

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 142/2018

Date of Institution ... 25.01.2018  
Date of Decision ... 09.11.2021

Abid Hussain Ex-Constable No.5360, District Police, Peshawar.  
... (Appellant)

**VERSUS**

Capital City Police Officer, Peshawar and two others.  
... (Respondents)

Fazal Shah Mohmand,  
Advocate ... For appellant.

Kabir Ullah Khattak,  
Additional Advocate General ... For respondents.

Rozina Rehman ... Member (J)  
Mian Muhammad ... Member (E)

**JUDGMENT**

Rozina Rehman, Member(J): Brief facts of the case are that appellant was appointed as Constable. He fell ill and got admitted in hospital where he was advised bed rest. He had been confined to his home because of a leg fracture. In the meanwhile, he was implicated in a criminal case and was arrested. After release from jail on bail, he reported for duty but was not allowed and consequently he was suspended. He was issued charge sheet and inquiry was initiated against him and was finally awarded major penalty of dismissal from service. He filed departmental appeal which was rejected, hence, the present service appeal.

2. We have heard Fazal Shah Mohmand Advocate learned counsel for appellant and Kabir Ullah Khattak, learned Additional

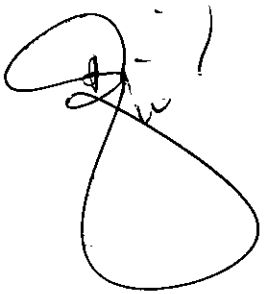
Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

3. Fazal Shah Mohmand Advocate, learned counsel for appellant submitted that mandatory provisions of law and rules were badly violated by the respondents as the appellant was not treated according to law. Learned counsel argued that no proper inquiry was conducted to find out the real facts and that no one was examined in presence of appellant nor he was given proper opportunity of defense. It was further contended that appellant was declared innocent by complainant of the criminal case and that minor penalty was recommended by the Inquiry Officer but the respondents imposed major penalty which is not tenable and lastly, he submitted that the absence of the appellant was not willful and deliberate and even otherwise the period of his absence was regularized by treating the same as leave without pay, therefore, appellant may be reinstated with all back benefits.

4. Conversely, learned A.A.G submitted that the appellant was posted in P.S Badhber wherefrom he absented himself from duty w.e.f 09.04.2017 to 18.05.2017 and was also charged in a criminal case vide F.I.R No.397. He submitted that the appellant was arrested by the local police in the above mentioned criminal case who was later on bailed out and that after completion of all codal formalities, he was dismissed from service.

5. From the record it is evident that on the allegations of his involvement in criminal case and absentia as well from lawful duty, appellant was proceeded against departmentally. He was placed under suspension and D.S.P Headquarter was appointed as Inquiry

Officer who recommended that the appellant may be awarded punishment of stoppage of one year annual increment and absence period may be treated as leave without pay, where-after, legal opinion of D.S.P (Legal) was sought and the inquiry was sent back to the Inquiry officer to record statement of the Investigating Officer. This time inquiry paper was marked to Inspector Yousaf Jan of Police Lines to probe into the matter and dig out actual facts, where-after, major punishment of dismissal from service was imposed upon appellant while the absence period was treated without pay. From the record, it is evident that the appellant made proper departure for fourteen days casual leave from P.S Badhber on 25.03.2017 and his arrival was due on 09.04.2017. He has annexed medical record which fully supports his case. During his leave period, he sustained injuries and was unable to walk which fact has been discussed in detail by the Inquiry Officer. The registration of F.I.R against appellant U/S 452 PPC/15-AA at P.S Kotwali shows that he was charged by one Inayat Ali for House trespass. The said Inayat Ali i.e. complainant of case F.I.R No.397 later on patched up the matter with the appellant as he was satisfied about the innocence of the accused/present appellant and in view of his statement, appellant was acquitted of the charges leveled against him vide order of the learned Judicial Magistrate Peshawar dated 13.12.2017. Infact, the appellant had never committed House trespass by entering into the house of one Inayat Ali rather he was present in the house of his relative and from the balcony of his relative's house he fell down inside the house of Inayat Ali. Fracture of his legs is also not disputed and that was the main reason he remained absent from duty. Now, on one hand he has been acquitted by a competent court of Law from charges being innocent



while on the other hand, his absence is justified being on bed and in jail for few days.

6. It has been held by the Apex Court that all acquittals are certainly honorable. There can be no acquittal, which may be said to be dishonorable. Implication of the appellant in the case of house trespass was the only ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service.

7. It is established from the record that charges of involvement in the criminal case ultimately culminated in honorable acquittal of appellant by the competent Court of Law in the above-mentioned criminal case. In this respect, we have sought guidance from 1988 P.L.C (C.S) 179; 2003 S.C.M.R 215 and P.L.D 2010 Supreme Court 695.

8. In view of the foregoing, the instant appeal is accepted and the appellant is re-instated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED.  
09.11.2021

  
(Mian Muhammad)  
Member (E)

  
(Rozina Rehman)  
Member (J)

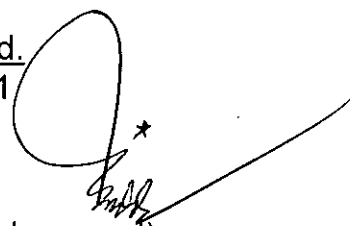
Order  
09.11.2021

Appellant present through counsel.

Kabir Ullah Khattak, learned Additional Advocate General for respondents present.

Vide our judgment of today of this Tribunal placed on file, the instant appeal is accepted and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to record room.

Announced.  
09.11.2021

  
(Mian Muhammad)  
Member (E)

  
(Rozina Rehman)  
Member (J)

26.07.2021

Appellant present through counsel.

Muhammad Adeel Butt for respondents present.

Former made a request for adjournment. Request is accorded.  
To come up for arguments on 09.11.2021 before D.B.



(Rozina Rehman)  
Member (J)



Chairman

26.10.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.


The Bar is observing general strike, therefore, the matter is adjourned to 31.12.2020 for hearing before the D.B.

  
(Atiq-ur-Rehman Wazir)  
Member

  
Chairman

31.12.2020

Due to summer vacation, case is adjourned to 12.04.2021 for the same as before.

  
Reader

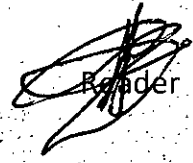
12.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 26.07.2021 for the same as before.

  
Reader

27.04.2020

Due to COVID19, the case is adjourned to 10.07.2020 for the same as before.

  
Reader

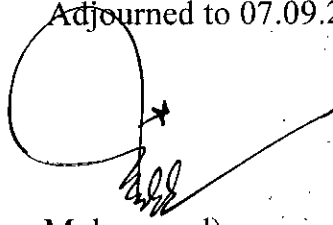
10.07.2020

Appellant in person present.


Addl: AG for respondents present.

Appellant seeks adjournment as his counsel is not available today.

Adjourned to 07.09.2020 for arguments before D.B.



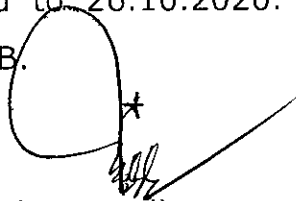
(Mian Muhammad)  
Member(E)



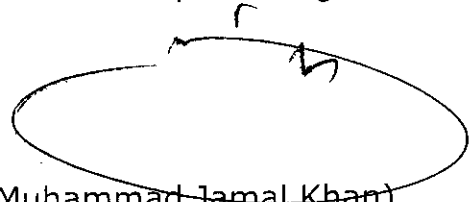
(Rozina Rehman)  
Member(J)

07.09.2020

Miss. Rabia Muzaffar, junior for senior counsel is present for appellant. Mr. Usman Ghani, District Attorney for the respondents is also present. Junior counsel requested for adjournment due to engagement of the learned senior counsel before the august Peshawar High Court, Peshawar. Adjourned to 26.10.2020. File to come up for arguments before D.B.



(Mian Muhammad)  
Member (Executive)




(Muhammad Jamal Khan)  
Member (Judicial)




10.12.2019 Due to general strike of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 20.01.2020 for arguments before D.B.

(Ahmad Hassan)  
Member

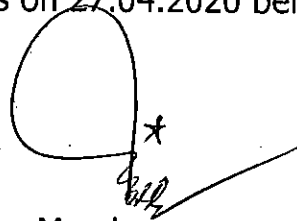
  
(M. Amin Khan Kundi)  
Member

20.01.2020 Due to general strike on the call of the Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Usman Ghani learned District Attorney for the respondents present. Adjourned to 06.03.2020 for arguments before D.B.

  
(Hussain Shah)  
Member


  
(M. Amin Khan Kundi)  
Member


06.03.2020 Counsel for the appellant present. Mr. Ziaullah, DDA alongwith Mr. Mehnaz, Legal Officer for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 27.04.2020 before D.B.

  
Member

  
Member


05.07.2019 Appellant in person present. Mr. Muhammad Jan, DDA alongwith Mr. Aziz Shah, Reader for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourned. Case to come up for arguments on 21.08.2019 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

21.08.2019 Appellant in person and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Muhammad Raziq, Head Constable for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 27.09.2019 for arguments before D.B.

27.09.2019 Appellant in person present. Mr. Kabirullah Khattak learned, Additional Advocate General for the respondents present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 29.10.2019 before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

29.10.2019 Clerk to counsel for the appellant present. Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment due to general strike of the bar. Adjourned. Case to come up for arguments on 10.12.2019 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

06.03.2019

Appellant in person present. Learned counsel for the appellant is absent. Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Appellant seeks adjournment as his counsel is not in attendance today. Adjourn. To come up for arguments on 30.04.2019 before D.B.

  
(M. HAMID MUGHAL)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

30.04.2019

Clerk of counsel for the appellant and Mr. Riaz Ahmad Painda Khel, Assistant AG for the respondents present. Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before the Hon'ble Peshawar High Court. Adjourned to 20.06.2019 for arguments before D.B.

  
(AHMAD HASSAN)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

20.06.2019

Learned counsel for the appellant and Mr. Kabirullah Khattak, learned Additional Advocate General present. Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General present. Appellant requested for adjournment on the ground that learned counsel for the appellant is busy before the Hon'ble Peshawar High Court. Adjourn. To come up for arguments on 05.07.2019 before D.B.

Adjourned to the next date.

  
Member

  
Member

Clerk

Member

28.09.2018

Clerk of counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG for the respondents present. Written reply submitted. To come up for rejoinder, if any, and arguments on 20.11.2018 before the D.B.

  
Chairman

20.11.2018

Appellant, clerk to counsel for the appellant and Mr. Kabir Ullah Khattak alongwith Mr. Muhammad Raziq H.C present. Clerk to counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment as learned counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 09.01.2019 before D.B

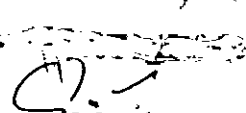
  
Member

  
Member

09.01.2019

Mr. Bilal-A-Kakaizai Advocate submitted wakalt nama in favor of appellant. Mr. Riaz Paindakhel learned Assistant Advocate General for the respondents present. Being freshly engaged, learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 06.03.2019 before D.B

  
Member

  
Member

Service Appeal No. 142/2018


08.05.2018

The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 03.07.2018.

  
Reader

03.07.2018

Junior counsel for the appellant and Mr. Sardar Shaukat Hayat, Addl: AG, for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 17.08.2018 before S.B.

  
Member

17.08.2018

Mr. Faral Shah Mohmand, Advocate counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. Learned AAG sought some time to submit the same. Case to come up for written reply/comments on 28.09.2018 before S.B.

  
Chairman

05.03.2018

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

Learned counsel for the appellant argued that the appellant was appointed as Constable in the Police Department on 31.10.2004. That the appellant, while posted at Police Station Badaber, fell ill, and was admitted to Hospital where the doctor advised him medicines and bed rest. That in the meanwhile the appellant was also falsely implicated and arrested in case FIR No. 397 dated 08.05.2017 under Section 452/511/380PPC/15AA Police Station Kotwali Peshawar. That after release the appellant reported for duty but was not allowed and consequently was suspended vide order dated 16.05.2017. that the appellant was dismissed from service vide impugned order dated 17.11.2017 and his absence period was treated as without pay. That the departmental enquiry was not according to law as no cross examination or personal hearing was granted to the appellant. That the appellant filed departmental appeal before respondent no. 1 on 06.12.2017 which was rejected on 04.01.2018.


Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is also directed to deposit security and process within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 23.04.2018 before S.B.

Appellant Deposited  
Security & Process Fee

  
(Gul Zeb Khan)  
Member




23.04.2018

Appellant in person and Addl. AG alongwith Muhammad Raziq, H.C for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 08.05.2018 before S.B.

  
Member

**Form-A**  
**FORM OF ORDERSHEET**

Court of \_\_\_\_\_  
Case No. 142/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29/1/2018	<p>The appeal of Mr. Abid Hussain resubmitted today by Mr. Fazal Shah Mohmand Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	06/02/18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/02/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	12.02.2018	<p>Clerk of the counsel for appellant present and requested for adjournment on the ground that learned counsel for the appellant is not in attendance today due to strike of the Bar. Adjourned. To come up for preliminary hearing on 05.03.2018 before S.B.</p> <p style="text-align: right;"> (Muhammad Amin Khan Kund) Member (J)</p>

The appeal of Mr. Abid Hussain Ex-Constable No. 5360 Distt. Police Peshawar received today i.e. on 25.01.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be flagged.
- 2- Wakalat nama in favour of appellant be placed on file.


No. 202 /S.T,

Dt. 26/01 /2018

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Fazal Shah Mohmand Adv. Pesh..

SIN, Resubmitted after removal of objections.

  
29/1/18



**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 142 /2018

Abid Hussain.....Appellant

**V E R S U S**

CCPO and Others.....Respondents

**I N D E X**

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-5
2.	Copies of Medical Chits	A	6-9
3.	Copy of FIR & Order dated 06-05-2017	B & C	10-12
4.	Copy of application & Order dated 16-05-2017	D & E	13-14
5.	Copy of Charge sheet, reply & inquiry report	F, G & H	15-19
6.	Copy of Final Show Cause Notice & reply	I & J	20-21
7.	Copy of Order dated 17-11-2017	K	22
8.	Copy of departmental appeal & Order dated 04-01-2018	L & M	22-27
9.	Copy of statement with acquittal order	N	28-29
10.	Wakalat Nama		30

Dated-25-01-2018

  
Appellant

Through

  
Fazal Shah Mohmand  
Advocate Peshawar

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841  
Email:- fazalshahmohmand@gmail.com

1

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 142 /2018

Abid Hussain Ex Constable No 5360, District Police Peshawar.

.....**Appellant**  
Khyber Pakhtunkhwa  
Service Tribunal

**V E R S U S**

Diary No. 147  
Dated 25/1/2018

1. Capital City police Officer Peshawar.
2. Superintendent of Police, Headquarters, Peshawar.
3. Provincial Police Officer KPK Peshawar

.....**Respondents**

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 04-01-2018 PASSED BY RESPONDENT NO 1 WHERE BY DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE ORDER DATED 17-11-2017 OF RESPONDENT NO 2 HAS BEEN REJECTED/FILED.**

**PRAYER:-**

On acceptance of this appeal the impugned Order dated 04-01-2018 of respondent No 1 and Order dated 17-11-2017 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

**Respectfully Submitted:-**

1. That the appellant joined the respondent Department as Constable on 31-10-2004 remained posted to various Police Stations and since then he performed his duties with honesty and full devotion.
2. That the appellant while lastly posted to Police Station Badaber, fell ill, was admitted to Hospital where the Doctor advised him Medicines and bed rest. **(Copies of Medical Chits are enclosed as Annexure A).**
3. That the legs of the appellant had been fractured and was unable to have performed his duties, and in the meanwhile the appellant was also falsely implicated in case FIR No 397 dated 03-05-2017 U/Ss 452/511/380PPC/15AA Police Station Kotwali Peshawar, was arrested and was released on Bail vide order dated

Filed to-day  
Registrar  
25/1/18

Re-submitted to-day  
and filed.

Registrar  
29/1/18

(2)

06-05-2017. **(Copy of FIR & Order dated 06-05-2017 is enclosed as Annexure B & C).**

4. That after release the appellant reported for duty but was not allowed joining duties hereafter the appellant submitted application and consequently the appellant was suspended vide order dated 16-05-2016. **(Copy of Application & Order dated 16-05-2017 is enclosed as Annexure D & E).**
5. That charge sheet was issued to the appellant which he replied in detail explaining the true position, hereafter an illegal inquiry was conducted. **(Copy of charge sheet, reply & inquiry report is enclosed as Annexure F, G & H).**
6. That the appellant was issued Final Show Cause Notice which was also replied refuting the allegations. **(Copy of Final Show Cause Notice & reply is enclosed as Annexure I & J).**
7. That finally the appellant was awarded the penalty of dismissal from service by respondent No 2 vide Order dated 17-11-2017. **(Copy of Order dated 17-11-2017 is enclosed as Annexure K).**
8. That the appellant filed Departmental appeal before respondent No 1 on 06-12-2017 which was rejected/filed vide Order dated 04-01-2018. **(Copy of departmental appeal & Order dated 04-01-2018 is enclosed as Annexure L & M).**
9. That the impugned orders dated 04-01-2018 of respondent No 1 and order dated 17-11-2017 of respondent No 2 are against the law, facts and principles of justice on grounds inter alia as follows:-

**GROUND S:-**

- A. That the impugned orders are illegal and void abinitio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules and the appellant did nothing that amounts to misconduct.

3

- C. That no proper inquiry was conducted to find out the true facts and circumstances, and no one was examined in presence of the appellant nor was the appellant afforded opportunity of cross examination.
- D. That the appellant was not provided copy of inquiry report with Final Show Cause Notice.
- E. That even the complainant of the case stated that the appellant is innocent and that he has patched up the matter. **(Copy of Statement is enclosed as Annexure N).**
- F. That even the inquiry officer recommended that the appellant be awarded the penalty of stoppage of annual increment for one year and the period of absence be treated as leave without pay but the competent authority without any reason awarded the penalty of dismissal, which is as such not tenable in the eyes of law.
- G. That even the absence from duty was not willful and deliberate rather the same was due to circumstances compelling in nature and were beyond the control of appellant as well.
- H. That even otherwise the period of absence has been regularized by treating the same as leave without pay and as such the appellant could not be penalized on this ground again.
- I. That the impugned orders are not speaking orders and thus not tenable in the eyes of law.
- J. That the appellant was not provided opportunity of personal hearing.
- K. That the appellant has more than 13 years of service with unblemished service record and is jobless since his illegal dismissal from service.
- L. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

3

(4)

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

25  
Dated: ~~25~~ 01-2018

  
Appellant

Through

  
Fazal Shah Mohmand  
Advocate, Peshawar

5

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No \_\_\_\_\_/2017

Abid Hussain.....Appellant

**V E R S U S**

CCPO and Others.....Respondents

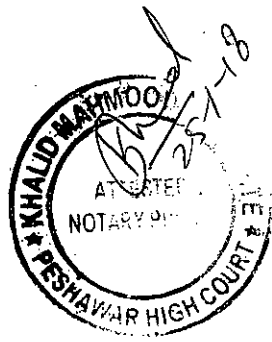
**A F F I D A V I T**

I, Abid Hussain Ex Constable No 5360, District Police Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

**D E P O N E N T**

**Identified by**

**Fazal Shah Mohmand  
Advocate Peshawar**



6A  
6

DHIS - 02 (F)

Sent To: \_\_\_\_\_

# OUT DOOR PATIENT TICKET

District \_\_\_\_\_

CRP No: 1120

Facility Name \_\_\_\_\_

Name S. S. Sharma Age: 35y Sex: M

Father's/Husband's Name \_\_\_\_\_

Monthly OPD Serial No. \_\_\_\_\_

Provisional Diagnosis: \_\_\_\_\_

Date	Clinical Findings / Investigations / Treatment / Referred / Test Findings
8-4-17	Typhoid fever
Fever	Rx
Nausea	1) Cap Cefspan 400mg
GTA	500 — 1st (1)
Adv	2) Tab Panadol
Typhoid	— 2nd — 2
CBC	3) Tab Motril
—	12 1/2 1
	S/P Ledsplex
	500 — 2



Advise bed rest

for 3 days



Senior Medical Officer  
R.H.C. Shergani

CTC  
e/s

Sent To: \_\_\_\_\_

# OUT DOOR PATIENT TICKET

DHIS - 02 (F)

(7)

District \_\_\_\_\_

CRP No: 1406

Facility Name \_\_\_\_\_

Name 21/10/2016 Age: 354 Sex: M

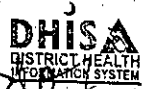
Father's/Husband's Name \_\_\_\_\_


Monthly OPD Serial No. \_\_\_\_\_

Provisional Diagnosis: \_\_\_\_\_

Date  
11-4-17  
 Fever  
 Nausea  
 Anorexia  
 vomiting  
 O/E  
 Fever = 102°  
 B.P = 110/90  
 pulse = 98/min  
 Adv

Clinical Findings / Investigations / Treatment / Referred / Test Findings  
 MP = P. vivax (eve)  
 fphdot. (eve)  
 ① Cap Cefspan 400ms  
 500 — 1/2 ①  
 ② Tab Chloroquine  
 500 — 1/2 ④  
 (1/2 @ 6 AM)  
 ③ Tab Ibuprofen - F  
 600 — 1/2 ①

MP  
 fphdot  


Advise bed rest for ③ days  
 Senior Medical Officer  
 R.H.C Shergarh  


LTC  
 ellg  
 (Adv)



Sent To: \_\_\_\_\_

OUT DOOR PATIENT TICKET

8

District \_\_\_\_\_ CRP No: \_\_\_\_\_

Facility Name \_\_\_\_\_

Name Gusule Age: \_\_\_\_\_ Sex: M

Father's/Husband's Name \_\_\_\_\_

Monthly OPD Serial No. \_\_\_\_\_

Provisional Diagnosis: \_\_\_\_\_

Date	Clinical Findings / Investigations / Treatment / Referred / Test Findings
<p>17-4-2017                      Recurrent                      chest inf.                      typical                      + Malaria                      +ve.</p>	<p><u>Admit for observation</u>                      - inj Oxidil 2gm IV stat - 5 days                      - inj Pleholyte 1L IV stat                      - inj Amil + Decadron IV in inj.                      - inj Neurobion IV in inj</p>
<p><u>Adv.</u>                      (XR (AP))</p>	<p><u>Continue oral treatment i.e.</u>                      - Cap. Cefspan 500mg                      10/10 _____                      - Tab. Arcena 8/150                      10/3 _____                      - Tab. Panadol                      2/2/2                      - SyP Reduplex                      2/2/2</p> <p>Advise bed rest for 7 days.</p>



Refer to MMC for further m/c

Senior Medical Officer  
 R.H.C. Shereah

CTC  
 Cell

## HOSPITAL TREATMENT

\*

### Clinical Findings & Investigation

2 namely Abid Hussain, aged 35 years admitted a diagnosed case typhoid fever & malaria. Pt having severe chest infection & fever of 603F. On investigation pt dx is community acquired pneumonia.

#### Investigation

typhoid = IgG + IgM (+ve)

Malaria = P. vivax (+ve)

Hb% = 11.2%

Sputum = C. pneumoniae (+ve)

CXR =

Pt admitted & treated for pneumonia.

1) inj Oxidil 2gm  $\frac{1}{2}$  Stat then B.D for 3 days.

2) inj Plabolyte 1L  $\frac{1}{2}$  OD.

3) Atem Nebulisation TDS.

4) inj Provas  $\frac{1}{2}$  SOS.

5) Oxygen inhalation SOS.

6) Tab Aceva 80/480 BD.

ETC  
3



5C<sup>y</sup>

(11)

**IN THE COURT OF MUHAMMAD ASGHAR ALI**  
**JUDICIAL MAGISTRATE-IX, PESHAWAR**

Abid Hussain                      Versus                      The State.

FIR No. 397 Dated 03-05-2017 U/S 380/452/511 PPC r/w 15-AA of PS Kotwali.

Order....03.  
06/05/2017

SPP for the State present. Accused/petitioner through Mr. Nasro Min Allah & Muhammad Faizan Advocate present. Complainant Inayat Ali s/o Baqar Ali also present. Record is available before the Court.

Accused/petitioner **Abid Hussain s/o Hussain Khan r/o Shekhan Dhaki, Tehsil Tangi, District Charsadda** seeks post arrest bail in case FIR No. 397 dated 03/05/2017 u/s 452/380/511 PPC r/w 15-AA registered at Police Station Kotwali, Peshawar.

Arguments heard and file perused.

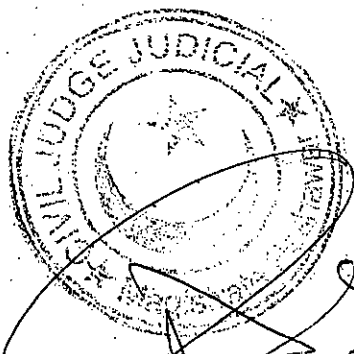
Today complainant Inayat Ali s/o Baqar Ali appeared before the court and submitted an affidavit to the effect that he has patched up the matter with the accused/petitioner and have forgiven him in the name of Almighty Allah. He also stated at the bar that he is satisfied about the innocence of the accused/petitioner. To this effect, his statement recorded and placed on file wherein he stated that he has got no objection over the release on bail of accused/petitioner as well as on acquittal at trial stage. CNIC of the complainant is Ex.PA, while, compromise deed is Ex.PB.

Without touching the merits of the case this court is of the view that although, the offence with which accused/petitioner has been charged is non compoundable, however it has been held by august Superior Courts in various authorities that compromise can be considered as a ground for bail in non compoundable cases. Reliance is placed on 2012 YLR 1606. Since, the complainant has not raised objection upon the release of accused/petitioner on bail as well as on acquittal at trial stage, therefore, application is accepted. Accused/petitioner be released from custody subject to furnishing bail bonds to the tune of **Rs. 90,000/-each** with two sureties each in the like amount to the satisfaction of this court/MOD. A copy of this order be placed on police file. Requisitioned record be returned to the quarters concerned while file of this court be consigned to record room after completion.

**Announced.** 06/05/2017

**Muhammad Asghar Ali**  
Judicial Magistrate IX, Peshawar

06/5/17



CTC  
EUP

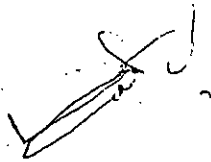
12

Statement of Inayat Ali s/o Baqar Ali r/o H.No.1540, Mohalla Kashmiri, inside Gunj Gate, Peshawar on oath.

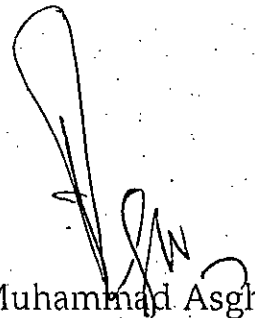
Stated that I am complainant in case FIR No.397 dated 03/05/2017 u/s 452.380/511 PPC r/w 15-AA registered at P.S Kotwa Peshawar. I charged the accused namely Abid Hussain s/o Hussa Khan, for the commission of the offence.

Now with intervention of the elders of the locality, I have patched up the matter with the accused and pardoned him in the name of Almighty Allah. The accused has also satisfied me about his innocence. I have got no objection if this hon'ble Court releases the accused on bail, and acquittal during trial from the charge levelled against him. I produce my original CNIC, copy of CNIC which is I PA.

R.O & A C  
06/05/2017

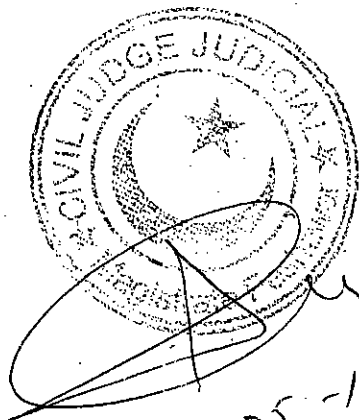


Inayat Ali s/o Baqar Ali  
CNIC No.17301-1352764-5



Muhammad Asghar Ali,  
Judicial Magistrate-IX,  
Peshawar.

CTC  
clp



15-05-17

خانہ -

کتابت میں ایک سال مورخہ 25/17 کو رہت الفت  
14 نومبر 1957ء کو مورخہ 17/17 کو رہت الفت  
رہت کرتے کے وجہ سے ایک کے دونوں ماؤں کو حکم

ہے۔ اور ماؤں سے ایک پر ملا کہ وہ مورخہ 25/17 کو رہت الفت  
2017

380-454-51 کو (کوئی) دعویٰ اور ایک صاحب خانہ  
15AA

کوفہ مورخہ 17/17 کا کوئی ایک اور ایک IIR سے

حافظات متعلقہ ایک سے مورخہ 17/17 کو رہت الفت

14 نومبر 1957ء کو مورخہ 17/17 کو رہت الفت

میں بغیر میں عفو کرنے کے۔ نو 1957ء سے مورخہ 17/17 کو رہت الفت

کیا۔ جس سے میں نہیں ان میں صاحب کے حکم

تعمیر و ترمیم کے۔ یہ ایک ایک سے مورخہ 17/17 کو رہت الفت

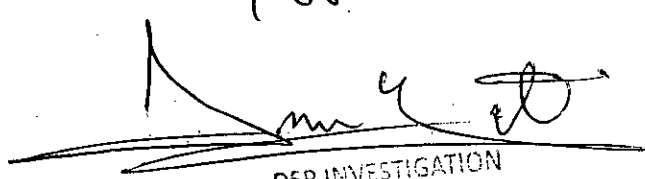
کریں۔ وہ سے عفو کرنے کے متعلقہ ایک سے

الوقت - مورخہ 17/17 کو رہت الفت

16/17 کو رہت الفت

Forwarded Pleas:

CTC  
etc



DSP INVESTIGATION  
SADDER CIRCLE, PESHAWAR.  
16-5-17

ORDER

(14) - E

Constable Abid Hussain No.5360 of CCP Peshawar while posted at PS Badaber, Peshawar is hereby placed under suspension & closed to Police Lines with immediate effect due to involvement in criminal case vide FIR No.397 dated 03.05.2017 u/s 452/15-AA PS Kotwali.

Charge sheet & summary of allegations is being issued to him separately.

*[Signature]*  
SUPERINTENDENT OF POLICE  
HEADQUARTER PESHAWAR.

O.B No 2073  
Dated 16/5 /2017

No. 2393-2400/PA/SP/H.Qrs: dated Peshawar, the 17/5 /2017

Copy to:

1. The Capital City Police Officer Peshawar
2. The SSP Coordination, Peshawar
3. The SSP Operations, Peshawar
4. Pay Officer /CRC /OASI/ /FMC.
5. Official concerned

ETC  
*[Signature]*

CHARGE SHEET

(15) <sup>4</sup>F  
2

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Abid Hussain No.5360 of Capital City Police Peshawar with the following irregularities.

"That you Constable Abid Hussain No.5360 while posted at PS Badaber, Peshawar were involved in a criminal case vide FIR No.397 dated 03.05.2017 U/S 452/15-AA PS Kotwali & also absented yourself from duty w.e.f 09.04.2017 till date. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case exparte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

ETC  




**DISCIPLINARY ACTION**

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Abid Hussain No.5360 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

16

**STATEMENT OF ALLEGATION**

"That Constable Abid Hussain No.5360 while posted at PS Badaber, Peshawar was involved in a criminal case vide FIR No.397 dated 03.05.2017 U/S 452/15-AA PS Kotwali & also absented yourself from duty w.e.f 09.04.2017 till date. This amounts to gross misconduct on his part and against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDDO Regi is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

*[Signature]*  
SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR

No. 131 /E/PA, dated Peshawar the 16-5- /2017

1. SDDO Regi is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

CR  
E/S

2. Official concerned

Steno  
Call the file  
*[Signature]*

DSP/HD  
*[Signature]*  
25.5.2017

(17) G<sup>3</sup> ~~(17)~~

Respected Sir,

Kindly this is in response to the charge sheet and statement of allegation conveyed vide memo No. 131/E/PA dated 16.05.2017 wherein charges of involvement in criminal case FIR No. 397/2017 under section 452 PPC, 15-AA Police Station Kotwali Peshawar and absence from duty with effect from 09.04.2017 have been leveled against me.

The charges leveled against me are the outcome of misunderstanding. Actually on 25.03.2017, I made proper departure vide S.No. 32 of the daily diary of Police Station Badaber for availing fourteen (14) days casual leave. My arrival was due on 09.04.2017 but unfortunately during leave period I suffered chronic disease and followed by sustaining leg injuries. The medical certificate in support of illness and leg injuries are enclosed. I am not absent from duty but the illness followed by leg injury did not allow me to resume duties. The alleged absence is not deliberate or willful but inevitable as the diseases did not allow me to join the duty.

As regard involvement in criminal case the complainant party had falsely charges me. The complainants give statement before Court with regard my innocence and the Honorable Court granted concession of bail to me. The order of the Honorable Court containing the gist of statement of complainant is enclosed for perusal.

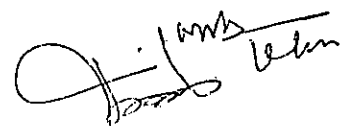
In view of the above it is humbly requested that I may please be exonerated of the charges and no sooner did I resume health from injured legs then I will join duties without loss of single movement. I belong to poor family; therefore, any departmental action against me will aid salt to burning injuries.

It is therefore requested that I may please be exonerated from the charges please.

Attested  
✓

Dy: Supdt: of Police  
Headquarters, C.C.P  
Peshawar

Your Obedient



Abid Hussain 5360 CCP  
Peshawar.

CTC  
elko

1/Sir,

Please refer to your Office Order No.131/1/P/A dated 16.05.2017. This enquiry has initiated against Constable Abid Hussain No.5360 on the basis of the following allegations:-

That Constable Abid Hussain No.5360 while posted at PS Badher Peshawar was involved in criminal case vide IIR No.397, dated 03.05.2017 u/s 452/15-AA PS Korwal & absented himself from duty.

In order to scrutinize the conduct of said official with reference to the above allegations, this enquiry was ordered and the undersigned was appointed as enquiry officer.

Proceedings:-

During enquiry proceedings, the alleged constable Abid Hussain No.5360 was summoned, apprised about the allegations framed against him. Besides, copy of charge sheet and summary of allegations was also served upon him, to which he submitted his written reply placed in file.

Constable Abid Hussain No.5360.

The stated in his statement that the charges have been leveled due to misunderstanding. Actually on 25.03.2017, he made proper departure on 14 days casual leave from PS Badher and his arrival was due on 09.04.2017. But unfortunately during leave period, he received sustained injuries due to which he was unable to stand on legs and it was not possible for him to assume the duty.

As regard his involvement in criminal case the complainant party had falsely charged him. The complainants gave statement before court with regard to his innocence and the Honorable Court granted bail to him. The order of the Honorable Court containing extract of his statement is enclosed. At the end he requested to be exonerated him from the charges leveled against him.

DD No.28, Dt: 03.05.2017 PS Badher:-

ASI Sher Ahmad reported that SIO Wazir Khan of PS Korwal informed him through telephone regarding the involvement of PC Abid Hussain No.5360 in criminal case vide IIR No.397, dated 03.05.2017 u/s 452/15-AA PS Korwal. The complainant party has requested to be exonerated him from the charges leveled against him.

DEPARTMENTAL ENQUIRY REPORT.

No. 3524/ST  
Date 12.07.2017  
Encl (ii)

18

H

Handwritten marks

CR  
No

W / SP/M/O/S: CCP Peshawar.

st  
dp

2  
A

By: Superintendent of Police  
M/O/S: CCP Peshawar.

Submitted please

In view of the above scenario, the alleged Constable Abid Hussain No. 5360 is found guilty, therefore, it is recommended to be awarded punishment for stoppage of annual increment for a period of one year without cumulative. Hence the period in which he was absent may be treated leave, without pay if agreed.

above named complainant Mr. Inayat Ali. In this connection, he made FIR against alleged official as mentioned above and hence the said enquiry was initiated. Due to this the alleged official fell-down from the balcony into the room of his closed relative's home situated at Mohallah Kashmiri area of PS Kotwali and get together there. During gossip with each other they became angry and a scuffle took place. On the day of incident, the alleged official had gone to official is not based on fact. From the foregoing circumstances, statements recorded and other material available on record, it came to light that the plea taken by the alleged official is not based on fact. On the day of incident, the alleged official had gone to his closed relative's home situated at Mohallah Kashmiri area of PS Kotwali and get together there. During gossip with each other they became angry and a scuffle took place. Due to this the alleged official fell-down from the balcony into the room of above named complainant Mr. Inayat Ali. In this connection, he made FIR against alleged official as mentioned above and hence the said enquiry was initiated.

FINDINGS:

accused/petitioner.

The Complainant Inayat Ali s/o Bagar Ali appeared before the court and submitted an affidavit to the effect that he has patched up the matter with the accused/petitioner and have forgiven him in the name of Almighty Allah. He also stated before the court that he was satisfied about the innocence of the

Judicial Magistrate-IX Pesh:-

absented from his lawful duty vide CID No.36, dated 09.04.2017 till date.

Lady Reading Hospital Peshawar. The accused Abid Hussain No.5360 has also been injured. Both the legs of alleged official got fractured and he was hospitalized at make escape but while jumping from the wall, he fell down and received grievous injuries. The alleged Abid Hussain attempted to namely Inayat Ali and some other family members woke-up, they saw the culprit namely Inayat Ali and started shouting. The alleged Abid Hussain attempted to make escape but while jumping from the wall, he fell down and received grievous injuries. Both the legs of alleged official got fractured and he was hospitalized at Lady Reading Hospital Peshawar. The accused Abid Hussain No.5360 has also been absented from his lawful duty vide CID No.36, dated 09.04.2017 till date.

(19)

FINAL SHOW CAUSE NOTICE

(B)

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20

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Abid Hussain No.5360 the final show cause notice.

The Enquiry Officer, Inspector Yousaf Jan, Police Lines Peshawar after completion of departmental proceedings, has recommended you for major punishment for you Constable Abid Hussain No.5360 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

100d

And whereas, the undersigned is satisfied that you Constable Abid Hussain No.5360 deserve the punishments in the light of the above said enquiry report.

ide  
om

I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. 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.

2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

*[Signature]*  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

No. 131-E /PA, SP/HQrs: dated Peshawar the \_\_\_\_\_ /2017.

1. 11. 2017

Copy to official concerned

*[Handwritten Urdu signature]*

*[Handwritten signature]*  
09/11/2017

*[Handwritten initials]*

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صداغ صالی

(21)

بحوالہ فائنل شوکار ٹوٹس سرور من درت

ہوں کم سائل نے جو بیان انکوائری آفسر کو دیا ہے  
وہی بیان لکھو کیا جاوے وہ صحیح اور حقیقت  
رہی ہے بس یہی ہمارا بیان ہے۔ اس کے  
ہے کم شوکار ٹوٹس کی کارروائی داخل دفتر  
کی جاوے

سید طاہر

13/10/2017

ETC  
D

**ORDER**

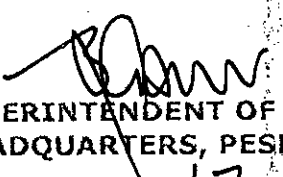
This office order relates to the disposal of formal departmental enquiry against Constable Abid Hussain No.5360 of Capital City Police Peshawar on the allegations that he while posted at PS Badaber, Peshawar involved in criminal case vide FIR No.397 dated 03.05.2017 u/s 452/15-AA PS Kotwali & also absented himself from lawful duty w.e.f 09.04.2017 to 18.05.2017 without taking permission or leave.

In this regard, he was placed under suspension & issued charge sheet and summary of allegations. DSP-HQrs was appointed as Enquiry Officer. He conducted the enquiry and submitted his report that defaulter official found guilty. The E.O further recommended that he may be awarded punishment of stoppage of 01-year annual increment & absence period may be treated as leave without pay vide Enquiry Report No.3524/ST dated 12.07.2017.

Upon the finding of Enquiry Officer, DSP Legal opinion was sought. He opined that the accused official is required to be proved, he being member of the disciplined force, then enquiry in hands may be sent back to the E.O with the direction to record statement of the IO based on material facts, in light of which the accused official be held responsible or exonerated.

The enquiry paper was marked to Inspector Yousaf Jan of Police Lines for re-enquiry to probe into the matter and dig-out of the actual facts. Inspector Yousaf Jan of Police Lines conducted the enquiry & submitted his report/finding that he allegation against the defaulter official has been proved and found him guilty in involvement in moral turpitude. The E.O further recommended major punishment for the delinquent official.

In the light of recommendations of E.O & other material available on record, the undersigned came to conclusion that the alleged official found guilty found guilty in involvement of criminal case(moral turpitude). Therefore, he is hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect. Hence, the period he remained absent from 09.04.2017 to 18.05.2017 is treated without pay.

  
SUPERINTENDENT OF POLICE  
HEADQUARTERS, PESHAWAR

OB. NO. 4185 / Dated 17/11/2017 17.11.2017

No. 6032-38 /PA/SP/dated Peshawar the 17/11/2017

Copy of above is forwarded for information & n/action to:

- ✓ Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office, OASI, CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

~~22~~

22

R<sup>n</sup>

CIC  
EJP

No: 434/PA-CP  
Dt: 6-12-2017

**BEFORE THE CAPITAL CITY POLICE OFFICER,**  
**PESHAWAR**

(23)

**Subject: DEPARTMENTAL APPEAL AGAINST**  
**THE ORDER DATED 17/11/2017 OF**  
**SUPERINTENDENT OF POLICE**  
**HEADQUARTER PESHAWAR**  
**WHEREBY I HAVE BEEN**  
**DISMISSED FROM SERVICE WITH**  
**IMMEDIATE EFFECT.**

**Respectfully Sheweth:**

1. That I joined police department as constable on 31/10/2004 and since then performed my duties with honesty and full devotion and to the entire satisfaction of the superior officers.
2. That while posted to police station Badaber, I fell ill and even admitted to the hospital where the doctor advised me bed rest and medicines. (Copy of medical chits are annexed as A)
3. That unfortunately my legs fractured and was unable to have performed duties. I was also falsely implicated in case FIR No. 397 dated 03/05/2017 under section

CTC  
R/KP



(24)

452, 511, 380 PPC/15 AA of police station Kotwali Peshawar, was arrested and released on bail on 06/05/2017. **(Copy of FIR and bail order dated 06/05/2017 are annexed as annexure B & C)**

4. That after release, reported for duty however I was not allowed to join my duties, whereafter, I submitted application 16/05/2017 and consequently, I was placed under suspension vide order dated 16/05/2017. **(Copy of application and order are annexed as annexure D & E)**
5. That charge sheet was issued which was replied in detail explaining the true position. **(Copy of charge sheet and reply are attached as annexure F & G)**
6. That an illegal inquiry was conducted whereafter, final show cause notice was issued which was also replied. **(Copy of show cause notice and reply are attached as annexure H & I)**
7. That finally, I was dismissed from service vide order dated 17/11/2017 with immediate effect. **(Copy of order is attached as annexure J)**

CTC  
e/6

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8. That the impugned order dated 17/11/2017 as against the law facts and principles of justice on grounds inter alia as followed:

**GROUND S:**

- A. That the impugned order is illegal and void ab intio.
- B. That I have not been treated according to law and rules and my rights guarantee my constitution and law are badly violated.
- C. That the impugned order is illegal because I have been dismissed before the decision of criminal case. Even the compliant recorded his statement before the court regarding my innocence. **(Copy of statement is annexure K)**
- D. That no proper inquiry was conducted no evidence was collected and no one was examined in my presence, nor cross opportunity was given.
- E. That inquiry conducted by DSP HQR it was held that the period of absence be treated as leave without pay with stoppage of one increment for one year. **(Copy of inquiry report is attached as annexure L)**

CTC  
EJP

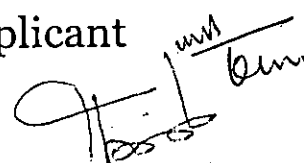
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- F. That two inquiries were conducted in violation of law and rules which show that the competent authority was bent upon punish me. The second inquiry is ex parte besides being in question answer form.
- G. That the absence has been regularized by treating the same as without pay, the absence was also due to compelling circumstances mentioned above and was not willful and deliberate.
- H. That I was not provided opportunity of personal hearing.
- I. That I have more than thirteen years of service with unblemished service record.

It is, therefore, most humbly prayed that on acceptance of this appeal, the impugned order dated 17/11/2017 of Superintendent of police Headquarter Peshawar may kindly be set aside, and I may be reinstated in service with all back benefits.

Date: 06/12/2017

Applicant



Abid Hussain (LHC No. 5360  
CCPO Peshawar  
Cell No. 0302-5968429

CPL  
YD



**OFFICE OF THE  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR**

Phone No. 091-9210989

Fax No. 091-9212597 ~ M<sup>n</sup>

**ORDER**


(27)

This order will dispose off departmental appeal preferred by ex-constable **Abid Hussain** No. 5360 who was awarded the major punishment of dismissal from service under PR-1975 by SP-HQrs: Peshawar vide OB No. 4185 dated 17.11.2017.

2. Short facts of the case are that the appellant while posted at PS Badhaber, Peshawar involved in criminal case vide FIR No. 397 dated 3.5.2017 u/s 452/15-AA PS Kotwali & also absented himself from lawful duty w.e.f 09.4.2017 to 18.5.2017 (39-days).

3. Proper departmental proceedings were initiated against him and Inspector Yousaf Jan, Police Lines Peshawar was appointed as the E.O, who carried out a detailed enquiry and established the charge against him. On receipt of the findings of the E.O, he was issued Final Show Cause Notice to which he replied. The same was perused and found unsatisfactory by the SP-HQrs, Peshawar as such awarded him the above major punishment.

4. He was called in O.R and heard in person on 3.1.2018. Enquiry file was thoroughly examined. He was provided full opportunity to defend himself but he failed to offer any plausible explanation in his favour. He was involved in a criminal case and also remained absent from lawful duty. Besides, he was not honorably acquitted rather he was acquitted on the basis of compromise, therefore, this acquittal would not give him benefit. The allegations levelled against him stands proved. There is no need to interfere with the order passed by SP-HQrs. Therefore, his appeal is rejected /filed.

  
(MUHAMMAD TAHIR) PSP  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR

No. 17-22 /PA, dated Peshawar the 4.1.2018

Copies for inf and n/a to the:-

- 1/ SP/HQrs: Peshawar.
- 2/ PO/OASI/CRC along with S.Roll for making necessary entry in his S.Roll.
- 3/ FMC along with FM
- 4/ Official concerned.



28

No. 397 dated 03/5/2017 u/s 380/452/511 PPC r/w 15 AA of Police  
Station Kotwali, Peshawar

Statement of Inayat Ali s/o Baqar Ali (complainant) r/o house No. 1540,  
Mohallah Kashmiri Inside Ganjj Gate, Peshawar on oath:-

Stated that I am complainant in case FIR No. 397 dated 03/5/2017 u/s 380/452/511 PPC r/w 15 AA of Police Station Kotwali, Peshawar through which I charged the accused Abid Hussain s/o Hussain Khan for the commission of offence. the Accused has fully satisfied me about his innocence and on the day of occurrence he unintentionally fell in our court yard. Since he is innocent, therefore, I have patched up the matter with him. I do not want to prosecute him further and has got no objection if the accused is acquitted from the charge. Copy of my CNIC is ExPA while copy of CNIC of my father in law being identifier is ExPB (original seen and returned).

R.O & A.C  
05/12/2017



*Inayat Ali*

Inayat Ali s/o Baqar Ali  
(complainant)  
CNIC. 17301-1352764-7

Identified by:-



Khanzada s/o Sher Afzal Khan  
(Father in law of the complainant)  
CNIC NO. 17301-5015029-1

*CIC*  
*Call*

*Muhammad Asghar Ali*  
Muhammad Asghar Ali  
Judicial Magistrate-IX,  
Peshawar.



29

In the court of Muhammad Asghar Ali,  
Judicial Magistrate-IX, Peshawar.

FIR No. 397 dated 03/05/2017 u/s 380-452-511 PPC Police Station Kotwali,  
Peshawar

Order ...:-  
13/12/2017

SPP for the state present. Accused Abid Hussain present on bail. Complainant Abid Hussain s/o Hussain Khan on 05.12.2017 put appearance before learned Judicial Magistrate-VI/MOD Peshawar who recorded his statement regarding compromise with the Accused. The complainant in his statement uttered that the accused has satisfied him about his innocence and on the day of occurrence he (Accused) unintentionally fell in his court yard. He further stated that being innocent, he has patched up the matter with him. The complainant raised no objection over acquittal of the accused from the charge. His statement is duly signed/thumb impressed by him and is available on file.

Although the offence with which the accused has been charged is non-compoundable, however, in the situation when the complainant is satisfied about innocence of the Accused and not willing to depose against him coupled with the fact that nothing has been stolen from the house of the Complainant, there would be no other material evidence to establish the guilt of the accused because the complainant is the star witness of the case and the entire case rests upon his testimony. Since the complainant raised no objection upon acquittal, therefore, there seems no probability of conviction of the accused and further proceedings in the case would be a futile exercise. Reliance in this respect be placed PLD 2016 Peshawar 26, PLD 2015 Peshawar 223. Hence, keeping in view the statement recorded by the complainant, the accused namely Abid Hussain s/o Hussain Khan stands acquitted of the charges leveled against him by the prosecution. Sureties of the accused also stands discharged from the liability of the bail bonds.

Case property (if any) be dealt as per law after expiry period of appeal/revision.

File be consigned to record room after its compilation and completion.

Announced:-  
13/12/2017

Muhammad Asghar Ali  
Judicial Magistrate-IX, Peshawar

No.	876
Date of Application.	10/12/18
Name of Applicant.	256
Case No.	P-4
Fee Paid.	Urgent Fee X
Signature of Copyist & Date.	R. F. 10/12/18
Date of Preparation.	10/12/18
Name of Copyist.	10/12/18

CTC  
RFG

CERTIFIED TO BE TRUE COPY

13/12/17  
Copying Agency  
Peshawar  
10/12/18



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

**Service Appeal No.142/2018.**

Abid Hussain Ex-Constable No.5360 Peshawar.....Appellant.

**VERSUS.**

1. Capital City Police Officer, Peshawar.
2. Superintendent of Police HQrs:, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar... ..**Respondents.**

**Reply on behalf of Respondents No. 1, 2, & 3.**

**Respectfully Sheweth:-**

**PRELIMINARY OBJECTIONS.**

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appellant has got no locus standi and cause of action to file the instant appeal.

**FACTS:-**

- 1- Para No.1 pertains to record, hence needs no comments.
- 2- Para No. 2 is incorrect. In fact the appellant while posted at PS Badhber Peshawar, was proceeded departmentally on the charge of involvement in criminal case registered against him vide FIR No. 397 dated 03.05.2017 u/s 452/15-AA PS Kotwali, and also absented himself from lawful duty w.e.f 09.04.2017 to 18.05.2017 Total 39 Days.
- 3- Incorrect. In fact the appellant was posted in PS Badhber wherefrom he absented himself w.e.from 09.04.2017 to 18.05.2017 and also charged in a criminal case vide FIR No. 397 dated 03.05.2017 u/s 452/15-AA PS Kotwali. In the instant case he was arrested red handed by the local police. Later on he was bailed out by the competent Court of Law on the basis of compromise.
- 4- Incorrect. After fulfilling all codal formalities the charges leveled against him were stood proved.
- 5- Para No. 5 is correct to the extent that a charge sheet, statement of allegations were issued to appellant to which he replied, but his reply was found unsatisfactory.



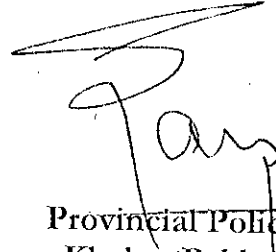
- 6- Para No. 6 is correct to the extent that a final show cause notice was issued to the appellant on completion of Enquiry Proceeding and reply submitted in response to the final show cause notice was also found un-satisfactory.
- 7- Para No. 7 is correct to the extent that a charge sheet and statement of allegations were issued to appellant. Proper enquiry was conducted and a final show cause notice was issued before the punishment order.
- 8- Para No. 8 is correct to the extent that appellant filed departmental appeal which after due consideration was filed/rejected, because the charges leveled against him were stood proved.
- 9- Incorrect. The punishment orders are just, legal and have been passed in accordance with law/rules.

**GROUND:-**

- A- Incorrect. The punishment orders are per the law/rules.
- B- Incorrect. The appellant was treated as per law/rules.
- C- Incorrect. The whole enquiry proceedings were initiated purely on merit and in accordance with law and rules. The appellant availed the opportunities of defense but he did not prove himself innocent.
- D- Incorrect. The appellant was associated in the enquiry proceedings and opportunity of defense was provided to appellant.
- E- Incorrect. The appellant was arrested red handed by the local police. The allegations leveled against him were proved and found guilty for his involvement in moral turpitude.
- F- Incorrect. The allegations were reported proved beyond any shadow of doubt by the enquiry officer. The enquiry officer recommended for major punishment.
- G- Incorrect. The appellant deliberately absented himself from his lawful duty without taking leave/permission.
- H- Incorrect. The appellant treated as per law/rules.
- I- Incorrect. The punishment orders are just legal and have been passed in accordance with law/rules.
- J- Incorrect. The appellant was given proper opportunity of personal hearing and defense before passing the punishment order.
- K- Para pertains to record hence needs no comments.
- L- That respondent may also be allowed to advance any additional ground at the time of hearing the appeal.

PRAYERS:-

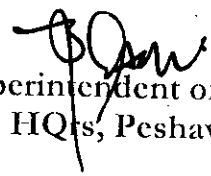
In view of the above, and keeping in view the gravity of slackness, willful negligence and misconduct of appellant, it is prayed that his appeal being devoid of any legal force may kindly be dismissed.



Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.



Capital City Police Officer,  
Peshawar.



Superintendent of Police,  
HQs, Peshawar.

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

Service Appeal No.142/2018.

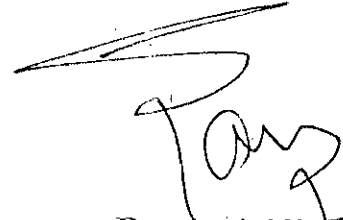
Abid Hussain Ex-Constable No.5360 Peshawar.....Appellant.

**VERSUS.**

1. Capital City Police Officer, Peshawar.
2. Superintendent of Police HQrs., Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar... ..**Respondents.**

**AFFIDAVIT**

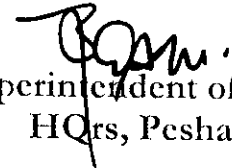
We respondents No. 1 ,2 and 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.



Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.



Capital City Police Officer,  
Peshawar.



Superintendent of Police,  
HQrs, Peshawar.

42

**CHARGE SHEET**

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Abid Hussain No.5360 of Capital City Police Peshawar with the following irregularities.

"That you Constable Abid Hussain No.5360 while posted at PS Badaber, Peshawar were involved in a criminal case vide FIR No.397 dated 03.05.2017 U/S 452/15-AA PS Kotwali & also absented yourself from duty w.e.f 09.04.2017 till date. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case exparte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.

  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

ایکس پی او کے پاس  
میں نے 13.06.2017  
0313-9162929



No. 3524/ST  
Dated 12.07.2017  
GMD (19)

26

R/Sir,

Please refer to your Office Order No.131/P/A dated 16.05.2017. This enquiry has initiated against Constable Abid Hussain No.5360 on the basis of the following allegations:-

That Constable Abid Hussain No.5360 while posted at PS Badhber Peshawar was involved in criminal case vide FIR No.397, dated 03.05.2017 u/s 452/15-AA PS Kotwali & absented himself from duty.

In order to scrutinize the conduct of said official with reference to the above allegations, this enquiry was ordered and the undersigned was appointed as enquiry officer.

Proceedings:-

During enquiry proceedings, the alleged constable Abid Hussain No.5360 was summoned, apprised about the allegations framed against him. Besides, copy of charge sheet and summary of allegations was also served upon him, to which he submitted his written reply placed in file.

Constable Abid Hussain No.5360.

He stated in his statement that the charges have been leveled due to misunderstanding. Actually on 25.03.2017, he made proper departure on 14 days casual leave from PS Badhber and his arrival was due on 09.04.2017. But unfortunately during leave period, he received sustained injuries due to which he was unable to stand on legs and it was not possible for him to assume the duty.

As regard his involvement in criminal case the complainant party had falsely charged him. The complainants gave statement before court with regard to his innocence and the Honorable Court granted bail to him. The order of the Honorable Court containing exact of his statement is enclosed. At the end he requested to be exonerated him from the charges leveled against him.

DD No.28, Dt: 03.05.2017 PS Badhber:-

ASI Sher Ahmad reported that SHO Waris Khan of PS Kotwali informed him through telephone regarding the involvement of FC Abid Hussain No.5360 in criminal case vide FIR No.397, dated 03.05.2017 u/s 452/51/15-AA PPC PS Kotwali. The complainant namely Inayat Ali s/o Baqir Ali r/o Mohallah

Sheet  
24/5

Kashmiri stated in his statement that the accused Abid Hussain has entered into his house with the intention of robbery. During the time of robbery the complainant namely Inayat Ali and some other family members woke-up, they saw the culprit namely Abid Hussain and started shouting. The alleged Abid Hussain attempted to make escape but while jumping from the wall, he fell down and received grievous injuries. Both the legs of alleged official got fractured and he was hospitalized at Lady Reading Hospital Peshawar. The accused Abid Hussain No.5360 has also been absented from his lawful duty vide ID No.36, dated 09.04.2017 till date.

Judicial Magistrate-IX Pesh:-

The Complainant Inayat Ali s/o Baqar Ali appeared before the court and submitted an affidavit to the effect that he has patched up the matter with the accused/petitioner and have forgiven him in the name of Almighty Allah. He also stated before the court that he was satisfied about the innocence of the accused/petitioner.

FINDINGS:

\*From the foregoing circumstances, statements recorded and other material available on record, it came to light that the plea taken by the alleged official is not based on fact. On the day of incident, the alleged official had gone to his closed relative's home situated at Mohallah Kashmiri area of PS Kotwali and got together there. During gossip with each other they became angry and a scuffle took place. Due to this the alleged official fell-down from the balcony into the home of above named complainant Mr. Inayat Ali. In this connection, he made FIR against alleged official as mentioned above and hence the said enquiry was initiated.

In view of the above scenario, the alleged Constable Abid Hussain No.5360 is found guilty, therefore, it is recommended to be awarded punishment for stoppage of annual increment for a period of one year without cumulative. Hence the period in which he was absented may be treated leave without pay if agreed.

Submitted please

By: Superintendent of Police  
HQs: CCP Peshawar

W/SP/HQs: CCP Peshawar.

(2)

sheet  
his

11

FINAL SHOW CAUSE NOTICE


I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Abid Hussain No.5360 the final show cause notice.

The Enquiry Officer, Inspector Yousaf Jan, Police Lines Peshawar after completion of departmental proceedings, has recommended you for major punishment for you Constable Abid Hussain No.5360 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Abid Hussain No.5360 deserve the punishments in the light of the above said enquiry report.

I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

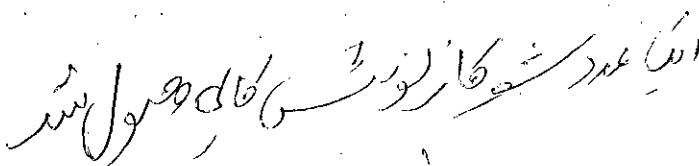
1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you:

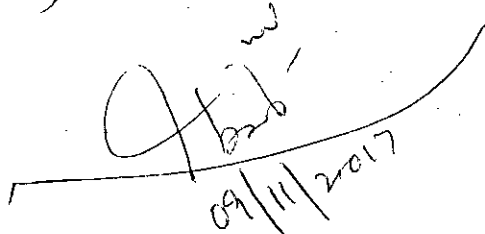
  
SUPERINTENDENT OF POLICE,  
HEADQUARTERS, PESHAWAR

No. 131-E /PA, SP/HQrs: dated Peshawar the \_\_\_\_\_ /2017.

Copy to official concerned

1. 11. 2017



  
09/11/2017





**OFFICE OF THE  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR**

Phone No. 091-9210989

Fax No. 091-9212597

**ORDER**

This order will dispose off departmental appeal preferred by ex-constable **Abid Hussain No. 5360** who was awarded the major punishment of **dismissal** from service under PR-1975 by SP-HQrs: Peshawar vide OB No. 4185 dated 17.11.2017.

2. Short facts of the case are that the appellant while posted at PS Badhaber, Peshawar involved in criminal case vide FIR No. 397 dated 3.5.2017 u/s 452/15-AA PS Kotwali & also absented himself from lawful duty w.e.f 09.4.2017 to 18.5.2017 **(39-days)**.

3. Proper departmental proceedings were initiated against him and Inspector Yousaf Jan, Police Lines Peshawar was appointed as the E.O, who carried out a detailed enquiry and established the charge against him. On receipt of the findings of the E.O, he was issued Final Show Cause Notice to which he replied. The same was perused and found unsatisfactory by the SP-HQrs:, Peshawar as such awarded him the above major punishment.

4. He was called in O.R and heard in person on 3.1.2018. Enquiry file was thoroughly examined. He was provided full opportunity to defend himself but he failed to offer any plausible explanation in his favour. He was involved in a criminal case and also remained absent from lawful duty. Besides, he was not honorably acquitted rather he was acquitted on the basis of compromise, therefore, this acquittal would not give him benefit. The allegations levelled against him stands proved. There is no need to interfere with the order passed by SP-HQrs. Therefore, his appeal is **rejected /filed**.

**(MUHAMMAD TAHIR) PSP  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR**

No 17-22 /PA, dated Peshawar the 4.1.2018

Copies for inf and n/a to the:-

- 1/ SP/HQrs: Peshawar.
- 2/ PO/OASI/CRC along with S.Roll for making necessary entry in his S.Roll.
- 3/ FMC along with FM
- 4/ Official concerned.

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No 142/2018

Abid Hussain .....Appellant

**VERSUS**

CCP & others .....Respondents

**REPLICATION ON BEHALF OF THE APPELLANT**

**Reply To Preliminary Objections:-**

All the preliminary objection of the respondents are incorrect, hence denied cause of action and locus standi to file instant appeal, which is will within time and the appellant has concealed nothing from this Hon'ble Tribunal. All necessary parties have been impleaded, the appellant has come to this Hon'ble Tribunal raised with clean hands and the appellant is not estopped to file instant appeal.

**Reply To Facts/Grounds: -**

Respondents have failed to deny the plea of the appellant through convincing reasoning and evidence. The comments of the respondents are full of contradictions, rather amounts to admissions. Respondents have failed to prove that any proper inquiry was conducted or the appellant was provided copy of inquiry report with final show cause. The appellant has been punished, contrary to the findings of inquiry officer and that to without resorting to the proper legal course. The appellant period of alleged absence has been regularized by treating the same as leave without pay. The complaint of criminal case has

stated before the Trial Court that the appellant is innocent, thus the appellant has been punished without any omission or commission n his part.

Even the appellant has been acquitted of the charges the report of competent Jurisdiction and as such the appellant is entitled to be reinstated in service with all back benefits.

**It is therefore prayed that appeal of the appellant may kindly be accepted as product for.**

Dated: 20/11/18  
~~10-20-2018~~

  
Appellant

Through

  
**Fazal Shah Mohmand**  
Advocate Peshawar

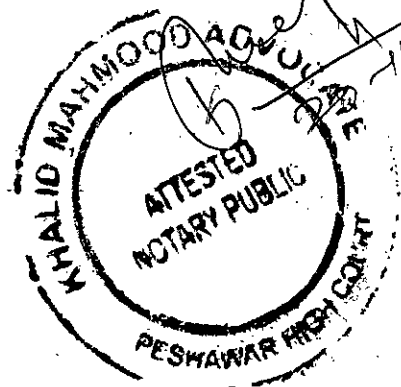
### AFFIDAVIT

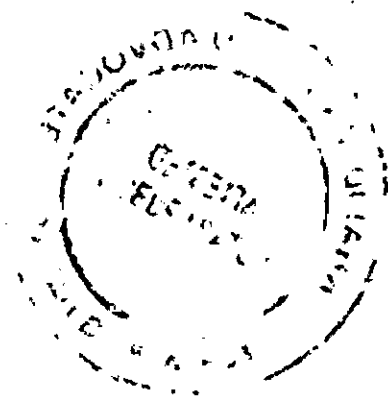
I **Abid Hussain (The Appellant)**, do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

  
**Fazal Shah Mohmand**  
Advocate Peshawar.

  
DEPONENT





قیمت  
50 روپے

59719

ایڈوکیٹ: بلال احمر ککڑائی

بار کونسل ایسوسی ایشن نمبر: BC-11-4062

رابطہ نمبر: 0300-9020098



پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

Appellant	مخائب:	دعویٰ: سردس ایدل کیمبر 142/18
Abid Hossain		علت نمبر:
بنام		مورخہ:
CCPO etc		جرم:
		تھانہ:

### باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ  
آن مقام Peshawar کیلئے Bilal Akkairai کو وکیل مقرر  
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کُل کارروائی 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 از ہر قسم کی تصدیق  
زیریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز  
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی نہ کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
کارروائی 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 جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاوان پیشی مقام دورہ یا حد سے  
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکیل صاحب نامہ لکھ دیا تاکہ سند رہے

المرقوم: 09-1-19

\_\_\_\_\_ مقام  
\_\_\_\_\_ واہ شد  
\_\_\_\_\_ کے لیے منظور ہے

*(Handwritten signatures and notes)*

*(Handwritten signature)*

کعبه الہیہ و غیرہ کے بارے میں سب سے پہلے

عالم احسن نبی کو لکھیں و غیرہ

دفعہ الہیہ کے بارے میں تاریخ ۱۰/۱۱/۲۰۰۶ عرف ۲۰۰۶

جانب کا! مسائل صحت و دل کے بارے میں گزارش۔

۱۔ کچھ مسائل کے بارے میں مزید کہ وہ کمال کے شعور اور علم کے حامل ہیں۔

۲۔ کچھ مسائل کے بارے میں صحت کے بارے میں کہ وہ ایک کمال کے علم کے حامل ہیں۔

۳۔ اللہ کے بارے میں کچھ اور مسائل کے بارے میں کہ وہ ایک کمال کے علم کے حامل ہیں۔

العرف ۲۰/۶/۲۰۰۹

مسائل کے بارے میں جاننے کے لیے کات لکھیں گے۔

۳۳



**KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL, PESHAWAR**

No. 2433 /ST

Dated: 08/12 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262


To

The Superintendent of Police Headquarters,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: JUDGMENT IN APPEAL NO. 142/2018 MR. ABID HUSSAIN.

I am directed to forward herewith a certified copy of Judgement dated 09.11.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR

KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR