

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT SWAT

Service Appeal No. 447/2018

Date of Institution ... 04.04.2018

Date of Decision ... 04.01.2022

Sher Shah S/O Ahmad Shah R/O Amankot, Shahid Abad, Tehsil Babozai, District Swat.
... (Appellant)

VERSUS

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

MR. IMDAD ULLAH,
Advocate --- For appellant.


MR. RIAZ AHMAD PAINDAKHEL,
Assistant Advocate General --- For respondents.

MR. SALAH-UD-DIN --- MEMBER (JUDICIAL)
MR. MIAN MUHAMMAD --- MEMBER (EXECUTIVE)

JUDGEMENT:

SALAH-UD-DIN, MEMBER:-


Precise facts forming background of instant service appeal are that the appellant while serving as Constable, was proceeded against departmentally on the allegations of his absence from duty. On conclusion of the inquiry, the appellant was dismissed from service vide order dated 05.10.2009 passed by the competent Authority. The appellant filed departmental appeal on 22.02.2018, which was



dismissed vide order dated 06.03.2018, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has argued that family of the appellant was targeted by militants and one of his cousin was also killed by the militants, therefore, the appellant was unable to attend his duty; that the absence of the appellant was not willful, rather the untoward situation in District Swat was the reason for absence of the appellant from his duty; that whole of the proceedings were conducted at the back of the appellant and he was not provided any opportunity of personal hearing or self defense; that no charge sheet or statement of allegations was served upon the appellant and he was condemned unheard; that similarly placed employees have already been reinstated in service, therefore, the appellant is also entitled to be treated at par with them; that the dismissal order of the appellant has been made with retrospective effect, therefore, the same is void and illegal, hence no limitation would run against the same; that the impugned orders being wrong and illegal are liable to be set-aside and the appellant is entitled to be reinstated in service with all back benefits.



4. On the other hand, learned Assistant Advocate General for the respondents has argued that the appellant had willfully remained absent from duty and statements of father of the appellant as well as elders of the locality were recorded during the inquiry, wherein they have mentioned that the appellant had proceeded abroad for earning of his livelihood; that proper inquiry was conducted in the matter, however the appellant was abroad, therefore, he cannot claim that he was not associated with the inquiry proceedings; that an advertisement was also published in the newspaper,

whereby all absent police officials were directed to report on their duty but the appellant did not bother to appear for resuming of his duty; that the departmental appeal of the appellant was badly time barred, therefore, his service appeal is liable to be dismissed on this score alone.

5. Arguments heard and record perused.

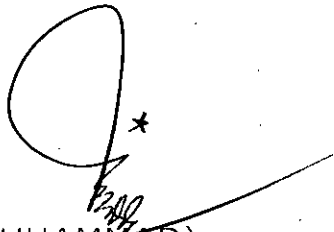
6. A perusal of the record would show that the appellant was dismissed from service vide order dated 05.10.2009, which was challenged by the appellant through filing of departmental appeal after considerable delay on 22.02.2018. The departmental appeal of the appellant was filed by the appellate Authority on the ground that the same was barred by 08 years and 03 months. Though punishment could not be awarded with retrospective effect, however where a civil servant has been proceeded against departmentally on the ground of his absence from duty, then punishment could be awarded to him retrospectively from the date of his absence from duty and the same is an exception to the general rule that punishment could not be imposed with retrospective effect. The impugned order dated 05.10.2009 thus could not be considered as void merely on the ground that the same was passed with retrospective effect. It is well settled proposition of law that when an appeal of an employee was time barred before the appellate Authority, then the appeal before the Tribunal was also not competent. Reliance is placed on 2007 SCMR 513, 2006 SCMR 453 and PLD 1990 S.C 951. Furthermore, august Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on limitation, its merits need not to be discussed.

7. As a sequel to the above discussion, it is held that as the departmental appeal of the appellant was badly time barred, therefore, the appeal in hand being not competent is

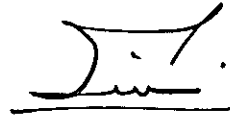


hereby, dismissed. Parties are left to bear their own costs.
File be consigned to the record room.

ANNOUNCED
04.01.2022

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(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)
CAMP COURT SWAT

A handwritten signature in black ink, featuring a series of connected loops and a horizontal line at the bottom.

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

Service Appeal No. 447/2018

O R D E R
04.01.2022

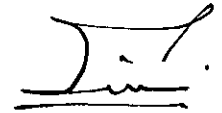
Appellant alongwith his counsel Mr. Imdad Ullah, Advocate, present. Mr. Ali Rehman, Inspector (Legal) alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, it is held that as the departmental appeal of the appellant was badly time barred, therefore, the appeal in hand being not competent is hereby, dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
04.01.2022



(Mian Muhammad)
Member (E)
Camp Court Swat



(Salah-Ud-Din)
Member (J)
Camp Court Swat

D.F.A.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT SWAT

Service Appeal No. 447/2018

Date of Institution ... 04.04.2018

Date of Decision ... 04.01.2022

Sher Shah S/O Ahmad Shah R/O Amankot, Shahid Abad, Tehsil Babozai, District Swat.
... (Appellant)

VERSUS

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

MR. IMDAD ULLAH,
Advocate

--- For appellant.

MR. RIAZ AHMAD PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN
MR. MIAN MUHAMMAD

--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

^E
JUDGMENT:
A

SALAH-UD-DIN, MEMBER:-

Precise facts forming the background of the instant service appeal are that the appellant while serving as Constable, was proceeded against departmentally on the allegations of his absence from duty. On conclusion of the inquiry, the appellant was dismissed from service vide order dated 05.10.2009 passed by the competent Authority. The

appellant filed departmental appeal on 22.02.2018, which was dismissed vide order dated 06.03.2018, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has argued that ~~the~~ family of the appellant was targeted by militants and one of his cousin was also killed by the militants, therefore, the appellant was unable to attend his duty; that the absence of the appellant was not willful, rather the untoward situation in District Swat was the reason for absence of the appellant from his duty; that whole of the proceedings were conducted at the back of the appellant and he was not provided any opportunity of personal hearing or self defense; that no charge sheet or statement of allegations was served upon the appellant and he was condemned unheard; that similarly placed employees have already been reinstated in service, therefore, the appellant is also entitled to be treated at par with them; that the dismissal order of the appellant has been made with retrospective effect, therefore, the same is void and illegal, hence no limitation would run against the same; that the impugned orders being wrong and illegal are liable to be XXXX set-aside and the appellant is entitled to be reinstated in service with all back benefits.

4. On the other hand, learned Assistant Advocate General for the respondents has argued that the appellant had willfully remained absent from duty and statements of father of the appellant as well as elders of the locality were recorded during the inquiry, wherein they have mentioned that the appellant had proceeded abroad for earning of his livelihood; that proper inquiry was conducted in the matter, however the appellant was abroad, therefore, he cannot claim that he was not associated with the inquiry proceedings; that an advertisement was also published in the newspaper, whereby ~~the~~ absent police officials [✓] were [✓] directed to report on their [✓] duty but the appellant did not bother to appear for resuming of his duty; that the departmental appeal of the appellant was badly time barred, therefore, his service appeal is liable to be dismissed on this score alone.

5. Arguments heard and record perused.

6. A perusal of the record would show that the appellant was dismissed from service vide order dated 05.10.2009, which was challenged by the appellant through filing of departmental appeal after considerable delay on 22.02.2018. The departmental appeal of the appellant was filed by the appellate Authority on the ground that the same was barred by 08 years and 03 months. Though punishment could not be awarded with retrospective effect, however where a civil servant has been proceeded against departmentally on the ground of his absence from duty, then punishment could be

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.**

Service Appeal No. 15297/2020

Date of Institution ... 01.12.2020

Date of Decision ... 10.12.2021

Farooq Siyar, Ex-Incharge Head Constable No. 38, Capital City Police Officer, Peshawar.

... (Appellant)

VERSUS

Capital City Police Officer, Peshawar and two others.

... (Respondents)

MR. FAZAL SHAH MOHMAND,
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

--- For respondents.

MR. AHMAD SULTAN TAREEN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Through this single judgment we intend to dispose of the instant Service appeal as well as connected Service Appeal No. 15298/2020 titled "Ihteram Ullah Versus Capital City Police Officer, Peshawar and two others" and Service Appeal No. 1299/2020 titled "Hussain Khan Versus Capital City Police Officer, Peshawar and two others", as common question of law and facts are involved therein.

2. Precisely stated the facts forming the background of the instant service appeal are that the appellants while posted in Police Post Industrial Estate, Police Station Hayatabad were

awarded to him retrospectively from the date of his absence from duty and the same is an exception to the general rule that punishment could not be imposed with retrospective effect. The impugned order dated 05.10.2009 thus could not be considered as void merely on the ground that the same was passed with retrospective effect. It is well settled proposition of law that when an appeal of an employee was time barred before the appellate Authority, then the appeal before the Tribunal was also not competent. Reliance is placed on 2007 SCMR 513, 2006 SCMR 453 and PLD 1990 S.C 951. Furthermore, august Supreme Court of Pakistan in its judgment reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on limitation, its merits need not to be discussed.

7. As a sequel to the above discussion, it is held that as the departmental appeal of the appellant was badly time barred, therefore, the appeal in hand being not competent is hereby, dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
04.01.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT SWAT

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)
CAMP COURT SWAT

LIST OF DB CASES FIXED BEFORE AHMAD SULTAN TAREEN CHAIRMAN. & MR
SALAH UD DIN MEMBER (J) KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR AT CAMP COURT ABBOTTABAD.

03/12/2021(FRIDAY)

ARGUMENTS

S.N	APPEAL NO	Appellant Name's	DEPARTMENTS	NEXT DATE
01				
02				
03				
04				
05				
06				
07				
08				
09				
10				
11				

READER

06.12.2021

Imdad Ullah Advocate present and submitted Wakalat Namah in favor of appellant.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for respondents present.

Being freshly engaged, learned counsel for appellant requested for adjournment in order to prepare the brief; granted. To come up for arguments on 04.01.2022 before D.B at Camp Court, Swat.



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, Swat.



(Rozina Rehman)
Member (J)
Camp Court, Swat


05/04/2021

Due to COVID-19, the case is adjourned to

07/10/2021 for the same.


READER

Due to COVID-19, the case is
adjourned to 7/10/21


Reader

07.10.2021


Appellant in person present.

Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Khawas Khan Inspector for respondents present.

Learned Members of the DBA are observing Sogh over the demise of Qazi Imdadullah Advocate and in this regard request for adjournment was made; allowed. To come up for arguments before the D.B on 06.12.2021 at Camp Court, Swat.




(Atiq-Ur-Rehman Wazir)
Member (E)
Camp Court, Swat



(Rozina Rehman)
Member (J)
Camp Court, Swat

07.12.2020

Due to COVID-19, case is adjourned to 01.02.2021 for the same as before.

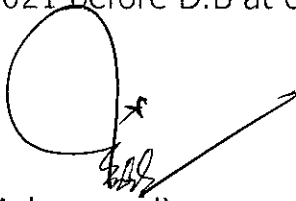

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01.02.2021

Nemo for parties.

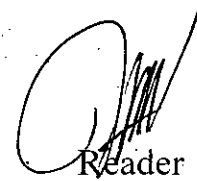
Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents is present.

Preceding date was adjourned on account of Covid-19, therefore, both the parties be put on notice for the date fixed. Issue involved in the instant case is pending before Larger Bench of this Tribunal, therefore, case is adjourned to 05.04.2021 before D.B at camp court Swat.


(Mian Muhammad)
Member(E)


(Rozina Rehman)
Member(J)
Camp Court Swat

02.06.2020 Due to Covid-19, the case is adjourned. To come up for the same on 07.07.2020, at camp court Swat.



Reader

07.07.2020 Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 08.09.2020, at camp court Swat.




Reader

08.09.2020 Appellant in person present.

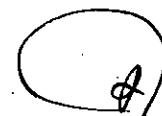
Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Khawas Khan SI for respondents present.

Issue involved in the present case is pending before Larger Bench of this Tribunal.

Adjourned to 07.12.2020 for arguments before D.B at Camp Court, Swat.




(Attiq-ur-Rehman)
Member
Camp Court, Swat




(Rozina Rehman)
Member
Camp Court, Swat

04.02.2020

Appellant in person present. Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Lawyers are not attending the courts today on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 03.03.2020 before D.B at Camp Court Swat.

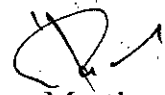

Member


Member
at Camp Court Swat

03.03.2020

Appellant in person present. Mr. Usman Ghani learned District Attorney alongwith Mr. Khawas Khan SI for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourn. To come up for further proceedings/arguments on 04.05.2020 before D.B at Camp Court Swat.


Member

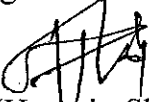

Member
Camp Court Swat


Due to corona virus toeb
to camp court swat has been
Cancelled. To come up for the
same on 02/06/20


Reader

08.10.2019


Counsel for the appellant and Mian Amir Qadir, Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 05.11.2019 for arguments before D.B at Camp Court Swat.



(Hussain Shah)
Member
Camp Court Swat


(Muhammad Amin Khan Kundi)
Member
Camp Court Swat

05.11.2019


Appellant alongwith his counsel and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 07.01.2020 for arguments before D.B at Camp Court Swat.



(Hussain Shah)
Member
Camp Court Swat


(M. Amin Khan Kundi)
Member
Camp Court Swat

07.01.2020

Appellant in person and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Muhammad Ishaq, Head Constable for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 04.02.2020 for arguments before D.B at Camp Court Swat.


(Hussain Shah)
Member
Camp Court Swat


(M. Amin Khan Kundi)
Member
Camp Court Swat

07.05.2019

Appellant in person present. Written reply not submitted. Khawas Khan SI representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 02.07.2019 before S.B at Camp Court, Swat.



Member
Camp Court, Swat.

02.07.2019

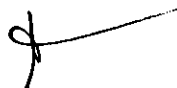
Appellant in person present. Mr. Mian Amir Qadir learned District Attorney alongwith Khawas Khan SI Legal present. Representative of the respondent department submitted written reply/comments. Adjourn. To come up for rejoinder, if any, and arguments on 03.09.2019 before D.B at Camp Court, Swat.



Member
Camp Court, Swat

03.09.2019

Counsel for the appellant present. Mian Amir Qadir, DDA alongwith Mr. Khawas Khan, SI for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 08.10.2019 before D.B at camp court Swat.



Member



Member

08.02.2019

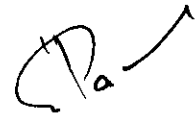
Learned counsel for the appellant present. Preliminary arguments heard.

The appellant has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 05.10.2009 whereby the appellant was awarded major penalty of dismissal from service on the ground of absence from duty. The appellant has also challenged the order dated 06.03.2018 through which his departmental appeal was filed being badly time barred for about 08 years and 03 months.

Learned counsel for the appellant argued inter-alia that discriminatory treatment was met out to the appellant in that other employees of the respondent department whose cases were at par with the appellant were reinstated in service.

Points urged need consideration. The appeal is admitted for regular hearing subject to all legal objections including the issue of limitation. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 02.04.2019 before S.B at Camp Court Swat.

Appellant Admitted
Security & Process Fee



Member
Camp Court, Swat

02.04.2019

Appellant in person present. Written reply not submitted. Khawas Khan S.I Legal representative of the respondent department present and seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 07.05.2019 before S.B at Camp Court Swat.



Member
Camp Court, Swat.

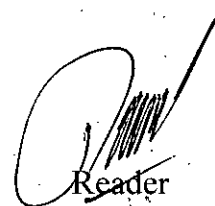
08.06.2018

Appellant Sher Shah in person present and requested for adjournment as his counsel has gone to Saudi Arabia to perform Umra. Granted. To come up for preliminary hearing on 10.08.2018 before S.B at camp court, Swat.


Chairman
Camp Court, Swat


10.08.2018

Clerk to counsel for the appellant present. Due to summer vacation the case is adjourned to 05.10.2018 for the same at camp court Swat.


Reader

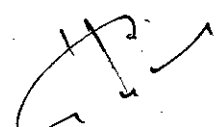
05.10.2018

Sher Shah appellant in person present and made a request for adjournment. Granted. To come up for preliminary hearing on 07.12.2018 before S.B at camp court, Swat.


Chairman
Camp Court, Swat

07.12.2018

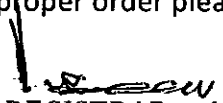

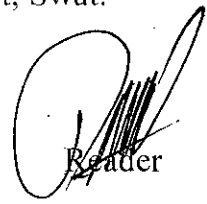
Appellant with counsel present. Adjournment requested. Adjourn. To come up for preliminary hearing on 08.02.2019 before S.B at Camp Court Swat.


Member
Camp Court, Swat.

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 447/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	04/04/2018	<p>The appeal of Mr. Sher Shah presented today by Mr. Aftab Alam 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 4/4/18</p>
2	11-4-18	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>11-5-18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
09.05.2018		<p>Due to retirement of the Worthy Chairman, the Tribunal become non-functional. To come up for the same on 08.06.2018 before the S:B at camp court, Swat.</p> <p style="text-align: right;"> Reader</p>

BEFORE THE SERVICE TRIBUNAL K.P.K
PESHAWAR

Service Appeal No 447 of 2018

Sher Shah S/o Ahmad Shah R/o Amankot, Shahid
Abad, Tehsil Babozai, District Swat..... Appellant


VERSUS

1. Inspector general of police K.P.K Peshawar at
Peshawar & others..... Respondents

INDEX

S.#	Description	Annexure	Pages No
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3.	Addresses of the parties	-	9
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5.	Copy of order dated 05-10-2009	"B"	11
6.	Copies of departmental appeal and order	"C" & "D"	12-13
7.	Copy of pay slip	"E"	15
8.	Copy of FIR	"F"	15
9.	Copy of Diary Report	"G"	16
10.	Copies of appeal and order dated 08-03-2017	"H" & "I"	17-22
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*Appellant
Through Counsel*


AFTAB ALAM
Advocate, High Court

Office: - Malak Mehboob Market,
People Chowk, Mingora,
Swat.

Cell No: 0301--8536776

①

BEFORE THE SERVICE TRIBUNAL K.P.K
PESHAWAR

Service Appeal No 447 of 2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 479

Dated 4-4-2018

Sher Shah S/o Ahmad Shah R/o Amankot, Shahid
Abad, Tehsil Babozai, District Swat..... Appellant

VERSUS

1. Inspector general of police K.P.K Peshawar at
Peshawar.
2. Regional Police Officer Malakand at saidu Sharif Swat.
3. District Police officer Swat at Gulkada Saidu Sharif
Swat.
4. Superintendent of Police Investigation Swat.

.....Respondents

Appeal against the order dated 05-10-2009
passed by respondent No. 4 whereby appellant
was dismissed from service and final order dated
06-03-2018 passed by the respondent No 1
whereby appellant's departmental appeal for re-
instatement was dismissed.

Filed to-day

Registrar

4/4/18

Prayer:~ That on allowing this appeal the impugned orders
may please be set-aside and appellant be re-instated on his post
(constable) along with all legal rights, back benefits and back
wages.

Respectfully Sheweth!

1. That the appellant was appointed as constable vide order dated 15-11-2003 in the K.P.K police and the Appellant has always performed his duty to the best of his ability and sincerity since the day one. (Copy of appointment order is attached as Annexure "A")

2. That the appellant was removed from his service vide order dated 05-10-2009 without asking for explanation, & without issuing any charge sheet, statement of allegation and conducting enquiry, without affording opportunity of hearing to the appellant. (Copy of order dated 05-10-2009 annexed as annexure "B")

3. That appellant was preferred departmental appeal to the Respondent No 1 but the same was illegally dismissed vide order dated 06-03-2018 without affording any opportunity of hearing or issuing any final show-cause notice. (Copies of departmental appeal and order as annexed as annexure "C" & "D")

3

4. That the impugned orders, are liable to be set aside and appellant is entitled to be granted the relief prayed for, on the following inter-alia grounds.

Grounds:-

- A:- That the impugned orders are against the law, rules & natural justice.
- B:- That in the impugned order dated 05-10-2009 appellant was shown absent from lawful duty w.e.f 25-07-2007 till 05-10-2009, which is totally misconceived and malafide oriented for the reason that appellant received his salary till 01-04-2009 meaning thereby that the appellant was present on his duty till 01-04-2009. (Copy of pay slip is attached as annexure "E")
- C:- That illegal ex-parte enquiry might have been conducted into the matter was initiated but the appellant was not made associated with the same, for the notice of show-cause or summon have been served upon the appellant.

4

- D:- That appellant's father & cousin namely Said Ali Shah ASI were also in police service and appellant cousin's namely Said Ali Shah was killed brutally by the militants on 05-05-2009, whereas appellant and his father were on the target of the militant, hence appellant was allowed by department to flea for saving his life due to inability of the police to maintain security and therefore regular army have been called for operation in the whole District Swat and Malakand Division. (Copy of FIR is attached as Annexure "F")
- E:- That during the above mentioned insurgency in the year 2008-09 appellant had been threatened and attacked for several time but appellant escaped and due to the above situation appellant as well as his family members had left swat for their safety. (Copy of diary report is attached as Annexure "G")
- F:- That due to the above mentioned militancy apart from appellant other most respectable officers and employees left District Swat for their safety.
- G:- That the government itself realized the fact that the servants never absented from duties at their own will but was due to the adverse law and order

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situation, which have elaborated in service appeal No. 614 of 2016 and order dated 08-03-2017.

H:- That due to the above mentioned situation a review committee had also been constituted and which the aggrieved employees directed to file review / revisions to the board to scrutinized the same and to reinstate them in their services, however the case of the appellant was properly consider.

I:- That other employees who were reinstated in their jobs are as under 1) Muhammad Sayed Khan No. 1613, 2) Ghuas Ali Khan No. 4344, 3) Shafiullah No. 660 etc on 19-12-2007, 4) 253 constables on 30-11-2010 5) 20 constables on 18-02-2011, 6) 12 constables on 07-02-2012 on 27-01-2015, on 01-03-2016 etc, but appellant was not treated at par with the same, thus discriminated.

J:- That when one class is availing the same benefits, depriving the same class tantamount to malafide.

K:- That no misconduct has been proved against the appellant.

L:- That no proper opportunity of hearing has been provided before passing the impugned orders.

6

M:- That no charge sheet or statement of allegations leveled against the appellant has been sent to the appellant.

N:- That the inaction of respondents upon the departmental appeal of the appellant shows malafide on the part of respondents. So their orders are against the norms of Justice and liable to be set-aside.

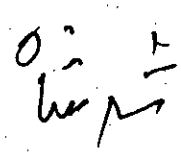
M:- That the appellant was condemned on mere suspicion and conjecture and the order of removal from service is only based on anticipation and malafide on behalf of the department.

N:- That the colleagues of the appellant namely Abdul Hanan who's case was absolutely at par with the appellant was given the relief by this honorable tribunal vide order dated 08-03-2017. (Copies of appeal and order dated 08-03-2017 are attached as annexure "H" & "I").

O:- That according to the rule of natural justice and Sharia as well as the golden principle of law, the similar and identical cases should be decided alike and no discrimination should be made.

7

It is therefore, submitted that on allowing of this appeal and by setting aside the impugned orders dated 05-10-2009 and appellate final order dated 06-03-2018 and appellant may please be reinstated on his post along with all back benefits and back wages.

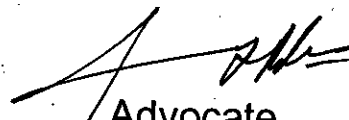

Appellant _____
Sher Shah S/o Ahmad shah

Counsel for appellant


AFTAB ALAM
Advocate High court

Certificate:

It is certified that no such like service appeal has been filed by the petitioner before this honorable tribunal nor pending or decided by this honorable tribunal.


Advocate

8

BEFORE THE SERVICE TRIBUNAL K.P.K
PESHAWAR

Service Appeal No _____ of 2018

Sher Shah S/o Ahmad Shah R/o Amankot, Shahid
Abad, Tehsil Babozai, District Swat.....Appellant

VERSUS

1. Inspector general of police K.P.K Peshawar at Peshawar.
2. Regional Police Officer Malakand at saidu Sharif Swat.
3. District Police officer Swat at Gulkada Saidu Sharif Swat.
4. Superintendent of Police Investigation Swat.

.....Respondents

AFFIDAVIT

I, Sher Shah S/o Ahmad Shah R/o Amankot, Shahid Abad, Tehsil Babozai, District Swat, do hereby solemnly affirm and declare on oath that all the contents of this Service appeal are true and correct to the best of my knowledge and nothing has been kept Concealed before this Honorable Court.



DEPONENT _____

Sher Shah S/o Ahmad Shah

9

BEFORE THE SERVICE TRIBUNAL K.P.K
PESHAWAR

Service Appeal No _____ of 2018

Sher Shah S/o Ahmad Shah R/o Amankot, Shahid
Abad, Tehsil Babozai, District Swat.....Appellant

VERSUS

1. Inspector general of police K.P.K Peshawar at Peshawar
& others.....Respondents

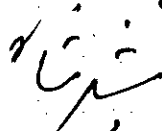
ADDRESSES OF PARTIES


PETITIONER:

Sher Shah S/o Ahmad Shah R/o Amankot, Shahid
Abad, Tehsil Babozai, District Swat
CNIC No: 15602-0815722-9 Cell No: 03349302503

RESPONDENTS:

1. Inspector general of police K.P.K Peshawar at Peshawar.
2. Regional Police Officer Malakand at saidu Sharif Swat.
3. District Police officer Swat at Gulkada Saidu Sharif Swat.
4. Superintendent of Police Investigation Swat.


Appellant
Counsel


AFTAB ALAM
Advocate High court

10

Annexure "A"

ENLISTMENT ORDER.

Mr. Sh. v. Shah S/O. Ahmad Shah
Case Apgram Village. Amankot .. Shahid .. Abad
P.S. Rahim Abad District. Swat ..

is hereby enlisted as Constable in this Distt. Police in three years probation period with effect from. 15-11-2003.

and allotted constabulary No. 1159


Date of birth. 1-2-1982

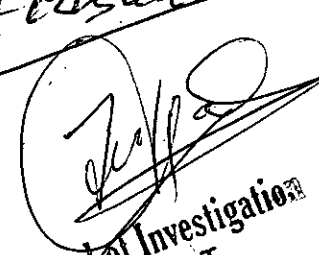
NIC No.

Height. 6-6 Chest. 36 x 37 1/2 .. Education. 10th ..

O.B.No. Dated.

Copy of above to D.A.O Swat.


DISTRICT POLICE OFFICER, SWAT
Now

Accepted

Head of Investigation
SWAT.

(11)

Annexure "B"

ORDER.

This order will dispose of the enquiry against Constable Sher Shah No. 1159 who while posted to Region Officer, Swat absented from lawful duty with effect from 25-07-2007 uptill now.

The defaulter Constable was issued charge sheet with statement of allegations. Enquiry was initiated against him and Inspector Fazal Wahid Khan was appointed as Enquiry Officer. The enquiry Officer in his finding report submitted that the defaulter Constable was summoned time and again but did not appear to record his statement. According to the statement of his father Ex SI Ahmad Shah the defaulter Constable has gone abroad. As such recommended for dismissal by the Enquiry Officer.

Therefore I, so competent authority am satisfied to proceed under section 3 of the removal from service (special Powers) ordinance 2000 and dispense with the enquiry proceed as laid down in the said ordinance. Since the defaulter Constable has been found guilty of gross misconduct as defined in the said ordinance, I Mr. Muhammad Ejaz Khan Superintendent of Police, Investigation, Swat as competent authority, therefore impose major penalty by dismissing him from service from the date of absence.

Order announced.

C. J. C.
Atiq Alam Advocate Swat

[Signature]
Superintendent of Police,
Investigation, Swat.
14/3/10

OB No: 82 / Swat

Dated: 5-10 /2009

Copy of the order is submitted to Deputy Inspector General of Police, Malakand Region-III, Saidu Sharif Swat for favour of information please.

Attested

[Signature]
Superintendent of Police,
Investigation, Swat.

[Signature]
Superintendent of Police,
Investigation, Swat.

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Annexure "D"

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

No. S/ 901 /18, dated Peshawar the 06/03/2018.

To: The I/C Complaint Cell,
CPO.

Subject: APPEAL (EX-FC SHER SHAH NO. 1159)

Memo:

Please refer to your office memo: No. 872-73 / C. Cell, dated 22.02.2018.

Appeal of the Ex-FC Sher Shah No. 1159 of Investigation Wing Swat for reinstatement into service was processed / examined at Central Police Office, Peshawar and filed by the competent authority being badly time barred for about 08 years and 03 months.

The applicant may please be informed accordingly.

(SYED ZIA ALI SHAH),
Registrar.

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

AK
S
S/2

C.T.C
[Handwritten signature]

Annexure 'E'

14

17 Washing Allowance	500.00
16 Constabulary R Allow	401.00
70 Spl. Additional allow	775.00
30 Special Relief All(2	775.00
31 Adhoc Relief (2005)	935.00
64 Dearnes Allowance (2	
PAYMENTS	14,998.00

DEDUCTIONS
Payment through DDO 539.00-

NET PAY 14,459.00 01.04.2009 30.04.2009
Acct. No:

1094317 SHER SHAH P A Y M E N T S	Prev Pers No:	Desig: CONSTABLE	(00000394)	Grade: 05 NTN:	Buckle No.: 1159	Gazetted/Non-Gazetted: N	
	A M O U N T	D E D U C T I O N S	A M O U N T	LOAN/FUND	PRINCIPAL	REPAID	BALANCE
001 Basic Pay	4,140.00	3005 GPF Subscription - Rs	290.00-		POLSH002663		10,021.00
000 House Rent Allowance	1,002.00	4200 Professional Tax	50.00-	GPF Temp. Advance	8,000.00	2,000.00	6,000.00
300 Medical Allowance	500.00	6505 GPF Loan Principal In	500.00-				
528 Unattractive Area A	75.00	3511 Adml Group Insurance	7.00-				
547 Ration Allowance	681.00	3604 Group Insurance	67.00-				
567 Washing Allowance	100.00						
646 Constabulary R Allow	300.00						
1830 Special Relief All(2	330.00						
1831 Adhoc Relief (2005)	330.00						
1864 Dearnes Allowance (2	414.00						
PAYMENTS	7,872.00	DEDUCTIONS	914.00-	NET PAY	6,958.00	01.04.2009	30.04.2009

Accepted
Head of Investigation
SWAT.

4-9-2009

00094436 MUHAMMAD RAZIA P A Y M E N T S	Prev Pers No: 11785128677	Desig: SUB-INSPECTOR	(00001393)	Grade: 14 NTN: 0	Buckle No.:	Gazetted/Non-Gazetted: N	
	A M O U N T	D E D U C T I O N S	A M O U N T	LOAN/FUND	PRINCIPAL	REPAID	BALANCE
0001 Basic Pay	10,620.00	3014 GPF Subscription - Rs	850.00-		POLBD000330		75,559.00
1000 House Rent Allowance	1,476.00	4200 Professional Tax	150.00-				
1300 Medical Allowance	500.00	3511 Adml Group Insurance	13.00-				
1528 Unattractive Area A	75.00	3604 Group Insurance	115.00-				
1547 Ration Allowance	681.00						
1567 Washing Allowance	100.00						
1646 Constabulary R Allow	500.00						
1770 Spl. Additional allow	415.00						
1830 Special Relief All(2	861.00						
1831 Adhoc Relief (2005)	861.00						
1864 Dearnes Allowance (2	1,071.00						
PAYMENTS	17,160.00	DEDUCTIONS	1,128.00-	NET PAY	16,032.00	01.04.2009	30.04.2009

00096697 FAIZ KHAN	Prev Pers No:	Desig: CONSTABLE	(00000394)	Grade: 05 NTN:	Buckle No.: 285	Gazetted/Non-Gazetted: N	
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ابتدائی اطلاع رپورٹ

ابتدائی اطلاع نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ ریزولوشن نمبر ۱۵۲ مجموعہ ضابطہ نو بعد از

نام	سید وسیر علی	صلح	سوات
نمبر	34	تاریخ	05.05.09
تاریخ وقت رپورٹ	05.05.09		

1-	تاریخ وقت رپورٹ	05.05.09
2-	نام و سکونت اطلاع دہندہ مستفیض	غلام محمد خان الیکٹرونک سید وسیر علی
3-	مختصر کیفیت جرم (معرفہ) حال اگر کچھ لیا گیا ہے	5 EXTRACT 120B 121A / 7ATA 3146
4-	جائے وقوعہ فاصلہ تھانہ سے اور سمت دفتر والا صاحب، دفتر مختصر مادہ	ملا لنگر ڈھنگ، مسلم کیمسٹری سٹریٹ، ٹینک ٹھانہ سید وسیر علی
5-	نام و سکونت ملزم	
6-	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا ہو تو وجہ بیان کرو	تب و وقوعہ مقدمہ قائم کیا جاتا ہے
7-	تھانہ سے روانگی کی تاریخ و وقت	لیٹر سٹیبل رپورٹ

تھانہ میں موجود تھا۔ کنٹرول روم واقع دفتر والا صاحب ملا لنگر ڈھنگ، مسلم کیمسٹری سٹریٹ، ٹینک ٹھانہ سید وسیر علی سے سید علی شاہ ASI صاحب کے اطلاع دی کہ تقریباً 50 لاکھ روپے کی سیڑھی اور دیگر سامان، دفتر مختصر مادہ، دفتر ڈسٹرکٹ اکاؤنٹ کا قیام شدہ ہو گیا ہے۔ اطلاع افسرنان والا صاحبان نے پولیس میں لا کر دفتر مذکورہ میں اہلیات پولیس، F لہری کو کال کرنے اور انظر کاروائی کرنے کی ہدایت دی۔ اسی انسدادیوں نے فائبر اور تھانہ سید وسیر علی کے ٹینک پر اندھا دھند ٹینک کی۔ کیو ویلنگ جائیداد پر واقع دفتر والا صاحب نے انسدادیوں کے شرکیوں کا قیام شدہ تھانہ سے لے کر آئے تھے۔ جو تھانہ کے قریب ہی لنگر سٹریٹ کے عدلیہ گھاٹے لہری پولیس ایجنسی شرکیوں نے ملنے کے قریب سے ان پر جائیداد لے لیں۔ یہی تھانہ علی شاہ ASI صاحب عدلیہ گھاٹے لہریوں کے فائبر سے ٹک کر موقع پر جان کٹی ہوا۔ کابلہ دیگہ ہزارا ہیان شیوٹی احمد ۱۹۹۹، قیصر ۱۶۴۸، عرفان علی ۱۶۲۶-۸۲۷۔ داود 827 خان اللہ 55، عبدالحمید ۹۹۱ معہ F لہری مال مال بن گئے۔ شرکیوں کے فائبر سے تھانہ سید وسیر علی کالٹ اور دو لاریں لے لیں۔ یہ وہاں پہنچے ہیں۔ جیکو فائبر والا صاحب، مختصر مادہ، ڈسٹرکٹ اکاؤنٹ شرکیوں نے قبضہ میں لے لیے ہیں۔ جہاں سے شدید دھماکوں کے آواز پیدا ہوئے ہیں۔ اسی طرح شرکیوں نے جوں میں واقع مسلم کیمسٹری سٹریٹ کو لوٹ کر اس میں بھی دھماکہ کیا ہے۔ اور ان ہی تھانہ کے ٹینک پر قبضہ ملنے کے بعد سے فوراً اس پولیس ایجنسی سے فائبر جاری ہے۔ کابلہ لہری اور F کے درمیان بھی جوانی فائبرنگ کر رہے ہیں۔ موقع ملے پر لاشیں اٹھانے کے اور لوہے اور لٹیم کی کاروائی کرانی جائے گی۔ وقوعہ کے احوال یہ دفتر لہری کی لپٹی کرتی ہے۔ جو کہ ساری قوی و پراس نہیں ملے، جسے شدید سرکاری اہلیات کو لوٹنے اور دھماکہ دہانہ سے اڑانے سے کوری فورسز کا طلبہ حملے کر کے حکومت کے رٹ کو صبح نے ہوئے ہیں۔ حالات وہاں سے عدالت ختم سالانہ کی ہو کر 5 لاکھ روپے کی سیڑھی اور دیگر سامان نامعلوم کے خلاف مقدمہ قائم کیا جاتا ہے۔ لہریوں سے عدالت کے متعلق جاننے کے لیے اخبارات ایجنسیوں سے جانچ لیا گیا ہے۔

23/06/2020
Ate
AMMC
26.6.20

صلاح

مقرر ہوا ہے کہ...
17-5-11
AMMC/12/11/11/11
21-05-11

بھائی...
1575
14/10/138
28/4/11

AMMC/12/11/11/11
2-5-11

ATTESTED
SHO, PSSS

صلاح
AMMC/12/11/11/11
26-08-11

صلاح

ان وقت...
28/11/11

AMMC/12/11/11/11
28/11/11

بھائی...
3/10/11

اطلاع کے لیے اطلاع دہندہ کا دستخط ہو گا یا اس کی مہر یا نشان لگایا جائے گا۔ اور اسے تحریر کنندہ ابتدائی اطلاع کا دستخط بطور تصدیق ہوگا۔ حروف الفبائی سرخ روشنائی سے بالمقابل نام لکھا جائے۔

۱۹ رپورٹ میں احمد شاہ ولد امیر سلطان کا نوم عدضیل تقریباً ۱۹۵۵/۱۹۵۸ سال سن ۳ کم کوڑ پو امان کوٹ بونٹ ۵۵:۵۰
 ۵۱۰۸/۵۹ جاغ کتابت آبر یوں رپورٹ کرتا جہیں حالیہ دھبتت "رازی عینی نامہ ملام دھبتت
 آکر جاری کرا تا چارہ کراے آبر آبر میں کوڑ پو میں بڈتت سب اسلئے کھبات ڈنا
 لیکر پاسارے واقعات امرکان مسلم اضران پلا کے نوٹس میں لایا گیا تھا کہ وزیر حالات
 ضرب ہوئے گی وج سے مال پھوں گیا تھا اسلام آباد چلا گیا تھا۔ اب واپس آکر معلوم
 ہوا ہے کہ نامعلوم دھبتت گروہوں نے سائیل کے گھر کے تالے کھول کر قیمتی اشیاء کو
 علاوہ انعامی بانڈز مبلغ ایک لاکھ سینے ہتیرا ہوئے اور ڈو عدد ریسول ۵۳ پوز ایک خبرتی
 ہتیرا زور پور چائنا سٹیر الم کینس ڈاٹر ساتھ لے گئے ہیں اس کے علاوہ سب سائیل کے ذاتی
 گاڑی کو سٹیر ۹۱۳۱ کو بھی نامعلوم دھبتت گروہوں نے تباہ کر کے اپنے تین لاکھ روپے کا

لغز تاج ۱۱۱ ^{FBI} رپورٹ میں لایا گیا جائے گا
 رقم کا رقم لائی تھانہ دور دور میں لائی گئی

دو کڑے دو کڑے اور اس کے ساتھ دو کڑے دو کڑے اور اس کے ساتھ دو کڑے دو کڑے

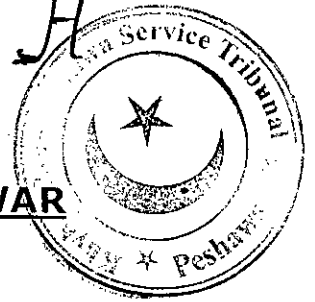


Arrested
 Signature
 11/11/58

17

1

Annexure 'H'



BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 614 /2016

Abdul Hanan S/o Juma Dost,
R/o Village Manjot, Swat,
Ex - Constable No. 1607,
Police Line, Swat Appellant

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 601

Dated 08-6-2016

Versus

1. Inspector General of Police,
KP, Peshawar.
2. Regional Police Officer,
Malakand Region, Swat.
3. District Police Officer, Swat Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT,
1974 AGAINST OFFICE ORDER NO. 4058/16,
DATED 19.05.2016 OF R. NO. 1, WHEREBY
DEPARTMENTAL APPEAL AGAINST OB NO. 146,
DATED 12.10.2009 OF R. NO. 2, DISMISSING
APPELLANT FROM SERVICE, WAS REJECTED
FOR NO LEGAL REASON.**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth;

1. That appellant was enlisted on 31.12.2008 as constable. (Copy as annex "A")
2. That appellant became ill and vide mad No. 23, dated 19.01.2009 he was deputed for treatment to Civil Hospital, Saidu Sharif but did not turn up thereafter. (Copy as annex "B")
3. That on 23.01.2009, father of the appellant submitted application

Filed to-day

Registrar

8/6/16


ATTESTED

**EXAMINED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar**

have been kidnapped by miscreants. This application was marked to the SHO of PS concerned to make efforts for the release of appellant from the clutches of miscreants with the help of jirga members. (Copy as annex "C")

4. That on 27.04.2009, Personal Assistant to R. No. 3 wrote letter to department that appellant has been kidnapped by the miscreants during insurgency but no FIR was registered as in the militancy area, Govt. writ was not established as most of the Police Stations were sieged by the miscreants. Press clipping was also enclosed with the said letter regarding the matter. (Copy as annex "D")
5. That on 01.09.2009, charge sheet was issued to appellant but the same was not served upon him being not traceable, so could not be replied the same. (Copy as annex "E")
6. That perhaps enquiry into the matter was initiated but appellant was not associated with the same, being untraced and self made report was submitted to the authority, recommended him for major punishment.
7. That on 10.09.2009, the Inquiry Officer submitted finding report to the department wherein appellant was shown absent from duty. (Copy as annex "F")
8. That on 18.09.2009, final show cause notice was issued for service upon appellant but was not replied, being un-served. (Copy as annex "G")
9. That on 12.10.2009, appellant was dismissed from service by R. No. 3 (D.P.O) from the date of absence from duty i.e. 19.01.2009. (Copy as annex "H")
10. That on 13.10.2014, Review/Revision/Appellate Board was constituted by R. No. 1 (I.G.P) to review the cases of constables, etc. who were disappeared during insurgency. (Copy as annex "I")

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Services Tribunal,
Peshawar

19

19

absent from duty but was kidnapped by the miscreants, so he is reinstated in service. (Copy as annex "J")

12. That in similar circumstances, the authority reinstated Ex-Constable Muhammad Saad Khan No. 1613, Ex-Constable Ghous Ali Khan No. 4344, Ex-Constable Shafiqullah No. 600, etc. on 19.12.2007, 223 Constables on 20.11.2010, 20 Constables on 18.02.2011, 12 Constables on 07.02.2012, on 27.01.2012, on 01.03.2016, etc. but appellant was not treated at par with the same, thus discriminated. (Copies as annex "K")

13. That on 19.02.2016, the Appellate Board who held meeting on 14.04.2016, rejected the appeal of appellant. (Copy as annex "L")

14. That similar question of fact and law came under consideration in numerous appeals before this Hon'ble Tribunal and after thorough probe, the same were accepted vide judgment dated 02.02.2016. (Copy as annex "M")

Hence this appeal, inter alia, on the following grounds:-

GROUND:

a. That appellant never absented from service willfully and intentionally but the same was due to the deteriorated situation of the area.

b. That the Govt. itself realized the truth and fact that the servants never absented from duties of their own will but was due to the adverse law and order situation.

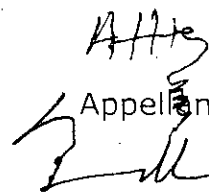

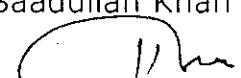
c. That for the aforesaid purpose, the Review Committee was constituted and the dismissed/removed servants were directed to file review, revision and appeals to the Board to scrutinize the same and to reinstate them in services but unfortunately, the case of appellant was not properly, fairly and justly scrutinized and bypassed the same for no plausible reason.

That in the circumstances, not only the Board but also the Hon'ble

ATTESTED

- e. That similarly and equally placed servants be treated similarly and equally and not to discriminate them inter-se.
- f. That when one class is availing the same benefits, depriving the same class tantamounts to malafide.

It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 19.05.2016 or 12.10.2009 of the respondents be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.


 Appellant
 Through 
 Saadullah Khan Marwat
 & 
 Arbab Saiful Kamal
 Advocates.

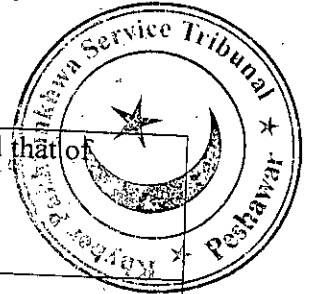
Dated. 7.06.2016

Certified to be true copy
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 Service Journal
 Peshawar

Date of Presentation of Application 02-04-18
 Number of Words 1600
 Copying Fee 10-
 Urgent 2-
 Total 12-
 Name of Copyist [Signature]
 Date of Completion of 02-04-18
 Date of Delivery of Copy 02-04-18

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Annexure 'J'



S. No.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	08.03.2017	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>CAMP COURT SWAT</u></p> <p align="center">Appeal No. 614/2016</p> <p align="center">Abdul Hanan Versus Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and others.</p> <p align="center"><u>JUDGMENT</u></p> <p align="center"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u></p> <p>Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader alongwith Imranullah, Inspector (Legal) for respondents present.</p> <p>2. Abdul Hanan son of Juma Dost hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order dated 12.10.2009 vide which he was dismissed from service on the allegations of wilful absence w.e.f. 19.1.2009 and where-against his departmental appeal was also rejected vide order dated 19.05.2016 and hence the instant service appeal on 08.06.2016.</p> <p>3. Learned counsel for the appellant has argued that the absence of the appellant was not intentional and that he was kidnapped by militants during the days of insurgency. In support of his stance he has placed reliance on the application submitted by the father of the appellant which was entertained by the D.P.O on 23.01.2009 and marked to the SHO Police Station, Mingora with the directions to make efforts for the release of the appellant. Certificates issued by the office of the DPO signed by P.A to DPO is also suggestive of the fact that the appellant was kidnapped by militants during the days of insurgency.</p>

08.03.17

ATTESTED

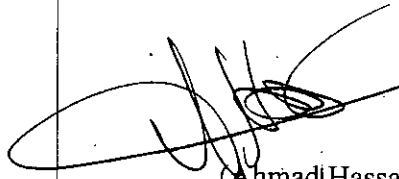
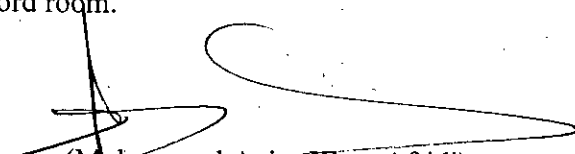

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

4. Learned Senior Government Pleader has argued that the appellant has failed to participate in the enquiry and as such the appeal is liable to dismissal.

5. We have heard arguments of learned counsel for the appellant as well as learned Senior Government Pleader and perused the record.


6. Perusal of record would suggest that the appellant was not associated with the enquiry proceedings. The enquiry officer has failed to take note of the stance of the appellant due to ex-parte proceedings. We are of the view that the stance of the appellant requires consideration at departmental level.

7. We are therefore constrained to accept the present appeal, set aside the impugned order of dismissal of the appellant from service and reinstate him in service with the directions that the competent authority shall conduct denovo enquiry in the allegations wherein appellant be afforded opportunity of participation and hearing including his defence and where-after the competent authority shall pass orders deemed appropriate within a period of two months from the date of receipt of judgment of this Tribunal. Parties are left to bear their own costs. File be consigned to the record room.

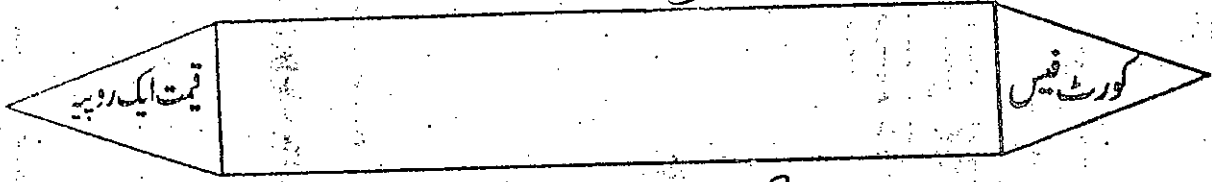


 (Ahmad Hassan)
 Member
 (Muhammad Azim Khan Afridi)
 Chairman
 Camp Court, Swat.

ANNOUNCED
 08.03.2017

Date of Presentation of Application 02-04-18
 Number of Words 800
 Copying Fee 6--
 Urgent 2--
 Total 8--
 Name of Copyist [Signature]
 Date of Completion of Copy 02-04-18
 Date of Delivery of Copy 02-04-18

Certified to be true copy

 Khushwant Singh
 Service Tribunal
 Peshawar

بعدالت عدالت صدر منہ سر دس ٹریسٹریل بیٹا روپے سو روپے



مورخہ ۱۸-۲۱-۳۰
 مقدمہ ۲۰ منجانب ایڈووکیٹ
 دعویٰ سر شاہ بنام G.P. اور سر
 جرم سر ساریل

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام گلبرہ سوٹ کے آئی اے منہ عالم ایڈووکیٹ مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برواختہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کر پتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

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المرقوم

العبد گواہ شدہ

Accepted
 H.C. 11/11/18

کے لئے منظور ہے

بمقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 447/2018.

Sher Shah S/O Ahmed Shah R/O Amankot, District Swat.

..... Appellant

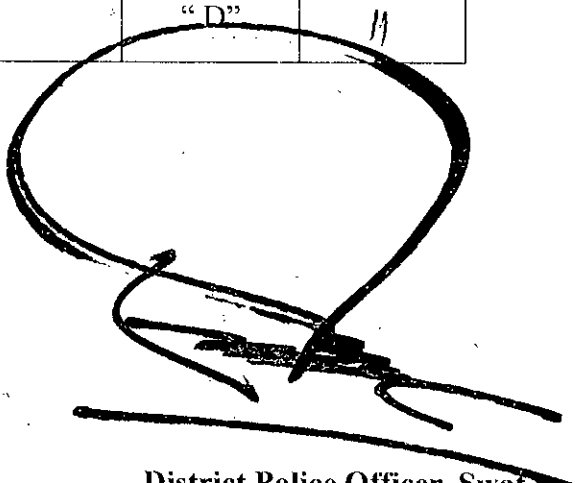
VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Malakand Region at Saidu Sharif, Swat.
3. The District Police Officer Swat.
4. The Superintendent of Police, Investigation Swat.

..... Respondents

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2	Affidavit	-	4
3	Authority Letter	-	5
4	Copy of List of punishments	"A"	
5	Copy of charge sheet	"B-B1"	7-8
6	Copy of statements of Ahmed Shah	"C-C1"	9-10
7	Copy of News Paper	"D"	11


District Police Officer, Swat
(Respondent No.03)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 447/2018.

Sher Shah S/O Ahmed Shah R/O Amankot, District Swat.

..... Appellant

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Malakand Region at Saidu Sharif, Swat.
3. The District Police Officer Swat.
4. The Superintendent of Police, Investigation Swat.

..... Respondents

PARAWISE REPLY BY RESPONDENTS

Respectfully Shewith,

PRELIMINARY OBJECTIONS.

1. That the appeal is badly barred by Law & limitation.
2. That the appellant has not moved departmental appeal to the appellate authority i.e respondent No.02 in time.
3. That the appellant has got no Cause of action and locus standi to file the present appeal.
4. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
5. That the appellant has not come to the Tribunal with clean hands.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant has concealed the material facts from this Hon'ble Tribunal.

FACTS:

1. Correct to the extent that the appellant was enlisted as Constable in Police Department in 2003, but during service he remained absent from duty on several occasions and 10 minor punishments for willful absence from lawful duty were imposed upon him. List enclosed as annexure- "A".
2. Incorrect. Proper Charge Sheet coupled with statement of allegation was issued to the appellant and efforts for service upon the appellant through DFC Police Station Rahimabad were made but Ahmed Shah retired SI (father of the appellant) and others disclosed that the appellant has preceded abroad for laboring. Copy of charge sheet and statements enclosed as annexure "B", "B1", "C" and "C1".
3. Incorrect. Time barred departmental appeal was made to respondent No.01 instead of appellate authority i.e respondent No.02 after delay of about 08-09 years was examined and filed on merits.
4. Incorrect. The orders of the respondents are quite legal and in accordance with facts/rules. The appellant is not entitled for re instatement into service as he has willfully left the duty and gone abroad without any permission/leave.

GROUND:

- A. Incorrect. The orders of the respondents are based on facts, justice and in accordance with Law/Rules. The appellant deliberately absented himself from lawful duty and proceeded abroad without proper leave/permission.

B. Correct to the extent that the date of absence i.e 25/07/2007 has been inadvertently written instead of 25/07/2009 in dismissal order. Daily Diary Report No.11 dated 25/07/2009 and charge sheet reveal the correct date of absence i.e 25/07/2009. The error in the order of dismissal regarding absence period is a result of clerical mistake. There is no malafide or ill will on the part of respondents and the appellant has deliberately absented from duty and proceeded abroad.

C. Incorrect. Ex parte action against the appellant was taken after observing all codal formalities. Besides statements of father of appellant and locals, advertisement was also published in News Papers with the directions to all absented Police officials to re join their duties within 04 days. Copy of advertisement enclosed as annexure "D".

D. This para is evasive and misconceived. Appellant including other Police officials have fled away from the official duty without any permission during insurgency in Swat but the appellant did not re join his duty despite call/directions through Print Media.

E. Incorrect. As per the statements of father of appellant and others, the appellant has gone abroad without any permission or sanction of leave.

F. Incorrect. During operation against militants in Swat, only general public have migrated to other part of the county but the Police officials were performing their routine official duty and no Police officer was allowed to left their place of duty.

G. Incorrect. The case of appellant is on different footing as he proceeded abroad for laboring for a long period.

H. Incorrect. As stated above, the appellant has proceeded abroad and never appeared before the review committee constituted for Police officials who remained absent from duty during operation against militants.

I. Incorrect. As stated above, the case of appellant is on different footing and grounds than other re instated officials.

J. Incorrect. The appellant willfully absented and proceeded abroad without any permission or sanction of leave.

K. Incorrect. Willful absence from official duty and proceeding abroad without leave is amount to gross misconduct on the part of appellant.

L. Incorrect. During departmental probe, the appellant was not present in his country as he had proceeded abroad.


M. Incorrect. This para has already been explained in para No. 02 in detail.

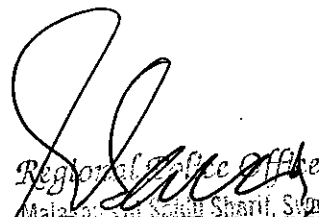
- N. Incorrect. There is no malafide on the part of respondents and departmental appeal of the appellant was moved to wrong forum and found badly time barred for about 08-09 years.
- O. Incorrect. The appellant has willfully left official duty and gone abroad without any permission/leave. After observing all codal formalities, he was dismissed from service.
- P. Incorrect. As stated above, the case of appellant is different with that of Abdul Hanan because the appellant had willfully absented himself and gone abroad.
- Q. Incorrect. The case of the appellant is neither identical nor similar with other cases. He has willfully absented from duty and gone abroad for laboring.

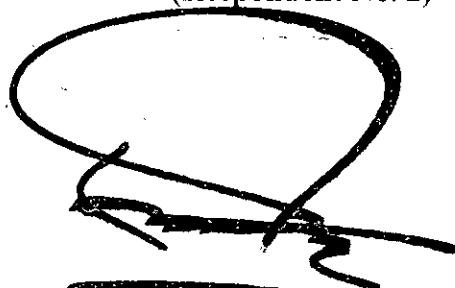
Respondents may be allowed to add more grounds/documents-at-the-time-of-arguments:


PRAYER:

Keeping in views the above facts and circumstances, it is humbly prayed that the appeal of appellant is devoid of legal force and badly time barred, may kindly be dismissed with costs:


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


 Regional Police Officer,
 Malakand Region Swat
 Regional Police Officer
 Malakand Region
 (Respondent No. 2)


 District Police Officer Swat
 (Respondent No. 3)


 Superintendent of Police
 Investigation Swat
 (Respondent No. 4)

4

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 447/2018.

Sher Shah S/O Ahmed Shah R/O Amankot, District Swat.

..... Appellant

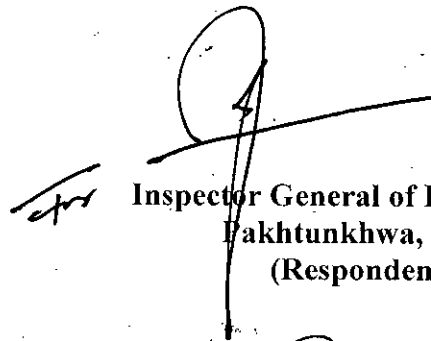
VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Malakand Region at Saidu Sharif, Swat.
3. The District Police Officer Swat.
4. The Superintendent of Police, Investigation Swat.

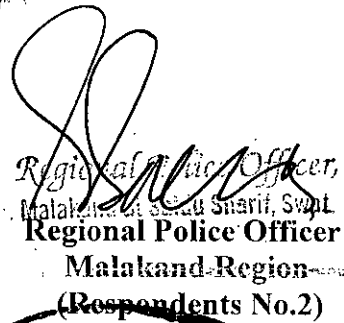
..... Respondents

AFFIDAVIT

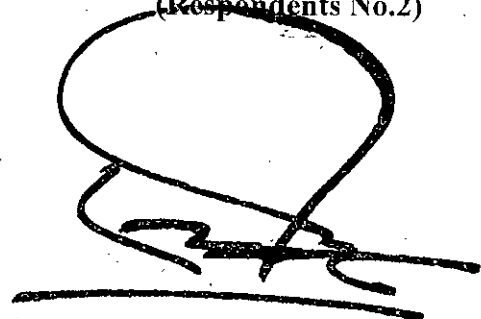
We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from the honorable Tribunal.



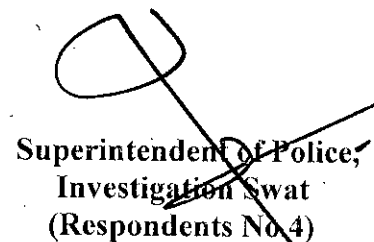
**Inspector General of Police, Khyber
Pakhtunkhwa, Peshawar
(Respondents No.1)**



**Regional Police Officer,
Malakand Region, Saidu Sharif, Swat.
Regional Police Officer
Malakand Region
(Respondents No.2)**



**District Police Officer, Swat.
(Respondents No.3)**



**Superintendent of Police,
Investigation Swat
(Respondents No.4)**

Service Appeal No. 447/2018.

Sher Shah S/O Ahmed Shah R/O Amankot, District Swat.

..... Appellant

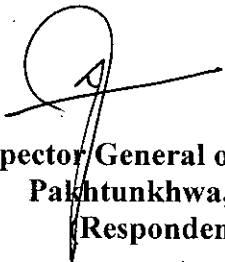
VERSUS

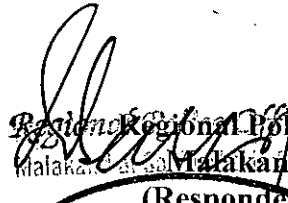
1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
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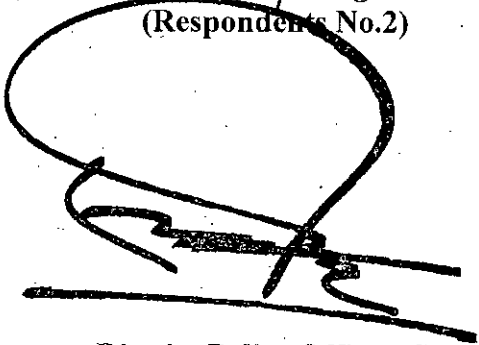
..... Respondents

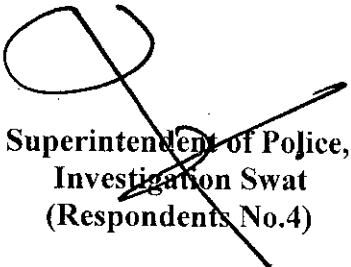
AUTHORITY LETTER

We, the above respondents do hereby authorized Mr. Mir Faraz Khan and Mr. Khawas Khan SI Legal Swat to appear in the Service Tribunal on our behalf on each date fixed in connection with titled Service Appeal and do whatever is needed.

For

**Inspector General of Police, Khyber
Pakhtunkhwa, Peshawar
(Respondents No.1)**


**Regional Police Officer
Malakand Region
(Respondents No.2)**


**District Police Officer, Swat
(Respondents No.3)**


**Superintendent of Police,
Investigation Swat
(Respondents No.4)**

Bad Entries/Minor Punishment detail of Constable Sher Shah
No.1159 Investigation Swat

Sr.No	Misconduct	Nature of punishment
01	Absent from duty w.e.f 18/05/2005 to 19/05/2005	Without pay
02	15/03/2005 to 16/03/2005 total 01 day	Without pay
03	11/03/2005 to 14/03/2005 total 01 days	Without pay
04	11/05/2005 to 13/05/2005 total 01 day	Without pay
05	16/01/2005 to 19/01/2005 total 03 day	Without pay
06	19/01/2005 to 19/01/2005 A.N.	Without pay
07	20/01/2005 to 25/01/2005 total 05 days	Without pay
08	31/12/2005 to 08/01/2005 total 08 days	Without pay
09	11/01/2005 to 14/01/2005 total 03 days	Without pay
10	13/02/2005 to 14/02/2005 total 01 day	Two days drill


Establishment Clerk
Investigation Swat
Investigation, Swat.

Annex. B/8

(7)


CHARGE SHEET

I Mr. Sajid Mohmand District Police Officer, Swat as competent authority hereby charge you, Constable Sher Shah No. 1159 of Investigation Wing, Swat as follows:-

That you, while posted to Region Office, Swat committed the following irregularities:

While posted to Region Office, Swat absented yourself from lawful duty with effect from 25-07-2009 uptill now vide D.D Report No. 12 dated 25-07-2009.

2. By reasons of the above, you appear to be guilty of misconduct under Section 3 of the (Removal from Service) Special Powers, 2000, and have rendered yourself liable to all or any of the penalties specified in Section - 3 of the Ordinance ibid.
3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer/Committee, as the case may be.
4. Your written defence, if any, should reach the Enquiry Officer/ Committee within the specified period, failing which it shall be presumed that you have no defense to put in and, that case ex parte action shall follow against you.
5. Intimate whether you desire to be heard in person.
6. A statement of allegations is enclosed.


District Police Officer, Swat.
mm/8

Annex - B/2

8

DISCIPLINARY ACTION

I Mr. Sajid Mohmand District Police Officer, Swat as competent authority, is of the opinion that Constable Sher Shah No.1159 of Investigation Wing, Swat, has rendered himself liable to be proceeded against as he committed the following acts / omissions within the meaning of Section 3 of the North-West Frontier Province Removal from Service (Special Powers) Ordinance, 2000: -

STATEMENT OF ALLEGATION

While posted to Region Office, Swat absented yourself from lawful duty with effect from 25-07-2009 uptill now vide D.D Report No. 12 dated 25-07-2009.

For the purpose of scrutinizing the conduct of said accused with the reference of the above allegations, an inquiry committee consisting of the following is constituted under Section-3 of the ordinance.

1. Inspector Fazal Wahid Khan 2. _____

The inquiry committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make within 30 days of the receipt of this order, recommendations as to punishment or other appropriate action, the accused.

The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Inquiry Committee.

No. 03 /E; dated 7-8 2009

District Police Officer, Swat

mf/178

Copy of above is sent to: -

1. Inspector Fazal Wahid Khan 2) _____

For initiating proceeding against the officer / official under the Provision contained in N.W.F.P./ Removal from Service (Spl: Power Ordinance, 2000)

3. Constable Sher Shah No.1159 of Investigation Wing, Swat.

With direction to appear the Inquiry Committee on the date time and place fixed by the Committee, for the purpose of the inquiry proceedings.

علاء

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تعارف نامہ

میں مسلمان ذیل رقم پر فخری کاروبار میں امرتسر کے محلہ میں
 کم سے کم شدتاً رقم 45 لاکھ روپے سے لے کر 10 لاکھ روپے تک
 امرتسر کے جو لوگوں میں سے ہیں۔ کافی علم و تجربہ سے
 وسیع خود سے نظر نہیں آتا ہے۔ سنہ 1919ء میں
 لکھنؤ اور محنت مزدوری کے سلسلے میں باہر ملک چلا گیا
 جہاں میں تعریف کرتا ہوں۔

شیر بازاران

Annual
Sum

(2) شیر بازاران
 شیر بازاران اور لکھنؤ
 سنہ 1919ء میں
 NIC. 15602-5954904-5

(1) شیر بازاران
 شیر بازاران اور لکھنؤ
 سنہ 1919ء میں
 NIC. 15602-4066970-5

Attested

289
 Yau
 D.P.S. R. Akal
 19/9/09

AAJ, The Largest Circulated Publication of NWFP

روزنامہ آج

پشاور پاکستان

12 صفحات

جلد 20 | 4 فروری 2009ء | نمبر 1430 | قیمت 9 روپے | ای ایم ای 25

نام پولیس اہلکاران جو بلا اجازت درخواست اپنے فرائضی منصبی سے غیر حاضر چلے آ رہے ہیں انکو
 زور سے اخبار مطاب کیا جاتا ہے کہ وہ اندر میں چاروں پہلے اپنے قبائلی پرو پورٹ کر کے ذریعہ تحقیق کو
 مطاب کرے بصورت دیگر تمام اہلکاران غیر حاضر کے خلاف کارروائی عمل میں لائی جائیگی۔

ڈسٹرکٹ پولیس آفیسر سوات

INF(SW)17

AAJ, The Largest Circulated Publication of NWFP

روزنامہ آج

پشاور پاکستان

12 صفحات

جلد 20 | 4 فروری 2009ء | نمبر 1430 | قیمت 9 روپے | ای ایم ای 25

نام پولیس اہلکاران جو بلا اجازت درخواست اپنے فرائضی منصبی سے غیر حاضر چلے آ رہے ہیں انکو
 زور سے اخبار مطاب کیا جاتا ہے کہ وہ اندر میں چاروں پہلے اپنے قبائلی پرو پورٹ کر کے ذریعہ تحقیق کو
 مطاب کرے بصورت دیگر تمام اہلکاران غیر حاضر کے خلاف کارروائی عمل میں لائی جائیگی۔

ڈسٹرکٹ پولیس آفیسر سوات

INF(SW)17

Attested to be
 true copy

[Signature]
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30-11-10

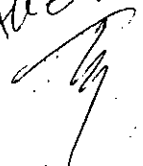
ORDER

WHEREAS as per the approval of the Provincial Police Officer, Khyber Pukhtunkhwa a Committee had been constituted vide this office No: 9871-77/E dated 16/11/2010, headed by DPO Swat to reconsider the cases of the personnel dismissed during militancy.

AND WHEREAS the Committee has, after thorough deliberations and scrutiny of the relevant record, submitted its findings vide No: 14732/E dated 29/11/2010 wherein 253 personnel have been recommended for reinstatement in service.

NOW THEREFORE as per the approval of the Provincial Police Officer, the following personnel recommended by the Committee are hereby reinstated in service with effect from the date of their dismissal. The period during which they remained out of service after dismissal and the period of their absence will be treated as leave without pay.

S.No.	Name and No.
1.	Ex-Constable Bahader Khan No. 1322
2.	Ex-HC Mian Said Rehman No.582
3.	Ex-Constable Muhammad Saeed No. 1543
4.	Ex-Constable Fida Hussain No. 751
5.	Ex-Constable Zia-ud-din No.1581
6.	Ex-Constable Sami Ullah No. 103
7.	Ex-Constable Sadiq Akbar No. 340
8.	Ex-Constable Ayaz Ali No. 1482
9.	Ex-PASI Ijaz Ali No.35 (Shaheed Son)
10.	Ex-Constable Farman Ali No.757
11.	Ex-Constable Shafiullah No. 298
12.	Ex-Constable Sher Ali Khan No. 443
13.	Ex-Constable Sabir Hussain No. 1421
14.	Ex-Constable Sharaf Khan No. 776
15.	Ex-Constable Fazal Anwer No. 1091
16.	Ex-Constable Asmat Ali No. 1304
17.	Ex-Constable Niaz Mohd No. 822
18.	Ex-Constable Abdul Wadod No. 151
19.	Ex-Constable Muhammad Shoaib No 112/RR
20.	Ex-Constable Shah Hussain No. 1257
21.	Ex-HC Abdul Wali Khan No. 378
22.	Ex-Constable Naseer Un-din No.1415
23.	Ex-Constable Ajmal Khan No. 1524

Accepted


24.	Ex-Constable Gul Faraz Khan No. 1512
25.	Ex-Constable Fazal Wa ood No. 1238
26.	Ex-Constable Sultanat Khan No. 556
27.	Ex-Constable Bakht Navab No. 141/RR
28.	Ex-Constable Saeed ul h No. 1043
29.	Ex-Constable Nasir Ali Jo.1074
30.	Ex-Constable Zahoor Ahmad No. 1038
31.	Ex-Constable Said Akhtar No.1118
32.	Ex-Constable Muhamrad Ali No.1850
33.	Ex-Constable Falak Ze No. 887
34.	Ex-Constable Adalat Khan No. 1254
35.	Ex-Constable Malak Zida No. 953
36.	Ex-Constable Zahoor Ahmad No. 165/RR
37.	Ex-Constable Akhtar A No. 49
38.	Ex-Constable Shakir Hussain No. 290
39.	Ex-Constable Akbar A No. 1306
40.	Ex-Constable Akber A No. 1528
41.	Ex-Constable Zoor Muhammad Khan No. 549
42.	Ex-Constable Muhamad Alam No 512
43.	Ex-Constable Amir Khatam No. 30
44.	Ex-Constable Naseer-ullah Khan No. 1428
45.	Ex-Constable Muhamad Zeb Khan No. 371
46.	Ex-Constable Hayat F uhd Khan No. 143
47.	Ex-Constable Subhar ullah No. 186/RR
48.	Ex-Constable Asad-ullah Jan No. 1226
49.	Ex-Constable Rashee Khan No. 33/RR
50.	Ex-Constable Habib- Rehman No. 205/RR
51.	Ex-Constable Abdulla No. 885
52.	Ex-Constable Niaz Al Shah No. 130/RR
53.	Ex-Constable Sher A im Khan No. 144/RR
54.	Ex-Constable Said M hmood Jan No. 615
55.	Ex-Constable Muhamad Shoalb No. 645
56.	Ex-Constable Ajab Khan No. 172
57.	Ex-Constable Tariq No. 1534
58.	Ex-Constable Karim ullah Khan No. 608
59.	Ex-Constable Shafi ullah No. 1506
60.	Ex-Constable Bashir, hmad No. 1457
61.	Ex-Constable Izzat Mond No. 1244
62.	Ex-Constable Shehz da No. 364
63.	Ex-Constable Umar aib No. 1448
64.	Ex-Constable Majee Khan No. 81

Atta Mes


65.	Ex-Constable Shamshe Khan No. 508
66.	Ex-Constable Sabz Ali Khan No. 1447
67.	Ex-Constable Baktawar Khan No. 1251
68.	Ex-Constable Bacha Wali No. 1434
69.	Ex-Constable Rasheed Ahmad No. 1791
70.	Ex-Constable Muhd Shariq Ali Khan No. 463
71.	Ex-Constable Adalat Khan No. 275
72.	Ex-Constable Mian Saif Parvez No. 752
73.	Ex-Constable Jahan Parvez No. 293
74.	Ex-Constable Rehmat Ali No. 927
75.	Ex-Constable Abdul Hanif No. 206
76.	Ex-Constable Bakht Ullah No. 92
77.	Ex-Constable Shokat Ali No. 1371
78.	Ex-Constable Zikriya No. 421
79.	Ex-Constable Zahir Ahmad No. 1450
80.	Ex-Constable Said Ahmad Khan No. 917
81.	Ex-Constable Bakht Zain No. 1694
82.	Ex-Constable Riaz Muhammad No. 1467
83.	Ex-Constable Zahid Ullah No. 1394
84.	Ex-Constable Bakht Nannoz No. 667
85.	Ex-Constable Mian Saif Gul No. 344
86.	Ex-Constable Hidayatullah Khan No. 335
87.	Ex-Constable Umar Rehman No. 728
88.	Ex-Constable Gohar Ali No. 625
89.	Ex-Constable Said Azam No. 42/RR
90.	Ex-ASI Aman Khan
91.	Ex-Constable Najib Ullah No. 1481
92.	Ex-Constable Atta Ullah No. 1514
93.	Ex-Constable Feroz Khan No. 961
94.	Ex-Constable Ubaid Ullah No. 190
95.	Ex-Constable Akbar Bach No. 852
96.	Ex-Constable Sher Ali No. 996
97.	Ex-Constable Muhammad Ayaz No. 488
98.	Ex-Constable Anwar-Ul-Haq No. 572
99.	Ex-Constable Muhammad Iqbal No. 369
100.	Ex-Constable Gohar Ali No. 642
101.	Ex-Constable Rizwan Ullah No. 1454
102.	Ex-Constable Yousaf Khan No. 350
103.	Ex-Constable Farooq No. 13
104.	Ex-Constable Muhammad Shoaib No. 1528
105.	Ex-Constable Ali Muhammad No. 1456

Attestes
/s/

106.	Ex-Constable Mumtaz / li No. 62
107.	Ex-Constable Shah Wali Khan No. 1502
108.	Ex-Constable Mian Khaliq Jan No. 383
109.	Ex-Constable Luqman / li No. 95
110.	Ex-Constable Jehan Ali No. 195
111.	Ex-Constable Musharraf Khan No. 1113
112.	Ex-Constable Amir Muhammad No. 176/RR
113.	Ex-Constable Alam Khan No. 1078
114.	Ex-Constable Sher Shah No. 862
115.	Ex-Constable Amjid Ali No. 1044
116.	Ex-Constable Sher Ali Khan No. 1353
117.	Ex-Constable Iftikhar No. 564
118.	Ex-Constable Bakht Akbar No. 1288
119.	Ex-Constable Taj Muhammad No. 1111
120.	Ex-Constable Alam Bashir Shah No. 1196
121.	Ex-Constable Liaqat Ali No. 225
122.	Ex-Constable Liaqat Ali No. 253
123.	Ex-Constable Azam Khan No. 1427
124.	Ex-Constable Habib Ullah No. 1446
125.	Ex-Constable Yar Badshah No. 933
126.	Ex-Constable Nadar Shah No. 468
127.	Ex-Constable Nazir Muhammad No. 1379
128.	Ex-HC Asghar Khan No. 31
129.	Ex-Constable Ali Rashid No. 1480
130.	Ex-Constable Fazal Rehman No. 784
131.	Ex-Constable Bakhtaj No. 1329
132.	Ex-Constable Ibrar Hussain No. 420
133.	Ex-Constable Zafar Alam No. 653
134.	Ex-Constable Muhd Rafiq No. 1633
135.	Ex-Constable Sajjad Khan No. 1518
136.	Ex-Constable Umar Kitab No. 1109
137.	Ex-Constable Ahmad Ali No. 1318
138.	Ex-Constable Rehmat Ali No. 175
139.	Ex-Constable Iqbal Hussain No. 1486
140.	Ex-Constable Rehman Ullah No. 1466
141.	Ex-Constable Ayaz Alam No. 320
142.	Ex-Constable Sadiq No. 1470
143.	Ex-Constable Shafiq-ur-Rehman No. 851
144.	Ex-Constable Bashir Ahmad No. 1377
145.	Ex-Constable Liaqat Ali No. 1345
146.	Ex-Constable Aziz-ullah Hassan No. 1170

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147.	Ex-Constable Zakir Hussain No. 308
148.	Ex-Constable Midrarullah No. 533
149.	Ex-Constable Muslim Khan No. 198/RR
150.	Ex-Constable Zafar Ali Shah No. 74
151.	Ex-Constable Najib Ullah Khan No.1439
152.	Ex-Constable Rahim Khan No. 571
153.	Ex-Constable Azam Khan No.45
154.	Ex-Constable Mian Saibacha No. 1362
155.	Ex-Constable Hazrat Azam No. 1570
156.	Ex-Constable Irfan Uddin No. 1549
157.	Ex-Constable Sher Hasan Khan No. 685
158.	Ex-Constable Muhd Raheeq No. 131/RR
159.	Ex-Constable Mian Saib Farooq No. 333
160.	Ex-Constable Muhammad Tahir No. 1703
161.	Ex-Constable Bahadur Nawab Khan No. 1635
162.	Ex-Constable Amir Khan No. 1604
163.	Ex-Constable Sami Ullah No. 1588
164.	Ex-Constable Muhammad Qasim No. 1688
165.	Ex-Constable Muhd. Araf Khan No. 1393
166.	Ex-Constable Asmat Ali No. 1723
167.	Ex-Constable Farhad Ali No. 1761
168.	Ex-Constable Mian Saib Ghani No. 1689
169.	Ex-Constable Inam Ullah No. 1145
170.	Ex-Constable Umar Farooq No. 1677
171.	Ex-Constable Israr Ahmad No. 1622
172.	Ex-Constable Amal Khan No. 1569
173.	Ex-Constable Rehmat Ali No. 496
174.	Ex-Constable Zara Wahab No. 134
175.	Ex-Constable Anwar Ullah No. 1666
176.	Ex-Constable Bakht Khan No. 1800
177.	Ex-Constable Anwar Ali No. 1574
178.	Ex-Constable Aziz Ullah Khan No. 1591
179.	Ex-Constable Hazrat B. Ali No. 1776
180.	Ex-Constable Farman Ali No. 217/RR
181.	Ex-Constable Muhd Ali Khan No. 1774
182.	Ex-Constable Asghar Ali Khan No. 1720
183.	Ex-Constable Abdullal No. 1661
184.	Ex-Constable Mohamrad Azim No. 971
185.	Ex-Constable Said Sarfullah No.1600
186.	Ex-Constable Samin Khan No. 1724
187.	Ex-Constable Salman Ashar No. 1575

Accepted
by

22


188.	Ex-Constable Hayat Ali	No. 1614
189.	Ex-Constable Liaqat Ali Khan	No. 1414
190.	Ex-Constable Yaqub Khan	No. 1601
191.	Ex-Constable Farman Ali	No. 1069
192.	Ex-Constable Rehmat Ali	No. 1679
193.	Ex-Constable Fayaz Ali	No. 914
194.	Ex-Constable Wali Ahmad	No. 841
195.	Ex-Constable Barkat Ali Khan	No. 190/RR
196.	Ex-Constable Nazir Mahmood	No. 1771
197.	Ex-Constable Mohim Esha	No. 1608
198.	Ex-Constable Muhd. Kishif	No. 1579
199.	Ex-Constable Nisar Ahmad	No. 1565
200.	Ex-Constable Fazal Haq	No. 1589
201.	Ex-Constable Ajab Khan	No. 1553
202.	Ex-Constable Shah Ali Yar Khan	No. 1645
203.	Ex-Constable Hazrat Ali	No. 1797
204.	Ex-Constable Zia Ullah	No. 104/RR
205.	Ex-Constable Naeem Iqbal	No. 1716
206.	Ex-Constable Amjid Ali	No. 1624
207.	Ex-Constable Farhad Ali	No. 127
208.	Ex-Constable Hazrat Usman	No. 1691
209.	Ex-Constable Umar Zaman	No. 160/RR
210.	Ex-Constable Zafar Ali	No. 159
211.	Ex-Constable Saeed Ullah	No. 1513
212.	Ex-Constable Sher Badar Shah	No. 211/RR
213.	Ex-Constable Arif Ali Shah	No. 828
214.	Ex-Constable Fazal Ahmad	No. 1647
215.	Ex-Constable Abdur Rehman	No. 1607
216.	Ex-Constable Muhammad Ikram	No. 240
217.	Ex-Constable Inayat Ullah	No. 1665
218.	Ex-Constable Sajid Ullah	No. 1672
219.	Ex-Constable Karim Ullah	No. 1788
220.	Ex-Constable Umar Muhammad	No. 1361
221.	Ex-Constable Nawab Rehman	No. 1664
222.	Ex-Constable Zai Ullah Khan	No. 9/RR
223.	Ex-Constable Qayum Khan	No. 1586
224.	Ex-Constable Imran Ali	No. 531
225.	Ex-Constable Nasir Ali	No. 1623
226.	Ex-Constable Riaz Ali	No. 1559
227.	Ex-Constable Haider Ali	No. 1667
228.	Ex-Constable Badsha Muhammad	No. 142/RR

Attested
/s/

23

229.	Ex-Constable Sher Zaman No. 1167
230.	Ex-Constable Muhammad Jan No. 1708
231.	Ex-Constable Mian Gul Bacha No. 1696
232.	Ex-Constable Salf Ullah No. 1769
233.	Ex-Constable Zahir Ullah No. 1644
234.	Ex-Constable Parveez Khan No. 65/RR
235.	Ex-Constable Muhammad Naeem No. 1746
236.	Ex-Constable Fazal Bacha No. 605
237.	Ex-Constable Barkat Ali No. 1312
238.	Ex-Constable Amir Zeb No. 1787
239.	Ex-Constable Kalim Ullah Jan No. 1656
240.	Ex-Constable Zai-ur-Rehman No. 1694
241.	Ex-Constable Muhammad Alam No. 1730
242.	Ex-Constable Fazal Hayat No. 1658
243.	Ex-Constable Hazrat Nawaz Khan No. 721
244.	Ex-Constable Ikram Ullah No. 1606
245.	Ex-Constable Tariq Pahim No. 1782
246.	Ex-Constable Wali Khan No. 212/RR
247.	Ex-Constable Abdali Khan No. 188/RR
248.	Ex-Constable Muhammad Parvez No. 63/RR
249.	Ex-Constable Muhammad Zahid No. 71/RR
250.	Ex-Constable Sardar Ali No. 45/RR
251.	Ex-Constable Luqman No. 95
252.	Ex-Constable Bahad Ali No. 4688/FRP
253.	Ex-Constable Sher Arzal No. 4388/FRP

Order announced.


(WAZI JAMIL-UR-REHMAN)
Deputy Inspector General of Police,
Malakand Region, Saidu Sharif, Swat.
SAIF

No. 10214-16/E,
Dated 30/11/2010.

Copy for information and necessary action to the:-

1. Provincial Police Officer, Khyber Pukhtoon Khwa, Peshawar.
2. District Police Officer, Swat.
3. Superintendent of Police, FRP, Swat.

Attested

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(20)

OFFICE ORDER

WHEREAS as per the approval of the Provincial Police Officer, FR, Pukhtunkhwa a Committee had been constituted vide this office No:9871 dated 16/11/2010, headed by DPO Swat to reconsider the cases of the persons absented during militancy.

AND WHEREAS the Committee has, after thorough deliberation scrutiny of the relevant record, submitted its findings vide No:89/OASI, 04/01/2012 wherein 12 personnel have been recommended for reinstatement service.

NOW THEREFORE as per the approval of the Provincial Police Officer, following personnel recommended by the Committee are hereby reinstated service with effect from the date of their dismissal. The period during which remained out of service after dismissal and the period of their absence will be treated as leave without pay.

S.No	Name and No.
1.	Ex-Constable Minhaj-ud-Din No.139
2.	Ex-Constable Zahoor Hussain No.1738
3.	Ex-Constable Ali Baz No.501
4.	Ex-Constable Muhammad Israr.No.118
5.	Ex-Constable Attaullah No.924
6.	Ex-Constable Muhammad Ali No.1653
7.	Ex-Constable Fazal Hanan No.1504
8.	Ex-Constable Ikram No.1189
9.	Ex-Constable Qaisar Ali Shah No.675
10.	Ex-Constable Bashir Ahmad No.270
11.	Ex-Constable Parwanat Khan No.30
12.	Ex-Constable Fazal Rabbi No.579

Order announced.

(AKHTAR HAYAT KHAN)
Deputy Inspector General of Police
Malakand Region, Saidu Sharif, Swat

No. _____ /E,

Dated 07/02/2012

Copy for information and necessary action to the :-

1. Provincial Police Officer, Khyber Pukhtunkhwa, Peshawar.
2. District Police Officer, Swat.

AKHTAR HAYAT KHAN
[Signature]

[Signature]

claimed, cannot be extended to him. It is further to state that the Honourable Supreme Court of Pakistan had taken a serious view in its judgment reported as 1998 PLC (CS) 1089 and the Lahore High Court in 1998 PLC (CS) 832 regarding the political interference in service matters so much so that it was observed that the politicians found involved in the affairs of the civil servants could be declared disqualified. The spirit behind this is that the political interference not only disturbs the normal working of the Governmental organizations but also cultivates political culture which does not lie in the public interest and frequent political interference adversely affect the smooth functioning of the various Governmental organisations, public interest and the merits as well. Politician have got a definite set of activities as per the Constitution of the Islamic Republic of Pakistan and the various enactments, made thereunder.

13. As a sequel to the aforesaid discussion, this appeal fails and is hereby dismissed leaving the parties to bear their own costs.

14. However, copies of this judgment shall be sent to the appellant, respondents and all other concerned as required under Rule 21 (1) of the Service Tribunals (Procedure) Rules, 1974.

(S.S.H.)

Appeal dismissed.

PLJ 2002 Tr.C. (Services) 93
[Federal Service Tribunal, Islamabad]

Present: JUSTICE (RETD.) JALAL-UD-DIN AKBARJI, CHAIRMAN, DR. AKHTAR HASAN KHAN AND ABDUL RAZZAQUE, MEMBERS.

RAIDULLAH KHAN--Appellant

versus

EXECUTIVE ENGINEER NO. II WAPDA, MARDAN
and others--Respondents

Appeal No. 43 (P) (C.S.) 2001, decided on 13.11.2001.

Pakistan WAPDA (Efficiency and Discipline) Rules, 1978--

---Rr. 4 & 5--Service Tribunals Act (LXX of 1973), S. 5(1)--WAPDA employee--Dismissal from service on basis of *ex-parte* proceedings on assumption that employee was absconding in a murder case--Sessions Judge meanwhile acquitted employee and thereafter, he filed Departmental appeal against his dismissal which was rejected--Service appeal against his dismissal was rejected--Service appeal was filed with a delay of 2 years 8 months and 16 days with application for condonation of delay--Appellant admittedly was not served any charge sheet. Del. was

5
Delay in Appeal considered

involved in a murder case or any other criminal case and was also not habitual absentee--Appellant had earned pension by long service in the Department and had earned pension not only for himself but also for his dependants which cannot be denied to him because of his un-blêmished service record--Impugned order of "removal from service" was modified and varied to "compulsory retirement from service" with effect from specified date.
[Pp. 95, 97 & 98] A, B & C

Mr. Adam Khan, Advocate for Appellant.

Mr. Manzor Ali, Senior Clerk, PESCO, Mardan as departmental representative.

Date of hearing: 7.11.2001.

JUDGMENT

Justice (Retd.) Jalal-Ud-Din Akbarji, Chairman.--Raidullah Khan Ex-Naib Qasid, WAPDA Sub Division Garhi-Kapura Mardan, appellant herein, has filed this appeal on 28.3.2001 alongwith petition for condonation of delay, from the following impugned order dated 11.7.1998:

"No. 9968-71

Dated 11.7.1998

(OFFIC ORDER)

Mr. Raidullah N/Q S/O Nasrullah village Kot Daulat Zai P.O Garhi Kapura Distt. Mardan of SDO (E) Garhi Kapura was involved in a murder case *vide* FIR No. 26/147 dt: 19/4/1997, Police Station Shahbaz Garhi under Section 302/34.

He was placed under suspension *vide* T/O Order No. 17547-49 dated 16.8.1997 on the report of SDO (E) Garhi Kapura *vide* his Letter No. 1711 dt: 8.5.1997.

A charge sheet was issued *vide* T/O No. 19473 dt: 3.9.1997 and was served upon the official at his home address through registered post *vide* SDO (E) Garhi Kapura L/No. 3694 but the same was received back undelivered from the postal Authority that the official is absconder in a murder case.

Final show-cause notice was published in a WAPDA Khabar Nama dt: 10/12/1997 *vide* Director Public Relation (Khabar Nama) WAPDA Lahore office memo: No. MRD-SHO (K) 1779-80 dated 5.5.1998.

A committee was constituted *vide* T/O No. 6857-58 dated 28.5.1998 and the result of enquiry committee was received *vide* SDO (E) Garhi Kapura No. 3181 dt: 22.6.1998 recommending *ex-parte* action against the official.

Now, therefore, in exercise of the administrative powers conferred on me under Pakistan WAPDA E&D Rules 1978 and Secretary WAPDA Lahore office Memo No. S/DD/(Rules)

07474/Vol-V/28820-29419 dated 23.12.81 the undersigned in the capacity of the competent authority has decided as under:-

Mr. Raidullah N/Q S/O Nasrullah of Garhi S/Divn. is hereby "REMOVED" from service w.e.f. 19.4.1997."

Sd/-

XEXI "E" No. II Mardan."

1. The brief facts of the appeal are that the appellant was employed in WAPDA as Naib Qasid on 30.4.1976 and was implicated in case FIR No. 145 dated 19.4.1997, Police Station Shahbaz Garhi, Mardan under Section 302/34 PPC. The appellant remained absconder and ultimately by order dated 15.9.1999, Learned Session Judge/Special Judge, Mardan acquitted the appellant alongwith others on compromise without paying blood money/Diyat. The appellant thereafter filed appeal in this Tribunal. The respondent have raised the objections that the appellants has no *locus-standi*, materials facts have been suppressed and the appeal is hopelessly time barred. It is denied that the appellant informed the department of involvement in criminal case and applied for leave and in fact the appellant was absconder and fugitive of law.

2. The arguments of the learned counsel for the appellant and the departmental representative of the respondents were heard on 7.11.2001 and the following order sheet was recorded:

"For the facts and reasons recorded later on and apropos to our order sheet dated 24.5.2001 the impugned order dated 11.7.1998 of 'removal from service' is modified and varied to 'compulsory retirement from service' w.e.f. 19.4.1997 within the meaning of Pakistan WAPDA (E&D) Rules, 1978 under sub-section (1) of Section 5 of the Service Tribunal Act, 1973. No order as to costs."

The order sheet dated 24.5.2001 is also reproduced as under:

"Raidullah Khan, Naib Qasid, WAPDA Sub-Division Garhi Kapura, Mardan, was implicated in case FIR No. 145 dated 19.4.1997, Police Station Shahbaz Garh under Section 302/34 PPC and the learned Session Judge by judgment dated 15.9.1999 acquitted the appellant from the charges. Meanwhile respondent WAPDA proceeded against him under the Pakistan WAPDA Employees E&D Rules, 1978 and by impugned order dated 11.07.1998 removed the appellant from service under the said rules.

Learned counsel contends that the appellant could not attend to his duties because of the said implication in the above-mentioned FIR and on acquittal reported arrival for duty but found that his service have been terminated. Learned counsel refer to F.R. 54 and submitted that on acquittal a civil servant is entitled to resume his duties and, therefore, the removal from service of the appellant is

of the appellant because the appellant had remained abstonder and, therefore, there was no need of service of charge sheet upon the appellant further. We will examine F.R. 54 in the present perspective as to applicability of F.R. 54 and of arrival for duty of a civil servant who has been removed from service who on two counts; one whether in these circumstances of the case in the appeal a civil servant is entitled to fresh appointment and/or the order of 'removal from service' is to be upheld because the post cannot be left vacant for a civil servant who is implicated in a criminal case and on second count whether F.R. 54 has efficacy in the present scenario because a large number of appeals are being heard by this Tribunal in the same matter. Admit. Notice accordingly. Cost and Security be deposited. A copy of this order be sent alongwith notices. Date in office.

Misc. Petition No. 364/2001. :(Petition for condonation of delay).--Notice of this Petition be also served upon the respondents."

3. The appellant in his Petition (Misc. Petition No. 364/2001. Petition for Condonation of Delay) has stated on affidavit that the appellant order was a not communicated to him at all and he learnt about it on 27.2.2000 when he visited the office of the SDO concerned. The appellant order has not been dismissed for the reasons that the department appeal is not within time but was disposed off on merits. The respondent WAPDA has resisted the petition by stating that the constents are false, incorrect and misleading. The appellant is to explain day to day as required under the law. It will not be irrelevant to reproduced the Appellate Order dated 27.6.2000:

"No. 15763/ES/MC-6/4
The XEN PPESCO Mardan-2.

Dated 27.6.2000

Subject: APPEAL

The undersigned in the capacity as "Appellate Authority" under Rule 11 of Pakistan WAPDA Employees (E&D) Rules 1978, after due consideration the appeal of Mr. Raidhllah Ex-N/Qasid has decided to up-held the decision issued *vide* your O/O No. 9968-71 dated 112.7.1998 and rejected the appeal of the appellant.

Sd/-

S.E. PESCO M/C MARDAN"

It is on record of the appeal that the appellant was initially suspended by order dated 16.8.1997 because of involvement in the murder case (Page 18 of the appeal). A charge sheet was sent by letter dated 17.9.1997 through registered post on the home address of the appellant but it seems that that was returned and the Executive Engineer records in his opinion that the appellant is absconder in murder case which render him liable for disciplinary action (Page 27 of the appeal). There is no other cogent evidence on the file of the appeal to suggest that the appellant was

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absconder. It is in admitted fact that the appellant was not served any charge sheet or statement of allegations because of presumed reasons of the appellant being an absconder. The appellant was acquitted by the Learned Session Judge, Mardan *vide* order dated 15.9.1999 and soon thereafter the appellant filed departmental appeal which was rejected *vide* above reproduced letter dated 27.6.2000 which was not conveyed to the appellant and on an inquiry from SDO came to know of the same on 27.2.2001 wrongly written in the petition 27.2.2000 and after obtaining a copy of the same filed the appeal in this Tribunal on 28.3.2001. *Prima facie* there is a delay of 2 years 8 months and 16 days in filing the appeal, if it is reckoned from the impugned office order dated 11.7.1998. Since we were deciding the appeal on merits. therefore, the delay in filing appeal in this Tribunal in the circumstances of the case in the appeal as stated above, is condoned. B

4. This Tribunal in an another Appeal No. 244 (P) (CS)/2000. Judgment dated 13.11.2001 (*Naimatullah Khan vs. Officer Commanding Rear Air Headquarter (Unit) Air Base, Peshawar and others*) it was held as under:

"The question of terms and conditions of service of such a civil servant has been agitating our minds for some time. The long absence because of protracted criminal litigations which in this case is for more than 8 years will not entitle any civil servant for reinstatement in service because the absence of a civil servant for more than 3 years even after grant of any kind of leave due results into many adjustment in the terms and conditions of service of the incumbent of the post and the vacancies being filled in due to absence of the civil servants. The criminal and civil litigations in which a civil servant is involved, now a days normally take sufficient time for decision. The old FRs including the present CSR will be of no use to a civil servant who remained absent from the place of duty because of the said litigations for sufficient long time as earlier the criminal or civil litigations were resolved at the earliest and as stated before the adjustment of the incumbent of the posts of the civil servants and filling in the vacancies do not materialize during short period of litigations and a civil servant is easily accommodated in service by reinstating him after the grant of any kind of leave due.

The appellant had remained "Proclaimed Offender" and, therefore the benefit for being fugitive from law cannot be extended by this Tribunal which will be resulting into countenance of the abscondence of an accused civil servant.

5. It is also admitted fact that the appellant has unblemished service record. The appellant was never before involved in a murder case or any other criminal case and was also not habitual absentee since his employment on 30.4.1976. The appellant has earned pension for the services rendered not C

For these facts and reasons we had recorded the brief order on 7.11.2001.

The appeal is disposed off accordingly.

Parties be informed.

(S.S.H.)

Orders accordingly.

PLJ 2002 Tr.C. (Services) 98
[Sindh Service Tribunal, Karachi]

Present: JUSTICE (RTD.) ABDUL GHANI SHAIKH CHAIRMAN; BHAUDDIN SIRHINDI, MEMBER-I AND ABDUL RASHID MEMON, MEMBER-II

Professor (Dr.) M. FAHEEMUDDIN--Appellant

versus

GOVERNMENT OF SINDH, and 2 others--Respondents

Appeal No. 88 of 2000, heard on 21.2.2001.

(i) **Sindh Board of Intermediate and Secondary Education Ordinance, 1972--**

---Ss. 15(1), 14(2)--S. 15(1) indicates that no appointment could be made for more than three years at a time and S. 14(2) empowers Controlling Authority to make appointments on such terms and conditions as may be determined by him. [P. 100] A

(ii) **Sindh Board of Intermediate and Secondary Education Ordinance, 1972--**

---Ss. 15(1), 14(2)--Even if post is a tenure post, appointment against such post can be for any period and on such terms and conditions which are determined by Controlling Authority--Appointment ends on attaining age of superannuation if no other extension/contract is offered. [P. 102] B

Mr. Akhtar Hussain, Advocate for Appellant.

Mr. Muhammad Qasim Mirjat, AAG for Official Respondents.

Mr. M.M. Aqil Awan, Advocate for Respondent No. 3.

Date of hearing: 21.2.2001.

JUDGMENT

Mr. Abdul Rasheed Memon (Member-II).--The appellant came before this Tribunal against Notification No. GS/10(3)30/1998/ (SOIII) dated 2nd December, 1999 wherein on attaining age of superannuation while posted as Chairman, Board of Intermediate Education, Karachi he was retired from Government Service with effect from 28-11-1999. While citing his educational background and the lengthy career the Appellant has stated that on February 19, 1998 his services were placed at the disposal of

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