

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No, 240/2018

Date of Institution ... 13.02.2018

Date of Decision ... 29.08.2018

Aqil Shah Ex-Constable No. 653 R/o District Buner

... (Appellant)

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar and three others.

... (Respondents)

MISS. ROEEDA KHAN,
Advocate

--- For appellant.

MR. MUHAMAMD RIAZ PAINDAKHEL ,
Assistant Advocate General

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI... MEMBER(Executive)
... MEMBER(Judicial)JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant joined the Police Department as Constable in 2008. Disciplinary proceedings were initiated and upon culmination major penalty of dismissal from service was imposed on him vide impugned order dated 17.01.2009. He filed an undated departmental appeal which was rejected on 25.01.2018. Thereafter Review Petition was filed on 22.01.2018 and rejected on 25.01.2018, hence, the instant service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued that due to some domestic problems he was unable to perform duty and dismissed from service vide

impugned order dated 17.01.2009. Proper inquiry was not conducted. It is established from the impugned order that even show-cause notice was not served on the appellant before imposing the major penalty. According to the directions of the Supreme Court of Pakistan in numerous cases, in case major penalty is to be imposed than regular inquiry should invariably be conducted in the manner prescribed in the rules. Penalty awarded was not ^{& only} very harsh but given with retrospective effect, so the impugned order was void ab-initio.

4. On the other hand learned Assistant Advocate General argued that before imposing of major penalty of dismissal from service upon the appellant all codal formalities were fulfilled and the appellant was rightly dismissed from service.

CONCLUSION

5. Major penalty of dismissal from service was awarded to the appellant vide order dated 17.01.2009. The record further revealed that no notice or even show-cause notice was served on the appellant before imposition of above penalty. The appellant was dismissed from service without conducted proper disciplinary proceedings. Respondents in the impugned order had not mentioned reasons why inquiry which was a mandatory provision of law not conducted. Action taken by the respondents goes against the procedure given in Police Rules, 1975 but also violation of directions of the Supreme Court of Pakistan given in various judgments that in case major penalty is to be imposed against a civil servant regular inquiry should be conducted. It can be safely said that action taken by the respondents was sheer violation of Article-4 & 10-A of the Constitution of Islamic Republic of Pakistan. Opportunity of fair trial was denied to him and condemned unheard. The impugned order is illegal, void ab-initio and unlawful.

6. As a sequel to the above, the appeal is accepted and the impugned order is set-aside. The respondents are at liberty to conduct de-novo inquiry strictly in accordance with rules. The period of absence as well as intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.



(AHMAD HASSAN)
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
29.08.2018

04.07.2018

Counsel for the appellant and Mr. Sardar Shaukat Hayat, Addl: AG alongwith Mr. Nowsherwan, Sub Inspector, Reader for the respondents present. Written reply submitted. To come up for rejoinder if any and arguments on 29.08.2018 before D.B.


Member


29.08.2018

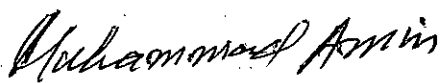
Counsel for the appellant and Mr. Riaz Ahmad Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today placed on file, the appeal is accepted and the impugned order is set-aside. The respondents are at liberty to conduct de-novo inquiry strictly in accordance with rules. The period of absence as well as intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

29.08.2018


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

05.04.2018

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant has filed the present service appeal against the order dated 17.01.2009 whereby he was dismissed from service and against the order dated 25.01.2018 whereby the departmental appeal of the appellant was filed being badly time barred for about 9 years.

Learned counsel for the appellant argued inter alia that since the original impugned order has been passed with retrospective effect therefore no limitation would run against the same.

Points ~~alleged~~ raised need consideration. Admitted for regular hearing subject to all just/legal objections including the issue of limitation. The appellant is directed to deposit process fee and security within 10 days, thereafter notice be issued to respondents for written reply/comments. To come up for written reply/comments on 29.05.2018 before S.B

Appellant Deposited
Security & Process Fee


Member

29.05.2018




Appellant alongwith counsel present. Mr. Kabir Ullah Khattak, learned Additional Advocate General for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 4.7.2018 before S.B.


Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 240/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	21/02/2018	<p>The appeal of Mr. Aqil Shah resubmitted today by Roeda Khan 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-	26/02/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>08/03/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	08.03.2018	<p>Junior counsel for the appellant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 05.04.2018 S.B.</p> <p style="text-align: right;"> (Gul Zeb Khan) Member</p>


The appeal of Mr. Aqil Shah Ex-Constable no. 653 r/o District Buner received today i.e. on 13.02.2018 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Annexure-A of the appeal is illegible which may be replaced by legible/better one.
- ② Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- ③ Address of respondent no. 3 is incomplete.

No. 344 /S.T,

Dt. 14/02 /2018

Roeda Khan Adv. Pesh.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Respectfully Sheweth:-

1. That the appellant joined Police department in the year 2008 and since then he performed his duty with honesty and full devotion.
2. That in the mean while appellant due to his domestic problems not able to performed his duty.
3. That in the year 2012 the appellant came to know that the appellant has been dismissed from service on dated 17-01-2009 by the Respondent department.(Copy of dismissal order is attached as annexure A)
4. That the appellant submitted Departmental petition against the impugned order on 17-01-2009 to Respondent No. 3 which has been rejected on 28-08-2012 by the Respondent department..(Copy of departmental appeal and rejection order is attached as annexure "B & C")

5. That the appellant also submitted a mercy petition on 22-01-2018 to Respondent No. 4 against the impugned order which has been rejected on 25-01-2018 by the rejection order are attached as annexure "D" & "E")
6. That the order impugned is liable to be set aside on the following grounds

Grounds:

- A. That the impugned order is illegal, void and being passed in utter violation of law and rules on the subject.
- B. That the appellant has not been treated according to law and mandatory provisions of law have been violated by Respondents.
- C. That on inquiry has been conducted into the matter to find out the true facts and circumstances and prove the allegations leveled against the appellant, which

5. That the appellant also submitted a Departmental appeal on 22-01-2018 to Respondent No. 4 against the impugned order which has been rejected on 25-01-2018 by the rejection order are attached as annexure "D" & "E")
6. That the order impugned is liable to be set aside on the following grounds

Grounds:

- A. That the impugned order is illegal, void and being passed in utter violation of law and rules on the subject.
- B. That the appellant has not been treated according to law and mandatory provisions of law have been violated by Respondents.
- C. That on inquiry has been conducted into the matter to find out the true facts and circumstances and prove the allegations leveled against the appellant, which

department admitted in their impugned order.

D. That no charge sheet and show cause notice was communicated to the appellant.

E. That even the appellant was not provided the opportunity of personal hearing.

F. That the absence from duty was neither willful, nor deliberate, rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.

G. That the dismissal from services is a very harsh penalty and keeping in view the facts and circumstances of the case commensurate with the guilt of appellant especially by ignoring his service career.

H. That ex-parte action has been taken against the appellant, thus the impugned order is

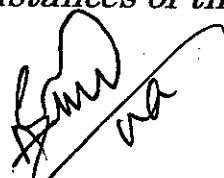
void and the appellant has been condemned unheard.

- I. That even otherwise the impugned order is defective being passed with retrospective effect.
- J. That the Appellant is a poor and jobless person, since his illegal dismissal from service.
- K. That he appellant seeks permission of this Hon'ble Tribunal for further additional grounds at the time of arguments.


It is, therefore, most humbly prayed that on acceptance of the instant Appeal the impugned order, dated 17-01-2009 may kindly be set aside and the appellant may kindly be re-instated into service with all back benefits of service.

Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.

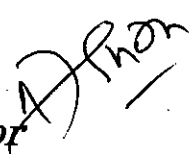
Dated: 13/02/2018


Appellant

Through


Roeeda Khan

&


Afshan Manzoor
Advocates High Court
Peshawar.

NOTE:-

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.

Advocate. 

BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

In Re S.A _____/2018

Adil Shah

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa and others

AFFIDAVIT

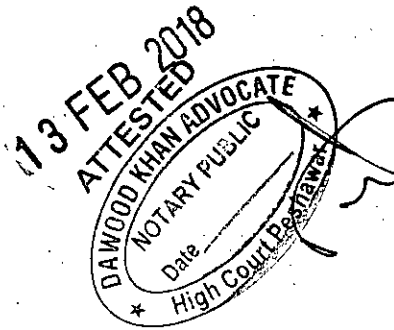
I, Adil Shah Ex-Constable No. 653 R/o District Banir, do hereby solemnly affirm and declare that all the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

Adil Shah

DEPONENT

Identified By :

Roeeda Khan *D*
Advocate High Court
Peshawar.



**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

In Re S.A _____/2018

Adil Shah

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa and others

ADDRESSES OF PARTIES

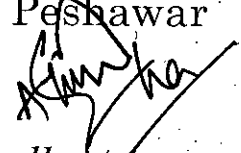
APPELLANT.

Adil Shah Ex-Constable No. 653 R/o District Banir.


RESPONDENTS:

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. District Police Officer Bunir.
3. Deputy Inspector General of Police, Bunir.
4. IGP, Khyber Pakhtunkhwa Peshawar

Dated: 13/02/2018


Appellant

Through

Roeeda Khan 

&

Afshan Manzoor 

Advocate High Court
Peshawar.

Annex A 8

ORDER

As reported you Constable Aqil Shah NO.653 received from Account Course had un-qualified ^{was} Commandant D.P.O. Bura Signed NO.3445/GC dated 15.08.2008 absence of 23 days absentee and his pay was stopped as this office C.O. NO.97 dated 22.08.2008 but he is still absent till this date.

From this fact is highly irresponsible, indiscipline and misconduct on your part which is liable U/S & Sub Section (4) of the Removal from Service (Special Powers) Ordinance 2001 (Amendment) Ordinance 2001

I as competent authority, therefore, satisfied to proceed under Section 5 of Sub Section (4) of the Removal from Service (Special Powers) (Amendment) Ordinance 2001 and dispense with the enquiry proceedings as laid down in the said ordinance and further satisfied that there is no need of holding a departmental enquiry since the accused Police Official Constable Aqil Shah NO.653 has been found guilty of misconduct as defined in the said Ordinance. I, Syed Zubair Shah D.P.O. Buner as competent authority therefore, impose major penalty by dismissing him from service from the date of his absence.

DISTRICT POLICE OFFICER,
BUNER

CENG. 4
DATED: 17/11/2008

Aqil Shah
Syed Zubair

BETTER COPY NO 8

A

ORDER

As reported you, Constable Aqil Shah No. 653 was received from record course had un-qualified the Commandant P.T.O signed No 3945/GS dated 15-08-2008 absent of 29 days, absentee and his pay was stopped from this office O.D. No 97 dated 2008 but he is still absent till this date.

Your this act is highly irresponsible, indisciplined and misconduct on your part which is liable U/S 5 Sub Section (4) of the Removal from Services Special (Power) Ordinance 2000 (Amendment Ordinance 2001)

I was competent authority, therefore, satisfied to proceed order Section 5 of Sub Section (4) of the Removal from Service (Special Powers) (Amendment) Ordinance 2001 and dispense with the enquiry proceeding as laid down in the said ordinance and further satisfied that there I no need of holding departmental inquiry since the accused Police Official Constable Aqil Shah No. 653 has been found guilty of misconduct as defined in the said Ordinance, I, Syed Zubair Shah D.P.O Buner as competent authority therefore, impose major penalty by dismissing him from the service from the date of his absentee.

DISTRICT POLICE OFFICER

BUNER

OB NO. 4

Dated. 17/1/2009

خدمت جناب انسٹریٹس ڈیپارٹمنٹ پولیس حیدرآباد

جناب عالی

زارش کی جاتی ہے کہ سائل 2008ء میں بطور

انسٹیبل پولیس ڈیپارٹمنٹ میں بھرتی ہوا، گھوڑے

سائل کی وجہ سے سائل نوکری سے غیر حاضر ہوا جس کی وجہ سے

سے سائل کو 2008ء میں نوکری سے برخواست کیا گیا،

سائل نے 2012ء میں جناب (D/14) کو اپیل کیا،

جو کہ نام منظور کیا گیا۔

لہذا بڑے درجے کی درخواست استدعا ہے کہ سائل کو

نوکری پر بحال کرنے کا حکم صادر فرمائیں

میں زارش ہوئی۔

الحقاری

افغانیالہار سابقہ انسٹیبل عاقل شاہ 653 ضلع نوشہرہ

تاریخ 22-01-18

AS For. n. act

0347-9480220

Recd 21/1/18 Munc. Officer

Office of the P.O. & M., Peshawar (District Office) 17/1/18 22-1-18

Replay M.P 10



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

No. S/ 471 /18, dated Peshawar the 25/01/2018.

To : ✓ The Regional Police Officer,
Malakand Region, Swat.

Subject: APPEAL (EX-FC AQIL SHAH NO. 653)

Memo :

Ex-Constable Aqil Shah No. 653 of District Police Buner had submitted appeal to the Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for reinstatement into service. His appeal was processed / examined at Central Police Office, Peshawar and filed by the competent authority being badly time barred for about 09 years.

The applicant may please be informed accordingly.

(SYED ZIA ALI SHAH),
Registrar,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Amended
D. Khan

محرمیت جناب ڈپٹی انسپلر جنرل پولیس مردکٹر سوات

عنوان :- درخواست بھرار دوبارہ بحالی سروس

جناب عالی :-
مور یاد نہ گزارش کی جاتی ہے کہ سائل محکمہ پولیس

میں 2008-2-1 کو قلع بوئیر میں بحیثیت کنسٹبل ڈیوٹی سر انجام

دیے یا تھا کہ اجانک کیشدہ حالات کی وجہ سے نمبر خاں ہوا

یوجہ میجوری 2009-3-1 کو افسران بالائنہ بر حسیٹی کا حکم صادر

فرمایا سائل ایک گریب گھرانے سے تعلق رکھتا ہے (س سروس

کے علاوہ سائل کا کوئی متبادل روزگار نہیں ہے جس کی وجہ

سے سائل بہت دشواری کا سامنا ہے اگر آپ عنا حدان

مربان فرمائیں سائل کو دوبارہ سروس پر بحالی کا حکم صادر

فرمائیں تو سائل تا حیات دعا گو رہے گا

آپ کا تابداد



سابقہ سپاہی عقیل شاہ بلیٹ نمبر 653



قلع بوئیر گاؤن اقبیلہ

12 Reply of P.A.

From: The Deputy Inspector General of Police,
Malakand Region, Saidu Sharif, Swat.

To: The District Police Officer, Buner.

No. 5821 / Dated Saidu Sharif, the 28-08-2012.

Subject: APPLICATION FOR REINSTATEMENT IN SERVICE.

Enclosure:

Reference your office Memo No. 3496/L dated 08/08/2012.

Application of Ex-Constable Amir Shah No. 623 of your District
examined and filed by the worthy Regional Police Chief.

The applicant may be informed accordingly.

[Signature]
Office Supt.

For Deputy Inspector General of Police
Malakand Region, Saidu Sharif, Swat.

[Handwritten signatures]

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

In Re S.A _____/2018

Adil Shah
✓

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa and others

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth,

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That the final impugned order was communicated to the appellant in the year 2012 due to domestic problems, however if it would be considered time barred, then the limitation is condonable on the following grounds:

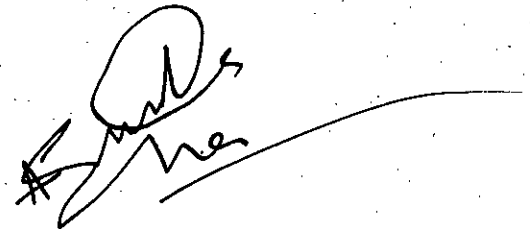
Grounds:

- A. That the impugned orders are void order and no limitation run against the void orders.

- b. That the final order was communicated to the appellant in the year 2012.
- c. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.

Dated: 13/02/2018



Appellant

Through

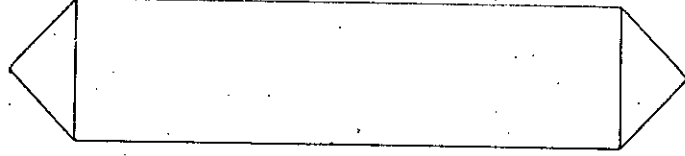
Roeda Khan

&

Afshan Manzoor

Advocates High Court
Peshawar.

بعدالت حساب سروس ٹریبونل KPR راج 19



2018ء منجانب

عقید بنام 3 لیس sept

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام اور کیلئے روسیہ، افسان ایڈووکیٹ مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے 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 کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور 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 بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

2018ء

ماہ صروری

13

المقام

العرب و العہد

کے لئے منظور ہے۔

مقام

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

Appeal No..... 240 of 20 18.

Mr. Agid Sheikh Appellant/Petitioner
Versus

P.P.O, K.P.K, Peshawar Respondent
Respondent No.....

Notice to:

- Distt. police officer,
Buneri

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on..... at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this

office Notice No..... dated.....

Given under my hand and the seal of this Court, at Peshawar this..... 15/4/18

Day of..... April 20 18.

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

In Re S.A. 240 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 197

Adil Shah Ex-Constable No. 653 R/o District Banir.

Dated 13-2-2018

-----(*Appellant*)

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. District Police Officer Bunir.
3. Deputy Inspector General of Police, Malakand.
4. IGP, Khyber Pakhtunkhwa Peshawar.

-----(*Respondents*).

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT
1974 KHYBER PAKHTUNKHWA AGAINST THE
ORDER DATED 17-01-2009 WHERE BY THE
APPELLANT WAS DISMISSED FROM SERVICE
AND DEPARTMENTAL APPEAL DATE: 22-01-2018
HAS BEEN REJECTED ON NO GOOD GROUNDS**

Prayer:-

Filed to-day

Registrar

13/2/18

Re-submitted to -day
and

Registrar

21/2/18

On acceptance of this appeal the impugned
order dated 17-01-2009 may kindly be set-
aside and appellant may kindly be re-
instated into service with all back benefits
of service and any other relief may kindly
be granted deemed fit in the circumstances

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 240/2018

Aqil Shah ex-constable No. 653 r/o district Buner Appellant

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
 2. District Police officer Buner.
 3. Deputy Inspector General of Police Malakand Region at Saidu Sharif Swat.
- Respondents

Parawise comments on behalf of respondent.

Respectfully sheweth:

Preliminary Objections:-

1. That the service appeal is badly time barred.
2. That the service appeal is not maintainable.
3. That the service appeal is bad in the present form and liable to be dismissed.
4. That the appellant stopped due to his own conduct.
5. That the instant appeal is bad due to mis-joinder and non-joinder of necessary parties.
6. That the appellant has concealed material facts from this august tribunal.
7. That the appellant has got no cause of action and locus standi to file instant appeal.
8. That the respondent No.01 and 04 are the same post.

ON FACTS:

1. Para No. 01 relates to the service record of the appellant hence no comments.
2. Incorrect. The appellant was enlisted in district Buner police as constable on dated 29/01/2008 and detailed for recruit training course to PTC Hangu where he remained himself absent total 28 days from training program without any grant of leave. The signal No.15/300 dated 16/09/2008 of PTC Hangu as annex-"A".
3. Incorrect. As explained in para No.02 when the appellant remained absent from training program, the commandant PTC Hangu issued order to returned him unqualified to district but the appellant did not make arrival report in district Buner therefore, he was dismissed from service and he was timely informed about his dismissal.

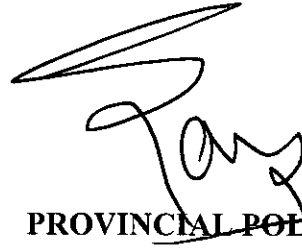
- (2)
4. Incorrect. The appellant had not been submitted departmental appeal before the respondent No.03 well in time against the impugned order but submitted departmental appeal to respondent No.03 after passing the long period i-e 03 years. Therefore, departmental appeal had been filed.
 5. Correct. To the extent that the appellant submitted mercy petition to respondent and No.01 after passing a long period of 10 years, therefore, the mercy petition of the appellant filed being badly time barred.
 6. That the instant appeal liable to be dismissed on the following grounds.

✓ **GROUNDS**

- A. Incorrect. That the impugned order is legal, being passed according to the law and rules.
- B. Incorrect. The appellant was treated according to the law, rules and policy. The respondents have not been violated any law and rules.
- C. Incorrect. Explained as per Para (A).
- D. Incorrect. All the codal formalities are fulfilled.
- E. The willful absence of the appellant was admitted facts therefore, personal hearing was not mandatory.
- F. Incorrect. The appellant absented from law full duty (training) program deliberately neither he submitted any application for grant of leave and nor he brought his compulsion in the notice of high ups.
- G. Incorrect. The appellant was treated according to his own conduct.
- H. Incorrect. The impugn order not a void order but the willful absence / lack of interest in his job of the appellant leads him to major punishment i-e dismissed from service.
- I. Incorrect. The impugn order is not defective but being passed according to the law, rules and policy.
- J. The appellant was not interested to his job, and remained absent therefore, dismissed from service.
- K. That the respondents also seek the permission of this august tribunal to adduce more points / grounds at the time of arguments.

✓ **PRAYER:**

In view of the detailed comments mentioned above it is most humbly prayed that the appeal of the appellant may graciously be dismissed with costs.



**PROVINCIAL POLICE OFFICER,
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No. 01)**



**REGIONAL POLICE OFFICER,
MALAKAND REGION AT SAIDU SHARIF SWAT
(Respondent No. 03)**

*Regional Police Officer,
Malakand at Saidu Sharif, Swat*



**DISTRICT POLICE OFFICER,
BUNER.
(Respondent No. 02)**

*Distt; Police Officer,
Buner*

4

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 240/2018

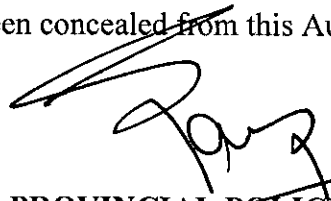
Aqil Shah ex-constable No. 653 r/o district Buner Appellant

VERSUS

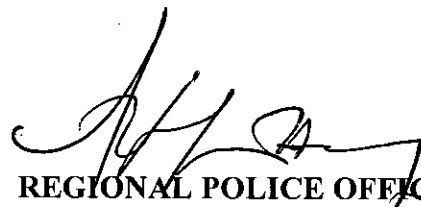
1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. District Police officer Buner.
3. Deputy Inspector General of Police Malakand Region at Saidu Sharif Swat.
..... Respondents

AFFIDAVIT

We the above responded do hereby solemnly affirm and state on oath that the whole contents of this Para-wise comments are true and correct to the best of our knowledge and belief and nothing has been concealed from this August tribunal.



**PROVINCIAL POLICE OFFICER,
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No. 01)**



**REGIONAL POLICE OFFICER,
MALAKAND REGION AT SAIDU SHARIF SWAT
(Respondent No. 03)**

*Regional Police Officer
Malakand at Saidu Sharif, Sw.*



**DISTRICT POLICE OFFICER,
BUNER.**

**(Respondent No. 02)
Distt. Police Officer.
Buner**

5

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 240/2018

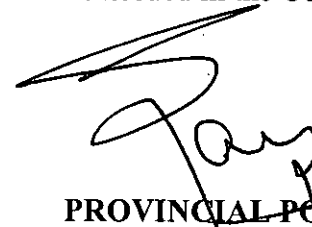
Aqil Shah ex-constable No. 653 r/o district Buner Appellant

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
 2. District Police officer Buner.
 3. Deputy Inspector General of Police Malakand Region at Saidu Sharif Swat.
- Respondents

AUTHORITY LETTER

We, the above responded do hereby authorize and allow Mr. Nowsherwan Sub Inspector Legal Buner to file para-wise comments on our behalf in the August Service trainable Khyber Pakhtunkhwa Peshawar and do whatever is needed in the Court.




**PROVINCIAL POLICE OFFICER,
KHYBER PAKHTUNKHWA PESHAWAR
(Respondent No. 01)**



**REGIONAL POLICE OFFICER,
MALAKAND REGION AT SAIDU SHARIF SWAT
(Respondent No. 03)**

*Regional Police Officer,
Malakand at Saidu Sharif, Swat.*



**DISTRICT POLICE OFFICER,
BUNER.**

**(Respondent No. 02)
Distt; Police Officer.
Buner**

⑥

for comd Pte HGM / 15/300 IN 5
To DPO BUNED ~~16/3/08~~ 7817

NO 3445/GC ① 15-9-08 G SUBS G

RETURN TO DIST AS UNQUALIFIED

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IS THEIR FOR & RETURNED TO THE DIST

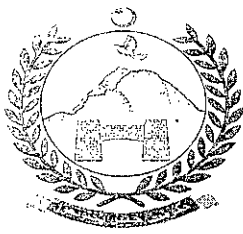
AS UNQUALIFIED VIDE THIS OFFICE OB

NO 539 ① 9-9-08 G

HGM 15/55 ~~16/3/08~~
DPO/BUNED

Attested
~~Signature~~
Distt: Police Officer.
Buner

Regulate/Court Case



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No.SOR-V(E&AD)/15-3/09

Dated 30th January, 2014

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
PHE Department.

Subject: APPOINTMENT OF SUB ENGINEERS

Dear Sir,

I am directed to refer to your letter No.SO (Estt)PHED/1-90/2012-13 dated 22-1-2014 on the subject noted above and to state that the appointment, promotion and transfer rules 1989 and recruitment policy of the Provincial Government is quite clear and the Department may look/examine the appointment of Sub Engineer in the light of the rules and policy of the Provincial Government and firm up their views for final decision and take necessary action if the appointment proved illegal and appraise the Supreme Court of Pakistan accordingly. Moreover the Department should also initiate disciplinary action against the officers who was/were involved in appointment of illegal Sub Engineer and brought him/them to the justice.

DSC(A)
SO(E)

Yours faithfully,

(Signature)
(SHABBIR AHMAD)
SECTION OFFICER (REG-V)

Per W/a

(Signature)

(Signature)
312
SO(E)

imposing the major penalty. According to the directions of the august Supreme Court of Pakistan in numerous cases, in case major penalty is to be imposed than regular inquiry should invariably be conducted in the manner prescribed in the rules. Penalty awarded was ^{not} very harsh as ~~punishment~~ ^{but} was awarded with retrospective effect so the impugned order is void ab-initio.

4. On the other hand learned Assistant Advocate General argued that before imposing of major penalty of dismissal from service upon the appellant all the ~~the~~ codal formalities were fulfilled and the appellant was rightly dismissed from service.

CONCLUSION

5. Major penalty of dismissal from service was awarded to the appellant vide order dated 17.01.2009. The record further reveals ^{ad} that no notice or even show-cause notice was served on the appellant before imposition of above penalty. Respondents had not mentioned any reason ^{for} ~~why~~ dispensing with the inquiry which is mandatory provision of law. Action taken by the respondents goes against the spirit and directions of the august Supreme Court of Pakistan that in case major penalty is to be imposed on a civil servant regular inquiry should be conducted. It can be safely said that action taken by the respondents is sheer violation of Article-4 & 10-A of the Constitution of Islamic Republic of Pakistan. The appellant was condemned unheard. The impugned order is illegal, void and unlawful.

6. As a sequel to the above, the appeal is accepted and the impugned order is set-aside. The respondents are at liberty to conduct de-novo inquiry strictly in accordance with rules. The period of absence as well as intervening period is treated as leave ^{without Pay.} ~~of the kind due~~. Parties are left to bear their own costs. File be consigned to the record room.

(AHMAD HASSAN)
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

ANNOUNCED
29.08.2018

The appellant was dismissed from ~~service~~ service without conducted proper disciplinary proceedings.



ANHEXURE - V
GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG. DEPARTMENT

No.SO(Estt)/PHED/1-90/2012-13
Dated Peshawar, the December 24, 2013

To

The Secretary to Govt. of Pakhtunkhwa,
Establishment Department.

Subject:- **APPOINTMENT OF SUB ENGINEERS**

Dear Sir,

I am directed to, invite your kind attention to this Department's letter No.SO(Estt)PHE/1-90/2010, dated 12th November, 2011 (copy enclosed) wherein advice was sought for action against 24-Nos Sub Engineers (BPS-11), appointed by the Chief Engineer (Mr.Alla ud Din, now retired) during the period from 10/2008 to 01/2010, without observing procedures & codal formalities. Similarly some of the stenotypist/stenographer has also been appointed. (Copies of appointment orders issued are enclosed herewith for examination.

2. It is added that a reference bearing No.SO(Estt)PHE/1-90/2012, dated 24th May, 2013 (copy enclosed) was also made to the Anti-Corruption Establishment as the officer has since been retired from the service. However, ACE expressed inability on the grounds that there are no criminal proceedings involved in the matter and that the department may resolve the issue at his level.

3. In view of the above, I am to request as to what action is required to be taken at this stage.

Yours faithful!

SECTION OFFICER (ESTT)

ENDST: OF EVEN NO. & DATE

Copy forwarded to the:-

- 1) PS to Minister for PHE Department KPK Peshawar.
- 2) PS to Secretary PHE Department, KPK Peshawar.

SECTION OFFICER (ESTT)

DEA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No, 240/2018

Date of Institution ... 13.02.2018

Date of Decision ... 29.08.2018

Aqil Shah Ex-Constable No. 653 R/o District Bunjr

... (Appellant)

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar and three others.
... (Respondents)

MISS. ROEEDA KHAN,
Advocate

آڈیٹر جنرل پولیس

--- For appellant.

MR. MUHAMAMD RIAZ PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

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

JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The appellant joined the Police Department as Constable in 2008. Disciplinary proceedings were initiated and upon culmination major penalty of dismissal from service was imposed on him vide impugned order dated 17.01.2009. He filed an undated departmental appeal which was rejected on 25.01.2018. Thereafter Review Petition was filed on 22.01.2018 and rejected on 25.01.2018, hence, the instant service appeal.

ARGUMENTS

3. Learned counsel for the appellant argued that due to some domestic problems he was unable to perform duty and was dismissed from service vide impugned order dated 17.01.2009. Proper inquiry was not conducted. It is established from the impugned order that even show-cause notice was not served on the appellant before

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 1785 /ST

Dated 3 / 9 / 2018


To

1. The District Police Officer,
Government of Khyber Pakhtunkhwa,
Bunir.

Subject: - JUDGMENT IN APPEAL NO. 240/2018, MR. AOIL SHAH.

I am directed to forward herewith a certified copy of Judgement dated 29.8.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.