

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 728/2018

Date of Institution ... 14.05.2018

Date of Decision ... 10.09.2020

Yaqoob Nawaz S/O Saleh Khan ASI of Police Department District Hangu,  
R/O Zarki Nasrati, Tehsil Takhte Nasrati, District Karak.

... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa and four others.

... (Respondents)

-----  
MR. SALAMAT SHAH MEHSOOD,  
Advocate

--- For appellant.

MR. KABIR ULLAH KHATTAK,  
Additional Advocate General


--- For respondents.

MR. MIAN MUHAMMAD  
MR. MUHAMMAD JAMAL KHAN

... MEMBER(Executive)  
... MEMBER(Judicial)


JUDGMENT


MIAN MUHAMMAD, MEMBER.- Brief facts of the case leading to the instant service appeal are that the appellant joined service as Constable in the respondent-department in 1985. During his service, he was nominated in FIR No. 871 dated 14.12.1989 and charged under Section 302/34 PPC, Police Station City Kohat. He was dismissed from service vide Order dated 31.12.1992. On his acquittal by the Competent Court of Jurisdiction on 09.09.1998 as a result of compromise reached between the parties, he preferred departmental appeal and was reinstated in service on 13.04.1999. His period of absence was considered and treated as leave without pay. The appellant remained out of service since 31.12.1992 till 13.04.1999. He therefore, submitted departmental appeal for restoration of back benefits and annual



increments for the intervening period, on 15.02.2018 which was filed by the Competent Authority being badly time barred i.e. for about nineteen years as is evident from the letter No. 1188 dated 29.03.2018 of IGP Central Police Office Peshawar. This order has been in question and assailed as impugned order before the Services Tribunal.

02. We have heard the pro and counter arguments of the learned counsel for the parties and material available on record.

03. Learned counsel for the appellant argued that back benefits in terms of financial loss were the legal rights of the appellant and rights so accrued cannot be denied on the mere point of limitation. It was further contended that the appellant has been denied fair trial as enshrined in Article 10-A of the Constitution of Islamic Republic of Pakistan 1973. He relied on 2007 SCMR 537 and PLD (SC) 37 (Shariat appellate Bench). He also quoted  FR.52 and FR.53(b) in support of his arguments and pleaded for the back benefits in favour of the appellant.



04. On the other hand learned Additional Advocate General on behalf of the respondents raised preliminary objection on the maintainability of the service appeal and assailed the service appeal to have been badly time barred and no application for leave of condonation submitted before the Services Tribunal. He, therefore, was of the view that question of maintainability to be decided first and merit of the case, if any, be taken up subsequently. He based his arguments on 2011 SCMR 676 and 2015 SCMR 165 citation (d) Federal Services Tribunal Act (LXX

of 1973). The spirit involved and point of law decided by the Apex court would be relevant to reproduce here:-

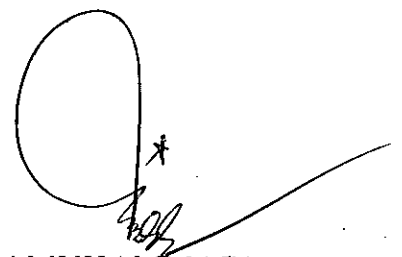
**“Limitation period and competency---When a departmental representation was barred by time, then without disclosing any sufficient reason for delay, no subsequent order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed before the Service Tribunal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

5. As a sequel to the above, it can safely be concluded that the appellant was reinstated in service on 13.04.1999 and he was serving in the department till the time of his departmental appeal on 15.02.2018 i.e about nineteen years of his reinstatement in service. He miserably failed to have agitated and requested for his back benefits and annual increments for the intervening period from 31.12.1992 to 13.04.1999. The maxim *“The law helps the vigilant and not the indolent”* stands fit and reflects on the attitude of appellant. This Bench, therefore, finds no grounds and considers it inappropriate to intervene the order of departmental authority dated 29.03.2018 which has rightly been decided on the point of limitation. The instant service appeal being not maintainable is, therefore, dismissed. Parties are left to bear their own costs. File be consigned to the record room.

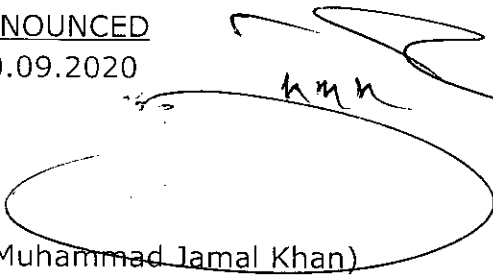
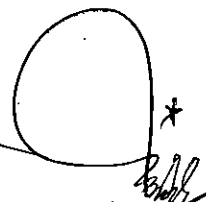
ANNOUNCED  
10.09.2020



(MUHAMMAD JAMAL KHAN)  
MEMBER(J)

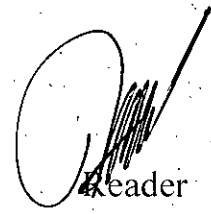


(MIAN MUHAMMAD)  
MEMBER(E)

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	10.09.2020	<p><u>Present.</u></p> <p>Mr. Salamat Shah Mehsood ... For appellant Advocate</p> <p>Mr. Kabirullah Khattak, Additional Advocate General ... For respondents</p> <p>Vide our detailed judgment of today, this bench, therefore, finds no grounds to consider it appropriate to intervene the order of departmental authority dated 29.03.2018 which has rightly been decided on the point of limitation. The instant service appeal being not maintainable is, therefore, dismissed. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><u>ANNOUNCED</u> 10.09.2020</p> <p> (Muhammad Jamal Khan) Member (Judicial)</p> <p> (Mian Muhammad) Member (Executive)</p>

17.06.2020

Due to Covid-19, the case is adjourned. To come up for  
the same on 10.09.2020 before D.B.

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by several vertical strokes.

Reader

26.12.2019

Counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Zahid Ur Rehman, Inspector for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 28.02.2020 before D.B.

  
Member

  
Member

28.01.2020

Clerk to counsel for the appellant present. Addl:AG for respondents present. Due to General Strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the instant case is adjourned. To come up for further proceedings/arguments on 27.03.2020 before D.B. Appellant be put on notice for the date fixed.

  
Member

  
Member

27.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 17.06.2020 before D.B.

  
Reader

28.03.2019

Due to general strike of the bar, the case is adjourn. To come up for further proceeding on 11:06.2019 before D.B.

  
Member

  
Member

11:06.2019

Counsel for the appellant and Addl. AG for the respondents present.

Due to paucity of time hearing is adjourned to 02.08.2019 before the D.B.

  
Member

  
Chairman

02.08.2019

Learned counsel for the appellant present. Mr. Riaz Paindakheil learned AAG alongwith Zahid Rehman Inspector present. Learned counsel for the appellant seeks adjournment Adjourn. To come up for arguments on 24.10.2019 before D.B.

  
Member

  
Member

24.10.2019

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Abdur Rauf, Steno for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 26.12.2019 for arguments before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

25-10-18

Due to Retirement of Honorable  
Chairman the Tribunal is non  
functional therefore the case is adjourned  
to come up for the same on 11-12-2018  
Rehman

11.12.2018

Appellant in person present. Mr. Zahid-ur-Rehman, Inspector (Legal) alongwith Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply on behalf of respondent No. 5 has already submitted. Written reply on behalf of respondents No. 1 to 4 not submitted. Learned Additional AG requested for further adjournment. Adjourned. To come up for written reply/comments on behalf of respondents No. 1 to 4 on 17.01.2019 before S.B.

  
Muhammad Amin Khan Kundi  
Member

17.1.2019

Counsel for the appellant and Addl. AG alongwith Zahidur Rahman, Inspector (Legal) for the respondents present.

Parawise comments on behalf of respondents 1 to 4 have been submitted. To come up for arguments before D.B on 28.03.2019. The appellant may submit rejoinder, if so desires, within a fortnight.

  
Chairman



09.07.2018

Miss Uzma Syed, Advocate on behalf of the appellant present and heard on preliminary.

Contends that the appellant was charged in a criminal case and after acquittal by the competent court of law, the appellant has been reinstated in service by respondent No. 2 on 13.4.2018 but without back benefits and then his departmental appeal was rejected by respondent No. 1 on 29.03.2018. That illegally the appellant has been deprived from back benefits and increments.

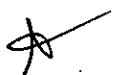
Points raised need consideration. The appeal is admitted to full hearing, subject to all legal objections including limitation, if raised by the respondents. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. Case to come up for written reply/comments on 27.08.2018 before S.B.

Appellant Deposited  
Security & Process Fee

  
Chairman

27.08.2018

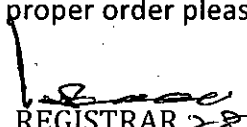


Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Zahid Hussain, Inspector (Hangu) and Mr. Farman, Account Officer (Hangu) for the respondents present. Representative of respondent No. 5 submitted written reply. Learned Additional AG made a request for adjournment on behalf of respondents No. 1 to 4 for filing of written reply. Granted. To come up for written reply/comments on behalf of respondents No. 1 to 4 on 25.10.2018 before S.B.

  
(Ahmad Hassan)  
Member

Form-A  
FORM OF ORDERSHEET

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

Case No. 728/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	28/05/2018	<p>The appeal of Mr. Yaqoob Nawaz resubmitted today by Uzma Syed 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 28/05/18</p>
2-	29/05/18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>08/06/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	08.06.2018	<p>Counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 09.07.2018 before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member</p>

The appeal of Mr. Yaqoob Nawaz son of Saleh Khan ASI of Police Department Hango received today i.e. on 14.05.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be flagged.
- 3- Approved file cover is not used.
- 4- Affidavit be got attested by the Oath Commissioner.
- 5- Address of respondent no. 5 is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 6- Copy dismissal and reinstatement order mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 7- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1008 /S.T,

Dt. 14/05 /2018.

  
REGISTRAR 14/5/18  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Salamat Shah Mehsood Adv. Karak

*Reported after remaining objections.*

*Counsel for Appellant*



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

Service Appeal No. 728 /2018

Yaqoob Nawaz ..... Appellant

**VERSUS**

2. Inspector General of Police KPK etc..... Respondents

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S.No.	Description of Documents	Annex	Pages
1.	Memo of Service Appeal	—	1-4
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3.	Copy of Appeal	A	6
4.	Order Impugned dated 29-03-2018	B	7
5.	Order of Acquittal dated 09-09-1998 <i>Disposal order &amp; Appointment order</i>	C	8-9-9A-9B
6.	Wakalat Nama		10

Date 14/5/18

Appellant:

Through:

**Salamat Shah Mehsood**  
Advocate,  
Supreme Court of Pakistan  
No. 03459160086

*[Signature]*  
14/5/18

1944

1944

1944

1944

1944

(11)

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

Khyber Pakhtukhwa  
Service Tribunal

Service Appeal No. 728 /2018

Diary No. 683

Dated 14-5-2018

Yaqoob Nawaz S/O Saleh Khan ASI of Police Department District Hangu  
R/O Zarki Nasrati Tehsil Takhte Nasrati District Karak

.....Appellant

**VERSUS**

1. Inspector General of Police KPK
2. Regional Police Officer Kohat Region (Kohat)
3. District Police Officer District Hangu
4. Superintendent of Police Investigation Hangu
5. District Account Officer *Hangu at Hangu*

..... Respondents

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 74**

**AGAINST THE ORDER OF RESPONDENT No 1 DATED 29-03-**

**2018, VIDE WHICH THE BACK BENEFITS ALONG WITH**

**ANNUAL INCREMENT HAS BEEN REFUSED.**

**Filed to-day**

**Registrar**

*14/5/18*

**Re-submitted to -day  
and filed.**

**Registrar**

*28/5/18*

**Prayer in Appeal:**

On accepting this appeal the impugned order dated 29-03-2018 be set aside and the back benefits along with annual increments may kindly be allowed, along with any other relief this Honorable Tribunal Deem fit in the circumstances may also be allowed.

**Facts**

1. That appellant join the service of respondent since 1985, while during service an incident happened and the appellant was charged in a murder case and was dismissed from service vide order dated 31-12-1992 and he was out of service till 13-04-1999.
2. That there after appellant was acquitted on the basis of compromised, on 09-09-1998 by the Court of District & Session Judge Kohat.
3. That thereafter, appellant was re instated in service by filing a Departmental Appeal on 13-04-1999, and his absence was considered leave without pay.
4. That one Mujahid Karim HC No. 154-D District Hangu filed service appeal against the promotion of appellant which was dismissed by this Honorable Tribunal.
5. That appellant filed Departmental Appeal before the respondent No. 1 for issuing annual increments along with back benefits which was not considered vide order dated 29-03-2018, and the said order was communicated through proper channel and was received on 11-05-2018.
6. That having found no other adequate and efficacious remedy appellant is constrained to file this appeal amongst other on the following grounds.

سید محمد عارف

**Documents annexed**

1. Appeal
2. Order dated 29-03-2018
3. Acquittal order dated 09-09-1998

**GROUNDS**

- A. That impugned order wrongly been passed without examining the relevant provision of law and to matter, hence the order is not sustainable.
- B. That appellant is entitle to all kinds of back benefits available under the rules procedure, relevant law, the order impugned based on non reading of relevant law and rule.
- C. That appellant case is fully attracted to the identical case already decided by the Apex Court decided in 2007 SCMR page No. 537.
- D. That before passing impugned order appellant was not heard in support of their appeal which is evident from the impugned order.
- E. That article 10(A) of Constitution 1973 provide fair Trial and hearing which was ignored by the respondent concerned, hence the order is not sustainable on the sole ground.
- F. That order impugned was signed by registrar of respondent No. 1 which is legally incorrect, illegal not sustainable in the eye of law.
- G. That Appeal by counting days from 11-05-2018 is will within time.

مستورد



**Prayer in Appeal:**

On accepting this appeal the impugned order dated 29-03-2018 be set aside and the back benefits along with annual increments may kindly be allowed, along with any other relief this Honorable Tribunal Deem fit in the circumstances may also be allowed.

Date 14/5/18

Appellant:

Through:

**Salamat Shah Mehsood  
Advocate,  
Supreme Court of Pakistan  
No. 03459160086**

*[Handwritten signature]*  
*[Handwritten signature]*  
14/5/18

**Certificate:**

Certified that no such Service Appeal has earlier been filed by the Appellant in this honourable Tribunal.

Appellant:

Through Council

*[Handwritten signature]*  
*[Handwritten signature]*  
14/5/18

*[Handwritten signature]*

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

Service Appeal No. \_\_\_\_\_/2018

Yaqoob Nawaz ..... **Appellant**

**VERSUS**

1. Inspector General of Police KPK etc..... **Respondents**

**Affidavit**

I Yaqoob Nawaz S/O Saleh Khan do hereby solemnly affirm and declare on oath on behalf of Appellant 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 Honorable Court.

Date

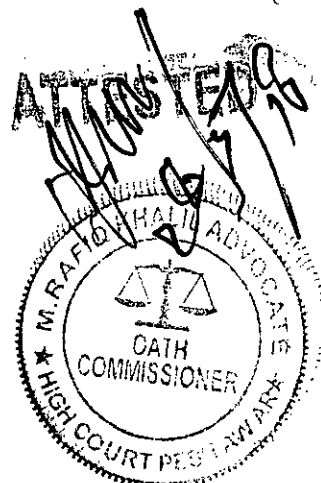
14/5/18

Appellant:

Yaqoob Nawaz S/O Saleh Khan

ASI District Hangu

لقیو ب نواز



THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

1961

1961

PHYSICS DEPARTMENT  
UNIVERSITY OF CHICAGO  
5734 S. UNIVERSITY AVE.  
CHICAGO, ILL. 60637

PHYSICS DEPARTMENT  
UNIVERSITY OF CHICAGO  
5734 S. UNIVERSITY AVE.  
CHICAGO, ILL. 60637

*Amal A-6*

TO

The Inspector General of Police  
Khyber Pakhtunkhwa Peshawar.

Subject: Through Proper Channel

Respected Sir,

With due respect, Appellant submits as follows.

1. That Appellant was dismissed from service and was later on re-instated in service by Worthy Regional Police Officer Kohat vide order dated 13-04-1999.
2. That the intervening was treated on leave without pay, However, The office reluctant to grant annual increments.
3. That Appellant is entitled for increments of the intervening but the office is not allotting increments to appellant.

It is therefore requested that annual increments for intervening may allowed.

Yours Obediently,

*Yaqoob Nawaz*  
Yaqoob Nawaz

ASI Distict, Hangu  
15-02-018

*Div. Peshawar*  
*16/02/18*

*Forwarded Pt.*

*Sub. Div. Officer*  
SUB-DIVISIONAL  
POLICE OFFICER  
THALL  
06-03-018

Distict Police Officer  
Hangu  
Duty No. \_\_\_\_\_  
Date \_\_\_\_\_

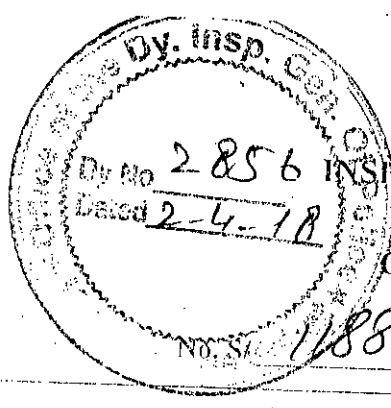
SRC.

*Yaqoob Nawaz*

*[Signature]*  
DEPT. \_\_\_\_\_

*[Signature]*  
**ATTESTED**  
*14/5/18*

Ann-B-7



OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
CENTRAL POLICE OFFICE,  
PESHAWAR.

/18, dated Peshawar the 29/03/2018.

To : The Regional Police Officer,  
Kohat Region, Kohat.

Subject: APPEAL (DRIVER ASI YAQOOB NAWAZ)

Memo:

Please refer to your office memo: No. 2883 / EC, dated 20.03.2018.

The appeal of Driver ASI Yaqoob Nawaz to the Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for restoration of annual increments has been processed / examined at Central Police Office, Peshawar and filed by the competent authority being badly time barred for about 19 years.

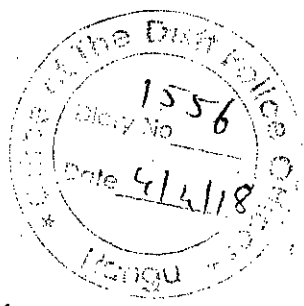
The applicant may please be informed accordingly.

*Handwritten notes:*  
DSC  
EC 3/4/18  
204-08

*Handwritten notes:*  
4359  
No. / EC  
203/4/2018

*Signature:*  
(SYED ZIA AHSAN),  
Registrar,  
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.

DPO Hangu



For information w/s to this office  
Endst: No. 2884/EC, dated 20/03/2018.  
Also inform the official concerned  
accordingly please.

SRG.

For information  
& action.

*Signature:*  
D.P.O Hangu

**DIG POLICE  
KOHAT**  
EC/3/4/18  
**RECEIVED**  
14/5/18



NWFP J (Criminal) No. 210  
Sess. Judge of Kohat  
9

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
		<p>read with Section 338-E of Pakistan Penal Code. The matter has now been compounded between the parties. The legal heirs have waived their right of Qisas and Diyat. It is, therefore, both the accused/convicts stands acquitted in the case. To be release forthwith if not required in any other case. File be consigned to the R/R after completion.</p> <p><u>Order announced:</u> Dt: 09.9.1998. (MALIK MUJTABA AHMAD) Sessions Judge, Kohat.</p> <p><i>7/9/98</i></p> <p><b>ATTESTED</b> <i>[Signature]</i> 14/5/18</p> <p><b>ATTESTED TO BE TRUE COPY</b> <i>[Signature]</i> 28/18</p>

ORDER BOOK

Dated 31/12/92.

Serial No.

Section Head

Details of order

Dated 31/12/92.

2132

DISMISS FROM SERVICE ORDER

Const: Sadie, Said No: 393 and Const: Yaqoob Ahmad No: 308 of this Dist. Police, while performing their duties in Police station City, were charged in Criminal Case FIR No: 071 dated 14/12/89 U/s 302/34 PPC, Ps, City. The Criminal Case against them have been decided they convicted sentenced to under go imprisonment for life each and also to pay fine of Rs 20,000/- each in default of payment of fine, the accused shall further undergo RI for one year, vide additional Session Judge, Lehert order dated 15/12/92. They are therefore dismissed from service with immediate effect.

2133

DISC. FINE & CENSURE

Const: Hossain Anwar No: 476 was found absent from duty and asleep in a corner nearby, and report against him was made vide DD: No: 30 dated 26/12/92 at Police lines Market. He is awarded censure and fine Rs 50/- The following transfer/postings between the upper sub, serving in this Dist: are hereby ordered with immediate effect on administrative grounds.

2134

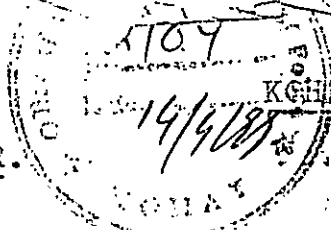
TRANSFER ORDER

- ① SI Tajmool SHO, Sh. Dara, SI CIA staff.
- ② SI Akhtar Inam CIA to SHO, Sh. Dara.



POLICE DEPTT:

9B



KOHAT, RANGE:

O R D E R.

This is an order on the appeal of Ex:Constable Yaqoob Nawaz No.308 of Kohat District Police.

The brief facts of the case were that on 14-12-1989 the applicant while on beat duty in Main Bazar near Royal Bakery has stopped Kamal Khan Afridi and his servant, Muhammad Ali for checking and had asked Kamal Khan to produce licence copy of the Pistol. In the meantime exchange of hot words took place. Resultantly the beat Constable fired at Kamal Khan Afridi and Muhammad Ali with which both had sustained injuries and had succumbed to their injuries while on their way to Hospital. With the firing of Constable one another person was also injured. Their case was tried by the Additional Sessions Judge, Kohat, who vide his judgement dated 15-12-1992 had convicted both the Constables. However, subsequently on 9.9.1998 the learned Distt: & Sessions Judge on account of compromise had acquitted the applicant and his colleague.

The applicant was heard in person during Orderly Room held at this office on 12-4-1999. During hearing it come to light that there was no previous enmity between the parties and occurrence took place at the spur of moment which amounts to sudden provocation.

Keeping this in view Ex:Constable Yaqoob Nawaz No.308 being a trained soldier, is hereby re-instated in service with immediate effect. The period spent by him out of service is ordered to be considered as leave without pay.

( MUHAMMAD AZAM KHAN )  
Dy:Inspector General of Police,  
Kohat Range, Kohat.



No. 1773-74 /EC, dated Kohat, the 13-4- /1999.

Copy of above is forwarded to the Supdt: of Police Kohat for information and necessary <sup>action</sup> The Service Record received with your Memo: No.4924/EC, dated 19-3-1999 is returned herewith for record.

2. Constable Yaqoob Nawaz S/O Luleh Khan Resident of Village Zarki Nasrati District Karak.

or 681  
or 14-4-99  
Sgt/Ordn/No with En

24/4/99  
12/4/99  
10/4/99

قیمت 50 روپے	 	40205
ایڈوکیٹ:	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	
بار کونسل ایسوسی ایشن نمبر:		
رابطہ نمبر:		

بعدالت جناب: KPI Service Tribunal, Peshawar

مخانب:	دعویٰ:
Appellant	
یقوب انوار	علت نمبر:
بنام	مورخہ:
یولیب	جرم:
	تھانہ:
<b>باعت تحریر آگہ</b>	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ  
 آن مقام پشاور کیلئے ار جاد بسف اللہ ایدہ وکیل مقرر  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست استعانت ہر قسم کی تصدیق  
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا کسی کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سمنر سے

المرقوم: 28-5-2018

العبد \_\_\_\_\_ واہ شد \_\_\_\_\_ العبد

مقام \_\_\_\_\_ Peshawar \_\_\_\_\_ کے لیے منظور ہے۔



# District Accounts Office Hangu

Email: daohangu@gmail.com Phone: 0925623290

No. \_\_\_\_\_ DAO/HANGU/2018-19

633

DATED: 16/08/2018

## Before the KPK Service Tribunal Peshawar

Appeal No. 728/2018

Mr Yaqoob Nawaz-----Appellant

V/S

Inspector General of Police KPK & others -----Respondent

(para wise reply on behalf of Respondent No.5)

### Preliminary objection.

- 1- That the Appellant have no cause of action.
- 2- That the Appellant have no locus standi.
- 3- That the appeal in hand is not maintainable.
- 4- The ~~the~~ instant is <sup>appeal</sup> time barred.
- 5- That the Appellant has not come to this case with clean hands.
- 6- The Finance department Peshawar is also the competent authority in this case, which has not make as respondent by the Appellant.

### Respectfully Sheweth:-

**Para 1:-** relates to record, however liable to be proved by the Appellant, with the extent that under para FR-52 is to clearly mention as

"the pay & allownces of the government servant who is dismissed/removal from service cease from the date of such dismissed or removal" (Annex-A)

**Para 2:-** Relate to record, however liable to be proved by the Appellant

**Para 3:-** correct to the extent that in order No 1773-74/EC, dated 13-04-1999 issued by the police department Kohat Region which is clearly mention that Appellant is here by re-instated in service with immediat effect, hence the Appellant is not entitled for annual increments along with back benefits. (Annex-B).

**Para 4:-** no comments.

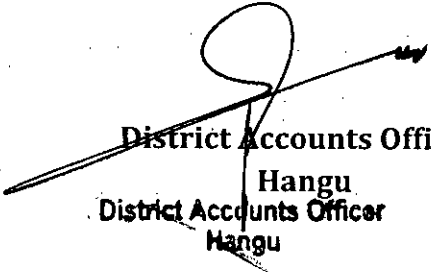
**Para 5:-** Correct to the extent that letter No 1188/18 dated 29/03/2018 (respondent No 1) and they are in better position to shown the status of the case

**Para 6:-** no Comments

### Grounds

- A. Relates to respondent No 1, hence no comments
- B. Incorrect in light of FR-52 which is clearly mention that "the pay & allownces of the government servant who is dismissed/removal from service cease from the date of such dismissed or removal" , hence the Appellant is not entitled for back benefit along with annual increments under the rules.
- C. No comments
- D. Relates to the respondent No 1, and they are in better position to shown the status of the case.
- E. Relates to the respondent No 1, and they are in better position to shown the status of the case.
- F. Relate to respondent No 1, hence no comments
- G. No comments.

Keeping in view of the above mention facts it is therefore humbly prayed that the appeal in hand having no merits, may please be dismissed.

  
District Accounts Officer  
Hangu  
District Accounts Officer  
Hangu

*peave net*

*ant/AM.*

*20/8/18*

## CHAPTER VIII. - DISMISSAL, REMOVAL AND SUSPENSION

**F. R. 52.** The pay and allowances of a Government servant who is dismissed or removed from service cease from the date of such dismissal or removal.

**F. R. 53.** A Government servant under suspension is entitled to the following payments:-

(a) In the case of <sup>1</sup>[an employee of the Armed Forces] who is liable to revert to Military duty, to the pay and allowances to which he would have been entitled had he been suspended while in military employment.

<sup>2</sup>(b) In the case of a Government servant under suspension, other than that specified in clause (a), he shall be entitled to full amount of his salary and all other benefits and facilities provided to him under the contract of service, during the period of his suspension.]

*Government decision -*

It has been decided that the rate of the subsistence grant payable to suspended Government servants governed by F.R. 53(b) shall be enhanced from one-third to one-half of the pay of the suspended Government servant.

A doubt has been raised as to whether, in the case of a Government servant who has been suspended while on leave, the subsistence grant should be calculated with reference to his leave salary or with reference to his pay. Attention in this connection is invited to F.R. 55, which prohibits grant of leave to Government servants under suspension. Such a Government servant, therefore, ceases to be on leave as soon as he is placed under suspension, and the subsistence grant in his case also has to be calculated with reference to the pay which was admissible to him on the eve of the commencement of the leave.

These orders take effect from the 1st of December, 1969.

[G.P., M.F., O.M. No. F. 12(32)-R3/70, dated the 14th February, 1970.]

<sup>1</sup>In F.R. 53, in clause (a) substituted by the S.R.O. 718(I)/93, 2nd August, 1993, Gaz. of Pak., Extra., Pt. II, P. No. 1339, Aug. 22, 1993.

<sup>2</sup>In F.R. 53, clause (b) substituted by the S.R.O. 1173 (I)/94, dt. 21-9-1994, Gaz. of Pak. Extra., Pt. II, dated 5th December, 1994.

\* [F. R. 54.

move

grant

(a)

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\*F.R. 54  
pt. II, P. No. 133

Annex - B

93

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KOHAT, RAJ...

POLICE DEPTT:

ORDER

This is an order on the appeal of Ex:Constable Yaqoob Nawaz No.308 of Kohat District Police.

The brief facts of the case were that on 14-12-1989 the applicant while on beat duty in Main Bazar near Royal Bakery has stopped Kamal Khan Afridi and his servant, Muhammad Ali for checking and had asked Kamal Khan to produce licence copy of the Pistol. In the meantime exchange of hot words took place. Resultantly the beat Constable fired at Kamal Khan Afridi and Muhammad Ali with which both had sustained injuries and had succumbed to their injuries while on their way to Hospital. With the firing of Constable one another person was also injured. Their case was tried by the Additional Sessions Judge, Kohat, who vice his judgement dated 15-12-1992 had convicted both the Constables. However, subsequently on 9.9.1998 the learned Distt: & Sessions Judge on account of compromise had acquitted the applicant and his colleague.

The applicant was heard in person during Orderly Room held at this office on 12-4-1999. During hearing it come to light that there was no previous enmity between the parties and occurrence took place at the spur of moment which amounts to sudden provocation.

Keeping this in view Ex:Constable Yaqoob Nawaz No.308 being a trained soldier, is hereby re-instated in service with immediate effect. The period spent by him out of service is ordered to be considered as leave without pay.

*[Handwritten signatures]*

( MUHAMMAD AZAM KHAN )  
By: Inspector General of Police,  
Kohat Range, Kohat.

No. 1773-74 /EC, dated Kohat, the 13-4- /1999.

Copy of above is forwarded to the Supdt: of Police Kohat for information and necessary <sup>action</sup>. The Service Record received with your Memo; No.4924/EC, dated 19-3-1999 is returned herewith for record.

2. Constable Yaqoob Nawaz E/C Saleh Khan Resident of Village Zunki Masrati District Kohat.

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

Service Appeal No.728 /2018

Yaqoob Nawaz

..... Appellant.


**VERSUS**

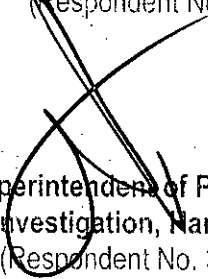
Inspector General of Police,  
Khyber Pakhtunkhwa and others

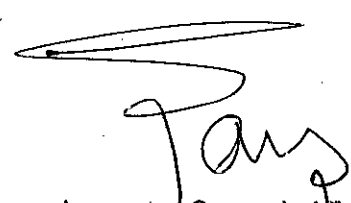
..... Respondents.


**COUNTER AFFIDAVIT**

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

  
Dy: Inspector General of Police,  
Kohat Region Kohat  
(Respondent No. 2)

  
Superintendent of Police,  
Investigation, Nangu  
(Respondent No. 3)

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
(Respondent No. 1)

  
District Police Officer,  
Hangu  
(Respondent No. 4)

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

Service appeal No. 728/2018  
Yaqoob Nawaz

..... Appellant.

**VERSUS**

Inspector General of Police,  
Khyber Pakhtunkhwa, and others

..... Respondents.

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 to 4.**

**Respectively Sheweth:-**

Parawise comments are submitted as under:-

**Preliminary Objections:-**

- a. That the appellant has got no cause of action.
- b. That the appellant has got no locus standi.
- c. That the appeal is not maintainable in the present form.
- d. That the appellant has not come to this Hon: Tribunal with clean hands.
- e. That the appeal is bad for misjoinder and non-joinder of necessary parties.
- f. That the appeal is badly time barred.

**FACTS:-**

1. Enlistment of appellant, pertains to record. It is added that the appellant (as constable) while on duty was charged in murder case. The appellant was proceeded with departmentally which resulted his dismissal from service.
2. Pertains to record, hence no comments.
3. Pertains to record, hence no comments.
4. Irrelevant, hence no comments.
5. The departmental appeal of the appellant was properly proceeded, which was found badly time barred for about **19 years** and filed. The appellant was timely informed.
6. Incorrect, the appellant has availed proper forum for redressal of his grievances.


**GROUND:-**

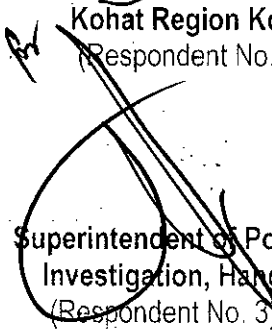
- A. Incorrect, legal and proper order was passed by the competent authorities.
- B. Incorrect, the appellant is not entitled for any kind of back benefits. Furthermore, the appellant filed appeals after a laps of about 19 years.

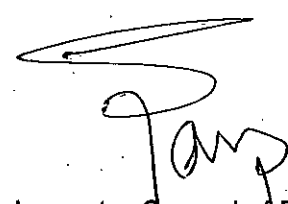


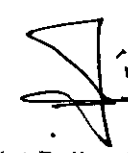
- C. Incorrect, each and every case has its own circumstances, facts and merit.
- D. Incorrect, there was no need of personal hearing of the appellant as, the appeal was decided on available record.
- E. Incorrect, the appellant has been treated in accordance with law & rules.
- F. Incorrect, the information was circulated in accordance with rules of business.
- G. Incorrect, the appeal is time barred.

Keeping in view of the above, the appeal is badly time barred, without merit and not substantiated. It is, therefore, prayed that the appeal may kindly be dismissed with cost.

  
Dy: Inspector General of Police,  
Kohat Region Kohat  
(Respondent No. 2)

  
Superintendent of Police,  
Investigation, Hangu  
(Respondent No. 3)

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
(Respondent No. 1)

  
District Police Officer,  
Hangu  
(Respondent No. 4)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Service Appeal No. \_\_\_\_\_/2018

Yaqoob Nawaz ..... Appellant

**VERSUS**

2. Inspector General of Police KPK etc. .... Respondents

**INDEX**

S.No.	Description of Documents	Annex	Pages
1.	Memo of Service Appeal		
2.	Affidavit	—	1-4
3.	Copy of Appeal	—	5
4.	Order Impugned dated 29-03-2018	A	6
5.	Order of Acquittal dated 09-09-1998 <i>Resignation order &amp; Appointment order</i>	B	7
6.	Wakalat Nama	C	8-9-9A-9B
			10

Date 14/5/18

Appellant:

Through:

*[Signature]*  
Salamat Shah Mehsood  
Advocate,  
Supreme Court of Pakistan  
No. 03459160086

*[Signature]*  
14/5/18

(11)

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

Service Appeal No. \_\_\_\_\_/2018

Khyber Pakhtunkhwa  
Service Tribunal

683

14-03-2018

Yaqoob Nawaz S/O Saleh Khan ASI of Police Department District Hangu

R/O Zarki Nasrati Tehsil Takhte Nasrati District Karak

.....Appellant

**VERSUS**

1. Inspector General of Police KPK
2. Regional Police Officer Kohat Region (Kohat)
3. District Police Officer District Hangu
4. Superintendent of Police Investigation Hangu
5. District Account Officer *Hangu at Hangu*

.....Respondents

APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 74

AGAINST THE ORDER OF RESPONDENT No 1 DATED 29-03-

2018, VIDE WHICH THE BACK BENEFITS ALONG WITH

ANNUAL INCREMENT HAS BEEN REFUSED.

*[Signature]*  
File-to-day

14/05/18

*[Handwritten notes]*

*[Handwritten marks]*

(3)

**Prayer in Appeal:**

On accepting this appeal the impugned order dated 29-03-2018 be set aside and the back benefits along with annual increments may kindly be allowed, along with any other relief this Honorable Tribunal Deem fit in the circumstances may also be allowed.

**Facts**

1. That appellant join the service of respondent since 1985, while during service an incident happened and the appellant was charged in a murder case and was dismissed from service vide order dated 31-12-1992 and he was out of service till 13-04-1999.
2. That there after appellant was acquitted on the basis of compromised, on 09-09-1998 by the Court of District & Session Judge Kohat.
3. That thereafter, appellant was re instated in service by filing a Departmental Appeal on 13-04-1999, and his absence was considered leave without pay.
4. That one Mujahid Karim HC No. 154-D District Hangu filed service appeal against the promotion of appellant which was dismissed by this Honorable Tribunal.
5. That appellant filed Departmental Appeal before the respondent No. 1 for issuing annual increments along with back benefits which was not considered vide order dated 29-03-2018, and the said order was communicated through proper channel and was received on 11-05-2018.
6. That having found no other adequate and efficacious remedy appellant is constrained to file this appeal amongst other on the following grounds.

3

Documents annexed

1. Appeal
2. Order dated 29-03-2018
3. Acquittal order dated 09-09-1998

GROUNDS

- A. That impugned order wrongly been passed without examining the relevant provision of law and to matter, hence the order is not sustainable.
- B. That appellant is entitle to all kinds of back benefits available under the rules procedure, relevant law, the order impugned based on non reading of relevant law and rule.
- C. That appellant case is fully attracted to the identical case already decided by the Apex Court decided in 2007 SCMR page No. 537.
- D. That before passing impugned order appellant was not heard in support of their appeal which is evident from the impugned order.
- E. That article 10(A) of Constitution 1973 provide fair Trial and hearing which was ignored by the respondent concerned, hence the order is not sustainable on the sole ground.
- F. That order impugned was signed by registrar of respondent No. 1 which is legally incorrect, illegal not sustainable in the eye of law.
- G. That Appeal by counting days from 11-05-2018 is will within time.

**Prayer in Appeal:**

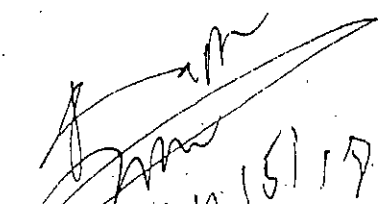
On accepting this appeal the impugned order dated 29-03-2018 be set aside and the back benefits along with annual increments may kindly be allowed, along with any other relief this Honorable Tribunal Deem fit in the circumstances may also be allowed.

Date 14/5/18

  
Appellant:

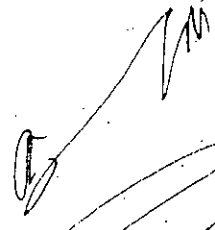
Through:

**Salamat Shah Mehsood  
Advocate,  
Supreme Court of Pakistan  
No. 03459160086**

  
14/5/18

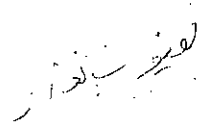
**Certificate:**

Certified that no such Service Appeal has earlier been filed by the Appellant in this honourable Tribunal.

  
Appellant:

Through Council

  
14/5/18



5

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

Service Appeal No. \_\_\_\_\_/2018

Yaqoob Nawaz ..... Appellant

VERSUS

1. Inspector General of Police KPK etc..... Respondents

**Affidavit**

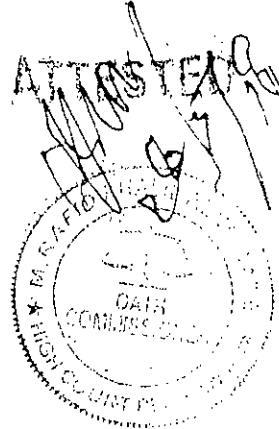
I Yaqoob Nawaz S/O Saleh Khan do hereby solemnly affirm and declare on oath on behalf of Appellant that the contents of the Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Date 14/5/18

Appellant:

Yaqoob Nawaz S/O Saleh Khan  
ASI District Hangu

*Yaqoob Nawaz*



14/5/18

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~~Handwritten signature~~

Dr. Farooq

SAC

16

Dr. Farooq  
16

SUB-DIVISIONAL  
POLICE OFFICER  
HANGU

ASI District, Hangu

Yaqoob Nawaz

Yours Obediently,

It is therefore requested that annual increments for intervening may

allowing increments to appellant.

3. That Appellant is entitled for increments of the intervening but the office is not

reluctant to grant annual increments.

2. That the intervening was treated on leave without pay, However, The office

service by Worthy Regional Police Officer Kohat vide order dated 13-04-1999.

1. That Appellant was dismissed from service and was later on re-instated in

With due respect, Appellant submits as follows.

Respected Sir,

Through Proper Channel

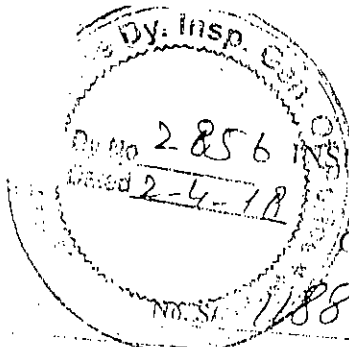
Subject:

The Inspector General of Police  
Khyber Pakhtunkhwa Peshawar

TO

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OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
CENTRAL POLICE OFFICE,  
PESHAWAR.  
/18, dated Peshawar the 29/03/2018.

The Regional Police Officer,  
Kohat Region, Kohat.

APPEAL (DRIVER ASI YAQOOB NAWAZ)

Please refer to your office memo: No. 2883 / EC, dated 20.03.2018.

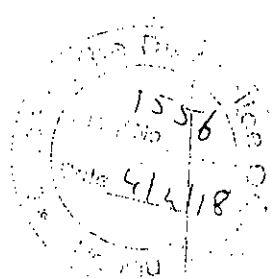
The appeal of Driver ASI Yaqoob Nawaz to the Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for restoration of annual increments has been processed & examined at Central Police Office, Peshawar and filed by the competent authority being badly neglected for about 19 years.

The applicant may please be informed accordingly.

*Handwritten notes:*  
2-4-18  
2-4-18

*Handwritten notes:*  
435)  
No. / EC  
20/3/18

(SYED ZIA ALI SHAH)  
Registrar,  
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar



DPO Hangu

For information w/r to this office  
Endst: No. 2884/EC, dated 20/03/2018.  
Also inform the official concerned  
accordingly please.

SRC.

DIG POLICE  
KOHAT  
EC/3/4/18

For information  
& action.

~~SECRET~~  
14/3/18

Yaqoob Nawaz etc...Vs...The State

GSAPD No. 1000 P. 105 - 1250

No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
	7/9/98	<p>Particular present level for the petitioner present named as seeking to be admitted to the P.B. No. 1000 of the proceedings.</p> <p>To be entered in the order of Session Case.</p> <p>Mr. Zahoor Khan advocate moved the application for acquittal of the two convicts Yaqoob Nawaz and Sadig Said in case FIR No. 871 dt: 14.12.89 of P.S. City convicted by Syed Rafique Hussain Shah the then learned Additional Sessions Judge, Kohat. He vide his judgment and order dated 15.12.98. The two convicts now have effected compromise with the legal heirs of the deceased. The statements of the legal heirs have been recorded in the case. The statements of the women folk have been recorded through the local commissioner. The statement of the legal heir of Mohammad Younus the deceased Captain one of the legal heirs, the brother of the deceased in the present case, has been recorded by Haji Nadar Shah Ex-Chairman District Council, Kohat. His statement today has been recorded in the court regarding the compromise of the legal heirs of Mohammad Younus with the two accused/convicts. It is, therefore, keeping in view the statements recorded in respect of compromise the offence stands compounded u/s 345 of Cr.P.C.</p>

9-9-98  
 ORDER  
 09.9.98

1387  
 1988-82  
 25-8661  
 11/11/1990  
 11/11/1990  
 11/11/1990

ATTESTED TRUE COPY

*[Signature]*  
 21/11/98

*[Signature]*  
 11/11/98

Yaqoob Nawaz etc...Vs...The State

GS/10/NW/11-1675-FS-10,000 Pak-7395-1260

SECRET  
19

No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
		<p>read with Section 338-E of Pakistan Penal Code. The matter has now been compounded between the parties. The legal heirs have waived their right of Qisas and Diyat. It is, therefore, both the accused/convicts stands acquitted in the case. To be release forthwith if not required in any other case. File be consigned to the R/R after completio</p> <p><u>Order announced:</u> Dt: 09.9.1998.</p> <p>(MALIK MUJTABA AHMAD) Sessions Judge, Kohat.</p> <p>74/24/18</p> <p>ATTESTED</p> <p>14/5/18</p> <p>ATTESTED TO BE TRUE COPY</p> <p>28/1/18</p>

ORDER BOOK

Dated 31/12/92

Serial No.	Section Head	Details of order
2132	DISMISS FROM SERVICE ORDER	<p>Dated 31/12/92</p> <p>Const: Sadie, Said No: 393 and Const: Yaqoob Nawayz No: 308 of this Dist. Police, while performing their duties in police station city, were charged in Criminal Case FIR No: 071 dated 14/12/89 U/s 302/34 PPC, Ps, city. The Criminal Case against them have been decided they convicted sentenced to under go imprisonment for life each and also to pay fine of Rs 20,000/- each in default of payment of fine. The accused shall further undergo RI for one year, vide additional Session Judge, Lechart order dated 15/12/92. They are therefore dismissed from service with immediate effect.</p>
2133	DISC: FINE & CENSURE	<p>Const: Hassan Anwar No: 476 was found absent from duty and asleep in a corner nearby, and report against him was made vide DD: No: 30 dated 26/12/92 at police lines Mahara. He is awarded censure and fine Rs 50/-</p> <p>The following transfer/postings between the upper sub: serving in this Dist: are hereby ordered with immediate effect on administrative grounds:</p>
2134	TRANSFER ORDER	<ol style="list-style-type: none"> <li>SI Tajmoul SHO sh. Darath SI C/A sh. Jaffer</li> <li>SI Haktan Jaman CA to SHO sh. Darath</li> </ol>

POLICE DEPTT:

9B

109  
KOHAT, RANGE  
14/4/99

ORDER

This is an order on the appeal of Ex:Constable Yaqoob Nawaz No.308 of Kohat District Police.

The brief facts of the case were that on 14-12-1989 the applicant while on beat duty in Main Bazar near Royal Bakery has stopped Kamal Khan Afridi and his servant, Muhammad Ali for checking and had asked Kamal Khan to produce licence copy of the Pistol. In the meantime exchange of hot words took place. Resultantly the beat Constable fired at Kamal Khan Afridi and Muhammad Ali with which both had sustained injuries and had succumbed to their injuries while on their way to Hospital. With the firing of Constable one another person was also injured. Their case was tried by the Additional Sessions Judge, Kohat, who vide his judgement dated 15-12-1992 had convicted both the Constables. However, subsequently on 9.9.1998 the learned Distt: & Sessions Judge on account of compromise had acquitted the applicant and his colleague.

The applicant was heard in person during Orderly Room held at this office on 12-4-1999. During hearing it come to light that there was no previous enmity between the parties and occurrence took place at the spur of moment which amounts to sudden provocation.

Keeping this in view Ex:Constable Yaqoob Nawaz No.308 being a trained soldier, is hereby re-instated in service with immediate effect. The period spent by him out of service is ordered to be considered as leave without pay.

( MUHAMMAD AZAM KHAN )  
Dy:Inspector General of Police,  
Kohat Range, Kohat.

No. 1773-74 /EC, dated Kohat, the 13-4-1999.  
Copy of above is forwarded to the Supdt: of Police Kohat for information and necessary <sup>action</sup>. The Service Record received with your Memo: No.4924/EC, dated 19-3-1999 is returned herewith for record.

2. Constable Yaqoob Nawaz S/O Saleh Khan Resident of Village Zarki Nasrati District Karak.

68/  
14-4-99  
Ref. No. 4924/EC

24/4/99  
344

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL.PESHAWAR

Service Appeal No. 728/2018

Date of Institution ... 14.05.2018

Date of Decision ... 10.09.2020

Yaqoob Nawaz S/O Saleh Khan ASI of Police Department District Hangu.  
R/O Zarki Nasrati, Tehsil Takhte Nasrati, District Karak.

... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa and four others.

... (Respondents)

-----  
MR. SALAMAT SHAH MEHSOOD,  
Advocate

--- For appellant.

MR. KABIR ULLAH KHATTAK,  
Additional Advocate General

--- For respondents.

MR. MIAN MUHAMMAD  
MR. MUHAMMAD JAMAL KHAN

... MEMBER(Executive)  
... MEMBER(Judicial)

JUDGMENT

MIAN MUHAMMAD, MEMBER.- Brief facts of the case leading to the instant service appeal are that the appellant joined service as Constable in the respondent-department in 1985. During his service, he was nominated in FIR No. 871 dated 14.12.1989 and charged under Section 302/34 PPC, Police Station City Kohat. He was dismissed from service vide Order dated 31.12.1992. On his acquittal by the Competent Court of Jurisdiction on 09.09.1998 as a result of compromise reached between the parties, he preferred departmental appeal and was reinstated in service on 13.04.1999. His period of absence was considered and treated as leave without pay. The appellant remained out of service since 31.12.1992 till 13.04.1999. He therefore, submitted departmental appeal for restoration of back benefits and annual

increments for the intervening period, on 15.02.2018 which was filed by the Competent Authority being badly time barred i.e for about nineteen years as is evident from the letter No. 1188 dated 29.03.2018 of IGP Central Police Office Peshawar. This order has been in question and assailed as impugned order before the Services Tribunal.

02. We have heard the pro and counter arguments of the learned counsel for the parties and material available on record.

03. Learned counsel for the appellant argued that back benefits in terms of financial loss were the legal rights of the appellant and rights so accrued cannot be denied on the mere point of limitation. It was further contended that the appellant has been denied fair trial as enshrined in Article 10-A of the Constitution of Islamic Republic of Pakistan 1973. He relied on 2007 SCMR 537 and PLD (SC) 37 (Shariat appellate Bench). He also quoted FR.52 and FR.53(b) in support of his arguments and pleaded for the back benefits in favour of the appellant.

04. On the other hand learned Additional Advocate General on behalf of the respondents raised preliminary objection on the maintainability of the service appeal and assailed the service appeal to have been badly time barred and no application for leave of condonation submitted before the Services Tribunal. He therefore, was of the view that question of maintainability to be decided first and merit of the case, if any, be taken up subsequently. He based his arguments on 2011 SCMR 676 and 2015 SCMR 165 citation (d) Federal Services Tribunal Act (LXX

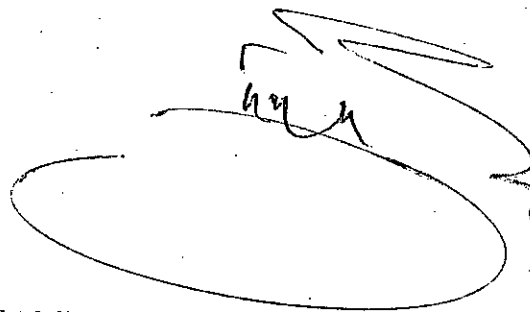
of 1973). The spirit involved and point of law decided by the Apex court would be relevant to reproduce here:-

**“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.”**

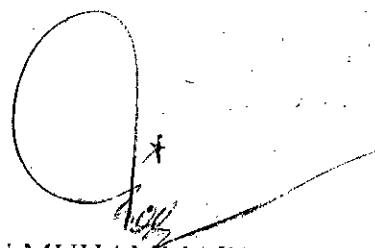
5. As a sequel to the above, it can safely be concluded that the appellant was reinstated in service on 13.04.1999 and he was serving in the department till the time of his departmental appeal on 15.02.2018 i.e about nineteen years of his reinstatement in service. He miserably failed to have agitated and requested for his back benefits and annual increments for the intervening period from 31.12.1992 to 13.04.1999. The maxim *“The law helps the vigilant and not the indolent”* stands fit and reflect on the attitude of appellant. This Bench, therefore, finds no grounds and considers it inappropriate to intervene the order of departmental authority dated 29.03.2018 which has rightly been decided on the point of limitation. The instant service appeal being not maintainable is, therefore, dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

10.09.2020



(MUHAMMAD JAMAL KHAN)  
MEMBER(J)



(MIAN MUHAMMAD)  
MEMBER(E)



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 728/2018

Date of Institution ... 14.05.2018

Date of Decision ... 10.09.2020

Yaqoob Nawaz S/O Saleh Khan ASI of Police Department District Hangu,  
R/O Zarki Nasrati, Tehsil Takhte Nasrati, District Karak. ... (Appellant)

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa and four others. ... (Respondents)

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Advocate

--- For appellant.

MR. KABIR ULLAH KHATTAK.

Additional Advocate General

--- For respondents.

MR. MIAN MUHAMMAD

... MEMBER(Executive)

MR. MUHAMMAD JAMAL KHAN

... MEMBER(Judicial)

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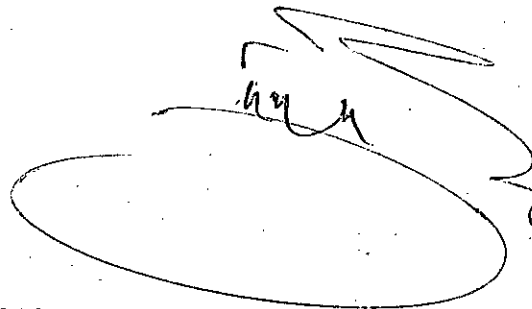
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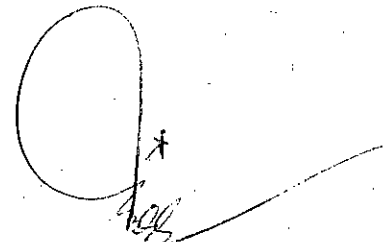
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10.09.2020



(MUHAMMAD JAMAL KHAN)  
MEMBER(J)



(MIAN MUHAMMAD)  
MEMBER(E)