

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

**SERVICE APPEAL NO. 934/2018**

Date of institution ... 24.07.2018

Date of judgment ... 26.03.2019

Muhammad Usman S/o Malik Khan  
R/o Saikot, Tehsil Takht-e-Nasrati, District Karak.

... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Inspector General of Police, Peshawar.
2. District Police Officer, Karak.
3. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Kohat Region.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ALL IMPUGNED ORDERS/ACTION DATED 16.03.2009 PASSED BY THE RESPONDENTS DEPARTMENT OF KHYBER PAKHTUNKHWA WHEREBY THE APPELLANT WAS AWARDED THE MAJOR PENALTY I.E DISMISSAL FROM SERVICE AND APPELLANT ALSO PREFERRED/SUBMITTED DEPARTMENTAL APPEAL/REPRESENTATION BUT THE SAME WAS NOT CONSIDERED/RESPONDED WITHIN THE STATUTORY PERIOD OF LAW.

Mr. Habib Ullah Mohmand, Advocate.

.. For appellant.

Mr. Ziaullah, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel present. Mr. Ziaullah, Deputy District Attorney alongwith

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

Arguments heard and record perused.

*M. Amin  
26.3.2019*

2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department as Constable. He was imposed major penalty of dismissal from service vide order dated 09.03.2009 by the competent authority on the allegation of absence from service. The appellant filed departmental appeal on 18.03.2009 but the same was not responded. The appellant also filed revision petition before the Inspector General of Police on 28.03.2018 but the same was also not responded hence, the present service appeal on 24.07.2018.

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

4. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that the appellant became seriously ill and due to illness it was beyond the control of the appellant to attend the duty. It was further contended that the appellant was dismissed from service by the competent authority on the allegation of absence from duty but neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor any final show-cause notice <sup>was m</sup> issued to the appellant therefore, the appellant was condemned unheard. It was further contended that the impugned order of dismissal from service of the appellant was also passed retrospectively i.e from the date of absence therefore, the impugned order is void and no limitation run against the void order and prayed for acceptance of appeal.

5. On the other hand, Learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department but he remained absent from duty without permission of the lawful authority. It was further contended that all

*M. K. M. M.*  
*26.3.2019*

the codal formalities were conducted before passing the impugned order by the respondent-department. It was further contended that the appellant filed departmental appeal on 18.03.2009 but the same was not responded therefore , the appellant was required to file service appeal within one month after waiting for stipulated period of 90 days as under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 the appellant was debarred from filing of revision petition before the Inspector General of Police but the appellant filed revision petition before the Inspector General of Police on 28.03.2018 despite the fact that the departmental appeal was not decided by the Deputy Inspector General of Police and thereafter, filed this Service Appeal on 24.07.2018 therefore, it was contended that the service 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 dismissed from service on the allegation of absence from duty by the competent authority vide order dated 09.03.2009 retrospectively from the date of absence. The record further reveals that the appellant has filed departmental appeal before the Deputy Inspector General of Police on 18.03.2009 but the same was not responded therefore, the appellant was required to file service appeal within one month after expiry of stipulated period of 90 days as the appellant was debarred under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 to file revision petition under rule 11-A of Police Rules, 1975 but the appellant filed revision petition before the Inspector General of Police on 28.03.2018 which was not responded and filed service appeal on 24.07.2018 therefore, the service appeal is badly time barred. Though the impugned order was passed by the competent authority retrospectively i.e from the date of absence but the same does not

*M. Amin  
26.3.2019*

make the impugned order illegal and void. Reliance is placed on 1998 SCMR 1890 therefore, without touching the merit of the case, the present service appeal is hereby dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
26.03.2019

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

  
(HUSSAIN SHAH)  
MEMBER

Service Appeal No. 934/2018

14.02.2019

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Idrees, PSI for the respondents present. Due to strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today, Adjourned to 26.03.2019 for rejoinder and arguments before D.B.

  
(HUSSAIN SHAH)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

26.03.2019

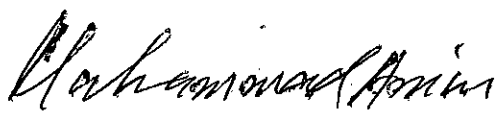
Appellant alongwith his counsel present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Atta-ur-Rehman, Sub-Inspector (Legal) for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of four pages placed on file, without touching the merit of the case, the present service appeal is hereby dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

26.03.2019

  
(HUSSAIN SHAH)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

DFA

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

**SERVICE APPEAL NO. 934/2018**

Date of institution ... 24.07.2018

Date of judgment ... 26.03.2019

Muhammad Usman S/o Malik Khan  
R/o Saikot, Tehsil Takht-e-Nasrati, District Karak.

... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Inspector General of Police, Peshawar.
2. District Police Officer, Karak.
3. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Kohat Region.

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.. For appellant.

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.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel present. Mr. Ziaullah, Deputy District Attorney alongwith

Mr. Atta-ur-Rehman, Sub-Inspector (Legal) 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 as Constable. He was imposed major penalty of dismissal from service vide order dated 09.03.2009 by the competent authority on the allegation of absence from service. The appellant filed departmental appeal on 18.03.2009 but the same was not responded. The appellant also filed revision petition before the Inspector General of Police on 28.03.2018 but the same was also not responded hence, the present service appeal. *SI 24-7-2018*

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

4. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that the appellant became seriously ill and due to illness ~~therefore~~, it was beyond the control of the appellant to attend the duty. It was further contended that the appellant was dismissed from service by the competent authority on the allegation of absence from duty but neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor any final show-cause notice issued to the appellant therefore, the appellant was condemned unheard. It was further contended that the impugned order of dismissal from service of the appellant was also passed retrospectively i.e from the date of absence therefore, the impugned order is void and no limitation run against the void order and prayed for acceptance of appeal.

5. On the other hand, Learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department but he remained absent from duty without permission of the lawful authority. It was further contended that all

the coda formalities were conducted before passing the impugned order by the respondent-department. It was further contended that the appellant filed departmental appeal on 18.03.2009 but the same was not responded therefore, the appellant was required to file service appeal within one month after waiting for stipulated period of 90 days as under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 the appellant was debar <sup>and</sup> for *from* filing of revision petition before the Inspector General of Police but the appellant filed revision petition before the Inspector General of Police on 28.03.2018 despite the fact that the departmental appeal was not decided by the Deputy Inspector General of Police and thereafter, filed this Service Appeal on 24.07.2018 therefore, it was contended that the service 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 dismissed from service on the allegation of absence from duty by the competent authority vide order dated 09.03.2009 retrospectively from the date of absence. The record further reveals that the appellant has filed departmental appeal before the Deputy Inspector General of Police on 18.03.2009 but the same was not responded therefore, the appellant was required to file service appeal within one month after expiry of stipulated period of 90 days as the appellant was debar <sup>and</sup> under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 to file revision petition under rule 11-A of Police Rules, 1975 but the appellant filed revision petition before the Inspector General of Police on 28.03.2018 which was not responded and filed service appeal on 24.07.2018 therefore, the service appeal is badly time barred. Though the impugned order was passed by the competent authority <sup>ie from the date of absence</sup> retrospectively but the same does not make the impugned order illegal and void.



Reliance is placed on 1998 SCMR 1890 therefore, without touching the merit of the case, the present service appeal is hereby dismissed being time barred.

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

ANNOUNCED

26.03.2019

(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

(HUSSAIN SHAH)  
MEMBER

DFA

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

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... (Appellant)

**VERSUS**

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2. District Police Officer, Karak.
3. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Kohat Region.

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Mr. Habib Ullah Mohmand, Advocate.

.. For appellant.

Mr. Ziaullah, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. HUSSAIN SHAH

.. MEMBER (EXECUTIVE)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Appellant

alongwith his counsel present. Mr. Ziaullah, Deputy District Attorney alongwith

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

Arguments heard and record perused.

Better copy of page 8

**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**HEALTH DEPARTMENT**

Peshawar dated the 21<sup>st</sup> November, 2017

**NOTIFICATION:**

NO. SOH(E-V)394/2007: The competent authority Chief Minister Khyber Pakhtunkhwa is pleased to order posting/transfer of the following doctors with immediate effect in the public interest.

S#	Name of Doctor	From	To
1.	Dr. Muhammad Shafiq (BPS-20)	MS DHQ Hospital Swat	Report to the Director General Health Services, Khyber Pakhtunkhwa, Peshawar.
2.	Dr. Aqeel Bangash (BPS-19)	Waiting for posting	MS DHQ Hospital Swat against the vacant the post of BS-20 in his own pay and scale.

**SECRETARY HEALTH**

Govt: of Khyber Pakhtunkhwa

Endst. No. & Date even

Copy to all concerned.

**ATTESTED**



2. Brief facts of the case as per present service appeal are that the appellant was serving in Police Department as Constable. He was imposed major penalty of dismissal from service vide order dated 09.03.2009 by the competent authority on the allegation of absence from service. The appellant filed departmental appeal on 18.03.2009 but the same was not responded thereafter.

~~the appellant filed revision petition on 28.06.2018 which was also not responded~~ hence, the present service appeal. *on 24.7.2018*

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

4. Learned counsel for the appellant contended that the appellant was serving in Police Department. It was further contended that the appellant became seriously ill and due to illness <sup>therefore</sup> it was beyond the control of the appellant to attend the duty. It was further contended that the appellant was dismissed from service by the competent authority on the allegation of absence from duty but neither charge sheet, statement of allegation was framed or served upon the appellant nor proper inquiry was conducted nor any final show-cause notice issued to the appellant therefore, the appellant was condemned unheard. It was further contended that the impugned order of dismissal from service of the appellant was also passed retrospectively i.e from the date of absence therefore, the impugned order is void and no limitation run against the void order and prayed for acceptance of appeal.

5. On the other hand, Learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department but he remained absent from duty without permission of the lawful authority. It was further contended that all the coda formalities were conducted before passing the impugned order by the

*The appellant also filed Revision Petition before authorities generally  
Police on 28-3-2018 but the same was not responded  
Hence the case*

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
HEALTH DEPARTMENT**

⑨  
⑩-⑪  
C-⑧

Provisional dated the 21<sup>st</sup> November 2007

**NOTIFICATION**

**NO SOH(VII) 394/2007**

This Department withholds a brief Master Keyes

in the interest of the public and to order pending transfers of the following doctors with immediate effect in the public interest

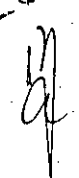
S#	Name of Doctor	From	TO
1	Dr. Muhammad (MS) (D)	MS. DHQ Hospital Swat	Report to the Director General Health Services Khyber Pakhtunkhwa MS. DHQ Hospital Swat Against the post of MS. DHQ in his own pay and scale
2	Dr. Asghar (MS) (D)	Hangash, Waiting for posting	

**SECRETARY HEALTH  
Govt of Khyber Pakhtunkhwa**


**Endst. No. & Date even**

Copy to

- 1 Accountant General Khyber Pakhtunkhwa
- 2 Director General Health Services Khyber Pakhtunkhwa
- 3 District Health Officer Swat
- 4 MS. DHQ Hospital Swat
- 5 District Account Officer Swat
- 6 PS to Minister Health Khyber Pakhtunkhwa
- 7 PS to Secretary Health Department
- 8 Computer Programmer Health Department
- 9 Doctors concerned

**ATTESTED**  


JIBREEL RAJA  
SECTION OFFICER

**ATTESTED**  


*Respondent department*

competent authority. It was further contended that the appellant filed departmental appeal on 18.03.2009 but the same was not responded therefore, the appellant was required to file service appeal within one month after waiting for stipulated period of 90 days as under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 the appellant was debar for filing of revision petition before the Inspector General of Police but the appellant filed revision petition before the Inspector General of Police on 28.03.2018 despite the fact that the departmental appeal was not decided by the Deputy Inspector General of Police and thereafter, filed this Service Appeal on 24.07.2018 therefore, it was contended that the service appeal is badly time barred and prayed for dismissal of appeal.

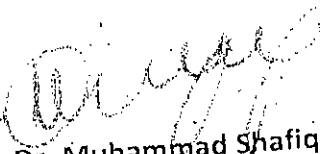
6. Perusal of the record reveals that the appellant was serving in Police Department. He was dismissed from service on the allegation of absence from duty by the competent authority vide order dated 09.03.2009 *Retrospectively* from the date of absence. The record further reveals that the appellant has filed departmental appeal before the Deputy Inspector General of Police on 18.03.2009 but the same was not responded therefore, the appellant was required to file service appeal within one month after expiry of stipulated period of 90 days as the appellant was debar ~~for filing of revision petition~~ *for the* under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 to file *under* revision petition *in* rule 11-A of Police Rules, 1975 but the appellant filed revision petition before the Inspector General of Police on 28.03.2018 ~~however~~, which was not responded and filed service appeal on 24.07.2018 therefore, the service appeal is badly time barred. Though the impugned order was passed by the competent authority retrospectively but the same does not make the impugned order illegal and void. Reliance is placed on 1998 SCMR

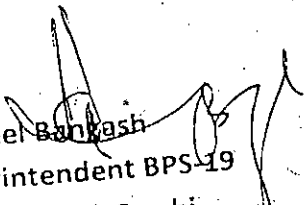
D-9 ~~ED~~ (1)

TRANSFER OF CHARGE (CERTIFICATE)

Certified that we have on the fore/afternoon of this day respectively received /handover charge of this office of the DHQ Teaching Hospital, Swabi as Medical Superintendent vide Govt of Khyber Pakhtunkhwa Health Department Peshawar Notification No. SOH (EV) 1-394/2007 Dated 21/11/2017.

Station Swabi

Signature of Relived:   
Government Servant: Dr. Muhammad Shafiq  
Designation: Medical Superintendent BPS-20  
DHQ Teaching Hospital, Swabi.

Signature of Receiving:   
Government Servant: Dr. Aqeel Bankash  
Designation: Medical Superintendent BPS-19  
DHQ Teaching Hospital, Swabi.

Dated 28/11/2017(Forenoon).

OFFICE OF THE MEDICAL SUPERINTENDNET DHQ TEACHING HOSPITAL SWABI

No. 4190-96/RF DHQTH Swabi

dated 28/11/2017

Copy forwarded to: -

1. Accountant General Khyber Pakhtunkhwa.
  2. Director General Health Services Khyber Pakhtunkhwa, Peshawar.
  3. District Account Officer, Swabi.
  4. PS to Minister Health Khyber Pakhtunkhwa
  5. PS to Secretary Health Department Khyber Pakhtunkhwa.
  6. Accounts Clerk DHQ Teaching Hospital Swabi.
  7. Officer/Official concerned.
- For information and necessary action please.

ATTESTED



Medical Superintendent  
DHQ Teaching Hospital

Swabi 28/11/17

ATTESTED



1890 therefore, without touching the merit of the case, the present service appeal is hereby dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
26.03.2019

(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

(HUSSAIN SHAH)  
MEMBER



GOVERNMENT OF KHYBER PAKHTUNKHWA

HEALTH DEPARTMENT

E-10

Dated Peshawar the 14<sup>th</sup> February, 2018

**NOTIFICATION**

**NO.SOH(E-V)2-238/2007**

The Competent Authority (Chief Minister Khyber Pakhtunkhwa) is pleased to order postings/transfers of the following doctors with immediate effect in the public interest:-

S#	Name of Doctor	FROM	TO	Remarks
1.	Dr.Muhammad Management BS-20 Shafiq Cadre	Waiting for posting	Medical Superintendent DHQ Hospital Swabi	Against the post of BS-20 vice S.No.02
2.	Dr.Aqeel Management (BS-19) Bangash Cadre	Medical Superintendent DHQ Hospital Swabi	Report to the Director General Health Services Khyber Pakhtunkhwa	For further posting.

SECRETARY HEALTH  
Govt. of Khyber Pakhtunkhwa

Endst. No. & Date Even

Copy to the:-

1. Accountant General Khyber Pakhtunkhwa, Peshawar.
2. Director General, Health Services, Khyber Pakhtunkhwa.
3. District Health Officer Swabi
4. Medical Superintendent DHQ Hospital Swabi
5. District Accounts Officer, Swabi.
6. PS to Minister for Health Khyber Pakhtunkhwa.
7. PS to Secretary Health Department.
8. Computer Programmer Health Department
9. DHIS Cell DGHS Office, Peshawar.
10. Doctor concerned.

(Muhammad Irfanuddin)  
SECTION OFFICER (E-V)

ATTESTED

ATTESTED

13.09.2018

Appellant Muhammad Usman in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. The learned AAG requested for adjournment. Granted. Case to come up for written reply/comments on 01.10.2018 before S.B.

  
Chairman

01.10.2018

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply not submitted. Learned Additional AG requested for adjournment. Adjourned. To come up for written reply/comments on 02.11.2018 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

02.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 18.12.2018. Written reply not received.

  
READER

18.12.2018

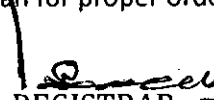


Appellant with counsel and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Israr SI present. Representative of the respondents submitted written reply. Adjourn. To come up for rejoinder if any and arguments on 14.02.2019 before D.B.- II

  
Member

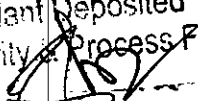
Form- A  
FORM OF ORDER SHEET

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

Case No. 934/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/07/2018  27-7-18	<p>The appeal of Mr. Muhammad Usman resubmitted today by Mr. Habibullah Mohmand 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 -</p>
2-	02.08.2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>2-8-2018</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Appellant Muhammad Usman in person alongwith his counsel Mr. Habibullah Mohmand, Advocate present and heard in limine.</p> <p>Main contention is that the dismissal order has been given effect with retrospective in utter violation of judgment of august Supreme Court of Pakistan.</p> <p>Points raised need consideration. The appeal is admitted to full hearing, subject to all legal objections including time limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 13.09.2018 before S.B.</p> <p style="text-align: right;"> Chairman</p>

Appellant Deposited Security & Process Fee



The appeal of Mr. Muhammad Usman son of Malik Khan r/o Saikot Tehsil Takh-e-Nasrati District Karak received today i.e. on 24.07.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

The authority whose order is challenged has not been arrayed/made necessary party.

No. 1473 /S.T,

Dt. 24/7 /2018.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr.Habibullah Mohmand Adv. Pesh.

Re-submitted  
on dated  
26.7.18

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR**

Service Appeal No. 934/2018

Muhammad Usman.....(Appellant)

**V E R S U S**

Government of Khyber Pakhtunkhwa through Inspector  
General of Police and others.....(Respondents)

**I N D E X**

S.No.	Description of Documents	Annex	Pages
1.	Service Appeal		1-5
2.	Affidavit		6
3.	Application with affidavit		7-9
4.	Addresses of the Parties		10
5.	Copy of impugned order dated 16/03/2009	A	11
6.	Copy of the 1 <sup>st</sup> departmental appeal/ representation	B	12-13
7.	Copy of the 2 <sup>nd</sup> departmental appeal/ representation	C	14-15
8.	Copy of medical documents		16-22
9.	Wakalat Nama		23

Appellant

Through



Dated: 24/07/2018

**Habib Ullah Mohmand**  
Advocate High Court,  
Peshawar.  
Cell: 0321-9087842

1

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

Service Appeal No. 934/2018

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1199

Dated 24-7-2018

Muhammad Usman S/o Malik Khan R/o, Saikot, Tehsil Takht-e-Nasrati, District Karak.....(Appellant)

**V E R S U S**

1. Government of Khyber Pakhtunkhwa through Inspector General of Police, Peshawar.
2. District Police Officer, Karak.
3. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Kohat Region.....(Respondents)

APPEAL UNDER SECTION 4 OF KHYBER PUKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ALL IMPUGNED ORDERS/ ACTION DATED 16/03/2009 PASSED BY THE RESPONDENTS DEPARTMENT OF KPK WHERE BY THE APPELLANT WAS AWARDED THE MAJOR PENALTY I.E. DISMISSAL FROM SERVICE AND APPELLANT ALSO PREFERRED/ SUBMITTED DEPARTMENTAL APPEAL/ REPRESENTATION. BUT SAME WAS NOT CONSIDER/ RESPONSE WITH THE STATUTORY PERIOD OF LAW.

Filed to-day  
Registrar  
24/7/18

Re-submitted to -day and filed.

Registrar  
26/7/18

25

**Respectfully Sheweth:**

1. That the appellant is law abiding citizen of Pakistan.
2. That the appellant was appointed/recruited in the respondents department on 16/02/2009 on the post of constable in the parent department.
3. That the appellant rendered his service to the parent department without any complaint without any objection and rendered his job with great zeal and devotion.
4. That appellant was transferred from Peshawar to Kohat Region on emergency duty and become seriously sick and suffering from Lumbago disease, due to that reason the appellant was unable to perform duty.
5. That appellant rendered more then 6 to 7 years unblemished service to the respondents department without any complaint or objection from any high-up's of the respondents department.

سجالیو

6. That appellant was unaware from the impugned and illegal order dated 09/03/2009 passed by the respondents department, in which the respondents awarded major penalty, which is against law and against the norms of justice. (Copy of impugned order dated 09/03/2009 is attached "A").
7. That the respondents department nor issue Show cause notice to the appellant neither conduct any proper inquiry against the appellant, but suddenly the impugned order was issued i.e. dismissal from service, which is against the law and also against the inquiry procedure.
8. That no proper opportunity had be given the appellant to defence his case before the authority nor personal opportunity had been given by the authority, which is against the law and also against the natural justice, and also against the maxim "AUDI ALTERAM PARTEM".
9. That there is no allegation against the appellant, no charge sheet, no proper inquiry had been conducted but respondents department awarded the major



(4)

penalty, which is against the and also against the norms of justice.

10. That under the law the department is legally bound to follow the legal procedure to inquire/ investigate the case thoroughly from the different angles, but respondents department awarded the major penalty which is against law and also against the norms of justice.

11. That the appellant submitted twice departmental appeal/ representation on dated 18/03/2009, but there is no response from the respondents department and the department keep silent on the departmental appeal/representation of the appellant which is against law and also against the norms of justice. (Copy of the 1<sup>st</sup> departmental appeal/ representation is attached as annexure "B").

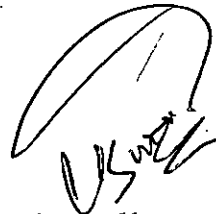
12. That appellant submitted another departmental appeal/ representation before the competent authority for reinstatement with all back benefits etc on 28/03/2018, but still no response from the

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respondents side, which is against the law and against the norms of justice. (Copy of the 2<sup>nd</sup> departmental appeal/ representation is attached as annexure "C").

13. That under the law whenever the illegal and void order passed by the authority then the limitation shall not be lie on that very case the appellant also reliance the judgment of august Supreme Court of Pakistan i.e. PLD 2003 SC 224, SCMR 2008 609.

It is, therefore, most humbly prayed that by accepting of this Service Appeal, the impugned action, orders, dated 09/03/2009 passed by the respondents department may very kindly be set aside and the appellant may kindly be reinstate at respondent department<sup>a</sup> service with all back benefits and wages etc.

  
Appellant

Through



Dated: 24/07/2018

**Habib Ullah Mohmand**  
Advocate High Court,  
Peshawar.

6

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

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

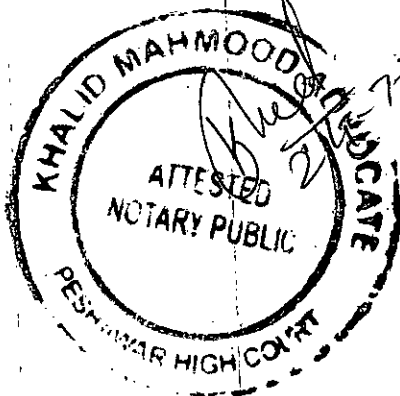
Muhammad Usman.....(Appellant)

**V E R S U S**

Government of Khyber Pakhtunkhwa through Inspector General of Police and others.....(Respondents)

**AFFIDAVIT**

I, Muhammad Usman S/o Malik Khan R/o, Saikot, Tehsil Takht-e-Nasrati, District Karak, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



**DEPONENT**

CNIC: 14203-5334849-3

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

C.M. No. \_\_\_\_\_/2018

In

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

Muhammad Usman.....(Appellant)

**V E R S U S**

Government of Khyber Pakhtunkhwa through Inspector  
General of Police and others.....(Respondents)

**APPLICATION FOR CONDONATION  
OF DELAY.**

**Respectfully submitted:**

1. That the cited Service Appeal has been filed by the appellant, in which no date of hearing has yet been fixed.
2. That the appellant is suffering from Lumbago and was under treatment in those days when the impugned order was passed and the doctors advised him to complete bed rest during the medical treatment. (Copy of medical documents are attached as annexure "D").

8


3. That delay was not intentional but due to the above mentioned reason i.e. disease of Lumbago.
4. That very valuable rights of the appellant is involved with the matter.
5. That this Hon'ble Tribunal has got ample powers to condoned the delay "if any" in the filling of the instant appeal.

It is, therefore, humbly prayed that on accepting this application, delay if any may kindly be condoned in the larger interest of justice.

  
Appellant

Through

Dated: 24/07/2018

  
**Habib Ullah Mohmand**  
Advocate High Court,  
Peshawar.

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**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**

C.M. No. \_\_\_\_\_/2018

In

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

Muhammad Usman.....(Appellant)

**V E R S U S**

Government of Khyber Pakhtunkhwa through Inspector General of Police and others.....(Respondents)

**AFFIDAVIT**

I, Muhammad Usman S/o Malik Khan R/o, Saikot, Tehsil Takht-e-Nasrati, District Karak, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



*(Handwritten Signature)*

**DEPONENT**  
CNIC: 14203-5334849-3

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR**

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

Muhammad Usman.....(Appellant)

**V E R S U S**

Government of Khyber Pakhtunkhwa through Inspector  
General of Police and others.....(Respondents)


**ADDRESSES OF THE PARTIES**

**APPELLANT:**


Muhammad Usman S/o Malik Khan R/o, Saikot, Tehsil  
Takht-e-Nasrati, District Karak.

**RESPONDENTS:**

1. Government of Khyber Pakhtunkhwa through Inspector  
General of Police, Peshawar.
2. District Police Officer, Karak.
3. Deputy Inspector General of Police, Khyber Pakhtunkhwa,  
Kohat Region

  
Appellant

Through

  
**Habib Ullah Mohmand**  
Advocate High Court,  
Peshawar.

Dated: 24/07/2018

(11)

Annex A

ORDER

This order is passed on the departmental proceedings initiated against constable Muhammad Usman No.710, who absented himself from emergency duty, w.e.from 23.11.2008 till date, vide D.D report No.4 of Police station Thail district Hangu. His pay was stopped to this effect. His deliberate & willful absence from emergency duty is prejudicial to service discipline. According to the enquiry, conducted by DSP/ Hqrs: Karak against the above named constable, who reported the official guilty on the charge. He was served with show cause notice vide this office No.331/EC, dated 14.01.2009. The above named official was served with final show cause Notice through SHO/ Police station Latamber on 23.02.2009. According to the report of SHO Police station Latamber the official has gone abroad on 02.03.2009.

In view of the above, the said constable Muhammad Usman No.710 is hereby "DISMISSED" from service from the date of his absence. Police Uniform / Kit etc recovered and take on stock.

*[Signature]*  
District Police Officer, Karak

OB No. 216

Dated 03.03.2009

*Attested to be*

*True copy*

*[Signature]*  
19.04.2011  
Inspector legal  
Karak

*[Signature]*  
ATTESTED



(12)

Annex (B)

To: The Deputy Inspector General of Police,  
Kohat Region Kohat

Subject: REPRESENTATION

With great ~~veerabun~~ and humble submission, appellant submits the present representation against the order of learned District Police Officer, Karak bearing OS No. 216 dated 09.03.2009, vide which penalty of dismissal from service was imposed on appellant.

FACTS

1. That appellant was appointed as constable in FRP in the year 2002. Appellant qualified recruit course and served Police department for about 7 year.
2. That in November 2008, appellant and others were detailed for duty to district Hangu Police station Thal.
3. That appellant suffered from chronic diseases, therefore appellant with permission of Incharge left for home to manage treatment.
4. That on reaching home, the parent took appellant to Services and Police hospital Peshawar and the medical officers after thorough investigation detected the disease as lumbago. The medical officer advised complete rest and issued directions for re-checking. Appellant contacted the medical officer numerous times and medical rest was advised on each occasion or checking. The appellant remained under treatment of medical officer of Services hospital for long period. Presently appellant was declared fit. The medical rest certificates are enclosed for perusal.
5. That on regaining health appellant desired joining duty but to the utter dismay of appellant, the lines staff disclosed about the dismissal order of the appellant. Therefore appellant came to Police office and managed grant of attested copy of

Attested  
ATTESTED

impugned order hence the present representation on the following ground.

GROUNDS

- a. That the impugned order was passed without providing chance of defense to appellant. No evidence was collected in support of the charge sheet during alleged ex-parte enquiry proceeding. No one was examined as witness in the presence of appellant
- b. That the impugned order increased mental agony of the appellant
- c. That the impugned order has been passed in violation of law and rules. Under the law the authority was duty bound to publish notice for attendance of appellant in two Urdu dailies but no such proclamation was published
- d. That the disappearance of appellant was not willful and deliberate but appellant was unable to join the duties in time due to chronic disease.
- e. That appellant belongs to poor family and there is no source of income for feeding the minor children and aged parent.
- f. That major penalty of dismissal from service was imposed on appellant without giving chance of defence to appellant.
- g. That the impugned dismissal order was passed in absentia and on charges of absence and there was nothing on file that appellant has committed any misconduct. Therefore the order of dismissal from service debarring appellant from other service was quite against the law and rules. The authority was required to pass discharge order.

It is therefore requested that the impugned order may please be set aside with back benefits

Yours truly,  
*[Signature]*

(MUHAMMAD USMAN)

Ex-Constable No. 710 Village and Post Office Saikot, Tehsil Takht-e-Nasrati, District Karak

COPY Forwarded To -

Dabeel

18.3.2009

① Inspector General of Police KPK

② Dist Police Officer Peshawar KPK

③ Dist Police Officer Karak

*[Signature]*

محترم صاحب آئی-سی-پی ڈی پی ٹی گورنمنٹ ہسپتال، پشاور

Annex C

"درخواست بہتر بجائی کوثری پولیس کیلئے دیکھو اور فرمایا جاوے"

صنای عالی!

موردہ نہ گزارش ہے کہ سائل محکمہ پولیس میں لیٹر کنٹینر میں رکھ کر  
 عرصہ تقریباً 7/8 سال سے فرانس سے انجام دے رہا تھا سائل کو  
 2008ء میں ایئر پورٹ پر پکڑا گیا۔ دوران فرانس سائل  
 شہرہ بینا کا شکار ہوا۔ لہذا میں ڈاکٹر سے پتہ چلا کہ وہاں سے  
 معلوم ہوا کہ سائل "Lumbago" شہر میں کاشکار ہوا ہے جس کی وجہ سے  
 سائل کو فرانس کی اداہستی ممکن نہ تھی۔ سائل درج بالا عوزی میں  
 اور علاج معالجے کا وجہ سے محکمہ پولیس میں فرانس ادر کرنے سے  
 غیر جانبدار۔ سائل نے عام صوبہ دیکر ایک عذرات میں وہ درخواست فرم کی۔  
 جب سائل اکتاب ہوا اور متعلقہ محکمہ سے فرانس کی اداہستی  
 کیلئے رجوع کیا تو معلوم ہوا کہ اس دوران بالا نہ تکلم نہ کاروائی کرنا  
 سائل کو تازگی سے بہرخواست لیا ہے۔ سائل کو محکمہ بالا سے اسٹیشن ن  
 لقمہ لیا تو ٹیس ڈاٹوٹری کا بہرخواست کیا جو کہ غیر قانونی اور

ادارہ اعلیٰ تعلیم برصغیر ہند

اس کے مزادہ سائل 18 مارچ 2009ء کو ڈیپارٹمنٹل انسپکٹر برائے تعلیم

کو ارسال کیا گیا ہے جس کے جواب میں ملاحظہ فرمائیے اس کے سائل کو

یہ درج ذیل ہے۔ صحیح جواب کا موقع مل رہا ہے تاکہ سائل کے الفاظ

مطابقت اور دوبارہ تفسیر کے لیے بحال ہے۔ (Back benefit) -  
مہر جانے والا ہو گا۔ (مہر جانے والا ہو گا)

کاپی مہرا

شمارہ مشعل دہ مہرا

1) جی۔ جی۔ جی۔

پولیس کنٹریول

2) CC PO پولیس کنٹریول

Appointment Date 16/2/2002

3) DPD آر آر

Dismissal Date 19/3/2009

4) I.A. کرنا ڈیپارٹمنٹ

9/3/2009

Dated of submission

28-03-2018

ATTACHED 4 ATTACHED

16

No. \_\_\_\_\_  
OUT-PATIENTS DEPARTMENT  
NAME U. J. 43  
YEARLY NO 19904  
DATE 25-03-09  
DISEASE Amibago

FACE VALUE RUPEES 5/- FACI

- Tab Nuberol-Joete  
1 + 1 +
- Tab Neurobion  
1 +
- Osteocam Cream  
1 + 1 +

Superintendent  
Police/Services Hospital,  
Peshawar

Advised sick leave for  
01 one month  
wef 25/3/2009  
Medical Officer,  
Police and Services Hospital,  
Peshawar

Attested  
ATTESTED

DATE 27/10/10

No. OUT-PATIENTS DEPARTMENT Rs. 5/-

NAME J. S. S. S.  
YEARLY NO. 58790  
DATE 27/10/10  
DISEASE Mumbasa

- Tab Voltam SR 17/10/10  
- Tab Benidox 17/10/10  
- Fastum Gel 17/10/10

Advised sick leave for one month

wef 27/10/2010

Medical Officer, Police and Services Hospital, Peshawar

FACE

DATE 26/11/10

No. OUT-PATIENTS DEPARTMENT Rs. 5/-

NAME J. S. S. S.  
YEARLY NO. 16206  
DATE 26/11/10  
DISEASE Mumbasa

- Tab Voltam SR 17/11  
- Tab Nemtale - B 17/11  
- Osteoem Cream 17/11

Advised sick leave for one month

wef 26/11/2010

Medical Officer, Police and Services Hospital, Peshawar

Attest by [Signature]

10 Feb

Medical Superintendent, Police and Services Hospital, Peshawar

DATE 16/11/10 FRD

No.                      Rs. 5/-

**OUT-PATIENTS DEPARTMENT**

NAME                     

YEARLY NO                     

DATE                     

DISEASE                     

- Tab Nuberal - 17/10/10  
- Tab Benidol - 17/10/10

- Voltal Emulgel 17/10/10

Advised sika leave for one month wof

26/2/2010  
Medical Officer,  
Police and Services Hospital,  
Peshawar.

Attested  
ATTESTED

DATE                      FRD

No.                      Rs. 5/-

**OUT-PATIENTS DEPARTMENT**

NAME                     

YEARLY NO                     

DATE                     

DISEASE                     

- Tab Benfen 17/10/10  
- Tab Neurobion 17/10/10

- Osteocam Cream 17/10/10

Advised sika leave for one month wof

27/11/2010  
Medical Officer,  
Police and Services Hospital,  
Peshawar.

Police/Serv. Hosp. Peshawar  
Police/Serv. Hosp. Peshawar  
Police/Serv. Hosp. Peshawar

19

No. \_\_\_\_\_ Rs. 5/-

**OUT-PATIENTS DEPARTMENT**

NAME U. S. S. 2

YEARLY NO 58 62

DATE 27-01-11

DISEASE Lumbago

FACE VALUE RUPEES

- Cap Feldene 20mg  
1 ⊕

- Tab Nemobronol  
1 ⊕

- Voltal Emulge  
1 ⊕ ⊕

Advised sick leave for

(01) one month w.e.f.

27/1/2011

*[Signature]*  
Medical Officer,  
Police and Services Hospital,  
Peshawar.

Medical Superintendent  
Police/Services Hospital  
Peshawar

AH-ATS  
(H)  
ATTESTED



FACE VALUE NUMBER 51 FAC

No. **OUT-PATIENTS DEPARTMENT** Rs. 5/-

NAME U. S. S. S.  
YEARLY NO 4850  
DATE 24-01-09  
DISEASE Lumbago

- Tab Brufen young  
- Tab Pentale-  
- Capam Cream  
Advised sick leave for  
one month  
wef 24/1/2009

Medical Officer,  
Police and Services Hospital,  
Lumbago

No. **OUT-PATIENTS DEPARTMENT** Rs. 5/-

NAME U. S. S. S.  
YEARLY NO 51208  
DATE 27-09-09  
DISEASE Lumbago

- Tab Brexin domg  
- Tab Beridos  
- Capam Cream  
Advised sick leave for  
one month  
wef 27/9/2010

Medical Officer,  
Police and Services Hospital,  
Lumbago

Attchus

**TESTED**

No. \_\_\_\_\_ Rs. 5/-  
**OUT-PATIENTS DEPARTMENT**  
 NAME D. S. S. 2  
 YEARLY NO 28572  
 DATE 26-05-2016  
 DISEASE Cumbago

- Tab Frohens R  
 17 100mg  
 - Tab Remitale - gel  
 17 17

- Froctum gel  
 17 17

Advised sick leave for  
 01 one month  
 up 26/5/2016  
 Medical Officer,  
 Police and Services Hospital

Hester  
 NITESH

No. \_\_\_\_\_ Rs. 5/-  
**OUT-PATIENTS DEPARTMENT**  
 NAME D. S. S. 2  
 YEARLY NO 40178  
 DATE 26-7-2016  
 DISEASE Cumbago

- Cap Feldens zoms  
 17 17

- Tab Nemotron gel  
 17 17

- Osteoem cream  
 17 17

Advised sick leave for  
 01 one month  
 up 26/7/2016  
 Medical Officer,  
 Police and Services Hospital

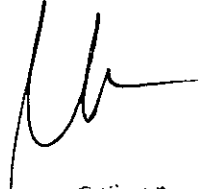
Police and Services Hospital,  
 Peshawar

Police and Services Hospital,  
 Peshawar

OFFICERS OF - FAC

FITNESS.

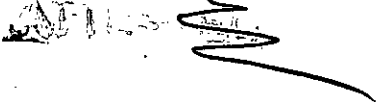
This is to certify  
that Mohammed  
Usman is physically  
fit to resume  
normal duties wif



Medical Officer,  
Police and Services Hospital,  
Faisalabad.


- 21/01/2016

Medical Officer,  
Police and Services Hospital,  
Faisalabad.

Attest  


 ایڈوکیٹ/دستخط بارنول ابار ایسوسی ایشن رابطہ نمبر 8784 8784	 36898 پشاور بار ایسوسی ایشن، خیبر پختونخوا
---	---

بعدالت جناب: **محمد علی شاہ** سروس سٹریٹس سول جرنل

 محمد علی شاہ بنام PPA	دعویٰ: علت نمونہ: مورثہ: جرم: تھانہ:
---	--

**بابت تحریر آگے**

قرآن مجید  
 20/11/2023

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ مقدمہ میں  
 آن مقام ایسٹا 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 تقریرات و فیصلہ برطاعت دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
 زریں مدد منتظر کرنے کا اختیار ہوگا، نیز ضرورت عدم پیروی یا تاخیر کی صورت میں یا اہل کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اہل نگرانی و نظربانی و پیروی کرنے کا شمار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کاروائی کے واسطے اور وکیل یا پانچار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب  
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا مانعہ پر داختم منظور و قبول ہو گا و دران مقدمہ  
 میں جو خرچہ ہر جہانہ التوائے مقدمہ کے سب سے ہو گا وہ وکیل موصوف و متول کرنے کا حقدار ہو گا کوئی تاریخ پیش مقام  
 دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المرقوم: \_\_\_\_\_  
 العبد \_\_\_\_\_ واہ شد العبد \_\_\_\_\_

مقام ایسٹا و  
**محمد علی شاہ** سروس سٹریٹس سول جرنل  
 کے لئے منظور ہے۔  
 قوت اس وکالت نامہ کی وکالت نامہ قابل قبول ہوگی۔  
 محلہ کورنگی تحت لکڑی

)

REF. 11.

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

**Service appeal No. 934/2018  
Muhammad Usman**

**....Appellant**

**VERSUS**

**Govt: of Khyber Pakhtunkhwa through  
Inspector General of Police,  
Khyber Pakhtunkhwa and Others**

**.... Respondents**

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**Respondents Through**

  
**Department Representative**

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

Service appeal No. 934/2018  
Muhammad Usman

..... Appellant.

VERSUS

Govt of Khyber Pakhtunkhwa, through  
Inspector General of Police, and others

..... Respondents.

599/AA7  
1/9/18

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.**

**Respectively Sheweth:-**

Parawise comments are submitted as under:-

**Preliminary Objections:-**

- i. That the appellant has got no cause of action.
- ii. That the appellant has got no locus standi.
- iii. The appellant is estopped to file the instant appeal for his own conduct.
- iv. That the appeal is not maintainable in the present form.
- v. That the appellant has not come to this Hon: Tribunal with clean hands.
- vi. That the appeal is badly time barred.

**FACTS:-**

- 1. Irrelevant, hence no comments.
- 2. Pertains to record, hence no comments.
- 3. Incorrect, the appellant was habitual absentee and besides his long willful absence from duty, the appellant remained willful absent from other occasions.
- 4. The appellant was deputed for special duty at Hangu, from where he deliberately absented himself from lawful duty. To this effect report was entered by concerned vide daily diary No. 4 dated 23.11.2008. Copy is annexure A.
- 5. Irrelevant. The appellant committed professional misconduct while willful absent from duty till the disposal of departmental proceedings conducted against him. Furthermore, the casual attitude of the appellant proved his disinterest in discharge of lawful duty.
- 6. Incorrect, the appellant was properly served with charge sheet on the above score of charge which was served upon him through concerned Police station and properly received by the appellant and duly signed on it. Furthermore, final show cause notice was also issued at his home address and reported by SHO Police station Latamber that the appellant had gone abroad. Copies are **annexure B & C.** in these circumstance there was no other option except awarding him a major punishment of dismissal from service.
- 7. Incorrect, as submitted in para No. 6, proper final show cause notice was issued against the appellant with the departmental proceedings under the law & rules.
- 8. Incorrect, as evident from the report mentioned on annexure C (final show cause notice), the appellant had gone abroad.

Handwritten signature and date 20/10/18

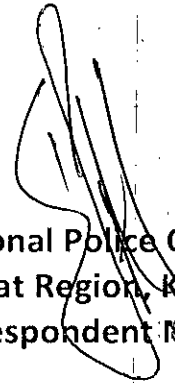
9. Incorrect, the appellant has absented himself from lawful duty and to this effect proper report was entered in daily diary in Police Station Thall.
10. Incorrect, all the codal formalities were fulfilled during the proceedings in accordance with law and rules.
11. Incorrect, the departmental appeal of the appellant was filed by the respondent No. 1 being badly time barred for about 07 years vide order dated 24.04.2018.
12. Incorrect, as submitted in para No. 11.
13. Incorrect, the appellant was proceeded in accordance with law and so far as the case referred by the appellant in this Para is concerned. It is submitted that each and every case has its own facts and merits.

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



District Police Officer  
Karak  
(Respondent No. 3)

District Police Officer  
(Karak)



Regional Police Officer,  
Kohat Region, Kohat  
(Respondent No. 2)



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



BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBR PAKHTUNKHWA, PEHSAWAR

Service appeal No. 934/2018

Muhammad Usman

.....Appellant

VERSUS

Govt: of Khyber Pakhtunkhwa, Through  
Inspector General of police, and others

.....Respondents

PETITION FOR CONDONATION OF DELAY IN FILING DEPARTMENTAL APPEAL

Respectively sheweth:

Parawise comments are submitted as under:-

**Preliminary Objections:**

- i. That the applicant has got no cause of action.
- ii. That the applicant is estopped due to his own conduct to file the instant appeal.
- iii. That the application is not maintainable in the present form.
- iv. That the appeal has not come to this Hon: Tribunal with clean hands.
- v. That the appeal / application is badly time barred.

**FACTS:**

- 1. That the applicant is estopped due to his own act to file the instant appeal. Therefore, the application alongwith appeal is not maintainable on merit and limitation as well.
- 2. Incorrect, the appellant had willfully absented himself from lawfully duty. Furthermore, as evident from statement of relative of the appellant on final show cause notice and report of SHO concerned the appellant had proceeded abroad.
- 3. Incorrect, the applicant took false plea of his illness; actually the applicant after absence had proceeded abroad.
- 4. Incorrect, the applicant was proceeded in accordance with law & rules and now right of the appellant was violated.
- 5. The appeal and application are against the law / limitation. Therefore, the application is not considerable.

Keeping in view of the above, it is submitted that the application is devoid of merits / law, without and substantiate. It is, therefore, prayed that the instant application of the applicant alongwith appeal are may kindly be dismissed in limine.

District Police Officer  
Karak  
(Respondent No. 3)

District Police Officer  
(Karak)

Regional Police Officer,  
Kohat Region Kohat  
(Respondent No. 2),

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

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Writ petition No. 934/2018 titled

Muhammad Usman s/o Malik Khan r/o Saikot, Takht-e-Nasrati District Karak..... (Petitioners)

**VERSUS**

1. Govt: of Khyber Pakhtunkhwa through Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Dy: Inspector General of Police, Kohat Region, Kohat.
3. The District Police Officer, Karak.....(Respondents)

Subject: **AFFIDAVIT**

I, Nausher Khan, the District Police Officer, Karak do hereby solemnly affirm and declare on oath that the contents of **para-wise comments** to writ petition on behalf of **Respondents Govt: & others** are correct to the best of our knowledge and belief. Nothing has been concealed from this honourable Court.

Identified by:

  
District Police Officer, Karak  
Respondent No. (3)

**District Police Officer  
(Karak)**

Add: Advocate General,  
Peshawar High Court,  
Peshawar

تعمیرات (5) تفکر 4 اور زانیہ 23/11/08

سر 4 اظہار ع اہل بیت علیہم السلام ASI ضلع 23/11/08 وقفہ 08:00 بجے  
ادب و وقار کے ساتھ ان کے دل سے تمام اسی کے بڑے بڑے فرائض اظہار  
کی کہ تشریح کی جائے۔ ~~اس کے بعد~~ اس کے بعد حصول اظہار کے لئے  
حاجی تشریح کی جائے۔ اس کے بعد خود صلیبی کے غیر جانبدار  
اور اظہار کے لئے تشریح کے خلاف اہل بیت علیہم السلام  
کی اور زانیہ کی تشریح کے خلاف اظہار کے خلاف اظہار کے  
استور کا نام لے کر اس میں سرگئی

مناد علی

نقل و کاتب اصل

محمد علی  
mm mll

23-11-08



Pay stopped. D/S/HR is directed to conduct enquiry & report within 7 days

Storia Pello O

5-12-08 Bata

OB no = 1629  
5/12/08

No 12944

at 6/12/08

Date of Enlistment 16-02-2002

20  
52TR.

5

No. 331 /EC.  
Dated 19/11 /2009.

SHOW CAUSE NOTICE

1 I, Raja Naseer Ahmad, District Police Officer, Karak as competent authority  
under the N.W.F.P Removal from service (Special Powers) Ordinance 2000, do  
hereby serve you Constable Muhammad Usman No.710  
fallow:

You constable Muhammad Usman No.710 absented  
your-self from your lawful duty w.e.from 23.11.08  
till-date vide D.D.Report No.04 of PS Thall District  
Hangu .Your pay has been stopped to this effect on  
05.12.2008.This all speak highly adverse on your  
part.

2 As a result thereof, I, as competent authority, have tentively decided to impose  
upon you the penalty of major punishment under section 3 of the said Ordinance

3 You are therefore, required to show cause as to why the aforesaid penalty should  
not be imposed upon you and also intimate whether you desire to be heard in  
person.

4 If no reply to this notice is receive within seven days of its delivery in the normal  
course of circumstances, it shall be presumed that you have no delency to put in,  
and in that case an exparte action shall be taken against you.

(RAJA NASEER AHMAD)  
District Police Officer, Karak.

203  
DPC

HO. P.S. LTR.  
22-7-09.

فوق العادى كذا كذا كذا كذا كذا كذا  
وغيره كذا

سألتك عن كذا


أشرف محمد عثمان عمر 715 ساكن ساكنون 515



فوق العادى كذا كذا كذا كذا كذا كذا  
أشرف محمد عثمان عمر 715 ساكن ساكنون

DRAC  
27/11/09

DRAC  
27/11/09

  
DRAC P.S.  
5/2/09

(7)

سابقہ کاروائی نمبر

No. 2614 /EC  
Dated 23/2 /2009

FINAL SHOW CAUSE NOTICE.

I, Raja Naseer Ahmad, District Police Officer, Karak as competent authority under the NWFP removal from service (Special Powers) Ordinance 2000 do hereby serve you, Constable Muhammad Usman No.710 as follow

1. That consequent upon the completion of enquiry conducted against you by Enquiry Officer, Anwar-uz-Zaman, District Police Officer, Karak.

2. On going through the finding and recommendation of the Enquiry Officer, the materials on the record and other connected papers including your defence before the said Enquiry Officer, I am satisfied that the charge against you is proved and you have committed the following acts / omission specified in Section-3 of the said Ordinance: -

You Constable Muhammad Usman No.710, absented yourself from emergency duty, i.e. from 23.11.2008 till date, vide D.D. No. 100 of Police Station Thal District Mangu. Your pay has been stopped to this effect on 05.12.08. Your deliberate and wilful absence from emergency duty is prejudice to service discipline. Therefore, amounts to gross misconduct and negligence in duty.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under section-3 of the said ordinance.

4. 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.

5. If no reply to this Notice is received within Seven days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. Copy of finding of the Enquiry Officer is enclosed

(RAJA NASEER AHMAD)  
District Police Officer, Karak.

ST  
09

De

20/2/2009



9

Ref:attached:-

Sir,

Final Show Cause Notice issued against constable  
Muhammad Usman No. 710 who absented himself w.e. from 3.11.2008  
till-date. The said Final Show Cause Notice served upon his  
cousin Shefiullah S/C Hamidullah resident of Saikot through LHC/  
P3 Istember has submitted his report placed at F/"A".

Date of enlistment. 26.02.2009.

*[Signature]*  
Submitted please.

Q.S.I/N.D.F.C.

09/03/09

*[Signature]*  
S.A.C. 963  
2009

Dismissed w.e.f. the  
date of absence. Police  
Uniform kit etc be  
recovered.

*[Signature]* 216  
9-3-09

*[Signature]*  
9/3/09



9

Ref:attached:-

Sir,

Final Show Cause Notice issued against constabl Muhammad Usman No.710 who absented himself w.e.from 13.11.2008 till-date.The said Final Show Cause Notice served upon his cousin Shafiullah S/O Hamidullah resident of Saikot through JHC/ PS Istamber has submitted his report placed at F/"A".

Date of Enlistment. 16.02.2009.

Submitted please.

On SI/d.DFC.

09/03/09

S.P.C. 9 63  
2009

Dismissed w.e.f. the date of absence. Police Uniform / Kit etc be recovered.

ORNO: 216  
9-3-09

9/3/9