

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	31.08.2016	<p align="center"><u>BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR</u></p> <p align="center">Appeal No. 872/2014</p> <p align="center">Mr Jan Said Versus the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others.</p> <p align="center"><u>JUDGMENT</u></p> <p align="center"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Appellant with counsel and Mr. Muhammad Jan, Government Pleader alongwith Mr. Aziz Shah, Head Constable for respondents present.</p> <p>2. Mr. Jan Said Ex-Constable hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 22.05.2016 vide which departmental appeal against original order dated 16.4.2014 was rejected.</p> <p>3. Brief facts giving rise to the present appeal are that the appellant was appointed as Constable in the year 1996. That while serving as constable he was charge sheeted under Police Rules, 1975 for absence from duty w.e.f. 18.08.2013 till 18.09.2013 and, after enquiry, dismissed from service vide impugned order dated 16.04.2014 where-against he preferred departmental appeal which was also rejected on 22.05.2014 and hence the instant service appeal on 19.06.2014.</p>

[Handwritten signature]
31.08.16

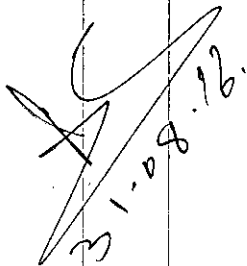
4. Learned counsel for the appellant has argued that the appellant was not deliberately absent from duty as he was not in a position to attend his duty due to fracture of leg. That the enquiry was conducted in the absence of the appellant. That 16 years service put in by the appellant was not taken into account and a very harsh penalty was imposed in the shape of dismissal from service.

Reliance was placed on case-law reported as 2007-PLC (C.S) 1318, 2015-PLC (C.S) 117 and 2006-SCMR-1120.

5. Learned Government Pleader has argued that the stance taken by the appellant regarding his ailment was a subsequent development as no such stance taken by him in his departmental appeal and other applications etc. submitted by the appellant. That the appellant was a habitual absentee and was therefore, dismissed from service which penalty is not harsh and which was imposed keeping in view the habitual absence of the appellant.

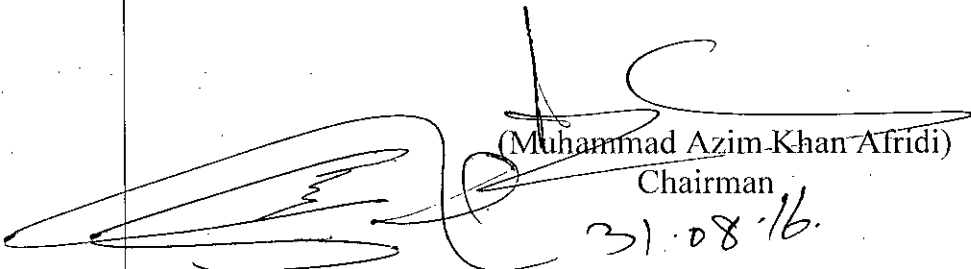
6. We have heard arguments of learned counsel for the parties and perused the record.

7. The appellant was proceeded against for willful absence w.e.f. 18.08.2013 till framing of charge i.e. 18.08.2013 and vide impugned order dated 16.04.2014 he was dismissed from service and absence his period was treated as leave without pay. The stance of the appellant before the appellate authority was not on the ground of fracture of leg or ailment, therefore, we do not deem appropriate to direct that the stance of the appellant


31-08-12

may be considered in denovo enquiry after re-opening of the case. The appellant was appointed in the Police Force in the year, 1996 and till date of dismissal he had put in considerable service and vide impugned order of dismissal he has been deprived of the benefits of his service.

8. Keeping in view the said circumstances of the case we are of the view that the punishment in the shape of dismissal from service for the alleged absence of the appellant was harsh and that safe administration of justice would justify the modification of the said major punishment. We, therefore, partially allow the instant appeal by modifying major punishment of dismissal from service into that of compulsory retirement from service w.e.f. 16.04.2014. The appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.


(Muhammad Azim-Khan Afridi)
Chairman
31.08.16.

(Pir Bakhsh Shah)
Member

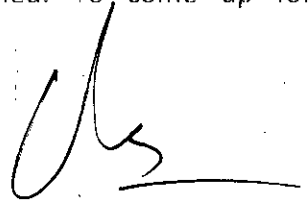
ANNOUNCED
31.08.2016

30.06.2016

Counsel for the appellant and Assistant AG for the respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. Adjourned. To come up for arguments on ~~3/8~~ 2016 before D.B.



MEMBER



MEMBER

5

26.02.2015

Counsel for appellant and Mr. Hayat Muhammad, Reader to DSP for respondents alongwith Addl: A.G present. Requested for adjournment. Adjourned for written reply/comments to 28.05.2015 before S.B.


Chairman

6

28.05.2015

Appellant in person and Mr. Hayat Muhammad, Reader to DSP alongwith Addl: A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 10.11.2015.


Chairman

10.11.2015

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Rejoinder on behalf of the appellant submitted, copy of which placed on file. To come up for arguments on 24-3-2016.


Member


Member

24.3.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Since the court time is over, therefore, case to come up for arguments on

30.6.16


MEMBER


MEMBER

Appeal No. 872/2014
Mr. Jam Suid.

28.08.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Through the instant appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, the appellant has impugned order dated 16.04.2014 vide which the appellant was awarded major penalty of dismissal from service. Against the above said impugned order appellant filed departmental appeal which was rejected by respondent No. 2 vide order dted 22.05.2014, hence the instant appeal on 19.06.2014.

Since the matter pertains to terms and conditions of service of the appellant, hence admit for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply. To come up for written reply/comments on 20.11.2014.

Appellant Deposited
Security & Process Fee
Rs. 3,000/- Bank
Receipt is Attached with File.

[Signature]
8/9/14

[Signature]

Member

28.08.2014

This case be put before the Final Bench I for further proceedings.

[Signature]
Chairman

20.11.14

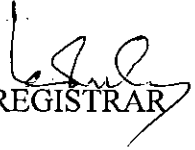
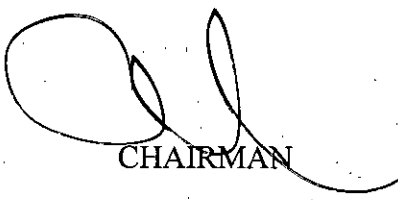
The Tribunal is incomplete,
has been, can be adjourned to 20.11.14

[Signature]
Read

Form - A
Form of Order Sheet

Court of _____

Case No. 872/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19/06/2014	<p>The appeal of Mr. Jan Said presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	20-6-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>28-8-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

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

Appeal No. 372 /2014

Mr. Jan Said


V/S Police Department.

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of Medical Prescription	- A -	05-18
3.	Copy of Charge sheet dated 18.09.2013	- B -	19
4.	Copy of Enquiry Report (24.10.2013)	- C -	20
5.	Copy of Final Show Cause Notice (21.01.2014)	-D-	21
6.	Copy of Reply to Show Cause Notice.	-E-	22
7.	Copy of Dismissal Order dated 16.4.2014	-F-	23
8.	Copy of Appeal	-G-	24
9.	Copy Rejection Order (22.5.2014)	-H-	25
10.	Vakalat Nama	---	26

APPELLANT

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AND

TAIMUR ALI KHAN
ADVOCATE, PESHAWAR.

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

Appeal No. 872 /2014

Mr. Jan Said,
Ex-Constable No.1002,
P.S. Michini Gate, Peshawar City. Peshawar.

909
19-6-2014

APPELLANT

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. The Superintendent of Police City, Peshawar.

RESPONDENTS

.....

**APPEAL UNDER SECTION-4 OF THE
KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL ACT, 1974 AGAINST THE ORDER
DATED 22.05.2014 WHEREBY THE APPEAL
OF THE APPELLANT AGAINST THE ORDER
DATED 16.04.2014 HAS BEEN REJECTED
FOR NO GOOD GROUNDS.**

.....

PRAYER:

.....

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 22.05.2014 AND 16.04.2014 MAY BE SET ASIDE AND THE RESPONDENT MAY BE DIRECTED TO REINSTATE THE APPELLANT INTO SERVICE WITH ALL BACK BENEFIT. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

.....

Jan Said
19/6/14

RESPECTFULLY SHEWETH:

1. That the appellant joined the Police Force in the year 1996 and has good record of service.
2. That the appellant has qualified all trainings and courses in his service period.
3. That the appellant was seriously injured due to which the appellant remained absent from his duty. Copy of Medical Prescriptions are attached as Annexure-A.
4. That charge sheet was issued to the appellant in which the appellant was charged under Police Rules 1975 for absence from duty with effect from 18.8.2013 till 18th September, 2013 without any leave or permission from his senior. Copy of Charge is attached as Annexure-B.
5. That the enquiry was conducted against the appellant without giving any chance of defense in the proceedings and that was completed at the back of appellant. Copy of Enquiry Report is attached as Annexure-C.
6. That final show cause notice was issued to the appellant in which the appellant was directed to give his reply within seven days. In his reply, the appellant mentioned that he was seriously injured and under treatment due to which he was unable to perform his duty. Copies of Show Cause Notice and Reply are attached as Annexure-D and E.
7. That the services of the appellant has been dismissed and his absence is treated as leave without pay in a single order dated 16.4.2014 passed under Police Rules 1975. Copy of Dismissal Order is attached as Annexure-F.
8. That against the dismissal order, the appellant submitted departmental appeal on 22.4.2014 which was rejected on 22.5.2014. Copies of Appeal and Rejection Order are attached as G and H.

9. That now the appellant comes to this Honourable Tribunal on the following grounds amongst the others.

GROUND:

- A) That the impugned orders passed against the appellant, which are against the law, fact, rules, norms of justice and material on record which is not tenable under the law.
- B) That the appellant has not been dealt with according to law and rules.
- C) That the appellant has not been dealt in accordance with the relevant law and rules because the appellant was a civil servant of the Province and for Provincial employees the relevant law and rules are E&D Rules 2011 but the appellant was proceeded under police Rules 1975 which is not tenable.
- D) That the enquiry committee concluded its proceedings in ex-parte manner without giving any chance of defense or examining the medical record. Thus the appellant was condemned unheard.
- E) That the authority had already declared the absence period as leave without pay, in the order dated 22.5.2014 which means that the authority had condoned the absence and there remained no grounds to penalize the appellant on the basis of absence. Thus, the dismissal of the appellant on condoned absence is not sustainable and the respondents were ought to adjust the appellant on duty.
- F) That the penalty imposed is very harsh and not commensurate with the guilt of appellant and that too passed in violation of norms of justice and material on record.
- G) That the appellant belongs to a poor family and has no other source of income to support his family.

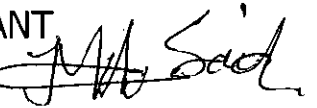
Moreover, the appellant was a well trained constable.

H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.


It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

APPELLANT

Jan Said



THROUGH:



(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AND

TAIMUR ALI KHAN
ADVOCATE, PESHAWAR.

Annex - A

5

Khyber Teaching Hospital, Peshawar

OUT - PATIENTS DEPARTMENT

Rs: 10/-



S.No. 167600

Patient ID: 14482690913

OPD

Name: JAN SAID

Gender: MALE

30 YEARS

Rate: 10

Referred To: SURGICAL

Date: 25-SEP-13

Time: 10:44:51

Address: PESHAWAR

Referred to orthopaedic OPD/ward

Dr. Augustin

Tr. pm's In

25-9-2013

STP
A/C

8

Khyber Teaching Hospital, Peshawar

OUT - PATIENTS DEPARTMENT

Rs: 10/-

183



S.No: 9802

Patient ID: 14397450913 *محمد نواز* OPD
 Name: TAN SAID
 Gender: MALE 31 YEARS Rate: 10
 Referred To: ORTHROPAEDIC
 Date: 19-SEP-13 Time: 11:05:07
 Address: PESHAWAR

محمد نواز اور کوری میں

نور احمد دیکھیں

For F.B removal

[Signature]
D. Mee

ATTESTED *[Signature]*

Annex

"B"

19

CHARGE SHEET

1. Whereas I am satisfied that a Formal Enquiry as contemplated by Police Rules 1975 is necessary and expedient.
2. And whereas, I am of the view that the allegations if established would call for major/minor penalty, as defined in Rule 3 of the aforesaid Rules.

Now therefore, as required by Rule 6 (1) of the said Rules, I Ismail Kharak (PSP) Superintendent of Police, City Division, Peshawar hereby charge you Constable Jan Said No.1002 of PS Paharipura Peshawar on the basis of following allegations:-

"You Constable Jan Said No. 1002 absented yourself from duty w.e.from 18.08.2013 till to date with out any leave/permission from your seniors. Therefore you have been recommended for proper departmental proceedings [redacted] under the Rule 1975.

3. By doing this you have committed gross misconduct.
4. And I hereby direct you further under Rules 6 (1) of the said Rules to put in a written defence with in 7 days of the receipt of this Charge Sheet as to why the proposed action should not be taken against you and also stating at the same time whether you desire to be heard in person.
5. And in case your reply is not received within the specific period it shall be presumed that you have no defence to offer and ex-parte action will be taken against you.

(ISMAIL KHARAK) *[Signature]*
Superintendent of Police City,
Peshawar

No. 7587 /PA

Dt: 18 /September, 2013.

TESTED
[Signature]

Amey C

20

ENQUIRY REPORT


Kindly refer to your office Dy: No.7587 dated 18.09.2013.

It is a departmental enquiry against Constable Jan Said No.1002 posted at Police Station Paharipura Peshawar was absent from his lawful duty w.e.f 18.08.2013 till date without any information or mentioned leave. His act is highly objectionable and amount to gross misconduct. In view of the above to disciplinary proceeding by worthy officer. The undersigned was appointed as enquiry officer to initiate departmental proceeding against the alleged constable with reference to the above mentioned allegation.

PROCEDURE: In this regard the alleged constable Jan Said No.1002 and Muharrar summoned with the relevant record. The Muharrar submitted his statement and DD report vide No.40, dated: 18.09.2013 where he stated that the alleged constable is the habitual absentee and not interested in his officials duty. The alleged Constable Jan Said was called vide this office letter No.2204, dated: 08.10.2013 but he did not respond till date (The DD report attached).

FINDING: From the perusal of record and Muharrar statement it is evident that he alleged constable Jan Said No.1002 is absent from lawful duty vide DD No. 40, dated:18.09.2013 PS Paharipura till date. He is also not appeared during the course of enquiry despite summon (attached).

RECOMMENDATION: Hence keeping in view the above mentioned circumstances the undersigned reached to the conclusion that he is a habitual absentee and not interested in his job. Therefore he is recommended for major punishment, if approved (Ex Party).


[Aslam Nawaz]
Deputy Superintendent of police
Fajirabad, Peshawar

W/SP City Peshawar el 05

NO. 53 /ST

Dated: 24 /10/2013

ATTESTE

Annex - B

21

FINAL SHOW CAUSE NOTICE

I, Faisal Mukhtar (PSP), Superintendent of Police, City Peshawar, as competent Authority do hereby serve Show Cause Notice to you Constable Jan Said No. 1002 while posted at Police Station Paharipura..

- i) That consequent upon the completion of enquiry concerned against you by SDPO Faqirabad. Enquiry Officer. found you guilty of misconduct.
- ii) Ongoing through the finding and recommendations of the Enquiry Officer, the material on record and other connected papers, I am satisfied that you have committed the following acts/omission specified in Section-3 of the said Ordinance on the following grounds:-

“You Constable Jan Said No. 1002 while posted at Police Station Paharipura absented your self from your lawful duty with effect from 18.08.2013 till to date without any leave or permission from your superior officers which shows that you do not take interest in your official duty and are liable to be proceeded departmentally vide 1975 Rules.

2. As a result thereof, I as competent Authority have tentatively decided to impose upon you the major penalty including dismissal from service under section-3 of the said Ordinance.

3. You are therefore, directed to Show Cause as to why the aforesaid penalty should not be imposed upon you.

4. If no reply to this notice is received within **(07)** days of its receipt of this notice in the normal course of circumstances, it shall be presumed that you have no defence to put and exparte action shall be taken against you.

[Signature]
(FAISAL MUKHTAR)PSP
SUPERINTENDENT OF POLICE CITY,
PESHAWAR

No. 587 /PA/SP/ City:

Dt: 21 /Jan: 2014.

Constable Jan Said No. 1002 PS Paharipura.

~~ATTEST~~

(22)

جو ان فائنل شو کا زائو لیس موقوفہ فرمت 190
میں سن 1912 میں لیس میں لیس پر گورنمنٹ 1908
کو لیس لیس اور سن 1908 اور سن 1913
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ATTESTE

ORDER

Amney - "F"

23

Constable Jan Said No. 1002 while posted at Police Station Paharipura absented himself from his lawful duty with effect from 18.09.2013 to 19.08.2013 (total 01 day) and again absented himself from 18.09.2013 till to date without prior permission or information from his superior officer. It shows that he is not taking interest in his legitimate duty. This act amounts to gross misconduct and is against the discipline of the force."

In this regard proper departmental inquiry was initiated against the delinquent officer and SDPO Faqirabad was appointed as enquiry officer.

Final Show Cause Notice was also issued to the delinquent official Constable Jan Said No.1002 vide this office No.587/PA, dated 21.01.2014. In response to FSCN he submitted his reply which was found unsatisfactory.

The enquiry officer in his findings has recommended for major punishment. In the light of the recommendation of the enquiry officer his absence period is treated as leave without pay and is awarded major punishment of "dismissal from service" under the existing rules 1975.

Order announced.

(FAISAL MIKHTAR) PSP
Superintendent of Police City,
Peshawar.

OB: No. 1230 /

Dated 15-4 April 2014 ✓

No. 3014 /PA dated Peshawar, the 16 April, 2014.

Copy for information and necessary action to:-

1. The Capital City Police Officer, Peshawar
2. The SSP/Operations Peshawar.
3. The SP HQrs:
4. PO, SRC.OASI, I/C Computer Cell
5. Fauji Missal Branch with enquiry papers for record.
6. Officer Concerned.

~~ANNEXURE~~

2
2014

- 15/4/14

Dy: No. 1679 PA-CCPO
Dt: 21.4.14
Encl: ①

حسابداری
Annex-G

درخواست کوثری بخالی لکھی

(10)

مُودبانہ گزارش ہے۔ کہ سائل کا جواب 3/9/14ء کا عبور شدہ ہے۔ سائل نے اس سے
پہلے کوثری کے بارے میں اس وقت پماری سے پورہ میں کوثری کے بارے میں

دو دن سائل کا تبادلہ پماری سے پورہ سے چھین پیسٹ ہوا۔ سائل نے پورہ
پورہ سے چھین پیسٹ سے حاصر کے۔ چھین پیسٹ سے ڈیوٹی کے سربراہ

اس سے دو دن پماری سے پورہ ماڈل کے۔ ایف کے نے بندر لکھی۔ سائل نے پورہ
دے۔ کہ ایف کے سائل کے سٹوٹز لکھی آئی ہے جب پماری گیا۔ لکھی کے سائل

لکھی گیا۔ جب پماری 17 بجے کے دفتر گیا۔ لکھی کے گیا۔ کہ سٹوٹز
لکھی دیا۔ لکھی کے گیا۔ لکھی کے گیا۔ 13/2/14ء تا 18/2/14ء تاریخ ماغیر

تعمیر تھا۔ جب پماری نے تنک سے روزنامہ لکھی دیا۔ لکھی کے گیا 18/2/14ء
حاضر اور 19/2/14ء کو حاضر آ یا۔ لکھی دن ماغیر حاصری تھا۔ لکھی کے گیا

اور سٹوٹز اور PA دونوں کو لکھی دیا۔ کہ اگر سٹوٹز کے لکھی کے گیا۔ لکھی کے گیا
آسے ماغیر انھوں نے لکھی کے گیا۔ اور لکھی کے گیا۔ لکھی کے گیا۔ لکھی کے گیا

ہے۔ نہ لکھی کے گیا۔ لکھی کے گیا۔ لکھی کے گیا۔ لکھی کے گیا۔ لکھی کے گیا
ہے۔ استغاثہ جاتی ہے۔ کہ سائل کو ماغیر لکھی کے گیا۔ لکھی کے گیا۔ لکھی کے گیا

سائل کا پھوٹا پھوٹا صورت سے لکھی کے گیا۔ لکھی کے گیا۔ لکھی کے گیا۔ لکھی کے گیا
لکھی کے گیا۔ آپ ماغیر لکھی کے گیا۔ لکھی کے گیا۔ لکھی کے گیا۔ لکھی کے گیا

سائل کو دوبارہ کوثری کے لکھی کے گیا۔ لکھی کے گیا۔ لکھی کے گیا۔ لکھی کے گیا
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اللہ باللہ ویر نیشنل جانے لکھی کے گیا
ATTEST
A

0302-5987588
0336-9184614. 201- CB

No. 2014/2014

e/cre DSP.L
Received For Comments.

۱۲۱ ۳۳۵

ORDER

Amr

This order will dispose off departmental appeal of ex-constable **Jan Said No. 1002** who was awarded the major punishment of **Dismissal** from service under PR 1975 vide OB No. 1230 dated 15.4.2014 by SP/City Peshawar, on the charge of deliberate absence for a long time from lawful duty w.e.f. 18.8.2013 to 19.8.2013 & 18.9.2013 to 15.4.2014 (Total 6-months and 28-days) from PS Pharipura.

Proper departmental proceedings were initiated against him and DSP/Faqirabad was appointed as the E.O and after completion of all the codal formalities he was awarded the aforementioned punishment.

The relevant record was perused along with his explanation. He was also heard in person in OR on 21/4/2014. The allegations stand proved against him. He could not defend himself. Since he has been dismissed twice before and he is habitually and willfully absented. Therefore, his dismissal order is retained and his appeal for re-instatement in service is rejected/filed.


**CAPITAL CITY POLICE OFFICER,
PESHAWAR.**

No. 1104-09 /PA dated Peshawar the 22.5. 14

Copies for information and n/a to the :-

- 1/ SP-City Peshawar
- 2/ PO/ OASI
- 3/ CRC along with S.Roll for making n/entry.
- 4/ FMC along with FM.
- 5/ Official concerned.

ATTESTED


VAKALAT NAMA

26

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar.

Jan Said

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt.

(Respondent)
(Defendant)

I/We Jan Said (Appellant)

E
Yamin Ali Akh

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar, E** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

M. Asif
(CLIENT)

ACCEPTED

M. Asif
M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 872/2014.

Jan Said Ex-Constable No. 1002.....Appellant.

VERSUS.

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

Reply for behalf of Respondents 1, 2 and 3.

PRELIMINARY OBJECTIONS.

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

Reply on Facts:

- 1- Para No. 1 is not related. No comments.
- 2- Para No. 2 is not related. Needs no comments.
- 3- Para No. 3 is totally incorrect and denied. In fact the appellant absented himself willfully w.e.f 18.08.2013 to 19.08.2013 and 18.09.2013 to 15.04.2014 (total 06 months & 28 days) without prior permission/information from his superior officer.
- 4- Para No. 4 is correct to the extent that the appellant while posted at PS Pahari Pura remind absent from his law full duty w.e.f 18.08.2013 to 19.08.2013 and 18.09.2013 to 15.04.2014 without taking

permission/leave. In this regard a departmental enquiry was conducted against him by SDPO/Faqir Abad he was issued a Charge Sheet & Summary of Allegations. The appellant was also issued final show cause notice vide No. 587/PA dated 21.01.2014. He submitted his reply to final show cause notice but his reply was found unsatisfactory, hence was awarded major punishment of dismissal from service vide OB No. 1230 dated 15.04.2014.

- 5- Para No. 5 is incorrect and denied. The appellant was issued a charge sheet and summary of allegations. He was summoned time and again to attend the enquiry proceeding but he did not turn up.
- 6- Para No. 6 is correct to the extent that the appellant submitted his reply to final show cause notice but he failed to defend his long absence period.
- 7- Para No. 7 is correct to the extent that the charges of willful absence were proved against appellant, hence was awarded major punishment of dismissal from service and his period of absence was treated as leave without pay vide OB No. 1230 dated 15.04.2014.
- 8- Para No. 8 is correct to the extent that appeal was filed by the appellant but as the charges of willful absence were proved against him, hence the appellate authority being agreed with punishment order rejected his appeal.
- 9- The appellant has got no cause of action to file instant appeal.

GROUND:-


- A- Incorrect. The punishment order is in-accordance with law/rules.
- B- Incorrect. The appellant was treated as per law and rules.
- C- Incorrect. The appellant being a member of disciplined force was treated as per rules of Police Disciplinary Rules 1975.
- D- Incorrect. The appellant was summoned time and again to defend himself but he did not turn up. He was issued a charge sheet and

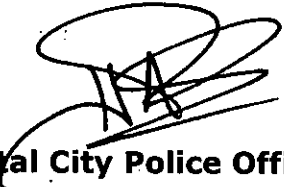
summary of allegations but he avoided to attend the enquiry proceedings.

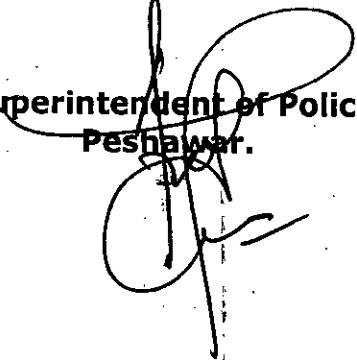
- E- Incorrect. The charges of absence were stand proved against appellant. So he was rightly awarded major punishment of dismissal from service and his period of absence was treated as leave without pay.
- F- Incorrect. The appellant is a habitual absentee. He does not take interest in his duty, hence does not deserve any leniency.
- G- Para not related. No comments.
- H- That the respondents also seek permission of this honorable tribunal to raise additional grounds at the time of arguments.

Prayers:-

It is therefore most humbly prayed that in light of above facts, submissions the appeal of the appellant devoid of merits, legal footing may be dismissed.


**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**


**Capital City Police Officer,
Peshawar.**


**Superintendent of Police City,
Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No.872/2014.

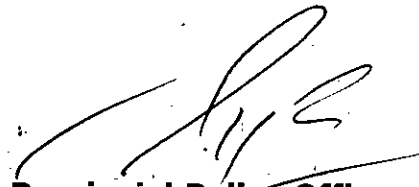
Jan Said Ex-Constable No. 1002.....Appellant.

VERSUS.

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

AFFIDAVIT.

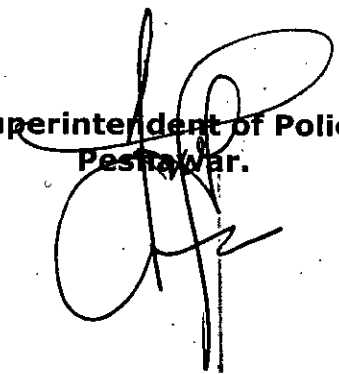
We respondents 1 to 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.



**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**



**Capital City Police Officer,
Peshawar.**



**Superintendent of Police City.
Peshawar.**

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 872/2014

Jan Said

VS

Police Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 No comments, endorsed by the department that para 1 of the appeal is correct.
- 2 No comments, endorsed by the department that para 2 of the appeal is correct.
- 3 Incorrect. The appellant was seriously injured due to which the appellant remained absent from the duty. The illness of the appellant is evident from the Annexure- A with the main appeal.
- 4 Incorrect. While para 4 of the appeal is correct.
- 5 Incorrect. The inquiry was conducted against the appellant without any chance of defence to the appellant and one sided inquiry was conducted against the appellant.

- 6 Incorrect. In the reply to show cause notice the appellant clearly mentioned that he was seriously injured.
- 7 Admitted correct by the respondents that appellant was dismissed from service on the basis of absentia and his absence period is treated as leave without pay in single order dated 16.4.2014 which means that authority had condoned the absence and there remain no ground to penalize the appellant on the basis of absence.
- 8 Admitted correct by the respondents that the appellant filed the departmental appeal which was also rejected for no good grounds.
- 9 Incorrect. The appellant has good cause of action to file the instant appeal.

GROUND:

- A) Incorrect. The impugned orders are against the law and rules, therefore not tenable and liable to be set aside.
- B) Incorrect. The appellant was not treated as per law and rules.
- C) Incorrect. The appellant was the civil servant of the Province and for Provincial employees the relevant law and rules E&D Rules 2011.
- D) Incorrect. While para D of the appeal is correct.
- E) Incorrect. The appellant had already declared the absence period as leave without pay, which means that the authority had condoned the absence and there remain no grounds to penalize the appellant on the basis of absence.
- F) Incorrect. The appellant was seriously injured and he was to remain absent from the duty, therefore the penalty of dismissal is very harsh and not commensurate with the guilt of the appellant.

- G) No comments endorsed by the department which means that para G of the appeal is correct.
- H) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT
Jan Said

Through:



(M. ASIF YOUSAFZAI)

& 

(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of appeal & rejoinder are true and correct to the best of my knowledge and belief.



DEPONENT



BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 872/2014

Jan Said

VS

Police Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

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- 8 Admitted correct by the respondents that the appellant filed the departmental appeal which was also rejected for no good grounds.
- 9 Incorrect. The appellant has good cause of action to file the instant appeal.

GROUND:

- A) Incorrect. The impugned orders are against the law and rules, therefore not tenable and liable to be set aside.
- B) Incorrect. The appellant was not treated as per and rules.
- C) Incorrect. The appellant was the civil servant of the Province and for Provincial employees the relevant law and rules E&D Rules 2011.
- D) Incorrect. While para D of the appeal is correct.
- E) Incorrect. The appellant had already declared the absence period as leave without pay, which means that the authority had condoned the absence and there remain no grounds to penalize the appellant on the basis of absence.
- F) Incorrect. The appellant was seriously injured and he was to remain absent from the duty, therefore the penalty of dismissal is very harsh and not commensurate with the guilt of the appellant.

- G) No comments endorsed by the department which means that para G of the appeal is correct.
- H) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT
Jan Said

Through:



(M. ASIF YOUSAFZAI)
&

(TAIMUR ALI KHAN)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of appeal & rejoinder are true and correct to the best of my knowledge and belief.


DEPONENT

872/14

کابو

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1456 /ST

Dated 5 /9 / 2016


To

The C.C.P.O,
Peshawar.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgment dated 31.08.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

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

Q.W.P. Peshawar
Service Tribunal
Dist No 1324
20-11-15

Appeal No. 872/2014

Jan Said

V/S

Police Deptt:

.....
**APPLICATION FOR FIXING OF AN EARLY DATE OF
HEARING IN THE ABOVE TITLED APPEAL INSTEAD OF 24.03.2016**
.....

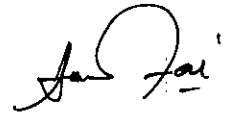
RESPECTFULLY SHEWETH:

1. That the appellant has filed the instant appeal against the order dated 16.04.2014, where the appellant has been dismissed from service.
2. That the instant appeal is in argument stage and the next date fixed for the case is 24.03.2016 before this Honourable KPK Service Tribunal.
3. That due to the removal from service of the appellant, the financial position of the appellant is very hard and will not be bearable.
4. That it will be in the interest of justice to fix the case at an early date.

It is, therefore, most humbly prayed that on acceptance of this application, an early date of hearing may kindly be fixed in the above Service Appeal instead of 24.03.2016. Any other remedy which this august Tribunal deems fit and appropriate that may also be awarded in favour of the appellant.

Appellant
Jan Said

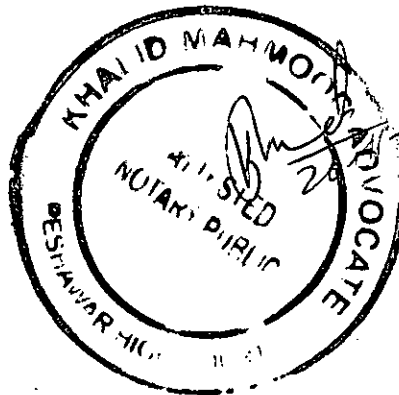
THROUGH:



(M. ASIF YOUSAFZAI)
ADVOCATE PESHAWAR.

AFFIDAVIT:

It is affirmed and declared that the contents of the above Application are true and correct to the best of my knowledge and belief.



Deponent