

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEALS NO. 1015/2014

Date of institution ... 6.8.2014

Date of judgment ... 27.7.2014

Mst. Saeeda, Ex. Constable No. 1881,
Police Line Mardan, District Mardan

... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
2. The Deputy General of Police, Mardan Region-1, Mardan.
3. The District Police Officer, District Mardan.

... (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE APPELLATE ORDER DATED 8.7.2014 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR HER RE-INSTATEMENT WITH ALL BACK BENEFITS HAS BEEN REJECTED ON NO GOOD GROUNDS AND AGAINST THE ORIGINAL ORDER DATED 23.4.2014 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE UNDER A WRONG LAW.

Mr. Noor Muhammad Khattak, Advocate.

.. For appellant.

Mr. Muhammad Adeel Butt, Additional AG.

.. For respondents

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)

JUDGMENT

AHMAD HASSAN, MEMBER: The appellant has preferred instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 that impugned order dated 23.4.2014 and 8.7.2014 may be set-aside and appellant be reinstated in service with all back benefits.

2. Brief facts of the case as narrated in the contents of appeal are that the appellant was appointed as Lady Constable in Mardan on 19.5.2009. While serving in Mardan the appellant got married. Her husband Mr. Karim ul Haq was also serving as Constable in Police Department. After Marriage her husband pressurized her to immediately quit the Police Service. On 21.2.2014, when the appellant was going from duty she was stopped by her

husband from duty and confined the appellant in his house. The appellant came to the house of her parents on 10.5.2014. On 11.5.2014 when the appellant came to Police Line, Mardan to join duty and receive two months salary, she came to know about her dismissal from service on account of willful absence from duty vide order dated 23.4.2014. Departmental appeal was filed on 13.5.2014 and rejected on 8.7.2014 hence, the instant service appeal.

3. Arguments heard and record perused.

4. Learned counsel for the appellant argued that during her absence from duty inquiry proceedings were initiated against the appellant under Police Rules 1975. He contended that regular inquiry was not conducted and appellant was not treated in accordance with law. Charge sheet and statement of allegations were not served on the appellant before issuing the impugned order dated 23.4.2014 nor was opportunity of personal hearing provided. The appellant also filed a case for dissolution of marriage in the Civil Court and her marriage has since dissolved as a result of Jirga proceedings. He further argued that the appellant could not be removed from service on the basis of statement of her husband as annexed with the Para-wise comments submitted by the respondents. She remained absent for two months and the punishment awarded was quite harsh which was beyond her control. Reliance was placed on case law as reported 2012 TD (S) 129, 2012 DT (S) 348, 2008 SCMR 1369, and 2008 SCMR 609. He further contended that impugned orders dated 23.4.2014 and 8.7.2014 being void and unlawful may be set-aside and appellant may be reinstated in service with all back benefits.

5. Learned Additional AG while opposing the appeal argued that inquiry proceedings were conducted in the prescribed manner and previous service record of the appellant was also found tainted. She was earlier dismissed from service in another case. He further contended that the Service Tribunal under section-4 of the Service Tribunal Act 2014 has the power to set-aside modify and confirm any order passed by the departmental authority and

the lacunae left in the impugned order could be rectified by its modification. He further contended that appeal being devoid of any merit may be dismissed with cost.

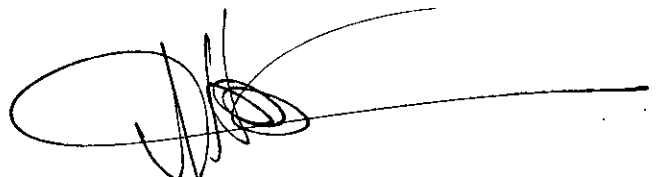
6. Having heard pros and cons of the case, this Tribunal is of the considered view that inquiry proceedings were not conducted in the prescribed manner and proper opportunity of defense was not provided to the appellant. Show cause notice was not served on the appellant prior to issuance of impugned order dated 23.4.2014 nor opportunity of personal hearing was provided. It is well settled principle that no one should be condemned unheard. Persual of the record shows that imposition of major penalty of dismissal from service does not commensurate with the period of her absence from duty which was beyond her control as such the punishment seems too harsh.

7. In view of the foregoing, the appeal is partially accepted and impugned order dated 23.4.2014 is set-aside. The major penalty of dismissal from service is converted into minor penalty of stoppage of two annual increments for two years. The intervening period since her dismissal is treated as leave of the kind due. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED
27.7.2016



(ABDUL LATIF)
MEMBER



(AHMAD HASSAN)
MEMBER

20.04.2016

Appellant with counsel and Mr. Muhammad Ghani, S.I
alongwith Mr. Muhammad Jan, GP for respondents present.
Arguments could not be heard due to paucity of time. To come up
for arguments on 27.07.2016.


Member

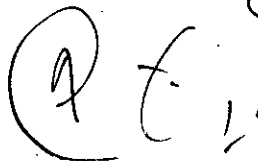

Member

27.07.2016

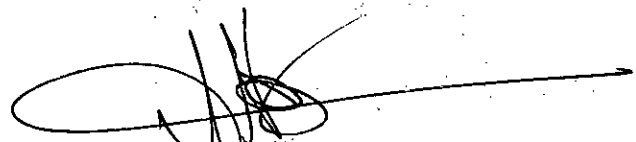
Counsel for the appellant and Mr. Additional ACP for
respondents present.

Vide our detailed judgment of today consists of three pages
placed on file, the appeal is partially accepted and impugned order
dated 23.4.2014 is set-aside. The major penalty of dismissal from
service is converted into minor penalty of stoppage of two annual
increments for two years. The intervening period since her
dismissal is treated as leave of the kind due. Parties are, however,
left to bear their own costs. File be consigned to the record.

Announced
27.07.2016



(ABDUL LATIF)
MEMBER



(AHMAD HASSAN)
MEMBER


23.02.2015

Counsel for the appellant and Mr. Muhammad Ghani, S.I (legal) alongwith Addl: A.G for respondents present. Para-wise comments by respondents submitted. The case is assigned to D.B for rejoinder and final hearing for 25.08.2015.


Chairman

25.08.2015

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Rejoinder on behalf of the appellant submitted which is placed on file. To come up for Arguments on 4-12-2015


Member


Member

04.12.2015

Clerk to counsel for the appellant and Mr. Muhammad Ghani, SI (Legal) alongwith Mr. Ziaullah, GP for respondents present. Clerk to counsel for the appellant requested for adjournment. Therefore, the case is adjourned to 20-4-16 for arguments.


Member


Member

Appeal No. 1015/2014
Mgt. Succeeded.

3. 23.10.2014

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 23.04.2014, vide which the major penalty of dismissal from service has been imposed upon the appellant. Against the above referred impugned order appellant filed departmental appeal on 13.05.2014 which was rejected vide order dated 08.07.2014, hence the instant appeal on 06.08.2014.

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 05.01.2015.

Appellant Deposited
Security & Process Fee
Rs. 300/- Bank
Receipt is Attached with File.


Member

4. 23.10.2014
This case be put before the Final Bench I for further proceedings.


Chairman

5-1-15

The Hon^{ble} bench is on
Rem, Res etc, case is agreed

IB 23.2.15.


Bench

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1015/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	06/08/2014	<p>The appeal of Mst. Saeeda presented today by Mr. Noor Muhammad Khattak 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	11-8-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>23-10-2014</u></p> <p style="text-align: right;">CHAIRMAN</p>

Receipt is Attached with REGISTRATION Fee
Security & Process Fee
Deposit

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1015 /2014

Saeeda

VS

Police Department

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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3.	Departmental appeal	B	5- 6.
4.	Rejection order	C	8.
6.	Vakalat nama	9.

APPELLANT

Saeeda
SAEEDA

THROUGH:

[Signature]
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 1015 /2014

Mst. Saeeda, Ex.Constable No.1881,
Police Line Mardan, District MardanAppellant

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
- 2- The Deputy Inspector General of Police, Mardan Region-I, Mardan.
- 3- The Distract Police Officer, District Mardan.

..... Respondents

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE APPELLATE ORDER DATED 08-07-2014 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR HER RE-INSTATMENT WITH ALL BACK BENEFITS HAS BEEN REJECTED ON NO GOOD GROUNDS AND AGAINST THE ORIGIONAL ORDER DATED 23-04-2014 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE UNDER A WRONG LAW

PRAYER:

That on acceptance of this appeal the impugned orders dated 23-04-2014 and 08-07-2014 may very kindly be set aside and the respondents may please be directed to re-instate the appellant with all back benefits. Any other remedy which this august Court deems fit may also be awarded in favor of the appellant.

R/SHEWETH:
ON FACTS :

- 1- That appellant was appointed as Lady Constable in the respondent Department vide order dated 19-05-2009. That after appointment the appellant started performing her duty quite efficiently and up to entire satisfaction of her superiors.
- 2- That appellant while serving as Lady constable in the respondent Department at District police line Mardan, performed marriage with one Police Constable Mr. Karim-ul-Haq District Mardan resident of Rustam Mardan on 07th March, 2013 according to the injunctions of Islam.

- 3- That after eight months of marriage the husband of appellant i.e. Mr. Karim demanded to leave the police force immediately or ready for divorce. The relations between the appellant and her husband became strained.
- 4- That the appellant while serving at police station Shahbaz Garhi, the appellant came to her husband's house on "Shabasee" vide dated 20-02-2014. That on 21-02-2014 when the appellant was going to join the duty, the husband confined her in his house and ordered not to go for duty. The appellant requested him to let her free to join the duty but he didn't do so. That the mother and brother of the appellant when came to know about the confinement of the appellant, they came to the house of husband of appellant and took the appellant into her parents house dated 10-05-2014.
- 5- That on 11-05-2014 the appellant came to police line Mardan to join her duty and to receive her 2 months salary. That the appellant was informed that she has been dismissed from service due to absence. That the appellant straight away went to the office of District Police Officer Mardan where the appellant was handed over the dismissal order dated 22-04-2014. Copy of the dismissal order is attached as annexure **A.**
- 6- That having no other remedy the appellant filed Departmental appeal dated 13-05-2014 before the appellate authority but the same was rejected vide dated 08-07-2014 on no good grounds. That hence the present appeal on the following grounds amongst the others. Copies of the Departmental appeal and rejection order are attached as annexure **B & C.**

GROUND:

- A- That the impugned orders dated 23-04-2014 and 08-07-2014 are against law, facts, natural justice and materials on record therefore not tenable and liable to be set aside.
- B- That the appellant has not been treated in accordance with law and rules by the respondents on the subject noted above and the Police Department acted in violation of Article 4 of the constitution of Pakistan 1973.
- C- That no show cause notice has been served on the appellant by the respondent Department before issuing the impugned order dated 23.4.2014.

- D- That no regular inquiry has been conducted which is as per Supreme Court judgment is necessary in cases of major penalties.
- E- That no charge sheet and statement of allegation has been served on the appellant before issuing the impugned order dated 23-04-2014.
- F- That no chance of personal hearing /defense has been given to the appellant which is mandatory under the amended E & D rules 2011.
- G- That action has been taken by the respondents against the appellant under a wrong law.
- H- That the appellant had not been treated according to law and had been condemned un heard.

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

APPELLANT

Saeeda

SAEEDA

THROUGH:

N.M. Khattak

**NOOR MOHAMMAD KHATTAK
ADVOCATE**

POLICE DEPARTMENT

MARDAN DISTRICT

A-4

ORDER

Lady Constable Saeeda No.1881, while posted at Police Lines committed the following act, which is lead to grass misconduct on his part as defined in Rules 02 (iii) of Police Rules 1975.

That you Lady Constable Saeeda No.1881, while posted at Police Lines Mardan has deliberately absented yourself from the lawful duty without prior permission or leaves vide DD No. 27, dated 21.02.2014 to-date.


In this connection, Lady Constable Saeeda No.1881, was charge sheeted vide this office No. 532/R, date 30.03.2014 and also proceeded her against departmentally through Mian Naseeb Jan DSP/HQrs Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 290/HQrs, dated 21.04.2014, in which the allegations established against her.

The undersigned agreed with the findings of enquiry officer and the alleged Lady Constable Saeeda No.1881, is hereby dismissed from service and her absence period counted as leave without pay, in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 959

Dated 22/04/2014


(Gul Afzal Afridi)
District Police Officer,
Mardan.

No. 4430-351 dated Mardan the 23-4-2014

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1
2. The S.P Operations, Mardan.
3. The DSP/HQrs Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan.

ATTESTED



B-5

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE MARDAN REGION -1

MARDAN

Subject: **APPEAL AGAINST THE ORDER O.B NO. 959 DATED 22-04-014 OF DISTRICT POLICE OFFICER MARDAN, WHERE BY THE APPELLANT WAS AWARDED THE PUNISHMENT " DISMISSAL FROM SERVICE".**

R/Sir,

It is submitted that :

1. That the petitioner was enlisted as lady constable on 19-05-2009 in police department and was allotted constabulary No.1881 by District Police Mardan. The petitioner remained posted at police line Mardan and had performed her duty with and efficiency.
2. During service, the petitioner performed marriage with one karim-ul-haq s/o Muhammad Jan r/o Rustam Mardan on 07 March, 2013 according to the injunctions of Islam. Karim, -ul-haq is also serving as police constable in District Police Mardan.
3. That after 08 months of the petitioner marriage, her husband Karim-ul-haq directed her to leave police service immediately . In response the petitioner told him that she is not ready to leave police service at any cost. The petitioner was threatened that by not leaving police service, she will be divorced. On this issue the relation between the petitioner and her husband became strained.
4. That during the month of Feb, 2014, the petitioner remained posted at police station Shahbaz Ghari. On 20-2-2014, the petitioner came to her house on "Shahbasee". On 21-2-2014 at morning time, the petitioner was ordered by his husband that not go for duty anymore. The petitioner requested him to please let her free to join her duty but her request was turned down. The petitioner was confined in her husband house. On 10-05-2014, the petitioner mother along with her brother Muhammad Aatif came behind her to her husband house. The petitioner narrated the whole story to them. The petitioner mother and brother brought her to their own house on the same day.
5. That on 11-5-2014, the petitioner went to police line Mardan to inquire about her duty and two months out standing salary, where the petitioner was informed that she has been dismissed from the service due to absence.
6. That on receipt of this information, the petitioner came the office of DPO Mardan where she was handed over by dismissal Order issued vide O.B No.959 dated 22-4-2014 with the following allegations.

" That you Lady Constable Saeeda No.1881, while posted at police lines Mardan has deliberately absented yourself from the lawful duty without prior permission or leaves vide DD No. 27, dated 21-02-2014 to date".(Copy attached)

CONCLUSION:

It is requested that the Appeal of the Appellant may kindly be accepted and Order of the punishment be set aside on the following grounds:-

No. 2732/ES
dt. 15-5-014
DPO, Mardan
For Comments
P/S
The
DIP/1712

1426
15-5-14

- (6) (C)
- a) That as per dismissal order, the petitioner have been shown absent, vide DD No.27 dated 21-2-2014. This allegations i.e the alleged absence is not intentional but was due the critical situation of her family. The petitioner came on shahbasee to her husband house where she was forcibly kept till 10-5-2014.
- b) That during her confinement at her husband house, a unique and illegal departmental inquiry was conducted in her absentia with the following irregularities.
- i) The alleged charge sheet No.532 /R dated 30-3-2014 mentioned in the dismissal Order was not served upon the petitioner.
 - ii) The inquiry Officer did not summoned the petitioner during the course of so called departmental inquiry.
 - iii) Neither the statement of the petitioner was recorded, Nor any opportunity was given to the petitioner to prove her innocence before the unknown inquiry officer.
 - iv) The petitioner was not associated at any stage of the alleged departmental inquiry.
 - v) The petitioner was not given "FINAL SHOW CAUSE NOTICE" by the competent authority, which was the necessary requirement as per relevant rules and thus the illegal Order was passed.
 - vi) The Petitioner was not given any opportunity of "PERSONAL HEARING" by the competent authority at the time of passing of impugned punishment Order, which is contrary to the Police rules 1975, hence great injustice was extended.
 - vii) That the petitioner has been learnt through reliable sources, that in her absentia, her husband Karim-ul-haq has approached and joined hands with the inquiry officer. Her husband produced a false application shown from her side before the E.O with the subject that the petitioner is not interested in the service of police department during the arranged so called departmental inquiry. The petitioner totally rebuts the said application if the same has been produced by her husband.
 - viii) That the alleged departmental inquiry, so far conducted is totally illegal, ex-parte and full of irregularities. The E.O has dashed the rules and regulations to the ground.

Keeping in view of the facts and circumstances mentioned above, it is humbly requested that the Appeal of the Appellant may kindly be accepted and the impugned Order passed by DPO Mardan may kindly be set aside.

ATTESTED



Yours Obediently,

Saeeda 13-05-2014
Lady Constable Saeeda No.1881

District Police Mardan

(Now Dismissed from service)

C-8

ORDER.

This order will dispose-off the appeal preferred by Ex-Lady Constable Saeeda No. 1881 of Mardan District Police against the order of District Police Officer, Mardan wherein she was dismissed from service vide District Police Officer, Mardan OB: No. 959 dated 22.04.2014.

Brief facts of the case are that she while posted at Police Lines, Mardan deliberately absented herself from the lawful duty without prior permission or leaves vide Daily Dairy No. 27 dated 21.02.2014 to the date of dismissal. In this connection she was charge sheeted and also proceeded against departmentally through enquiry officer, Mian Naseeb Jan the then Deputy Superintendent of Police Headquarter, Mardan, who after fulfilling necessary process submitted his findings to District Police Officer, Mardan & she was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 02.07.2014. She failed to justify her absence period and could not advance any ground in her defence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal, not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

ORDER ANNOUNCED.

MC
(MUHAMMAD SAEED)PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan. ✓

No. 4781 /ES,

Dated Mardan the 08/07 /2014.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 578/LB dated 04.06.2014. Her service record is returned herewith.

ATTESTED

(*****)



DIG Mardan
16/4/2014

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshawar
_____ OF 2014

Saeeda

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Department

(RESPONDENT)
(DEFENDANT)

I/We Saeeda

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** 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 cost. 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:

Dated. ____/____/2014

Saeeda

CLIENT

Accepted

**NOOR MOHAMMAD KHATTAK
(ADVOCATE)**

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 1015/2014.

Mst: Saeeda Ex-Lady Constable

.....Appellant.

VERSUS.

1. Inspector General of Police Department, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. District Police Officer, District Mardan.....Respondents.

Para wise comments on behalf of respondents No. 1, 2 & 3.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the instant appeal is barred by law.

PARAWISE REPLY ON FACTS.

1. Pertains to record.
2. No comments.
3. Para-3 is personal in nature & the respondent department has no concern with this, hence no, comments.
4. In fact, she was marked absent on 21.02.2014 vide D.D No. 27 dated 21.02.2014 by PS Shahbaz Garhi & she kept her deliberate absence continued till her dismissal. However, the last part of this Para contain issue which is personal in nature & need no comments. **(Copy of D.D No. 27 dated 21.02.2014 is attached as annexure-A).**
5. As admitted by the appellant, she deliberately remained absent and did not join her official duty till her dismissal.
6. Correct to the extent that the departmental appeal of the appellant was filed by the appellate authority but on genuine grounds. The appellant was also heard in orderly room and she failed to justify her absence period and could not advance any cogent grounds in her defence.

COMMENTS ON GROUNDS

- A. Incorrect. The impugned orders dated 23.04.2014 & 08.07.2014 were in accordance with law, facts, natural justice & the material on record. The impugned orders are, therefore, tenable & liable to be maintained.
- B. Incorrect. There is no violation of the Article-4 of the Constitution of the Islamic Republic of Pakistan-1973 & the appellant is dealt in accordance with law & Rules.
- C. Incorrect. All codal formalities have been complied with & the statement of allegations coupled with charge sheet has been served upon her husband, received &


0-5
23-02-15

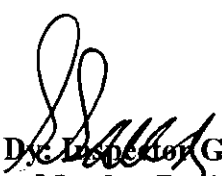
signed by him on the back of the served papers. (Copy of signed papers is attached as Annexure-B).

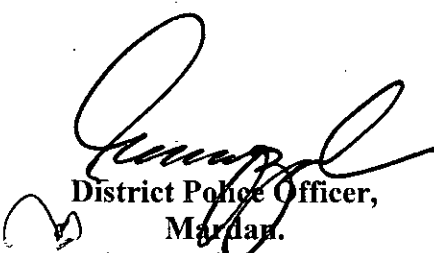
- D. Incorrect. Proper departmental enquiry was conducted against the appellant but she did not attend/join the enquiry, so no alternative than the recommended/awarded punishment. (Copy of enquiry is attached as Annexure-C).
- E. Incorrect. Replied in Para-C above.
- F. Incorrect. She was called for to appear before & was heard by the appellate authority on 02.07.2014 but she failed to justify her absence. (Copy of departmental appeal rejection order is attached as Annexure-D).
- G. Incorrect. She has been punished according to law & rules.
- H. Incorrect. She was treated under the law & was given opportunity of hearing as well.

Prayer:

In view of the above facts & circumstances, it is humbly prayed that the appeal of the appellant being baseless and devoid of legal force, may kindly be dismissed.


**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**
(Respondent No. 1)


**Dye Inspector General of Police,
Mardan Region-I, Mardan.**
(Respondent No. 2)


**District Police Officer,
Mardan.**
(Respondent No. 3)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 1015/2014.

Mst: Saeeda Ex-Lady Constable

.....Appellant.

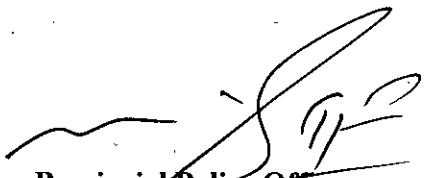
VERSUS.


1. Inspector General of Police Department, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. District Police Officer, District


Mardan.....Respondents.

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1)


Dy. Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 2)


District Police Officer,
Mardan.
(Respondent No. 3)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 1015/2014.

Mst: Saeeda Ex-Lady Constable

.....Appellant.


VERSUS.


1. Inspector General of Police Department, Khyber Pakhtunkhwa, Peshawar.
2. Deputy Inspector General of Police, Mardan Region-I, Mardan.
3. District Police Officer, District

Mardan.....Respondents.

AUTHORITY LETTER.

Mr. Muhammad Shafiq Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**
(Respondent No. 1)


**Dy. Inspector General of Police,
Mardan Region-I, Mardan.**
(Respondent No. 2)


**District Police Officer,
Mardan.**
(Respondent No. 3)

مقامہ سہ ماہی گوردو

تقریر 27 روز راجی 21 14

ریورٹ غیر حاضری و درجہ ملی 840 وقت 17:50 فورم 21 14

تفصیل مہماہ سعیدہ 1881 کوڈ ٹوٹی کے لئے طلب کرنا مہماہ نو عمر (ریورٹ)
جائگہ جگر تلاش بہ حدود نواح سہ ماہی گوردو سہ ماہی گوردو
حلاف ریورٹ غیر حاضری درجہ روز راجی سہ ماہی گوردو سہ ماہی گوردو
مناسبتہ درجہ ارسال و تفریق مہماہ سہ ماہی گوردو

مذہبیاتی
نقل تفریق مہماہ 2
SBG 3 5 14
4 - 3 - 14
خفا علی

Forwarded

L.O.P. Lines Mardan
51314

Forwarded PL

RI / Line / Mardan

7/3/14

مذکورہ وقت 21 14 سے پہلے
غیر حاضری جلی کر رہی ہے۔ بخیر
سہ ماہی گوردو مہماہ سہ ماہی گوردو
کندہ سفارش کی جاتی ہے۔

Attest
Pri Mardan
8/3/14

سابقہ ریورٹ مہماہ سہ ماہی گوردو
سہ ماہی گوردو سہ ماہی گوردو
10-3-14

and report

Copy to Main Office and DSB HQs: Marked for necessary action

Marked
District Police Officer
(Sgt. V. S. V. S. V.)

attached

officer on the date that such cases are taken by the said officer & statement of charges shall be
by the said officer No. 1881, directed to appear before the said

Under Police Rules 1932

within the stipulated time of (10) days as contained in section - 09 (2) of
The said officer shall complete all proceedings shall submit the

- 3. If Police Officer Marked
- 1. Main Office and DSB HQs: Marked

containing as contained in section-9 (1) (a) of the abovementioned Rules
reference to the above allegations & committee consisting of the following Police Officers is
action shall be:

This amounts to grave misconduct on part of the mentioned departmental

departmental action by the DSB HQs, Marked vide its office order No. 531, dated 13.05.2014
in date without any cause & justification of the concerned authority. The is recommended for
Marked departmental punishment being from the initial date vide DD No. 52 dated 21.05.2014 to
The said Police Officer No. 1881, while posted at Police Lines

STATEMENT OF ALLEGATIONS

section-03 (iii) of I.M.P. Rules 1932.
be proceeded against as are contained in the following section within the meaning of
authority and of the opinion that said Police Officer No. 1881 has rendered himself liable to

I, Sri. V. S. V. S. V. District Police Officer, Marked as competent

DISCIPLINARY ACTION UNDER I.M.P. RULES - 1932

Dated 20-5-2014
No. 235 I.M.P.-P-1932

OFFICE OF THE DISTRICT POLICE OFFICER, MARKDA

CHARGE SHEET UNDER NWFP POLICE RULES 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority hereby charge you **Lady Constable Saeeda No. 1881**, as follows.

That you **Saeeda No. 1881**, while posted at Police Lines Mardan, deliberately absented herself from the lawful duty vide DD No. 27 dated 21.02.2014 to till date without any leave / permission of the competent authority. You are recommended for departmental action by the DSP/HQrs, Mardan vide his office letter No. 231, dated 13.03.2014.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the NWFP Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the NWFP Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in persons.



(GUL AFZAL KHAN)
District Police Officer,
Mardan.

قائم الاصل وراثی اثباتی سند 1881 متعینہ پوشی لائسنس مردان

جانب عالی

جواز خارجہ نمبر 532/R مورخہ 30/3/14 مورخہ 1881 کے خلاف اٹوریٹری راجدھانی

موصول ہو کر جس میں مذکورہ راجدھانی لائسنس کے بارے میں 27 مارچ 21/12/14 سے بذمہ داری

جانب عالی - مذکورہ لائسنس کے بارے میں 27 مارچ 21/12/14 سے بذمہ داری

موصول ہو کر جس میں مذکورہ راجدھانی لائسنس کے بارے میں 27 مارچ 21/12/14 سے بذمہ داری

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Approved

Bismillah Service

Service

22.12.14

(جواز خارجہ)

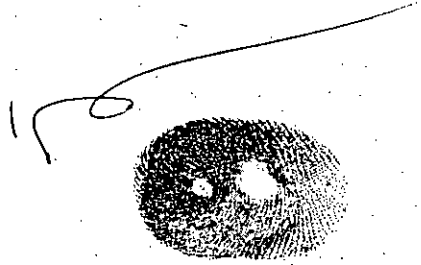
(مقامی لائسنس)

Handwritten signature

پوشی لائسنس کے بارے میں

Handwritten text at the top

Am
Attested
H. Khan



03009842769 - 0315

04-9-014
H. Khan

Handwritten notes in Urdu script, including the word "تعمیر" (Construction) and "میں" (in), along with various lines of text and a signature.


ORDER.

This order will dispose-off the appeal preferred by Ex-Lady Constable Saeeda No. 1881 of Mardan District Police against the order of District Police Officer, Mardan wherein she was dismissed from service vide District Police Officer, Mardan OB: No. 959 dated 22.04.2014.

Brief facts of the case are that she while posted at Police Lines, Mardan deliberately absented herself from the lawful duty without prior permission or leaves vide Daily Dairy No. 27 dated 21.02.2014 to the date of dismissal. In this connection she was charge sheeted and also proceeded against departmentally through enquiry officer, Mian Naseeb Jan the then Deputy Superintendent of Police Headquarter, Mardan, who after fulfilling necessary process submitted his findings to District Police Officer, Mardan & she was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 02.07.2014. She failed to justify her absence period and could not advance any ground in her defence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal, not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

ORDER ANNOUNCED.


(MUHAMMAD SAEED)PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

No. 4781 /ES,


Dated Mardan the 02/07 /2014.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 578/LB dated 04.06.2014. Her service record is returned herewith.

(*****)

DSP/Leagle/Be

Per. Mardan


DSP/Mardan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1015/2014

SAEEDA

VS

POLICE DEPARTMENT

REJOINDER ON BEHALF OF APPELLANT
IN RESPONSE TO THE REPLY
SUBMITTED BY THE RESPONDENTS

 25/8

R/ SHEWETH:

PRELIMINARY OBJECTIONS:

(1 TO 6):

All the preliminary objections raised by the respondents are incorrect and baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

ON FACTS:

- 1- Admitted correct by the respondents hence need no comments.
- 2- Admitted correct by the respondents hence need no comments.
- 3- Admitted correct by the respondents hence need no comments.
- 4- Incorrect and not replied accordingly. That appellant while serving as Lady constable in the respondent Department at District police line Mardan, performed marriage with one Police Constable Mr. Karim-ul-Haq District Mardan resident of Rustam Mardan on 07th March, 2013 according to the injunctions of Islam. That after eight months of marriage the husband of appellant i.e. Mr. Karim demanded to leave the police force immediately or ready for divorce. The relations between the appellant and her husband became strained. That the appellant while serving at police station Shahbaz Garhi, the appellant came to her husband's house on "Shabasee" vide dated 20-02-2014. That on 21-02-2014 when the appellant was going to join the duty, the husband confined her in his house and ordered not to go for duty. The appellant requested him to let her free to join the duty but he didn't do so. That the mother and brother of the appellant when came to know about the confinement of the appellant,

they came to the house of husband of appellant and took the appellant into her parents house dated 10-05-2014.

- 5- Incorrect and not replied accordingly. That as mentioned above, that appellant has absented herself from duty due to the above mentioned reason and as such the same was beyond the control of appellant, therefore she may not be punished on the fault of others.
- 6- Incorrect and not replied accordingly. That the appellant was condemned un heard and as such both the impugned orders are not tenable and liable to be set aside.

GROUND:
(A TO H):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless hence denied. That the impugned orders 23.4.2014 and 8.7.2014 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside. That no chance of personal hearing has been given to the appellant while issuing the impugned order dated 23.4.2014. Moreover no fact finding nor Departmental inquiries have been conducted in the matter and as such the impugned orders are not tenable in the eye of natural justice and prevailing laws. That the respondents acted in arbitrary and malafide manner while issuing the impugned orders dated 23.4.2014 and 8.7.2014.

It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.

APPELLANT


SAEEDA

THROUGH: 
NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1015/2014

SAEEDA

VS

POLICE DEPARTMENT

REJOINDER ON BEHALF OF APPELLANT
IN RESPONSE TO THE REPLY
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It is therefore most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may be accepted as prayed for.

APPELLANT



SAEEDA

THROUGH:


**NOOR MOHAMMAD KHATTAK
ADVOCATE**

2008 S C M R 609

For Appellant

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C. J. Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ

MUHAMMAD ISMAIL SHAHID---Appellant

Versus

EXECUTIVE DISTRICT OFFICER (REVENUE), LAHORE and another---Respondents

Civil Appeals Nos.2140 and 2141 of 2006, decided on 12th February, 2008.

(On appeal from the judgment, dated 16-3-2006 passed by Punjab Service Tribunal, Lahore, in Appeal Nos.2612 and 2656 of 2005).

Punjab Removal from Service (Special Powers) Ordinance (IV of 2000)---

---Ss. 3(1)(c), 5(1)(a) & 6---Punjab Service Tribunals Act (IX of 1974), S.4---Reduction in ranks---Charge of corruption---Dismissal of civil servant's appeal by Service Tribunal---Validity---Inquiry proceedings conducted in absence of service of statement of allegations on civil servant would be void and nullity in eyes of law as civil servant was not confronted with them---Evidence recorded prior to regular inquiry, in absence of civil servant, would not be of any value as right of cross-examining witnesses had been denied to civil servant resulting in manifest injustice---Inquiry had not been conducted according to mandatory provisions of law so much so that even statement of allegation was not supplied to civil servant to meet charges---Supreme Court set aside impugned judgment and directed reinstatement of civil servant with all back-benefits while giving liberty to department to initiate fresh inquiry in accordance with law, if so advised.

Sheikh Masood Akhtar, Advocate-on-Record for Appellant.

Raja Muhammad Saeed Akram, Astd. A.-G., Punjab for Respondents.

Date of hearing: 12th February, 2008.

JUDGMENT

IJAZ-UL-HASSAN KHAN, J.---The above captioned appeals, with the leave of this Court, filed by Muhammad Ismail Shahid and Muhammad Sharif, appellants, arise out of a common judgment, dated 16-3-2006 passed by Punjab Service Tribunal, Lahore, dismissing Service Appeals Nos.2612 and 2656 of 2005 preferred by the appellants.

2. Relevant facts of the case are, that while posted as Naib Tehsildar Settlement, Cantt. Lahore, appellant Muhammad Ismail Shahid demanded illegal gratification through his Reader appellant Muhammad Sharif, from one Muhammad Hussain, complainant, for attestation of mutations of complainant's land. A complainant was made to District Co-Ordination Officer, Lahore, in pursuance

whereof disciplinary proceedings were initiated and appellants were served with charge-sheets. The replies of the appellants, having been found unsatisfactory, they were awarded penalty of reduction in their ranks from the post of Naib Tehsildar to Stenographer and from the post of Junior Clerk to Naib Qasid, respectively. Appellants filed departmental appeals which did not succeed. Appeals of the appellants before the Tribunal also met the same fate necessitating the filing of instant appeals.

3. Leave was granted in both the cases by order, dated 14-11-2006 to consider the contentions, inter alia, that in the disciplinary proceedings carried out by the respondents the appellants were not given any opportunity to cross-examine the witnesses produced by the department and that adequate opportunity was also not afforded to the appellants to produce their evidence; that the statement of allegation was also not provided to them and that various contentions raised by the appellants were not attended to by the Tribunal.

4. Sheikh Masood Akhtar, Advocate representing the appellants, bitterly criticized the impugned judgment and attempted to argue that same has been recorded in a mechanical manner without application of independent judicious mind and in total disregard to the law on the point and that evidence recorded prior to the regular inquiry, in absence of the appellants, could not be treated as evidence of any worth, as a result whereof right of cross-examination has been denied to the appellants.

5. Raja M. Saeed Akram, learned Additional Advocate-General, Punjab representing the respondents, on the other hand, refuted the arguments of learned counsel for the appellants and supported the impugned judgment on the grounds more or less the same incorporated in the judgment itself.

6. Having heard the arguments from both sides in the light of the material on file, we find that submissions made by learned counsel for the appellants carry weight and must prevail. Learned Tribunal has erred in law and facts in dismissing the appeals of the appellants as in the absence of service of statements of allegations, required under section 5(1)(a) of the Punjab Removal from Service (Special Powers) Ordinance, 2000, the proceedings were void and nullity in the eyes of law as appellants were not confronted with the same. Again the evidence recorded prior to the regular inquiry in the absence of appellants could not be treated as evidence of any value as right of cross-examining the witnesses has been denied to the appellants, resulting in manifest injustice. We also find that inquiry was not conducted according to the mandatory provisions of law so much so statements of allegations were not supplied to the appellants to meet the charges.

7. In view of the above, appeals are allowed, impugned judgment is set aside and appellants are directed to be reinstated to their positions with all back-benefits. However, the department shall be at liberty to initiate fresh inquiry in the matter in accordance with law, if so advised. No order as to costs.

S.A.K./M-135/SC

Appeals accepted.

For Appellant

2008 S C M R 1369

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C. J., Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ

NASEEB KHAN----Petitioner

Versus

**DIVISIONAL SUPERINTENDENT, PAKISTAN RAILWAYS, LAHORE and another---
Respondents**

Civil Petition for Leave to Appeal No.466 of 2008, decided on 26th May, 2008.

(On appeal from the judgment, dated 23-1-2008 passed by Federal Service Tribunal in Appeal No.397(R) of 2007).

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

----S. 5---Misconduct---Dismissal from service---Non-holding of departmental Enquiry---Violation of principles of natural justice---Effect---Held, in case of imposing a major penalty, the principles of natural justice required that a regular enquiry was to be conducted in the matter and opportunity of defence and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

Pakistan International Airlines Corporation v. Ms. Shaista Naheed 2004 SCMR 316 and Inspector-General of Police, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 2007 ref.

Abdul Rehman Siddiqui, Advocate Supreme Court with Arshad Ali Chaudhry, Advocate-on-Record for Petitioner.

Qamar Zaman, Clerk, Litigation Branch for Respondents.

Date of hearing: 26th May, 2008.

JUDGMENT

IJAZ-UL-HASSAN KHAN, J--- Through instant petition under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, Naseeb Khan, petitioner, seeks leave against judgment, dated 23-1-2008 of learned Federal Service Tribunal, Islamabad, whereby appeal of the petitioner, challenging his dismissal from service, has been dismissed, in limine, being barred by time.

2. Precisely stated facts of the case as gathered from the record are, that petitioner joined service of respondent-Department as Junior Commercial Assistant Booking (BS-5) on 26-3-1998 and served as such for 14 years. On 10-11-2001 due to demise of his wife, petitioner proceeded on leave. Petitioner

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1217 /ST

Dated 1 / 8 / 2016


To

The District Police Officer,
Mardan.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 27.7.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.