

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 593/2018

Date of Institution ... 11.04.2018

Date of Decision ... 08.03.2021

Sher Rehman son of Muhammad Habib, Ex-Constable No. 1392, District Lower Dir Police, R/O Village Khan Serai, Talash Tehsil Timergara.

... (Appellant)

VERSUS

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

Present.

Mr. Arifullah,
Advocate.

... For appellant

Mr. Kabirullah Khattak,
Addl. Advocate General

... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. ATIQR REHMAN WAZIR,

... CHAIRMAN
... MEMBER(E)

JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

1. This judgment is also proposed to dispose of Appeal No. 505/2018 (Muhammad Amin Vs. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and others) hereinafter referred to as "the other appeal". The facts in both the appeals have similarity in terms of absence without leave on the part of appellants as well as the element of delay involved in both the appeals.

2. The facts, as laid in the memorandum of appeal No. 593/2018, provide that the appellant was appointed as Constable on 04.01.2010 and started performing duty in the Khyber Pakhtunkhwa Police Department. In the year 2015, parents of the appellant were seriously ill due to which he

was mentally disturbed and was also in need of a handsome amount to meet their treatment expenses. He, therefore, left for Saudi Arabia and informed the department of the fact. Upon his return it came to his knowledge that he was dismissed from service through order dated 10.03.2016. A departmental appeal was submitted by the appellant which was turned down vide order dated 05.01.2018. The two orders against the appellant prompted him for submission of instant appeal.

3. In the other appeal (No. 505/2018) the appellant is aggrieved of order dated 15.07.2013 as well as 12.03.2018, respectively. Through the prior order he was discharged from service while employed as a Constable in Police Department. Vide the later, the departmental appeal of appellant was turned down on 12.03.2018.

4. Taking up Appeal No. 593/2018, learned counsel contended that no proper/speaking order was passed against the appellant while on the enquiry report it was only endorsed "dismissed from service". It was in the knowledge of respondents that the appellant was abroad, therefore, it was mandatory for them to have published notice of appearance against him in newspapers. Learned counsel though did not deny the absence of appellant from duty for a long time but, in his view, it was condonable keeping in view the ailment of his parents.

Similar were the arguments of learned counsel in other appeal (No. 505/2018) when he attempted to contend that the appellant was discharged from service by endorsement on the finding report and no separate/speaking order was issued in that regard. The penalty of discharge from service was nowhere provided in the Khyber Pakhtunkhwa Police Rules, 1975, therefore too, the impugned order could not sustain. Explaining the long absence of



appellant from duty, it was stated that the same was condonable keeping in view the illness of his mother. Learned counsel also argued that in both the cases, the impugned orders were not lawful as prescribed procedure was not followed by the respondents.

5. Learned Addl. AG, while opposing the arguments from other side, stated at the outset that the appeals in hand were not maintainable as in Appeal No. 593/2018 there was considerable delay in submission of departmental appeal by the appellant. Similarly, in Appeal No. 505/2018 also, the appellant failed to submit the departmental appeal within the time prescribed for the purpose. The impugned order was passed on 15.07.2013 while the departmental appeal was submitted in 2018. In his view where the departmental appeal of a civil servant was delayed, his service appeal before the Tribunal was not competent. In support of his arguments, learned AAG relied on judgments reported as 2013 SCMR 911, 2009 SCMR 1435, 2010 SCMR 1982, 2015 SCMR 165 and 2011 SCMR 676. Judgment in Civil Petition No. 1773 of 2018 decided by the Apex Court on 16.01.2020 was also referred to.

6. We firstly take up Appeal No. 593/2018, wherein, learned counsel for the appellant has raised certain factual and legal objections. It was the case of appellant that the impugned order dated 10.03.2016 was not a speaking order nor a proper one. The publication of notices in newspapers was done away with despite the fact that the non-availability of appellant in Pakistan during the relevant days was in the knowledge of respondents.

In the above context we are in agreement with arguments of learned AAG, wherein, he questioned the competence and maintainability of instant appeal. As a matter of fact, it was not denied on the record that the



appellant was dismissed from service due to prolonged absence without leave on 10.03.2016. He chose to submit a departmental appeal on 3.07.2017, while the appeal in hand was preferred on 11.04.2018. The departmental appeal was, as such, preferred after more than one year of passing of the original impugned order. Clearly, the departmental appeal was not competent due to the delay and was dismissed as such, therefore, in view of judgments by the Apex Court reported as 2006 SCMR 453 and 2012 SCMR 195, instant appeal is not to be maintained. Needless to note that the Service Appeal was also delayed having been submitted on 11.04.2018 against the order dated 27.11.2017.

7. The appellant was proceeded against under Khyber Pakhtunkhwa Police Rules, 1975. This aspect of the case remained unrebutted throughout. The requirement of publication in newspapers was not necessary, therefore, done away with. The ex-parte proceedings were taken against the appellant in the light of statements of his father and brother in law who categorically stated about the factum of his being abroad at the time of service of notices at his residential address.

8. Adverting to the case of appellant in Appeal No. 505/2018, we do not tend to agree with the submissions made on his behalf. The appellant was appointed as Constable on 26.12.2010 and was posted at Timergara. As per his version, his mother fell seriously ill in the year 2013 due to which he left for Saudi Arabia in order to meet the expenses of treatment. On 15.07.2013, the appellant was discharged from service on account of long absence without leave. He submitted departmental appeal which was turned down through order dated 12.03.2018 due to delay in submission of the same.



This long period of absence from duty was not only admitted by the

appellant but as a reason, illness of his mother was pressed into service. Needless to repeat that the delayed departmental appeal of appellant rendered the appeal in hand as squarely incompetent.

The argument of learned counsel regarding the impugned orders dated 15.07.2013 and 12.03.2018 being void on account of description of penalty i.e. "Discharge from service" also does not carry any force. The appellant was appointed on 26.12.2010 and was discharged from service within three years thereof while still being under probation. The punishment of discharge from service for a probationer is very much available in the Police Rules, 1934 under Chapter 12.21. As such, no illegality was committed by the respondents on that score.

9. We have found from the record that both the appellants failed to submit any application for grant of leave for the period of absence. Almost similar stance was taken as an excuse for their misconduct, which too, was not convincing at all.

It is also to be kept in consideration that the applications for condonation of delay, submitted alongwith the appeals, did not provide any good ground for the purpose. Besides, the delay was not explained in the mode and manner required under the established norms.

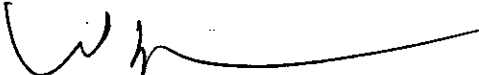

10. For what has been stated above, both the appeals in hand are dismissed hereby. Parties are, however, left to bear their respective costs.

File be consigned to the record room.


(ATIQRUR REHMAN WAZIR)
MEMBER(E)


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
08.03.2021

S.No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1.	2.	3
	08.03.2021	<p><u>Present.</u></p> <p>Mr. Arifullah, ... For appellant Advocate</p> <p>Mr. Kabirullah Khattak, Addl. Advocate General ... For respondents.</p> <p>Vide our detailed judgment, the appeal in hand is dismissed.</p> <p>Parties are, however, left to bear their respective costs.</p> <p>File be consigned to the record room.</p> <p> (ATIQ-UR-REHMAN WAZIR) Member(E)</p> <p> CHAIRMAN</p> <p><u>ANNOUNCED</u> 08.03.2021</p>

19.08.2020

Due to summer vacations, the case is adjourned to 21.10.2020 for the same.


Reader

21.10.2020

Junior to counsel for the appellant and Addl. AG alongwith Zewar Khan, Inspector for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned to 11.01.2021 for hearing before the D.B.


(Mian Muhammad)
Member


Chairman

11.01.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG for respondents present.

Due to COVID-19, the case is adjourned for the same on 08.03.2021 before D.B.


READER

10.12.2019

Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 10.02.2020 before D.B.


Member


Member

10.02.2020

Clerk to counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Zewar Khan, S.I (Legal) for the respondents present. Clerk to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to death of his uncle. Adjourned to 13.04.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

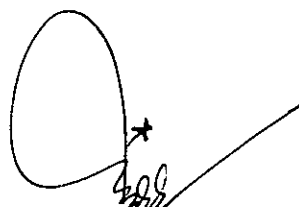
Due to Covid-19, the case is adjourned. To come up for the same on - 01.07.2020


01.07.2020

Learned counsel for the appellant and Addl. AG alongwith Mr. Zewar Khan, Inspector for the respondents present.

Former requests for adjournment to further prepare the brief.

Adjourned to 19.08.2020 before D.B.


Member


Chairman

17.06.2019

Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 02.08.2019 before D.B.


Member


Member

02.08.2019

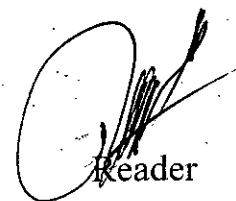
Clerk to counsel for the appellant and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Clerk to counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is not available. Adjourn. To come up for arguments on 29.10.2019 before D.B.


Member


Member

29.10.2019

Due to incomplete bench the case is adjourned. To come up for the same on 10.12.2019 before D.B.


Reader

01.03.2019 Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General Zewar Khan SI present. Clerk to counsel for the appellant submitted rejoinder which is placed on file. Due to general strike of the bar, the case is adjourned. To come up for arguments on 29.04.2019 before D.B


Member


Member


29.04.2019 Nemo for the appellant. Mr. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Zewair Khan SI for the respondents present. Notices be issued to the appellant/counsel for attendance. Adjourn. To come up for arguments on 17.06.2019 before D.B.


Member


Member

~~For the appellant, Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Zewair Khan SI for the respondents present. Notices be issued to the appellant/counsel for attendance. Adjourn. To come up for arguments on 17.06.2019 before D.B.~~

~~D.B.~~




06.08.2018

Appellant Sher Rehman in person present. Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. Learned AAG made a request adjournment. Granted. Case to come up for written reply/comments on 20.09.2018 before S.B.


Chairman

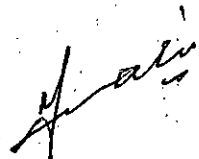
20-9-2018

Due to ~~prohibition~~ ~~of~~ ~~Haram~~ ~~vacation~~,
the case was not heard on - 20-9-2018.
Adjourned for 13-11-18.


(Reader)

13.11.2018


Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 01.01.2019. Written reply received on behalf of respondents by Mr. Zewar Khan S.I legal and placed on file.


READER

01.01.2019

Counsel for the appellant Muhammad Maaz Madni, Advocate present. Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant seeks time to submit rejoinder. Granted. Case to come up for rejoinder and arguments on 01.03.2019 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

23.05.2018

Counsel for the appellant Sher Rehman present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department and during service he was dismissed from service on 10.03.2016 on the allegation of his absence from duty. It was further contended that the appellant filed departmental appeal on 03.07.2017 which was rejected on 05.01.2018 hence, the present service appeal on 11.04.2018. It was further contended that neither proper inquiry was conducted nor any absence notice at the home address of the appellant was sent nor any advertisement regarding the absence of the appellant was published by the respondent-department therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to limitation and all legal objections. The appellant is directed to deposit security and process fee within 10 days thereafter notice be issued to the respondents for written reply/comments for ~~6-8~~ 2018 before S.B.

Appellant Deposited
Security & Process Fee






(Muhammad Amin Khan Kundi)
Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 593/2018

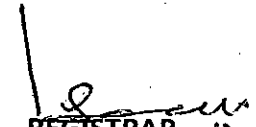
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	27/04/2018	<p>The appeal of Mr. Sher Rehman resubmitted today by Mr. Arifullah Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 22/4/18</p> <p>2-</p> <p>15/05/18.</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/05/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Sher Rehman son of Muhammad Habib Ex-Constable No. 1392 Distt. Lower Dir Police received today by i.e. on 11.04.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- ① Copy of dismissal order 10.3.2016 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.
- ② Copy of mercy petition is not attached with the appeal which may be placed on it.
- 3- Departmental authority has not been arrayed a necessary party.
- 4- The law under which appeal is filed is not mentioned.

No. 750 /S.T,

Dt. 12/4 /2018


REGISTRAR 12/4/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Arifullah Khan Adv. Pesh.

Sir

Resubmitted for further time




Adv.

24/4/18


⑦ days time extended.

Sir,

- 1)- Dismissal order has been mentioned at P. 9
- 2)- Mercy petition is attached at P. 10
- 3)- Department Authority has been arrayed a necessary party.
- 4)- The Law has been mentioned.


29/4/18

Re-submitted after needful, Plz.


Advocate

26-4-18.

BEFORE THE HONOURABLE
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 593 /2018

Sher Rehman

(Appellant)

V E R S U S

Inspector General of Police, KP, Peshawar and others


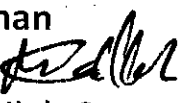
(Respondents)

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Petitioner

Through


Arif Ullah Khan
M. Zia Ullah 
Advocates, High Court,
Peshawar

Dated: 05.04.2018

BEFORE THE HONOURABLE
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 593 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 527

Dated 11-4-2018

Sher Rehman S/o Muhammad Habib

Ex-Constable No. 1392, District Lower Dir Police,

R/o Village Khan Serai, Talash Tehsil Timergara

(Appellant)

V E R S U S

- 1) Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
- 2) Deputy Superintendent of Police Circle, Maidan
- 3) District Police Officer, Circle Maidan, Dir Lower & Timergara
- 4) *Regional Police Officer, Malakand at Saidu Sharif, Swat.*
(Respondents)

u/s 4 of the Service Tribunal Act

Service Appeal, against the dismissal / removal
from service order dated 10.03.2016 passed by
respondent No. 3, whereby the departmental
appeal of the appellant was also turned down on
05.01.2018.

Prayer:

On acceptance of this appeal, the impugned order
dated 10.03.2016 whereby the appellant has been
removed / discharged from the service may kindly

Re-submitted to -day
and filed.

Registrar
21/4/18

Filed to-day
Registrar
11/4/18

be set aside and the appellant may kindly be re-
instated in service.

Respectfully Sheweth,

The appellant most respectfully submits as under:

- 1) That the appellant was appointed as Constable on 04.01.2010, and was serving his job at Police Line Timergara.
- 2) That in the year 2015 i.e. 29.12.2015 the appellant parents were seriously ill and suffering from sever diseases, due to which he appellant become mentally disturbed and also for their treatment a handsome expense were required due to which the appellant went to Saudi Arabia and he informed the department about that fact.
- 3) That when appellant came back, he came to know that he is discharged from the service vide order dated 10.03.2016. (Copy of findings of inquiry is attached)
- 4) That the appellant made the departmental appeal but same was turned down vide order dated 05.01.2018. (Copy of departmental appeal and order thereon are attached herewith)
- 5) That feeling aggrieved of the orders dated 10.03.2016 and 05.01.2018 the appellant approach this hon'ble court inter alia on the following amongst other grounds.

GROUNDS


- a) That the appellant absence from duty was not wilfull or deliberate but due to the reasons that his parents were seriously ill, suffering from sever diseases for their a huge amount of expense was required, due to which he went to Saudi Arabia. (Copy of medical slips are attached herewith)
- b) That appellant after his appointment served the department for more than 5 years and has never given a chance of complaint to his superiors.
- c) That removal from service is a harsh punishment whereby the career of the appellant become spoiled.
- d) That appellant is never ever involved in any type of corruption or misconduct, hence the punishment and dismissal from service is against the law.
- e) That no proper procedure has been adopted hence the order of removal from service is illegal by all aspects.
- f) That any other ground will be taken and the time of arguments.

It is, therefore, most humbly prayed that on acceptance of instant appeal, the impugned order dated 10.03.2016 whereby the appellant has been removed / discharged from the service may kindly be set aside and the appellant may kindly be re-instated in service.

Any other relief which this hon'ble court deem proper
and fit in the circumstances of the case may also be
granted in favour of the petitioner.


Petitioner

Through


M. Zia Ullah
Advocates, High Court,
Peshawar

Dated: 05.04.2018

BEFORE THE HONOURABLE
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2018

Sher Rehman

(Appellant)

V E R S U S

Inspector General of Police, KP, Peshawar and others

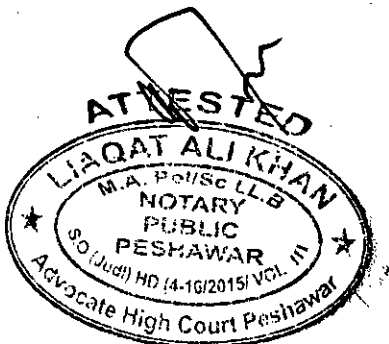
(Respondents)

AFFIDAVIT

I, **Sher Rehman** S/o Muhammad Habib Ex-Constable No. 1392, District Lower Dir Police, R/o Village Khan Serai, Talash Tehsil Timergara, do hereby solemnly affirm and declare on Oath that the contents of instant "**Service Appeal**" are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable court.

DEPONENT


Sher Rehman



10 APR 2018

P-6

BEFORE THE HONOURABLE
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2018

Sher Rehman

_____ (Petitioner / Appellant)

V E R S U S

Inspector General of Police, KP, Peshawar and others

_____ (Respondents)

APPLICATION FOR CONDONATION OF DELAY


Respectfully Sheweth,

- 1) That the above titled Service Appeal is being filed before this hon'ble court in which no date of hearing has yet been fixed.
- 2) That the delaying occurred in filing the instant service appeal is not intentional or deliberate but due to the reasons that the respondents kept the petitioner in hope that they are going to reinstate the petitioner in service.
- 3) That the impugned order was also not received to the petitioner on the date mentioned on it while the petitioner himself received it from the department and thereafter filed the instant appeal.

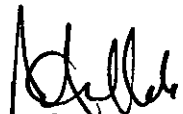

- p-2
- 4) That valuable rights of the petitioner are involved in the instant service appeal, and if the delay is not condoned the petitioner will suffer an irreparable loss.
 - 5) That any other ground will be taken and the time of arguments.

It is, therefore, most humbly prayed that on acceptance of instant application, the delay if any occurred in filing of the service appeal may kindly be condoned.

Any other relief which this hon'ble court deem proper and fit in the circumstances of the case may also be granted in favour of the appellant.


Petitioner / Appellant

Through


Arif Ullah Khan

M. Zia Ullah
Advocates, High Court,
Peshawar

Dated: 06.04.2018

P-8

BEFORE THE HONOURABLE
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2018

Sher Rehman

(Petitioner / Appellant)

V E R S U S

Inspector General of Police, KP, Peshawar and others

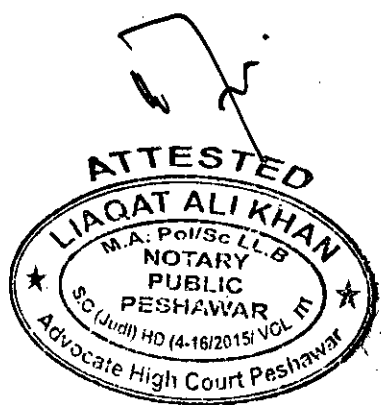
(Respondents)

AFFIDAVIT

I, Sher Rehman S/o Muhammad Habib Ex-Constable No. 1392, District Lower Dir Police, R/o Village Khan Serai, Talash Tehsil Timergara, do hereby solemnly affirm and declare on Oath that the contents of instant "**Condonation of Delay**" are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable court.

DEPONENT

SHER REHMAN



10 APR 2018

﴿ فائینڈنگ رپورٹ ﴾

خلاصہ الزام:- کنسٹیبل شیر رحمن نمبر 1392 پر الزام ہے۔ کہ مذکورہ مورخہ 29-12-2015 کو غیر حاضر ہو کر تاحال بدستور غیر حاضر ہے۔

تفصیل تحقیق:- انکوآری کے سلسلہ میں معلوم ہوا۔ کہ کنسٹیبل شیر رحمن نمبر 1392 مورخہ 04-01-2010 کو بھرتی شدہ ہے۔ اور مورخہ 07-12-2015 سے پولیس لائن تیرگرہ میں تعینات ہو کر بحوالہ بد 49 روز نامچہ 29-12-2015 سے تاحال بدستور غیر حاضر ہے۔ انکوآری ہذا کے سلسلہ میں تقدمات غیر حاضری طلب کر کے شامل انکوآری شد۔ محرر لائن زاہد حسین ASI اور لائن آفیسر شاد محمد خان SI کے تصدیقی بیانات لئے گئے اسی طرح غیر حاضر کنسٹیبل شیر رحمن نمبر 1392 کے والد مسمی محمد حبیب ولد نصیب خان ساکن خان سیرکی تالاش اور بہنوئی حضرت محمد ولد داوت خان ساکن قاضی آباد تالاش طلب کر کے جن کے بیانات لئے جا کر شامل انکوآری شد۔ ہر دو کسان نے وضاحت کی کہ کنسٹیبل مذکورہ بغرض محنت مزدوری باہر ملک سعودی عرب چلا گیا ہے۔

رائے انکوآری آفیسر:- کردہ انکوآری، تقدمات اور بیانات سے یہ امر عیاں ہے۔ کہ کنسٹیبل شیر رحمن نمبر 1392 بغیر پیشگی منظوری مجاز آفسران اپنی مرضی سے غیر حاضر ہو کر بغرض محنت مزدوری سعودی عرب جانا بیان ہوا ہے۔ مستقبل قریب میں واپس آنے کا کوئی امکان نظر نہیں آ رہا ہے۔ جو واضح طور پر رولز کی خلاف ورزی کا مرتکب ہو چکا ہے۔

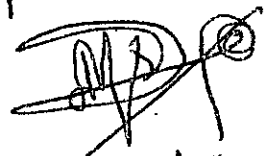
لہذا مذکورہ کو (Major punishment) دینے کی سفارش کی جاتی ہے۔

سید
ڈپٹی سپرنٹنڈنٹ آف پولیس
سرکل میدان

7/03/2016


Dismissed
from service

R/Sir,
entryp done.
Keep in his F.M


10/3/16

✓ لاہور
✓ حلیہ
✓ کٹنگ
✓ نوٹس
✓ A-B
✓ نوٹس

OB No 271
10-03-2016


(Amirullah)
ADU

درخواست نامہ عدیران فوراً دوبارہ عالی محبت
کے لیے حکم و عمل درج ذیل ہے

ہاں عالی

گناہ و حد کے سائل کے لیے حکم و عمل درج ذیل ہے جس سے محبت کے لیے
2010ء کا جو فی سیدہ کا - نہایت اہماری سے غرض ہے
الحاق دریا کا - یہاں کے گولوں سے کات / مروت سے کات
نظر انداز ہو کر جو کہ 3 کمانہ انکوائری کے حکم سے حاصل
کیا گیا - سائل ایک عزیز و صرف خاندان سے تعلق رکھتا ہے
صاحب والا: سائل ایک عزیز و صرف خاندان سے تعلق رکھتا ہے
مگر یہ سائل تعلیم یافتہ ہے / اجمالی طور سے سندس است اور نانا
ایک زمین سائل ہے - سائل کو کئے کا احوال خود سے
دوبارہ عالی کے احوال ہے - اگر حال کیا ہے تو اوف
بلا کوئی قسم کے کاتب کا موقع ہے اور

لہذا عدیران بالا وجوہات کو مدنظر رکھ کر سائل کو
دوبارہ عالی کے لیے حکم و عمل درج ذیل سے محبت کے لیے
کے احکامات صادر فرمائیں گے۔

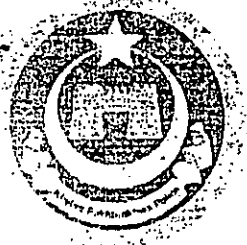
7
3/2017

عین خواہش ہوگی
الحاضر

ATTESTED
Arifullah
Adv

نامہ عدیران سائل کے لیے حکم و عمل 1392/م/3 کے لیے حکم و عمل
طرح ہے جس سے محبت کے لیے حکم و عمل
فون نم 0344-9676440

P-112



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

No. S/ 63 /18, dated Peshawar the 05/10/2018.

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


Subject: APPEAL (EX-FC SHER RAHMAN NO. 1392)

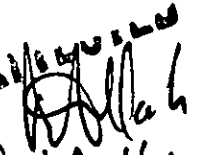
Memo :

Ex-Constable Sher Rahman No. 1392 of District Police Dir Lower 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 01 year.

The applicant may please be informed accordingly.

22
4/18


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


(A. Allah)
ADU



OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND

AT SAIDU SHARIF SWAT.
Ph: 0946-9240381 & Fax No. 0946-9240390
Email: digmalakand@yahoo.com

P-12

No. 13545 /E, dated Saidu Sharif the 24 / 11 /2017

To: The District Police Officer, Dir Lower.

Subject: APPLICATION FOR REINSTATEMENT IN SERVICE.

Memorandum:

Please refer to your office memo: No. 33664/EC, dated 25/10/2017.

Application of Ex-Constable Sher Rahman No. 1392 of Dir Lower District for reinstatement in service has been examined by Worthy Regional Police Officer, Malakand, and filed being time barred.

[Signature]
(OFFICE SUPDT)
For Regional Police Officer,
Malakand, at Saidu Sharif Swat
24/11

urgent

C
No. 3825/EC dt, 24/11/2017
EC

copy through SHO ps Talash

copy For EX/EC Sher Rahman No 1392

SPD, Muhammad Habib

R/O Khan Sarai Ziarat Talash

District Police Officer,
Dir Lower at Timergara

District Police Officer,
Dir Lower at Timergara

03439287526

*DFE 12-13-
27-11-17*

[Signature]
SHO ps Talash
27-11-17

ATTESTED
[Signature]
(Arifullah)
AAI

تلاجر

Medical No. 2

104

39/111

MR

53/wi

No.

نیشن ڈاکٹر فاضل اکرام
پہلی لی ایس بیو ٹیک ۱۰۰

Rs. 5

OUT PATIENTS DEPARTMENT.

NAME _____
YEARLY NO _____
DATE _____

No.

[Signature]

Rs. 5

OUT PATIENTS DEPARTMENT

NAME _____
YEARLY NO _____
DATE 05-2-83
DISEASE _____

FACE VALUE RUPEES 5

e/o - Epigastrie pain

Kyphotic chest
mid spine pain
radicular

ATTESTED
[Signature]
(Arshad)
Adv

BP = 130/70. - Adv.
- Xy Dorsal
Epigastrie pain
(AP 12th)

ڈاکٹر خالد شہزاد
پہلی لی ایس بیو ٹیک ۱۰۰
ڈی ایچ گورنمنٹ ہسپتال تھمرگرہ

- Abdo USS.
Unrel-

Gynaecologist/ Obstetrician

گائناکالوجسٹ/ اورسٹریٹیشن



Dr. Galina Rehman

ڈاکٹر گالینہ رحمان

M.D. (Doctor of Medicine)
P.G (Post Graduate)

ایم. ڈی (ڈاکٹر آف میڈیسن) پی. جی (پوسٹ گریجویٹ)

Gynae & Obstetric Specialist
Gynae & Obstetric Ultrasound Specialist
Gynae & Obstetric Surgical Specialist
Oncology & Endocrinology Specialist

اولی ایس اگائی، اولی ایس اگائی سرجن
زائید، زچہ دچی، برسٹ اینڈ یونیورسٹی کینسر، الزاساؤڈ،
ہائجہ پی، ایکوریا، امراض مخصوصہ

Name Rohafza

9
باجور

Age Sex F Date 24.9.16

Clinical Record

Body Ach
Pressure Perinum

Leucocely

- Rx
1. Tab. Lofafen 5mg
1+1 for 5 days
in the morn
 2. Tab. Promet FA
1+5 for 5 days
 3. Tab. Septox 850mg
1+1 for 5 days
 4. Cap. Promerit
1+5 for 5 days
 5. Tab. Inflamox 100mg
1+1+1 for 3 days
 6. Tab. Metformin 500mg
1+5 for 5 days
 7. Cap. Nexium 40mg
1+5 for 5 days

Temp = 8

Menopausal

B.P 120/80

ATTESTED
(Signature)
A.A.

Cell: 0342-9222322

کلینک: شفاء ہسپتال بلقابل ایمر جنسی گیٹ ڈی، ایچ، کیو ہسپتال بٹ خیلہ

P-15

QAZI CLINICAL LABORATORY

(Lab Reg. No 02/HRA)

Phone : +92-945-821143

URL : <http://www.qazilab.com>

Email : info@qazilab.com

S. ZADA FAZAL AHAD
DML Tech (Gold Medalist)
Islamabad
Email: fazalahad@qazilab.com

HAMID HUSSAIN
M.Sc (Hematology)
Baqai Medical Uni (Karachi)
Email: hamidhussain00@live.com

Q. HUSSAIN AHMAD
M. Sc (Bio-Chemistry)
Consultant Bio-Chemist
Email: hussain@qazilab.com

Patient Name : W/O M. HABIB
Advised By : L.DR.Lubna Tahir (Gynaecologist)
Date/Time : 15 Jun, 2017 / 9:22 AM

Age/Sex : 8 Years / F
Lab No : 69763
Region : 0

Blood Sugar (R)

TEST NAME	RESULT	UNIT	REF.VALUE
Blood Sugar (R)	118	mg/dl	80---145

CBC/Urine/MP.

CBC

Hemoglobine (HB%)	11.2	g/dl	12---16
RBC.s	4.60	Million/cmm	4.5---6.5
Platelets count	252,000	/cmm	150,000---450,000
WBC.s Count	11900	/cmm	4,000---11,000
D L C Count.			
Neutrophils	82	%	20---65
Lymphocytes	13	%	20---40
Manocytes	02	%	02---08
Eosinophils	03	%	02---06
Basophils	00	%	00---01

Absolute Values.

HCT/PCV	37.3	Vol%	Male:- 37---47 F, Male:- 47---57
MCV	81.5	fl	76---96
MCH	24.6	g/dl	27---32
MCHC	30.2	pg	30---35
..

Urine Physical Examin..

Color	Cloudy	---	P. Yellow
Sugar	NIL	---	NIL
Albumine	NIL	---	NIL
Blood	NIL	---	NIL

Microscopic Examin..

Pus Cils	Numerous	/HPF	03---04
Red Cells	NIL	---	NIL
Cast Cells	NIL	/HPF	NIL

MP.

Smear for MP	Not seen	---	---
--------------	----------	-----	-----

ATTESTED
(Signature)
Adi

Lady
Dr. Lubna Tahir

MBBS, FCPS

Distict Gynaecologist & Ultrasound Specialist
DHQ Hospital Timergara



لیڈی ڈاکٹر لبنی طاہر

ایم بی بی ایس، ایف سی پی ایس
ڈسٹرکٹ گائنا کالوجسٹ اینڈ الزائوساؤنڈ سپیشلسٹ
ڈی ایچ کیو ہسپتال تیرگراہ

Pt's Name: W/O [unclear] Age: [unclear] Sex: [unclear] Date: 15.6.17

Rx Postampant & Bodya
w/wh
m/pur
Bp 120
80

Op. P
midysion

Op. P
w/wh
B. 5/8
m/p

Bian gel
Furgone
Augit

ATTESTED
[Signature]
add

Contact No's
0346-9449199
0301-8821813

Not Valid For Medico Legal Purpose

f-17

QAZI CLINICAL LABORATORY
 Air Road Timergara
 Contact # : 0945821143
 Patient Mobile # : 923
 CA055460 69763

Paid
~~XXXX~~

Name : w/o m. habib
 Date / Time 15-Jun-2017 , 09:00 AM

TEST	CHARGES
Blood Sugar (R) 118	50
CBC/Urine/MP.	500
Total Amount	550
Discount	
Net Charge	

Developed By Aursoft
<http://www.aursoft.com>
 Contact 03005998002

QAZI LABORATORY
 TIMMARGARA DISTRICT
 SYSTEMS XP-100

ID: MUM HABIB
 Date: 15/06/2017
 Time: 09:00
 Mode: WBCU

WBC	11.9	%
RBC	4.60	%
HGB	11.2	g/dl
HCT	37.3	%
MCV	81.1	fL
MCH	24.3	pg
MCHC	30.0	g/dl
PLT	352	/mm ³
LYM%	17.4	%
MXD%	0.0	%
NEUT%	82.6	%
LYM	2.1	%
MXD	0.0	%
NEUT	9.8	%
RDW-SD	39.7	fL
RDW-CV	12.2	%
PDW	13.4	fL
MPV	10.3	fL
P-LCR	28.5	%
P-G	0.26	%

RECEIVED
 (Arifullah)
 Adv

TREATMENT AT HOME:

1. Jan. Asst. 500
 1 + 0 + 1
 2. Jan. Benzoin 100
 1 + 1 + 1
 3. Jan. Thengam ultra
 120 ——— 100
 4. Jan. ultra sup
 1 + 0 + 1
 Benzoin - C. Meth. wash
 قران قران
 100 (10) 100
 100 (10) 100
 100 (10) 100
 100 (10) 100

ادوی ڈی: ہفتہ، منگل، بدھ
 آئندہ کارڈ ساتھ لانا ہے۔

(3) 100 (10) 100
 100 (10) 100
 100 (10) 100

ENT HEAD & NECK SURGERY UNIT

TIMERGARA DIR LOWER

DISCHARGE SLIP

Dr. Daud Jan
 MBBS, DLO, MCPS
 ENT Specialist

Dr. Nadir Khan
 MBBS (KMC), FCPS (Pak)
 ENT Specialist

Name: Muhammad ^{Hafiz} Address: Talash
 Admission No: 4/3/300 Bed No: _____
 Age: 70 years Sex: M.
 Date of Admission: 8/3/17 Date of Discharge: 11/3/17
 Diagnosis: Tongue Trauma (Haematomas)
 Operation: TID of Tongue
 Consultant Doctor: Dr. Nadir Khan

OPERATION NOTES:

Operation: ILD of Tongue Hematoma

Surgeon: DR Amlay Sen

Date: 01/11/17

Finding: _____

INVESTIGATION

- HBS

- HCV

- CT BT

- نہایت وقت کان میں چھٹی روٹی رکھیں۔
- نزلہ زکام اور کھانسی میں احتیاط اور فوری علاج۔
- تاک کوڑھی ہونے سے بچائیں اور ٹنگھن پانی سے صفائی کریں۔
- آپریشن کے 10 دن بعد تیریاں نکلوائیں۔

TREATMENT AT HOSPITAL

Ⓐ (3) Antaxone 4g 2x 183

Tab. Voltrol 50mg
1-10-11

Tab. Augmentin 625mg
1-1-11

Tab. Therazone 400mg
1-1-10

برایات:

- کان خشک رکھیں۔
- پانی سے بچائیں۔
- ترش اشیاء اجازہ چھٹی، لیموں، کچا پیاز، مرچ، چکنائی اور مشائی وغیرہ سے پرہیز کریں۔
- نمک کے غرارے کریں۔

ACCEPTED
11/11/17

ATTESTED
Fazal
(Ain Fildal)
Add

P-21

**Dr. Fazal Rahim
Laboratory**



ڈاکٹر فضل رحیم
لیبارٹری

Approved For Specialized Tests

PatientName	MUHAMMAD HABIB	Patient	135.111
Address	TALASH	Age	70.00 years
Consultant	Dr. KHALID SHEHZAD MEDICAL SPECIALIST	Sex	M

Special Chemistry Tests

Test	Result	Unit	Reference Range
PSA	3.5	ng/ml	< 4.0 <4.0 does not completely rule out prostatic disorder If the test result is above 4.0 then further tests are recommended

Test performed on Fluorescent Immune Assay

False high levels of PSA may be seen in

- Prostatic manipulation
- Bicycle riding
- UTI
- Catheterization
- After Ejaculation
- BPH
- Medications such as testosterone or other hormones

Factors can lower PSA levels (which could potentially mask PSA elevations):

- Herbal mixtures
- Drugs used to treat enlarged prostate glands or treat urinary symptoms such as Proscar or Propecia or Avodart.
- Obesity causes lower PSA levels due to haemodilution
- Aspirin may lower PSA levels especially in non-smokers
- Statin drugs (cholesterol lowering medications)
- Thiazide diuretics

Date March 11, 2017 12:00 am

Authorized by

Pathologist Dr Fazal Rahim MBBS, M.Phil (Hematology), Member PAP & PSH.

Senior Pathologist DHQ Hospital Timergara, Health Department Khyber PakhtunKhwa

Opp. DHQ Hospital Timergara Khyber PK. +92945824155, <http://www.fazallab.com>, fazallab@fazallab.com

ATTENDED
Adi



Shifa Hospital Batkhela

Opp: Emergency Gate, D.H.Q Hospital
Batkhela Tel: 0932-411665 / 0310-6016713

Patient Name: Rooh Hamza **Age (Sex):** NA/ Female
Referring Doctor: Lady Dr Gulna Rahman (Gynaecologist) **Specimen Name:** Blood / Urine
Request: FBC, Urine R/E **Date:** September 21, 2019

Test	Result	Ex: Value
Typhidot	IgM Negative	
	IgG Negative	

HB	11.9 gm/dl	M, 14.0 - 18.0 F, 12.0 - 16.0
TLC	10,800 /Cmm	4,000 - 11,000

Differential Count:-

Neutrophils	70 %	40 - 70 %
Lymphocytes	24 %	20 - 40 %
Monocytes	05 %	02 - 07 %
Eosinophils	01%	01 - 06 %

URINE R/EXAM

Physical Character:- P- Yellow
 Chemical Examination
 Reaction: Acidic (PH-06)
 Albumin: NIL
 Sugar: Nil
 Microscopic Examination:

Pus Cell...04 - 06 /HPF RBC... Nil /HPF Epi Cells .01 - 02 /HPF

→ If Our Result Does Not Correlate Clinical Findings Then Please Ask The Lab On Same Day To Repeat The Test
 → T3, T4, Tsh, Carc.c Enz, Lipid Profile, Hbs Ag, Hcv Ab, ghBy ELISA Method & Aio available At This Lab

Naveed Anjum
 M.Sc (Biochemistry)
 M.Phil (Biochemistry)
 University of Hazzara

Zooshan Abid
 BS (Biotechnology)
 University of Malakand

Mian Waqas Ahmed
 BS (Pathology)
 Khyber Medical University
 Peshwar Member Provincial TB
 Control Program

Khaliq uz Zaman
 DMLT LMS

Authorised Signature

Handwritten signature: *Galina Rehman*

Gynaecologist/ Obstetrician

Dr. Galina Rehman

M.D. (Doctor of Medicine)
P.G (Post Graduate)

Gynae & Obstetric Specialist
Gynae & Obstetric Ultrasound Specialist
Gynae & Obstetric Surgical Specialist
Oncology & Endocrinology Specialist



کالوجسٹ / اوپسٹریٹیشن

ڈاکٹر گالینہ رحمان

ڈاکٹر (پوسٹ گریجویٹ) بی۔ سی (پوسٹ گریجویٹ) ڈاکٹر
اولی ایس اگائی، اولی ایس اگائی سرجن
نات، زچہ، برست اینڈ ٹیٹس کنسر، الزاساڈنڈ
ہائجہ بین لیکور یا امراض خصوص

Name Rohabza

Age 37

Sex F Date 13-11

Clinical Record

→ Bole Ath
→ Pain Abdomen
Cystocely

→ Para - 8

Menopause?

B.P. 120/80

Rx

1. Ibuprofen 500mg

1 + 5 for 7 days

2. Tab. Domifen D-5

1 + 1 for 7 days

3. Tab. Sp. 500mg

1 + 1 for 7 days

4. Tab. Diclofenac 75mg

1 + 5 for 7 days

5. Cap. Mefenamic acid

1 + 5 for 7 days

6. Cap. Ibuprofen 400mg

1 + 1 for 7 days

7. Inj. Paracetamol 1000mg

1 + 5 for 7 days



8. Tab. Levonelle

1 + 5 for 7 days

Cell: 0342-9222322

کلینک : شفاء ہسپتال بلقامل ایمر جنسی گیٹ ڈی، ایچ، کیو ہسپتال رٹ جیلہ

دوبارہ جانچ کیجیے

50 روپے	 	34063
ایڈوکیٹ:	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	
بار کونسل ایسوسی ایشن نمبر:	bc-17-7666	
رابطہ نمبر:		

بعدالت جناب: سر جسٹس نیشنل سٹیٹس ریٹریوٹو ٹریبونل پشاور

مخائب:	دعویٰ:
appilant	
Sher Rahman	علت نمبر:
بنام	مورخہ:
9-G-P-K-P-K	جرم:
	تھانہ:

باعت تحریر آگہ

سائن نامہ پیشی مصلح کوثر دیر
کمرہ عدلیہ ولد حق صلیب

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
آن مقام سر جسٹس نیشنل سٹیٹس ریٹریوٹو ٹریبونل پشاور، جسٹس صاحبان، محمد ضیاء الدین، ضیاء الدین کو وکیل مقرر
کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یا طرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ یا اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے
المقوم:

JESHAWAR BAR ASSOCIATION
KHYBERP - 10-4-2018

Handwritten notes and signatures on the left margin.

مقام سر جسٹس نیشنل سٹیٹس ریٹریوٹو ٹریبونل پشاور کے لیے منظور ہے۔

8/3/2019. DB. Chairman

Mohd Amis

Sher Rehman - Impugned order. 8/3/2016

Dep't Appeal 3/7/2017.

Rejected ~~by 101P~~

5/10/2018.

Rejected

24/11/2017.

S.A/- 11/4/18.

o) No proper orders, ^{No} publications?

DVA - not maintainable. 17/5/2016.

D.A. 3/7/2017

Delay one year ^{two} months

Time barred

2015 SCMR 165

2011 SCMR 676

S.A 5/11/20

12/4/2018

2010 SCMR 1982.

2013 SCMR 911 B

2009 SCMR 1435

S.A 48/2017.

18/3/2019

C.P No 739/2016

~~DOD~~ 1773/2018

DOD 16/1/2020.

SA 325/2011. DOD 23/10/2017.

Combination of delay

C.P 1706/2018

DOD 16/1/2020.

T.B.(D),

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 593/2018

Ex Constable Sher Rehman No. 1392 District Dir Lower..... Appellant.

VERSUS.

- 1) Provincial Police Officer Khyber Pakhtunkhawa Peshawar.
- 2) District Police Officer Dir Lower.
- 3) Deputy Superintendent of Police Circle, Maidan Respondents.

PARA WISE REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

- 1) That the present service appeal is not maintainable in its form.
- 2) That the appellant has not come to this honourable Service Tribunal with clean hands.
- 3) That the present Service appeal is badly time barred.
- 4) That this honorable Service Tribunal has got no jurisdiction to entertain the present service appeal.
- 5) That the appellant has suppressed the material facts from this honorable service tribunal.

ON FACTS:

1. Pertains to record, hence needs no comments.
2. Incorrect, the appellant absented himself from duty vide daily Dairy No. 49 dated 29-12-2015 without any leave or prior permission from his seniors. The appellant was required to bring the difficulties being faced to him in the notice of his seniors and seek proper leave in accordance with rules, but he deliberately failed and had gone to Saudi Arabia on his own. Being member of disciplined fore, the appellant committed gross mis-conduct.
3. Needs no comments.

4. Incorrect, the department appeal was rightly filed by the competent authority, being badly time barred.
5. Incorrect, the appellant has got no cause of action to file the present Service appeal.

ON GROUND

- (a) Incorrect, the absence of appellant from duty was found willful and intentional, as he kept his seniors/ department in dormant and has gone to Saudi Arabia on his own sweet will. As already discussed that being member of disciplined force, he was required to inform his seniors about the issue and to apply for leave through proper channel, but he failed to do so.
- (b) Incorrect, the appellant short service history shows that, he is habitual absentee and always remained absent from duty.
- (c) Incorrect, the dismissal order was passed after completion of all the relevant process i.e. issuance of charge sheet + statement of allegations, conducting proper enquiry, final show cause notice.
- (d) Incorrect, the punishment awarded to the appellant is in accordance with law, as the appellant had gone abroad on his own sweet will. The respondents have no other option, except to dismiss the appellant, as he committed gross misconduct.
- (e) Incorrect, proper procedure has been adopted by following all the required formalities and the order of removal from service is legal on all aspects.
- (f) The respondents also seek leave of this honorable Tribunal to rely on additional grounds at the time of arguments/ hearing.

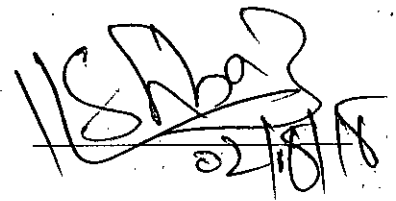
PRAYER:

It is therefore humbly prayed that on acceptance of this Para-wise reply, the service appeal may graciously be dismissed with cost.

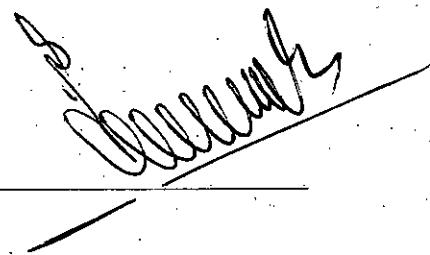
Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.



District Police Officer,
Dir Lower.



Deputy Superintendent of Police
Circle, Maidan Dir Lower



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 593/2018

Ex Constable Sher Rehman No. 1392 District Dir Lower..... Appellant.

VERSUS.

- 1) Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
- 2) District Police Officer Dir Lower.
- 3) Deputy Superintendent of Police Circle, MaidanRespondents.

AFFIDAVIT.

We the following respondents do hereby solemnly affirm and declare on Oath that the contents of Para-wise reply are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honorable Tribunal.

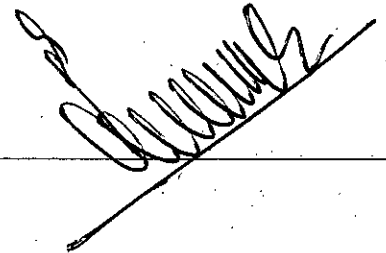
Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.



District Police Officer,
Dir Lower.


2/8/18

Deputy Superintendent of Police
Circle, Maidan Dir Lower



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 593/2018

Ex Constable Sher Rehman No. 1392 District Dir Lower..... Appellant.

VERSUS.

- 1) Provincial Police Officer Khyber Pakhtunkhawa Peshawar.
- 2) District Police Officer Dir Lower.
- 3) Deputy Superintendent of Police Circle, MaidanRespondents.

POWER OF ATTORNEY

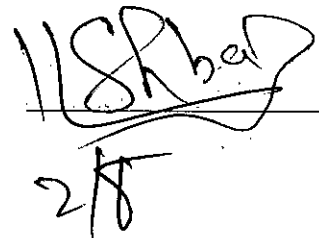
We the following respondents do hereby authorize Mr. Zewar Khan SI Legal Dir Lower to appear on our behalf before the Honorable service Tribunal in the above Service appeal and pursue the case on each and every date.

He is also authorized to submit all the relevant documents in connection with the above Service Appeal.

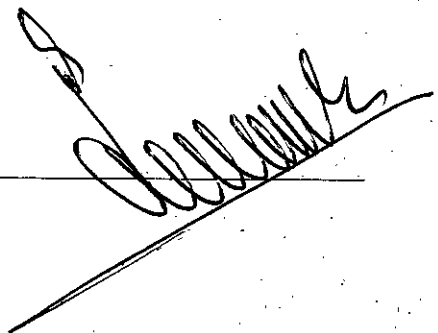
Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.



District Police Officer,
Dir Lower.



Deputy Superintendent of Police
Circle, Maidan Dir Lower



Enquiry No. 1672 /EB
Dated Timergara the 18/02/2016

DISCIPLINARY ACTION

I, **Qasim Ali (PSP)**, District Police Officer, Dir Lower at Timergara competent authority as of the opinion that you **Constable Sher Rahman No.1392** have rendered yourself liable to be proceeded against departmentally as you have committed the following acts /omission in the Rule 2 (iii) of Police Rules 1975

STATEMENT OF ALLIGATION

That he while posted to **Police Lines Timergara** was found absent on **29 12-2015 to date** without any leave or prior permission from his superior, which is gross misconduct on his part.

2. For the purpose of scrutinizing the conduct of said office, with reference to the above allegation **Mr. Zahir Shah/ SDPO Circle Maidan** is appointed as enquiry officer.

3. The enquiry officer shall conducted proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused officer, record its findings and make within twenty five (25) days of the receipt of his order, recommendation as to punishment or other appropriate action against the accused officer.

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

**District Police Officer,
Dir Lower at timergara**

No. 11382-83 /EC,

dated 18 /02/2016

1. **Mr. Zahir Shan/SDPO Circle Maidan**, (Enquiry Officer) for initiating proceeding against above defaulter official within 25 days, under Police Rules 1975 in the Light of attached 03 documents.

2. Above named defaulter official.

57 SA
No
P.S. Talish

303
DFC
[Signature]

SHO P.S. Talish
23-02-016

Enquiry No. 1672

Dated Timergara the 18/02/2016

(9)

CHARGE SHEET

I, **Qasim Ali (PSP)**, District Police Officer, Dir Lower at Timergara competent authority, hereby charge you **Constable Sher Rahman No. 1392** committed as follows:-

That you while posted to **Police Lines Timergara** was found absent on **29-12-2015 to date** without any leave or prior permission from your superior, which is gross misconduct on your part.

By the reason of above, you appear to be guilty of miss-conduct and have rendered yourself liable to all or any penalties specified in Rule-4, of the disciplinary Rules, 1975.

- 2- You are: therefore, required to submit your written reply within 07 days of the receipt of this charge sheet to the enquiry officer.
- 3- Your written reply, if any, should reach to the enquiry officer, within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.
- 4- Intimation as to whether you desire to be heard in person or not?
- 5- A statement of allegation is enclosed.

**District Police Officer,
Dir Lower at timergara**

No. 11384 /EC,

Dated 18 /02/2016

Copy to Constable Sher Rahman No.1392 s/o Muhammad Habib r/o Village Haya Seri, Police Station Haya Seri through SHO/PS Haya Seri SDPO/Circle Maidan.

LO DSP/T

یہاں شیٹ نمبر حسب و نام اہلیت خواتین سکول ہائیک اسکول تھانہ لاہور میں مذکورہ شیٹ نمبر ۱۲۱ کے تحت کارڈ
ڈیٹا جی شیٹ سے مطلع ہوا۔ جو کہ شیٹ نمبر ۱۲۱ کے تحت کارڈ نمبر ۱۲۱ میں موجود ہے۔ مذکورہ کارڈ سے مطلع
کرونگا۔ جسے چارج شیٹ نمبر ایک کے تحت توالیہ ہے۔

27-2-016

محمد حبیب و نام اہلیت خواتین سکول ہائیک اسکول تھانہ لاہور

Mob-0348-9877901

CMTC-

ذوب عالیہ ۱

ذوب عالیہ ۱

چارج شیٹ تمام شیٹ نمبر خواتین سکول ہائیک اسکول تھانہ لاہور
کا کارڈ نمبر ۱۲۱ کے تحت معروضات کیلئے لکھو اور
موجودہ کارڈ نمبر ۱۲۱ کے تحت معروضات کیلئے لکھو اور
موجودہ کارڈ نمبر ۱۲۱ کے تحت معروضات کیلئے لکھو اور
موجودہ کارڈ نمبر ۱۲۱ کے تحت معروضات کیلئے لکھو اور

ذوب عالیہ ۱ کے تحت معروضات کیلئے لکھو اور

محمد حبیب

110-PS-02016

27-02-016

110-PS-02016

27-2-016

بی ادبی محمد حبیب ولد نصیب صاحب ساکن حاشیہ سٹی مال روڈ
 نزد ریفائیٹیا گیا ہے۔ یہی سیر الرحمن ولد صاحب ہے۔
 حکیم لوہیوں میں جمنیہ کا فیسل ہوئی ہوگا۔
 لیکن اب مذکورہ ذمہ داری جو مگر سعوی میں حلالہا،
 فیحہ علم نہیں ہے۔ مذکورہ کتب و اسلرا کا
 اور نوئی کرنے یا نرنے کا بھی فیحہ کوئی علم نہیں ہے۔
 یہی ولد صاحب ہے۔ جو اور ہے۔

الکفر

محمد حبیب ولد نصیب صاحب قوم بلوچ
 جموں 701 سال ساکن حاشیہ سٹی مال روڈ

NICNO:- 15302-2782542-9
 mobNO:- 0348-9877901-
 Date:- 01-03-2016-

Attested
 E.O

(11)

بی بی آدا حضرت خدیوہ داؤد صاحبہ کی مکمل گمانی آباد ٹاؤن -

نے دریافت کیا کہ مسیحی سرالطمان ولد محمد صیب علیہ السلام
سال ہے۔ حکم پور میں بسنت کانسٹیبل ہوئی، ہو چکا تھا۔
کتاب مذکورہ اب سواری مرید حلا تھا۔ اب وہ کون ہے؟
کتاب واصل رہے گا۔ اور ذمہ داری کرنے کا خواہشمند ہے یا نہیں؟
یہی دریافت ہے۔ جو کہ درج ہے۔

حضرت خدیوہ داؤد صاحبہ کی مکمل گمانی آباد ٹاؤن -
گھر نمبر 69/70 سال ٹاؤن گمانی آباد ٹاؤن -
NICNO: - 15302-0980485-5-
mobNO: - 0342-9393820-
Date: - 01-03-2016-

A. Usaid
P.O.

(1)

دفتر DSP سرکل میدان دیر لوئیر۔

ریڈر نمبر 25 / 03 / 2016

﴿فائنڈنگ رپورٹ﴾

کنسٹیبل شیر رحمن نمبر 1392 پر الزام ہے۔ کہ مذکورہ مورخہ 29-12-2015 کو غیر حاضر ہو کر تاحال بدستور غیر حاضر ہے۔

خلاصہ الزام:-

انکوائری کے سلسلہ میں معلوم ہوا۔ کہ کنسٹیبل شیر رحمن نمبر 1392 مورخہ 04-01-2010 کو بھرتی شدہ ہے۔ اور مورخہ 07-12-2015 سے پولیس لائن تیرگرہ میں تعینات ہو کر بحوالہ مد 49 روز نامچہ 29-12-2015 سے تاحال بدستور غیر حاضر ہے۔ انکوائری ہذا کے سلسلہ میں تقدمات غیر حاضری طلب کر کے شامل انکوائری شد۔ محرر لائن زاہد حسین ASI اور لائن آفیسر شاد محمد خان SI کے تصدیقی بیانات لئے گئے اسی طرح غیر حاضر کنسٹیبل شیر رحمن نمبر 1392 کے والد مسی محمد حبیب ولد نصیب خان ساکن خان سیرکی تالاش اور بہنوئی حضرت محمد ولد داوت خان ساکن قاضی آباد تالاش طلب کر کے جن کے بیانات لئے جا کر شامل انکوائری شد۔ ہر دو کسان نے وضاحت کی کہ کنسٹیبل مذکورہ بغرض محنت مزدوری باہر ملک سعودی عرب چلا گیا ہے۔

تفصیل، تحقیق:-

کرہ انکوائری، تقدمات اور بیانات سے یہ امر عیاں ہے۔ کہ کنسٹیبل شیر رحمن نمبر 1392 بغیر پیشگی منظوری مجاز آفسران اپنی مرضی سے غیر حاضر ہو کر بغرض محنت مزدوری سعودی عرب جانے بیان ہوا ہے۔ مستقبل قریب میں واپس آنے کا کوئی امکان نظر نہیں آ رہا ہے۔ جو واضح طور پر رولز کی خلاف ورزی کا مرتکب ہو چکا ہے۔

رائے انکوائری آفیسر:-

لہذا مذکورہ کو (Major punishment) دینے کی سفارش کی جاتی ہے۔

ڈپٹی سپرنٹنڈنٹ آف پولیس
سرکل میدان

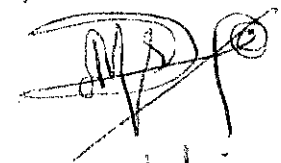
7/03/2016

Dismissed
from service

R/Sir,

entry done.

Keep in his F.M



10/3/16

10/3

CB No 271
10.03.2016

یہ رپورٹ
کنسٹیبل
کے پاس
رہے گی
A-B
لوئیر

2011-SCMR 676

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J. Raja Fayyaz Ahmed and Ch. Ijaz Ahmed, JJ

RAJA KHAN---Petitioner

Versus

MANAGER (OPERATION) FAISALABAD ELECTRIC SUPPLY COMPANY (WAPDA) and others---Respondents

Civil Petition No. 636 of 2009, decided on 21st May, 2009.

(Against the judgment dated 11-2-2009, passed by the Federal Service Tribunal, Islamabad, in Appeal No. 445(R) CE of 2005).

(a) Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---Ss/34 & 10---Constitution of Pakistan, Art. 212(3)---Compulsory retirement from service---Dismissal of first departmental appeal for being time barred---Dismissal of second departmental appeal as not competent---Dismissal of appeal by Service Tribunal on merits as well as its being time barred---Validity---Petitioner had filed appeal before Tribunal without fulfilling mandatory requirement of S. 4 of Service Tribunals Act, 1973 in regard to limitation---Court could not compromise on limitation---Petitioner during four years of service had been punished for unauthorized absence as many as eight times---Petitioner by his subsequent conduct had accepted punishment of compulsory retirement by getting his pension claim and monthly pension regularly---Supreme Court refused to grant leave to appeal in circumstances.

Haji Ghulam Rasul's case PLD 1971 SC 376; Mst. Amina Begum's case PLD 1978 SC 220 and Nawab Syed Raunaq Ali's case PLD 1973 SC 236 rel.

(b) Constitution of Pakistan---

---Art. 212(3)---Service Tribunal, finding of---Validity---Such finding being finding of fact would not call for interference by Supreme Court.

Ch. Muhammad Azim's case 1991 SCMR 255 rel.

(c) Constitution of Pakistan---

---Art. 212(3)---Concurrent findings of fact by Appellate Authority and Service Tribunal---Validity---Supreme Court would not interfere with such findings.

Iftikhar Ahmed Malik's case 2005 SCMR 806 rel.

(d) Service Tribunals Act (LXX of 1973)---

--S. 4--Departmental appeal being time-barred--Effect--Appeal before Service Tribunal would not be competent.

Chariman PIA and others v. Nasim Malik PLD 1990 SC 951; Muhammad Aslam v. WAPDA and others 2007 SCMR 513 and Government of Pakistan through Secretary, Establishment Division v. Bashir Ahmad Khan PLD 1985 SC 309 rel.

(e) Limitation---

---Appeal, if required to be dismissed for being time-barred, then its merits need to be discussed.

Khan Sahib Sher Muhammad Mir's case 1987 SCMR 92 rel.

(f) Constitution of Pakistan---

---Art. 212(3)---Constitutional jurisdiction under Art. 212(3) of the Constitution---Discretionary in character.

(g) Constitution of Pakistan---

---Arts. 185(3) & 212(3)---Grant of leave to appeal by Supreme Court---Discretionary.

Ghulam Qadir Khan's case 1986 SCMR 1386 rel.

(h) Constitution of Pakistan---

---Arts. 199 & 212(3)---Void order---Constitutional jurisdiction of High Court and Supreme Court--Scope---Such jurisdiction might be refused, if same was meant to enable petitioner to circumvent provisions of law of limitation or if he was stopped by his conduct from challenging order.

Muhammad Ismail's case 1983 SCMR 168; Abdur Rashid's case 1969 SCMR 141 and Wali Muhammad case PLD 1974 SC 106 rel.

Haider Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Nemo for Respondents.

ORDER

CH. IJAZ AHMED, J.---Raja Khan, petitioner, seeks leave to appeal against the impugned judgment dated 11-2-2009 whereby the learned Federal Service Tribunal, Islamabad, dismissed his appeal on merits as well as time-barred.

2. Detailed facts have already been mentioned in the impugned judgment. However, necessary facts of which the present petition arises are that petitioner was appointed as Chowkidar with the respondent establishment from April, 1985. Show cause notice dated 23-2-2004 under section 5(4) of the Remuneration from Service (Special Powers) Ordinance, 2002 along with statement of allegations was served upon petitioner containing the following charges:--

- (1) Whereas you Mr. Raja Khan, Chowkidar PESCO (WAPDA) Jhang Circle Jhang are charged with misconduct as per statement of allegations attached.
- (2) And whereas on the basis of documentary evidence available, it is not considered necessary to have formal inquiry against you and that proceedings are being initiated under section 5(4) of the Removal from Service (Special Powers) Ordinance, 2002 which might entail imposition of a major penalty of dismissal from service as specified in section 3 of the said ordinance.
- (3) Now, therefore, you are required to show cause within 15 days from the date of receipt of this notice as to why the proposed action should not be taken against you.
- (4) If no response is received from you within the time stipulated above, it would be presumed that either you have no defence to offer and/or you have willfully declined to do so. The case shall then be decided on 'ex parte' without further reference.

Whereas you Mr. Raja Khan, Chowkidar, PESCO Jhang Circle Jhang are charged with gross misconduct, inefficiency, corruption and mal practices for the following charges and other relevant circumstances.

As per report of Mr. Shahzad Nasir, Telephone Attendant and Mr. Ghulam Abbas Bhatti Telephone Attendant PESCO Jhang Circle Jhang. You are absent from duty w.e.f 6-2-2004 to 17-2-2004 without intimation/prior permission/sanction leave from the Circle Superintendent/Technical Officer/and by the undersigned.

If any mishap/incident create in Circle office, who are responsible. You are already so many times directed to present in the office after closing hours but you have failed in official duties."

Petitioner submitted reply to the show cause notice and admitted that he was absent from duty on account of illness. The competent authority after providing him personal hearing awarded major penalty of compulsory retirement from service w.e.f. 31-3-2004 vide order dated 29-3-2004. Petitioner being aggrieved filed departmental appeal on 6-4-2004 before the appellate authority who dismissed the same as time barred vide order dated 10-11-2004. Thereafter the petitioner filed another appeal before the Managing Director Power on 8-12-2004 which was dismissed vide order dated 4-2-2005 on the ground that there is no provision of second appeal "further appeal" under the rules. Petitioner being aggrieved filed Appeal No. 445(R)CS/2005 in the Federal Service Tribunal, Islamabad, on 12-4-2005 which was dismissed vide impugned judgment dated 11-2-2009. Hence the present petition.

3. Learned counsel for the petitioner submits that the impugned order of dismissal of the petitioner dated 29-3-2004 was passed by incompetent authority therefore, the same was coram non iudice and without lawful authority. He further urges that impugned order of the department was void, therefore, limitation would run against such type of order. It can be agitated at any time and could be ignored being a void order. Learned Service Tribunal had not adverted to this aspect of the case, therefore, impugned judgment was passed by the learned Service Tribunal without application of mind.

4. We have given our anxious consideration to the contentions of the learned counsel of the petitioner and perused the record. It is an admitted fact that show cause notice was served upon the petitioner under the provisions of Removal from Service (Special Powers) Ordinance, 2002 wherein it is specifically provided under the provisions of the Ordinance that petitioner has to file departmental appeal w

prescribed period of 15 days. The order of compulsory retirement was passed by the competent authority on 29-3-2004. The petitioner filed departmental appeal on 6-4-2004 which was dismissed as time barred on 10-11-2004. Thereafter the petitioner filed second appeal before the Managing Director on 8-12-2004 which was also dismissed on 4-2-2005 in the following terms:--

"It is to inform you that your appeal under reference does not merit consideration as there is no provision of second appeal "further appeal" under the rules."

5. The learned Service Tribunal had rightly come to the conclusion that appellate authority was justified to dismiss his appeal as time-barred and second appeal was also dismissed with cogent reasons on account of non availability of any provision under the rules to file second appeal to higher authority after dismissal of the first appeal. We have also re-examined the material on record with the assistance of the learned counsel of the petitioner. We do not find any infirmity or illegality with regard to the conclusion arrived at by the learned Service Tribunal with regard to the finding mentioned in para 7 of the impugned judgment. It is settled principle of law that finding of service tribunal having findings of fact would not call for interference by this Court as law laid down by this Court in Ch. Muhammad Azim case (1991 SCMR 255). Even otherwise this Court does not interfere with the concurrent findings of fact arrived at by the departmental authorities and learned service Tribunal while exercising the power under Article 212(3) of the Constitution. See *Iftikhar Ahmed Malik case* (2005 SCMR 806). It is settled proposition of law that when an appeal of the employee was time barred before the appellate authority then the appeal before the Tribunal was also not competent in view of the various pronouncements of this Court. See *Chairman PIA and others v. Nasim Malik* (PLD 1990 SC 951) and *Muhammad Aslam v. WAPDA and others* (2007 SCMR 513). The question of law with regard to the representation has already been decided by this Court in *Government of Pakistan through Secretary, Establishment Division v. Bashir Ahmad Khan* (PLD 1985 SC 309). The relevant observation is as follows:--

"He challenged his first compulsory retirement through a review application filed on 23rd of October, 1974, which was decided on 3-6-1975. This was the final order passed on review. It could be challenged within 30 days, before the Tribunal under section 4 of the Service Tribunals Act. If the appellant chose not to file an appeal but only to repeat a representation before the same authority who had decided the review, that by itself would not give him another cause of action to file an appeal under section 4. The period spent in making the representation this second or any other representation after the decision of the review application, could not be excluded as of right in counting the period of limitation..... The review petition filed by the respondent in that behalf was decided on 13-6-1978. Instead of filing an appeal before the Tribunal under section 4 within 30 days of this final order passed on review, he made another representation which caused further delay. The period consumed during the processing of the subsequent representation could not be excluded as of right. And there being no condonation on any good ground by the Tribunal, the appeal filed on 14-1-1979, was clearly time barred and should have been dismissed accordingly."

6. The appeal of the petitioner before Service Tribunal is incompetent under section 4(1)(b) of the Service Tribunal Act, 1973. Since the petitioner has filed appeal before the Service Tribunal without fulfilling the mandatory requirement of section 4 in regard to limitation and court cannot compromise the limitation. See:--

Muhammad's case (1998 SCMR 1354)

Messrs Raja Industries' case (1998 SCMR 307)

Mst. Sirajun-Munira's case (1998 SCMR 785)

7. It is admitted fact that appeal is obviously time barred and it has been held by this Court in Khan Sahib Slier Muhammad Mir's case (1987 SCMR 92) that when an appeal is required to be dismissed on limitation, its merits need not be discussed. In spite of the aforesaid law laid down by this Court the learned Service Tribunal has considered the case on merits and the appeal was also dismissed on merits. It is pertinent to mention here that "the competent" authority awarded penalty of compulsory retirement vide order dated 29-3-2004. The petitioner had accepted the punishment awarded by the respondents due to his conduct on the basis of subsequent events as the petitioner applied for payment of his pensionary benefit to the respondents. Petitioner got settled his pension claim within three months after his retirement and received Rs.155,733 as well as monthly pension. He also received his monthly pension regularly. Petitioner preferred appeal before the Service Tribunal on 12-4-2005. This fact was also noted in the impugned judgment in para 10. Even on merits the learned Service Tribunal was justified to dismiss his appeal on the well known principal of "approbate and reprobate." See Haji Ghulam Rasul's case (PLD 1971 SC 376). The learned Service Tribunal was justified to dismiss his appeal on the well known principle of estoppel keeping in view subsequent events. See Mst. Amina Begum's case (PLD 1978 SC 220).

8. The conduct of the petitioner has been highlighted by the Service Tribunal in para 10 of the impugned judgment which is reproduced herein below:

"We have seen placed on the record a number of documents which indicate the service record of the appellant. From 1989 to 27-3-2003, the appellant has been punished for unauthorized absence as many as eight times. The punishment included censure, stoppage of one annual increment for one year (1983), reduction to three lower stage in time scale for a period of three years (1990), stoppage of one annual increment for one year (1993) and stoppage of annual increment for one year (1995)."

9. It is settled principle of law that constitutional jurisdiction under Article 212(3) is discretionary in character. It is settled law that grant of leave to appeal is discretionary. See Ghulam Qadir Khan's case (1986 SCMR 1386). It is also settled law that constitutional jurisdiction against void order may be refused if it was meant to enable petitioner to circumvent provisions of law of limitation or if he was estopped by his conduct from challenging of order. See:--

Muhammad Ismail's case (1983 SCMR 168)

Abdur Rashid's case (1969 SCMR 141)

Wali Muhammad case (PLD 1974 SC 106)

10. Keeping in view the conduct of the petitioner mentioned herein above in para 10 of the impugned judgment we are not inclined to exercise our discretion in favour of the petitioner on the well known maxim that he who seeks equity must come with clean hands as law laid down by this Court in Nawab Syed Raunaq Ali's case (PLD 1973 SC 236).

11. In view of what has been discussed above we do not find any infirmity or illegality in the impugned judgment. Even otherwise the learned counsel has failed to raise any question of public importance in the present case as contemplated under Article 212(3) of the Constitution. The petition has no merit and the

2/27/20

AAC

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

*not submitted
condonation of
delay application*

RESENT:
MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

Civil Petition No.1706 of 2018
(Against the judgment dated 9.3.2018 of
the KPK Service Tribunal, Peshawar
passed in Service Appeal No.849 of 2016)

Farkhar Zaman. ... Petitioner(s)

VERSUS

Province of KPK thr. its Secy. Elementary &
Secondary Education, Peshawar & others ... Respondent(s)

For the Petitioner(s): Mr. Fazal Shah Mohmand, ASC
Mir Adam Khan, AOR (Absent)

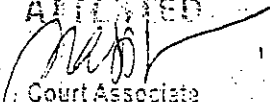
For the Respondent(s): N. R.

Date of Hearing: 16.01.2020

ORDER

Gulzar Ahmed, CJ.- The KPK Service Tribunal, Peshawar in the impugned order has found that the petitioner's departmental appeal was time barred and thus dismissed the service appeal as being barred by time. Admittedly, no application for condonation of delay was filed by the petitioner. Petitioner's counsel relied upon the case of **Usman Ali Chhachhar Vs. Moula Bux Chachhar (2019 SCMR 2043)** we find that the case relied upon by the learned counsel is altogether distinguishable from the case in hand for that it does not relate to a matter where time barred departmental appeal was filed. No question of public importance in terms of Article 212(3) of the Constitution of the Islamic Republic of Pakistan has been raised in this petition calling for

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

interference by this Court. This petition being without merit is dismissed and the leave is refused.

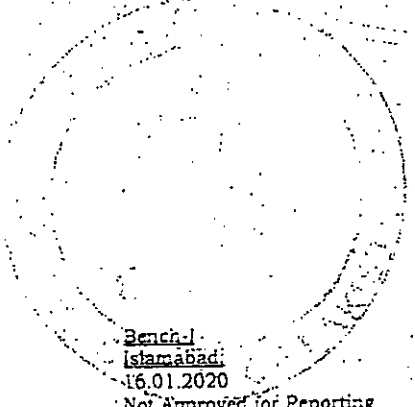
Sd/-HCJ

Sd/-J

Sd/-J

Certified to be True Copy

(Signature) 29/11/2020
Court Associate
Supreme Court of Pakistan
Islamabad



Bench-1
Islamabad
16.01.2020
Not Approved for Reporting

(Handwritten)
5/1/20

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 48/2017

Date of Institution ... 26.12.2016

Date of Decision ... 18.03.2019

Yasim son of Noor Muhammad Ex-Constable Belt No. 1130 R/O Bala
Nagar, Rawalpindi Road, Kohat. ... (Appellant)

VERSUS

District Police Officer, Kohat and two others. ... (Respondents)

Present:

Mr. Khursheed Ahmad Shahan, ... For appellant
Advocate.

Mr. Kabirullah Khattak, ... For respondents.
Addl. Advocate General,

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

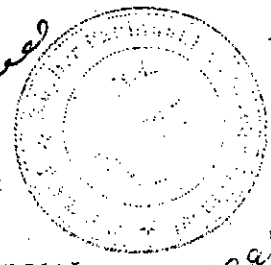
The appellant joined the service of Police Department in Kohat Region on 31.08.2008 and was removed from service on 08.01.2014 on account of absence w.e.f. 09.10.2013 till the date of passing of the order. His departmental appeal and further review petition were also dismissed/rejected, hence the appeal in hand.

2. We have heard learned counsel for the appellant, learned Addl. Advocate General on behalf of the respondents and have also gone through the available record.

ATTENDED

[Handwritten Signature]

18.03.2019
PESHAWAR



AMG
AAC
dismissed /
best time passed

NO reason
in condonation
of delay.

AMM

At the outset, learned AAG agitated objection regarding competency of appeal in hand on the ground that the departmental appeal of appellant was preferred on 22.09.2015 i.e. with a delay of more than 19 months. The said appeal was decided on 16.3.2016 while a review petition was preferred under Rule-11-A of the Police Rules, 1975 which was rejected on 29.09.2016, being barred by time. Learned AAG relied on judgment reported as 2015-SCMR-165, 2011-SCMR-676 and contended that in case the departmental appeal of a civil servant was barred by time his service appeal before the Tribunal was also not competent. It was further contended that the appellant was a habitual wrong doer and was earlier also dismissed from service on 21.09.2011. He was, however, reinstated subsequently on 13.12.2011 with modification of punishment to reduction in pay for a period of three years (time scale).

Learned counsel for the appellant while attempting to controvert the arguments of learned AAG referred to a judgment reported as 2008-SCMR-1666 and contended that due to the illness of appellant, the period of absence was condonable by the department.

3. On carefully examining the record, it revealed that the departmental appeal of appellant was decided in negative on 16.3.2016, also on the ground of being barred by time. It is further a matter of record that after rejection of his review petition on 29.09.2016, that too on the ground of limitation, the appeal in hand was preferred on 26.12.2016 with a delay of about two

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months. An application for condonation of delay was though submitted alongwith the appeal in hand but without any cogent reason warranting the condonation. Similarly, in para-7 of the memorandum of appeal it was noted that the order of rejection of his review petition was received by the appellant on 10-12 days ago. This claim, however, would not justify the condonation of delay in submission of appeal owing to the fact that the appellant had not even given the date of receipt of the order. Admittedly, the appellant failed to submit any application for the purpose alongwith his departmental appeal or the revision petition although he had taken the pretext of his illness in the departmental representation dated 22.09.2015. On the contrary, it was not the case of appellant that he had applied for any leave on medical grounds during the course of his absence from duty.

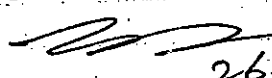
4. For what has been stated above, we find that the appellant remained indolent all along in pursuing his legal remedies in time. The appeal in hand is, therefore, dismissed hereby:

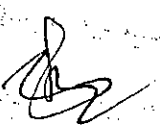
Parties are left to bear their respective costs. File be consigned to the record room.


 (AHMAD HASSAN)
 MEMBER


 (HAMID FAROOQ DURRANI)
 CHAIRMAN

ANNOUNCED
 18.03.2019

Date of Presentation of Copy	13-6-18
Number of Writs	1200
Copying Fee	16-
Urgent	-
Total	16-
Name of Officer	
Date of Copying	26-7-18
Date of Delivery of Copy	25-8-18

Certified true copy

 President

AAC

Time barred
Condonation of
delay /
without
same has
diminished

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

RESENT:
MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

Civil Petition No. 1773 of 2018
(Against the judgment dated 16.4.2018
of the KPK Service Tribunal, Peshawar
passed in Appeal No. 739 of 2016)

Zar Wali Shah Petitioner(s)

VERSUS

Province of KPK thr. Secy. Elementary
Secondary Education (E&S) Peshawar
& others Respondent(s)

For the Petitioner(s): Mr. Maazullah Barkandi, ASC

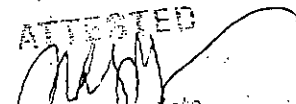
For the Respondent(s): N. R.

Date of Hearing: 16.01.2020

ORDER

Gulzar Ahmed, CJ.- Petitioner's departmental appeal so also the service appeal before the KPK Service Tribunal were time barred and such have been dismissed as such. Being confronted with the position, the learned counsel states that the petitioner was away, therefore, could not avail the remedy in time. This could hardly be a ground explaining the delay in filing the departmental or service appeal. In any case, the Tribunal has examined every aspect of the matter including the consideration of application for condonation of delay and has found the same not to be substantiated in accordance with law and thus has not allowed the same. The learned Tribunal has also observed in the impugned order that the petitioner without permission of the competent authority was making visits abroad without obtaining any sanctioned leave or an NOC for the said purpose. In this view of the matter, we do not find any illegality in the impugned judgment calling for interference

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

AAG

Time barred

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

When the case is time barred the merits could not be discussed

Service Appeal No. 325/2011

Date of Institution ... 27.01.2011

Date of decision ... 23.10.2017

Akhtar Wahid S/O Gul Wahid
R/O Village Mohammad Khawaja, Tehsil & District Hangu.

... (Appellant)

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 2 others.
..... (Respondents)

MR. ABDULLAH QAZI,
Advocate

... For appellant.

MR. ZIAULLAH
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN,

... CHAIRMAN
... MEMBER

JUDGMENT

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

FACTS

2. The appellant was discharged from service under police rules on 13.10.2008, against which he filed departmental appeal on 01.12.2010 which was rejected on 27.12.2010 and thereafter the present service appeal on 27.01.2011.

ARGUMENTS

3. The learned counsel for the appellant argued that at the relevant time the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 was in vogue and the original order was passed under the Police Rules which is illegal. That no show-cause

notice was issued to the appellant. That in para-4 of the comments of the respondents it has been admitted that the service was made on the father of the appellant and not on the appellant.

4. On the other hand, the learned Deputy District Attorney argued that the appeal is hopelessly time barred because the departmental appeal was time barred. In this respect he relied upon judgments reported in 2006 SCMR 453 and 2007 SCMR 513. He further argued that the appellant himself admitted in para-4 of the appeal that he could not perform his duty due to family reasons. That the whole proceedings were initiated under the RSO 2000 and only final order was made under the police rules because the RSO did not provide for any penalty in case of willful absence.

CONCLUSION.

5. This Tribunal can enter into the merits of the case only when the appeal is within time. It has been time and against held by the superior courts that if a case is time barred then merit could not be discussed. The present departmental appeal is clearly time barred after having been preferred some 26 months. There is no application for condonation of delay. In accordance with the ruling reported as 2006 SCMR 453 time barred departmental appeal if decided on merits the same cannot be presumed to bring the departmental appeal and for that matter the service appeal within time.

6. As a result of the above discussion, this appeal is hopelessly time barred which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

(Niaz Muhammad Khan)
Chairman

(Gul Zeb Khan)
Member

ANNOUNCED
23.10.2017

AAE

[Supreme Court of Pakistan]

Present: Javed Iqbal, Muhammad Sair Ali and Anwar Zaheer Jamali, JJ

MUNIR AHMAD—Petitioner

Versus

CHAIRMAN, WAPDA—Respondent

Civil Petition No. 497 of 2010, decided on 22nd July, 2010.

(On appeal from the judgment dated 2142-2009 passed by Federal Service Tribunal, Islamabad in Appeals No.710-712 (R)CS/2006).

Service Tribunals Act (LXX of 1973)—

---S.4---Constitution of Pakistan (1973), Art. 212(3)—Appeal—Limitation—Promotion—Grievance of civil servant was with regard to promotion on the basis of Water and Power Development Authority (Water Wing) Subordinate Scientific Staff Service Rules, 1982, which were acted upon in year, 1983, whereas civil servant assailed the promotion in year, 2006—Validity—Civil servant remained in deep slumber for more than 20 years and it was too late in the day to question the legality of additional note—No plausible justification could be furnished by civil servant for the delay, except that question of limitation was nothing more but a technicality which was an incorrect approach—Question of limitation could not be taken lightly as in service matters such question should be considered seriously and applied strictly—Civil servant failed to point out any illegality or irregularity in the judgment passed by Service Tribunal and besides that no question of public importance was involved which was sine qua non for invocation of the provisions enumerated in Art. 212 of the Constitution—Leave to appeal was refused.

Chairman, District Screening Committee, Lahore and another v. Sharif Ahmad Hashmi PLD 1976 SC 258; S. Sharif Ahmad Hashmi v. Chairman, Screening Committee Lahore and another 1978 SCMR 367; Yousaf Ali v. Muhammad Aslam Zia and 2 others PLD 1958 SC Pak 104; Punjab Province v. The Federation of Pakistan PLD 1956 FC 72; Muhammad Swaleh and another v. Messrs United Grain and Fodder Agencies PLD 1964 SC 97; Chief Kwame Asante v. Chief Kwame Tawia PLD 1949 PC 45; Hussain Bakhsh and others v. Settlement Commissioner and another PLD 1969 Lah. 1039; Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others PLD 1973 SC 236; Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and other PLD 1975 SC 331; WAPDA v. Abdul Rashid Bhatti 1989 SCMR 467; Federation of Pakistan v. Muhammad Azim Khan 1949 SCMR 1271; Inspector-General of Police, Balochistan v. Jawad Haider and another 1987 SCMR 1606; WAPDA v. Aurangzeb 1988 SCMR 1354; Muhammad Naseem Sipra v. Secretary, Government of Punjab 1989 SCMR 1149; Muhammad Ismail Memon v. Government of Sindh and another 1981 SCMR 244; Qazi Sardar Bahadar v. Secretary, Ministry of Health, Islamabad and others 1984 SCMR 177; Smith v. East Elloe Rural District Council and others 1956 AC 736; Province of East Pakistan and others v. Muhammad Abdu Miah PLD 1959 SC (Pak), 276; Mehr Muhammad Nawaz and others v. Government of the Punjab and others 1977 PLC (C.S.T.) 165 and Fazal Elahi Siddiqi v. Pakistan PLD 1990 SC 692 rel.

Muhammad Abdu Miah (PLD 1959 SC (Pak), 276), Mehr Muhammad Nawaz and others v. Government of the Punjab and others (1977 PLC (C.S.T.) 165) and Fazal Elahi Siddiqi v. Pakistan (PLD 1990 SC 692).

3. The question of discrimination has been examined by the learned Federal Service Tribunal in the judgment impugned, relevant portion whereof is reproduced hereinbelow for ready reference:-

"9. Before proceeding to examine this appeal on merit, it is necessary to address the question of limitation raised by the learned counsel for the respondents. It is a matter of record that the appellants who entered service in 1977, are aggrieved on account of note added to the service Rules in the year 1983. Secondly, it is not denied that the matter has been agitated by the appellants for the first time in 2006 i.e. after the lapse of almost 21 years. There is no cavil with the general principle that the issue of discrimination can be agitated at any time. But the Tribunal has not been vested with powers which are available to the superior judiciary. The appeals filed before the Tribunal have to comply with the mandatory requirements of section 4 of the Service Tribunals Act, 1973, and it is a settled principle of law that the provisions of the Limitation Act are to be strictly applied to service appeal as held in the case reported in PLD 1990 SC 692. This was further reiterated in the order of the Hon'ble Supreme Court in CP No.700 of 2008 dated 24-6-2008.

10. Even otherwise, the question of discrimination can be pressed into service while comparing equals i.e. while comparing appeals with appeals and not appeals with peers. Perusal of the record reveals that there are two channels for appointment to the post of Assistant Research Officers i.e. through promotion on the basis of 75 % quota and through direct recruitment on the basis of 25% quota. The appellants admittedly have not challenged the recruitment rules nor have they agitated this fact in their oral arguments. Their grievance is directed against the grant of premium to Assistant Research Officers who possess Post-graduate qualification, which they claim is discriminatory. Plain reading of the 1983 amendment clearly shows that the respondents have only given premium to higher educational qualification. They have not disturbed the reserved quota for promotion, nor have they created any hindrance in the career path of the promoted officials because their seniority has been protected over directly appointed ARO's having higher qualification. The change that was brought about 30 years ago, relates only to the grant of premium to higher educational qualifications. But even in this case there is a proviso in the amendment which says that "with due regards to merit on the recommendation of the Selection Board". The premium under dispute in 1983 made no distinction between the directly recruited and promoted officials. It was uniformly applicable to all employees in the said cadre who possessed higher education qualification. Therefore the question of discrimination does not arise. The rules provide for recruitment on the basis of graduation degree at one stage and the post-graduation degree at another stage. The appellant has not been able to point out any violation of policy/instructions/rules by the respondents. Moreover, we find that weightage has been given to both sides. If one side has been given premium for possessing higher education qualification the other side has received weightage in promotion quota and retention of seniority in the higher grade. Therefore, in the final analysis the weightage is counter-balanced in the term of long-term career prospects. It is a matter of record that the cause of grievance accrued to the appellants almost 30 years ago. And according to him it was aggravated in 2001 with the introduction of new pay scales. In our opinion, the appellant should have agitated the grievance within time."

4. No illegality or irregularity could be pointed out in the judgment impugned and besides that no question of law of public importance is involved which is sine qua non for

~~Proceedings~~
AAE

Condonation of delay

(Condonation)
AAE

2009 SCMR 1435

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C. J., Raja Fayyaz Ahmad and Ch. Ijaz Ahmed, JJ

ABDUL RASHID----Petitioner

Versus

DIRECTOR-GENERAL, POST OFFICES, ISLAMABAD and others----Respondents

Civil Petition No.589 of 2009, decided on 28th April, 2009.

(Against the judgment, dated 31-1-2009 passed by the Federal Service Tribunal, Islamabad, in Appeal No.1235(R)(C.S.) of 2003).

(a) Constitution of Pakistan (1973)---

---Art. 212(3)---Supreme Court, jurisdiction of---Findings of fact---Scope---Supreme Court cannot interfere in findings of fact arrived at by Service Tribunal while exercising power under Art.212(3) of the Constitution.

Ch. Muhammad Azim's case 1991 SCMR 255 and Muhammad Nawaz's case 1982 SCMR 880 rel.

(b) Service Tribunals Act (LXX of 1973)--- + e

---S. 4---Limitation Act (IX of 1908), S.5---Constitution of Pakistan (1973), Art.212(3)-Appeal--- Limitation---Repetition of departmental representation--- Effect--- Condonation of delay--- Principle--- On 25-4-1998, authorities imposed punishment of reduction in pay equal to two steps on civil servant, who instead of filing appeal before Service Tribunal within time prescribed under law, repeatedly filed departmental representations and thereafter filed appeal before Service Tribunal on 19-11-2003---Appeal against order passed by authorities was dismissed by Service Tribunal being time-barred---Validity---Law favoured diligent litigant and not negligent---Civil servant was neither vigilant to agitate matter before competent authority nor before Service Tribunal within prescribed period---Service Tribunal was justified to dismiss appeal of civil servant as time-barred--(Mere repetitions of representation could not, by itself, enlarge prescribed period of limitation)-Person seeking condonation of delay was to justify each day's delay but civil servant in his application for condonation of delay did not raise any plausible reason/ground for condonation of delay---Service Tribunal had examined all controversial questions of law and fact in a comprehensive manner after having scrutinized entire record and relevant laws---Service Tribunal exercised its discretion judiciously, which was not capricious, hence conclusion drawn by Service Tribunal was in accordance with law and settled norms of justice---Supreme Court did not find any ambiguity or illegality warranting interference in the judgment passed by Service Tribunal---Finding of Service Tribunal was conclusive which could not be challenged unless the same was result of misreading or non-reading of record---Civil servant failed to raise any question of public importance as contemplated under Art.212(3) of the Constitution---Leave to appeal was refused.

Muhammad Sharif's case 1981 SCMR 1158; Bashir Ahmed Khan's case PDL 1985 SC 309; Muhammad Hasham's case 1990 SCMR 1440; Ali Muhammad's case PLD 1996 SC 292; Muhammad Saleem's case PLD 1995 SC 396; Muhammad Feroze Khan's case 1986 SCMR 930; Zaffar Iqbal Khan's case 2003 SCMR 1471; Haji Kadir Bux's case 1982 SCMR 582 and Syed Ali Hasan Rizvi's case 1986 SCMR 1086 ref.

(c) Limitation--- ✓

---Time-barred remedy--Effect---It is duty and obligation of aggrieved person to pursue his legal remedy with diligence and to satisfy conscience of Court or Quasi-Judicial Authority for approaching respective forums beyond prescribed limitation---In case aggrieved person does not avail remedy within prescribed period then vested right accrues to other side which could not be taken away lightly even if objections to that effect were not raised by opposite party.

Hakim Muhammad Buta's case PLD 1985 SC 153 and Muhammad Hussain's case PLD 1993 SC 147 rel.

Haider Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Nemo for Respondents.

ORDER

CH. IJAZ AHMED, J.---Abdul Rashid, petitioner, seeks leave to appeal against the impugned judgment, dated 31-1-2009 whereby the Federal Service Tribunal, Islamabad, dismissed his appeal as time-barred.

2. Detailed facts have already been mentioned in para.2 of the impugned judgment, however, necessary facts out of which the present petition arises are that petitioner while working as Postal Clerk, Khanewal G.P.O., was served show-cause notice containing allegations of inefficiency and misconduct under the provisions of Efficiency and Disciplinary Rules, 1973. The competent authority after completing the legal formalities awarded the punishment of reduction in his pay equal to two steps with immediate effect vide order, dated 25-4-1998. The petitioner being aggrieved filed departmental appeal before the appellate authority on 20-9-2000 which was finally decided by the appellate authority (Deputy Postmaster-General) vide order, dated 19-9-2002 wherein the punishment awarded to him was upheld by specifying the period of punishment as one year as the same was not mentioned in order, dated 25-4-1998. Subsequently, the petitioner filed representation to the appellate authority on 10-9-2003 which was rejected vide order, dated 13-10-2003 by observing as follows:--

"decision dated 19-9-2002 is final and holds good."

Petitioner being aggrieved filed Appeal No.1235(R)(C.S.) of 2003 before the Federal Service Tribunal, Islamabad, on 19-11-2003 which was dismissed as time-barred vide order dated 31-1-2009, hence the present petition.

3. Learned counsel for the petitioner submits that learned Service Tribunal had erred in law to dismiss the

of the petitioner on technical ground as time-barred. The judgment of the learned Service Tribunal is not in consonance with the law laid down by this Court as this Court had laid down principle various pronouncements that cases must be decided on merits and the poor litigant could not be dismissed on technical grounds including limitation. He further urges that petitioner filed an application before the Service Tribunal for condonation of delay which was not decided by the learned Service Tribunal after application of mind. He further maintains that his last representation was finally decided by the appellate authority on 13-10-2003 whereas the petitioner had filed appeal before the Service Tribunal on 19-11-2003, therefore, appeal of the petitioner was not time-barred before the Service Tribunal but the Service Tribunal did not consider this aspect of the case.

4. We have given our anxious consideration to the contentions of the learned counsel for the petitioner and perused the record with his able assistance. It is better and appropriate to reproduce the basic facts in chronological order to resolve the controversy arising out of this petitions:---

(i) Inquiry Officer was appointed by the Competent Authority vide order dated 19-3-1997.

(ii) The Inquiry Officer after completing the legal formalities found him guilty, vide its report, dated 5-7-1997.

(iii) Show-cause notice was served upon the petitioner on 29-8-1997.

(iv) The competent authority awarded punishment of reduction of two steps to the petitioner vide order, dated 25-8-1998 without prescribing the period on account of inefficiency and misconduct.

(v) Departmental appeal was filed, by the petitioner on 20-9-2000 which was finally decided by the appellate authority on 19-9-2002.

(vi) The representation was filed by the petitioner on 10-9-2003 which was rejected on 13-10-2003 by informing the petitioner that the decision, already taken on 19-9-2002, is final.

(vii) The petitioner filed appeal before the Service Tribunal on 19-11-2003.

5. In case the aforesaid facts are put in juxtaposition then it is crystal clear that the petitioner filed departmental appeal against the order of the appellate authority dated 25-4-1998 on 26-9-2000 after a delay of about 2 years and five months. It is pertinent to mention here that the Appellate Authority decided his appeal on 19-9-2002. The petitioner did not, agitate the matter before any forum till 10-9-2003 which was rejected vide order, dated 13-10-2003 by informing the petitioner that order, dated 19-9-2002 is final. The learned Service Tribunal after application of mind had given findings of fact against the petitioner that his appeal before the Service Tribunal was highly time-barred as is depicted from para.6 of the impugned judgment. This Court cannot interfere in the findings of fact arrived at by the Service Tribunal while exercising the power under Article 212(e) of the Constitution as dictum laid down by this Court in Ch. Muhammad Azim's case 1991 SCMR 255 and Muhammad Nawaz's case 1982 SCMR 880.

6. It is settled proposition of law that law favours the diligent litigant and not the negligent. As mentioned above the petitioner was not vigilant to agitate the matter before the competent authority or before Service Tribunal within prescribed period. The learned Service Tribunal was justified to dismiss the appeal of the petitioner as time-barred. See Muhammad Sharif's case 1981 SCMR 1158. It is settled proposition of law that mere repetitions of representation would not by itself enlarge the prescribed

2/27/20

2013 S C M R 911

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Muhammad Ather Saeed, JJ

ABDUL SATTAR---Petitioner

Versus

FEDERATION OF PAKISTAN and others---Respondents

C.P.L.A. No.957-K of 2011, decided on 6th June, 2012.

(On appeal from order of Federal Service Tribunal, Islamabad (Karachi Bench) dated 27-12-2011 passed in Appeal No.27(K)CS/2008.)

(a) Service Tribunals Act (LXX of 1973)---

---S. 4---Filing of appeal before Service Tribunal---Limitation---Successive departmental appeals cannot extend period of limitation (for filing appeal).

1998 SCMR 882; 1999 PLC (C.S.) 510 and 1999 PLC (C.S.) 862 ref.

(b) Service Tribunals Act (LXX of 1973)---

---S. 4---Filing of appeal before Service Tribunal---Limitation---Significance---Question of limitation should be considered seriously in service matters.

2010 SCMR 1982 rel.

(c) Service Tribunals Act (LXX of 1973)---

---S. 4---Filing of appeal before Service Tribunal---Limitation---Significance--- Question of limitation cannot be considered a technicality simpliciter as it had its own significance and would have substantial bearing on the merits of the case.

2011 SCMR 8 rel.

Ghulam Rasool Mangi, Advocate Supreme Court and Ghulam Qadir Jatoti, Advocate-on-Record for Petitioner.

Sanauallah Noor Ghor, Advocate Supreme Court and A.S.K. Ghor, Advocate-on-Record for Respondent No.1.

Ashiq Raza, D.A.-G. for Respondents Nos.2 and 3.

Date of hearing: 6th June, 2012.

ORDER

ANWAR ZAHEER JAMALI, J.---This petition for leave to appeal assails the order dated 27-10-2011, in Appeal No.27(K)CS/2008, passed by Federal Service Tribunal, Islamabad, Karachi Bench, whereby the said appeal before the Tribunal was dismissed on the ground that it was barred by time. Relevant discussion contained in the impugned order reads as follows:--

"6. We have considered the above arguments and carefully perused the record. Apparently, appeal is time barred, as the appellant has approached this Tribunal on 22-3-2008 against the order dated 15-6-2007 after filing a departmental appeal on 15-7-2007, which remained un-responded. An application for condonation of delay has also been filed along with the appeal wherein no reasonable ground has been taken except that the appellant has been continuously approaching the respondents for promotion in the cadre of Commercial Inspector BS-16 as per merit, but the same remained unresponded. Last application submitted on 20-11-2007, has not been responded to. It may be mentioned here that successive departmental appeal cannot extend period of limitation. We rely on 1998 SCMR 882, 1999 PLC (C.S.) 510 and 1999 PLC (C.S.) 862. Besides, it has been held in 2010 SCMR 1982 that, "civil servant remained in deep slumber for more than 20 years and it was too late in the day to question the legality of additional note. No plausible justification could be furnished by civil servant for the delay, except that question of limitation was nothing more but a technicality which was an incorrect approach. Question of limitation could not be taken lightly, as in service matters such question should be considered seriously." In 2011 SCMR 8, it was also held that, "Question of limitation cannot be considered a "technicality" simpliciter as it has got its own significance and would have substantial bearing on merits of case."

2. Learned Advocate Supreme Court for the petitioner has not disputed that in fact the appeal preferred by the petitioner before the Tribunal was barred by time. This being the position, we find no valid reason for interference in the impugned order. Besides, no question of law of public importance is involved in this petition. Dismissed. Leave refused.

MWA/A-3/SC

Petition dismissed.

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4/17/2011

basis of inferences, only such circumstances as are well authenticated.

Where there are indications of design, in the preparation of a case resting on circumstantial evidence, the Court should be on its guard against the possibility of being deliberately misled into false inference.

5. By now, it is a consistent view that when any case rests entirely on circumstantial evidence then, each piece of evidence collected must provide all links making out one straight chain where on one end the noose fit in the neck of the accused and the other end touches the dead body. Any link missing from the chain would disconnect and break the whole chain to connect the one with the other and in that event conviction cannot be safely recorded and that too on a capital charge. It was held in the case of Fazal Etahil (ibid) and in view of the changed social norms and standard of ethics of the society, to which the witnesses belong and also the questionable credibility of the investigating agency and its incompetency to professionally investigate such heinous crimes, by now the Courts have to exercise more and more caution before accepting and resting its opinion of being guilty on circumstantial evidence collected apparently in a dishonest, dubious and rough manner.

6. Therefore, we are left with no option but to adopt the same care and caution, keeping in view the peculiar facts and circumstances of this case, which cannot be put apart from the one, cited above.

7. With all respects to the Bench of the learned Federal Shariat Court, these precautions and judicial care so required, was not observed and view of the trial Judge with regard to the guilt of the appellant was endorsed by it. Thus, the approach to the evidence in the case was not accord with the principle since long well settled.

8. Accordingly, while extending benefit of doubt to the appellant this appeal is allowed and the appellant Imran @ Dully is acquitted of the charges, levelled against him by setting aside his conviction and sentences awarded to him. He be set free forthwith if not required in any other case.

9. In view of our above findings, Criminal Shariat Appeal No. 26(S)/09, titled Farzand Ali v. Imran @ Dully etc. has become infructuous and is dismissed.

MWA/l-19/SC

Order accordingly

2015 S C M R 165

[Supreme Court of Pakistan]

Present: Ijaz Ahmed Chaudhry and Umar Ata Bandial, JJ

MUHAMMAD ASIF CHATHA and others---Appellants

versus

CHIEF SECRETARY, GOVERNMENT OF PUNJAB, LAHORE and others---Respondents

Civil Appeals Nos. 222 to 238 of 2012, decided on 25th November, 2014.

(On appeal against the judgment dated 25-11-2011 passed by Punjab Service Tribunal, Lahore in Appeals Nos. 2953 to 2936, 2939 to 2943, 2951 of 2005, 4416 of 2006, 500 to 505 and 591 of 2006)

(a) Constitution of Pakistan---

Art. 212(3)---Civil service---Appeal against judgment of Service Tribunal filed before the Supreme Court---Question of fact---Such question could not be gone into in appeal proceedings before the Supreme Court under Art. 212(3) of the Constitution. (p. 170)-B-

(b) Civil Servants (Appointment, Promotion and Transfer) Rules, 1973---

R. 8-B---Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, R. 13---Appointment on acting charge/officiating basis---Promotion---Scope---Appointment on acting charge/officiating basis did not confer any vested right for regular promotion. (p. 170) C-

Tariq Aziz-ud-Din's case 2010 SCMR 1301 ref.

(c) Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974---

R. 13---Promotion to higher post on officiating basis---Civil servants seeking regularization of such promotion---Limitation---Delay of years in raising issue of regularization of promotion---Effect---Three writs were issued, during the period when civil servants were promoted on officiating basis, showing them not only junior to other civil servants but also on officiating basis but they kept mum and never challenged the said writs---Civil servants after their

Respondent

AAU

appointment on officiating basis in the years 1995-1998 could not have agitated the matter in the year 2001---Civil servants seemingly had accepted their appointment on officiating basis---Appeal filed by civil servants seeking regularization of their promotion was dismissed accordingly. (pp. 169, 170, 171) A, D, E & F

Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan PLD 1970 Quetta 115 distinguished.

(d) Service Tribunals Act (LXX of 1973)---

S-4--Departmental representation, filing of---Limitation period and Appeal filed before Service Tribunal-- Limitation period and competency--When a departmental representation was barred by time then without disclosing any sufficient reason for delay, no subsequent order of disposal of such incompetent representation could create a cause of action and that the appeal filed before the Service Tribunal would be incompetent. (p. 171) G

Abdul Wahid v. Chairman, Central Board of Revenue Islamabad and others 1998 SCMR 882 and NED University Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453 ref.

Saif ul Malook, Advocate Supreme Court for Appellants (the respondents in person)

Mudassar Khalid Abbasi, A.A.-G. for Government of Punjab

Date of hearing: 13th November, 2014.

JUDGMENT

IAZ AHMED CHAUDHRY, J.---These appeals by leave of Court have been directed against the judgment dated 25-11-2011 passed by the learned Punjab Service Tribunal, Lahore, whereby the appeals filed by the appellants were dismissed.

2. Briefly stated the facts of the matter are that the appellants were possessing B.Sc., Engineering Degree were promoted to the post of Assistant Engineer/SDO in BS-17 on officiating basis between the years 1995 to 1998 whereas the respondents who were holding B.Tech Degree were promoted in the year 2001 to the same post on officiating basis. Appellants filed Constitution petitions before the High Court challenging the promotion of the respondents. The learned High Court while dismissing the writ petitions directed the Department to depute the appellants in accordance with law after hearing both the parties in a separate writ petition. The Department failed to do so. Consequently, the appellants filed writ petitions before the learned Punjab Service Tribunal, Lahore, whereby the appeals were dismissed.

Appellants challenged the said order in Intra Court Appeal as also before this Court but remained unsuccessful. Thereafter, the Secretary, Communication and Works Department, Government of Punjab, took up the matter and vide the order dated 18-12-2002 he regularized the appointment of the appellants on the advice of the Regulating Wing of S&GAD and on the ground that regular posts were available in the year 1995-1998 at the time of promotion of the appellants on officiating basis. Consequently, the promotion of the respondents was converted as officiating. The respondents assailed this order before the learned Punjab Service Tribunal by filing Appeals. The learned Service Tribunal vide the order dated 10-12-2003 accepted the appeals and set aside the order dated 18-12-2002 of the Competent Authority and directed fresh hearing of the matter after hearing all concerned within a period of 60 days. Pursuant to the direction of the learned Service Tribunal, the Department again took up the matter and vide the order dated 27-7-2005 the Competent Authority decided that officiating promotion of the appellants could not be treated as regular. Feeling aggrieved, the appellants filed departmental appeals but as the same were not decided within the statutory period of 90 days, therefore, they filed the impugned appeals before the Punjab Service Tribunal. During the pendency of appeals before the Service Tribunal, it came to the notice of the learned Tribunal that one Section Officer in the office of Secretary, C&W Department, Lahore, instead of putting departmental appeals before the Appellate Authority/Chief Secretary Punjab opted to decide these appeals of his own on 28-12-2005. On this, the learned Tribunal directed the Appellate Authority to decide the departmental appeals of the appellants within 60 days. Pursuant to this direction of the Tribunal, the Chief Secretary/Appellate Authority finally decided the matter and rejected the departmental appeals of the appellants. The learned Service Tribunal vide the impugned judgment also dismissed the appeals filed by the appellants. Thereafter, the appellants filed Civil Petitions Nos. 164 to 172-230 to 236 and 240 of 2012 before this Court, out of which have been allowed the instant appeals, in which leave was granted on 15-3-2012. The judgment reads as under:--

"Leave to appeal is granted in all these listed petitions, inter alia, to examine if an official/officer has been authorized to be competent authority to hold a post against a clear vacancy in officiating capacity, whether it would tantamount to his promotion because an employee cannot be allowed to continue on officiating position for an indefinite period; subject to all just exceptions, keeping in view the case of Jafar Ali Akhtar Yousafzai v. Islamic Republic of Pakistan (PLD 1970 Quetta 115), wherein the identical issue regarding a Superintendent in the Geological Survey of Pakistan has been discussed."

Respondent
AAK

3. Learned counsel for the appellants has contended that appointment of a duly qualified person against a permanent vacancy could not be described as officiating as the same could be deemed regular under section 2(2) of the Punjab Civil Servants Act, 1974; that the learned Service Tribunal while dismissing the appeals of the appellants has not taken into consideration the law laid down by this Court; that the learned Service Tribunal has wrongly relied upon the judgments of this Court reported at *Tariq Aziz ud Din and others* (2010 SCMR 1301) and *Dr. S.M. Inkisar Ali v. Government of Sindh* (2011 SCMR 121) and the unreported judgment passed in Civil Petition No. 1583-L of 1998; that even if the case is not covered by Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, even then an appointment made in the prescribed manner could not be treated as officiating; that during the period 1995-1998 the relevant qualification of the respondents for promotion was lacking; that long temporary service was to be considered as regular due to flux of time and that the competent authority had passed a detailed order on 18-12-2002, therefore same provided valid and legal basis for declaring the promotions of appellants as regular. Learned counsel in support of the contentions relied on *Jafar Ali Akhtar v. Islamic Republic of Pakistan* (PLD 1990 Quetta 115), *Muhammad Tahir v. Secretary, Communication and Works Department, Government of Punjab etc.* (2009 PLC(C.S.) 527), *Khan Iqbal ur Rehman Khan, SP, Khanawal v. Muhammad Ali Mirza* (1992 SCMR 989), *Lugman Zareen and others v. Secretary Education, N.-W.F.P.* (2006 SCMR 1938), *Irfan-Majeed v. University of Karachi etc.* (2006 PLC (C.S.) 1118) and *Muhammad Anjad v. Dr. Israr Ahmed etc.* (2006 PLC (CS) 760).

4. Respondent Muhammad Farooq Malik, who appeared in person submits that the appellants had accepted their promotion on officiating basis and never challenged the same before any forum for about 6 years; that there was no question of ineligibility or lack of qualification on part of the respondents because the matter stood finally decided by competent authority that B.Tech. (Hons.) Degree be treated at par with B.Sc. (Engineering) Degree; that in view of Rule 13 of the Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, officiating promotion neither confers any right of promotion on regular basis nor any such promotee could claim the same as regular; that since 1995 to 2002 three seniority lists have been issued and in all these lists, appellants were shown as officiating SDOs but they never challenged the same; that in the present case express provisions of Rule 13 of the *ibid* Rules, 1974 and provisions of section 2(2) of the Rules being deeming clause could be given effect to and that as the appellants were admittedly junior

respondents and were not eligible for such promotion on regular basis, they were rightly ignored and their promotion was rightly treated as on officiating basis.

5. Learned Assistant Advocate-General, who appeared on behalf of the Government of Punjab has supported the impugned judgment.

6. We have heard learned counsel for the appellants, respondent in person, as also learned Assistant Advocate General at some length, and have perused the record.

7. The questions involved in these appeals are three fold; (i) whether the appointment of appellants on officiating basis was valid; (ii) whether the respondents were rightly promoted on regular basis in the year 2001; and (iii) Whether the appeals before the Service Tribunal were time-barred?

8. After the enforcement of Punjab Civil Servants Act, 1974, as well as Punjab Civil Servants (Appointment and Conditions of Service) Rules, 1974, the legal position is clear, the Punjab Civil Servants Rules are framed by the Government pursuant to the powers conferred under section 23 of the Punjab Civil Servants Act, 1974. In terms of section 13 of the Rules, the Government conferred power on the appointing authority to make appointment by promotion against such post on officiating basis. It would be relevant to reproduce the said Rule, which is as under:--

13. Appointment on officiating basis.---(1) Where a post falls vacant as a result of deputation, posting outside cadre, leave, suspension or appointment on acting-charge basis of the (regular) incumbent or is reserved under the rules to be filled by transfer, if none is available for transfer, the appointing authority may make appointment by promotion against such post on officiating basis:

Provided that a post reserved for regular promotion; on deferment of a civil servant due to any reason, may be filled by promotion on officiating basis.

(i) No person shall be promoted on officiating basis unless he possesses the qualifications and experience prescribed for the post and his promotion as such is approved by the chairman of the appropriate selection authority.

(ii) An officiating promotion shall not confer any right of promotion on regular basis but shall be liable to be terminated as soon as a person becomes available for promotion on regular basis.

(iv) - Officiating promotion shall be made on the same terms and conditions as to pay as are prescribed for regular appointment by promotion.

9. From the bare perusal of the above provisions, it is clear that the appointing authority is empowered to make appointments on officiating basis. This leads us to the question as to whether at the time of promotion of the appellants on officiating basis, were there permanent posts available or not? We have found that regarding this matter, three inquiries have been held in order to resolve the issue. First was held on 10-9-2002 and vide the order dated 18-12-2002, the appellants were declared to be promoted on regular basis. Second was dated 27-7-2003 whereby it was mainly held that there is no ground for considering the officiating promotion of appellants as on regular basis on the ground that promotion cannot be granted with effect from an early date. This inquiry was carried out by a committee headed by Additional Chief Secretary on the direction of the Chief Secretary. The Committee after detailed deliberation on 27-10-2010 held that the prayer of the appellants for promotion on regular basis is not legally tenable and is liable to be rejected and that there were no permanent posts available at the time of appointment of the appellants on officiating basis. Except the order dated 18-12-2002 which was passed without hearing some of the parties, the consistent stand of the Department that the appellants could not have been promoted on regular basis. Whether at that time permanent posts were available or not is also a question of fact, which cannot be decided into in these proceedings. This Court in Tariq Aziz-ul-Din case reported at 2010 SCMR 1801 has specifically cleared that appointment on officiating basis does not confer any vested right for regular promotion. Evident from Rule 8-B of the Civil Servants (Appointments, Promotions and Transfer) Rules, 1973. It is important to note here that the Rule 8-B is *pari materia* to Rule 13 of the Punjab Civil Servants (Appointments and Conditions of Service) Rules, 1974. It is noteworthy that the appellants never challenged the condition of officiating for a long period of about 6 years. It was for the first time in the year 2001 when they agitated the matter before the learned High Court when the respondents were promoted as Assistant Engineers/SDOs on regular basis. Besides, since 1995 three seniority lists were also showing the appellants not only junior to the respondents but also on officiating basis but they kept mum and never challenged the said promotion. Learned counsel tried to argue that the effect of order of remand dated 24-1-2002 passed by the learned High Court was that the controversy stood revived, therefore, no question of limitation was raised. We have noted that the learned High Court had merely remanded the matter to decide the controversy afresh in accordance with law and had not condoned the delay. If we keep in mind the words in accordance

with law, then the question of limitation is also a question of law. The appellants after their appointment on officiating basis in the years 1995-1998 could not have agitated the matter in the year 2001. It seems they had accepted their appointment on officiating basis. It is by now a well-settled principle of law that if a departmental representation is barred by time, then without disclosing any sufficient reason for delay, no subsequent order of disposal of such incompetent representation could create fresh cause of action and that the appeal filed by the civil servant before the Tribunal would be incompetent. Reliance in this regard has been placed on Abdul Wahid v. Chairman, Central Board of Revenue, Islamabad etc. (1998-SCMR 882) and NED University of Engineering and Technology v. Syed Ashfaq Hussain Shah (2006 SCMR 453). The question of limitation being basic requirement has to be strictly dealt with. So far as the eligibility of respondents is concerned, we find that the Federal Government had issued a policy letter dated 26-10-1973 holding that B.Tech (Hons) degree be treated at par with B.Sc. (Engineering) degree. Pursuant to this decision, the Government of Punjab also issued a notification on 1-2-1981 declaring B.Tech. (Hons.) degree in particular specialization equivalent to corresponding B.Sc. (Engineering) degree. The Government of Punjab also amended the Rules of (i) Communication and Works Department, (ii) Irrigation and Power Department, and (iii) Housing Physical and Environmental Planning Department for promotion of Sub-Engineers. As a result several persons were promoted. Despite the above said amendment, several employees of Physical and Environmental Planning Department were not allowed promotion on the ground that B.Tech. (Hons) degree is not equivalent to B.Sc. (Engineering) degree. Pakistan Engineering Council also refused to recognize B.Tech. (Hons.) degree equivalent to B.Sc. (Engineering) degree. The matter ultimately then came up before the Court in Civil Petition No-216 of 1991 but this Court dismissed the petition on 5-12-1992. However, this Court in Suo Motu Review Petition No-52 of 1993 reopened the matter and while recalling its earlier order directed the competent authority to consider the case of B.Tech. (Hons) degree holders for promotion to BS-17. Pursuant to this Direction of this Court the service rules of Assistant Engineers were amended on 16-12-2000 whereby B.Tech. (Hons.) degree holders also became eligible for their promotion as Assistant Engineers/SDOs. Even otherwise, it has been brought to our notice through C.M.A. No-4341 of 2012 that on humanitarian grounds, the Chief Minister has allowed 27 reverted officiating Assistant Engineers/SDOs including the present appellants to include on officiating basis as a special dispensation in relaxation of Rule 13 till their regular promotion on seniority cum fitness basis vide order dated 22-2-2011 that a meeting of Departmental Promotion Committee was convened on 16-12-2011 in which six appellants/officiating AEs/SDOs were also considered, out of which three have