puran.

For initiating proceeding against the officer/ official under the Provision contained in N.W.F.P/ Removal from Service (Spl: Power Ordinance, 2000)

Constable Tawsef Ahman No.253.

with direction to appear before the Enquiry Officer on the date time and place fixed by the Enquiry Officer, for the purpose of the Enquiry proceedings.

THY S/140/e

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

(CAMP COURT AT SWAT)

Service Appeal No. 27/2018: EX Constable Tawseef Ahmad Police Constable No. 258 r/o Chakisar Tehsil Besham District Shangla.....(appellant)

VERSUS

- 1) The District Police Officer Shangla
- 2) The Provincial Police Officer Khyber Pakhtunkhwa Peshawar
- 3) The Deputy Inspector General of Police Malakand at Swat..... (Respondents).

AFFIDAVIT

I Raees Khan Inspector legal office of the District Police officer Shangla do hereby solemnly affirm & state on oath that the whole contents of this best of my knowlage and belief that nothing has been concealed from this Honorable Tribunal Court.


Inspector Raees Khan
Inspector legal
shangla
Ph #: 03429469870
Office #: 0996850015

(05)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT SWAT

Service Appeal No. 27/2018.

Mr Tawseef ahmad Ex constable no 258 r/o Chakisar teh Besham distt shangla
.....(Appellant).

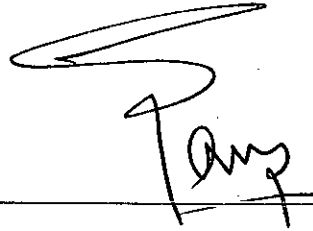
VERSUS

1. The District police officer Shangla
2. The provincial police officer, Khyber Pakhtunkhwa Peshawar.
3. The Deputy Inspector General of Police, Malakand at Saidu Sharif, Swat.....(Respondents)

AUTHORITY LETTER

Mr. Raees Khan Inspector District Shangla is hereby authorized to appear on behalf of the respondents below, before the Honorable tribunal court. He is authorized to submit all the required documents and replies etc to the Honorable tribunal court.

Provincial Police Officer
Khyber Pakhtunkhwa Peshawar
(Respondents No 02)



Regional Police Officer
Malakand at Saidu Sharif, Swat
(Respondents No 03)



Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer
Shangla
(Respondents No 01)



District Police Officer,
SHANGLA,