Appeal No. 1218/2018

Date of Institution

04.10.2018

Date of Decision

10.07.2020

Iqtidar Ali, Ex-Constable No. 629, District Police Kohat. ... (Appellant)

VERSUS

The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and two others. ... (Respondents)

Mr. Taimur Ali Khan, Advocate.

For appellant

Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General

For respondents.

MR. HAMID FAROOO DURRANI, Mr. MUHAMMAD JAMAL KHAN,

Chairman.

Member (Judicial)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

The appellant, while performing his duty as constable in the District Police Kohat at the relevant time, was detailed for basic recruit course at Police Training School Swabi. He absented himself and did not care to join the course, therefore, was proceeded against departmentally and, on 15.08.2018, was awarded major penalty of dismissal from service with immediate effect. A departmental appeal was preferred which also could not find favour and was rejected on 27.09.2018, hence the service appeal in hand.



- 2. We have heard learned counsel for the appellant, learned Assistant Advocate General on behalf of the respondents and have also examined the available record.
- 3. It was the argument of learned counsel that the appellant could not join the course due to his ailment for which he had already submitted medical record before the official respondents. The record was, however, not considered by them. It was also the contention of learned counsel that through the impugned order previous omissions, attributable to the appellant, were also made basis for the award of penalty. It was, therefore, without any legal foundation. The penalty awarded to the appellant was not commensurate with the charges/allegations against him, it was added. Learned counsel relied on judgments reported as 2002-PLC(C.S)391 and 2006-SCMR-1120 in support of his arguments.

Learned Asstt. Advocate General, on the other hand, while referring to the copies of medical record claimed by the appellant and argued that the same was not free from doubt, therefore, was rightly disregarded by the respondents. He added that the appellant duly participated in the process of departmental enquiry against him and was provided ample opportunity to put forth his defence.

4. The available record, including the impugned order, suggests that although the previous misdeeds of appellant were mentioned in the order, however, the charges included the lapse on the part of appellant in not joining the basic recruit course at Swabi. Needless to note that at least five occasions prior to the above noted lapse the appellant was repatriated as unqualified from training centre/school at different stations. Such conduct of appellant was not ignorable.



5. The appellant, throughout the departmental proceedings, had heavily relied on the pretext of his ailment in not joining the course. It is, however, conceded that he never submitted any application for grant of medical leave to the competent authority or to any other offices in the departmental hierarchy. It is noted with concern that the medical leave certificate, as well as the out-door patient ticket dated 10.05.2018, did not deserve credence as the former did not bear any date of issue however suggested 17 days bed rest. Noticeably, the period of bed rest also bore cuttings. Similarly, the latter, purported to have been issued on 10.05.2018, also suggested rest for 17 days but w.e.f. 10.05.2017.

In the above context the District Police Officer Kohat had duly sent the medical leave certificate to the Medical Superintendent DHQ Hospital Kohat for verification. In reply, it was stated in writing by the hospital authority that the OPD chit bearing No. 2939 dated 10.05.2018 though had the record in the CRC Register but the prescription and signatures of the Medical Officer could not be verified. It was added that Medical Officer was not authorized to advise medical leave for more than three days.

6. The record is also depictive of the fact that the appellant duly participated in the proceedings and submitted reply to the charge sheet as well as the show cause notice. Pertinently, in his reply to the show cause notice the appellant did not wish to add anything and relied on his reply to the charge sheet. Needless to reiterate that the appellant did not grudge his absence from the recruit course nor ever claimed that he had followed the procedure for grant of medical leave.



7. As a corollary to the above, the appeal in had is dismissed being without any merits.

Parties are left to bear their own costs. File be consigned to the

record room.

(HAMID FAROOQ DURRANI) Chairman

(MUHAMMAD JAMAL KHAN) Member (Judicial)

ANNOUNCED 10.07,2020

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1 ;	2	3
		Present.
	10.07.2020	Mr. Taimur Ali Khan, For appellant Advocate
		Mr. M. Riaz Khan Paindakhel , Assistant Advocate General, For respondents
		Vide our detailed judgment of today, the appeal ir
		hand is dismissed being without any merits.
		Parties are left to bear their own costs. File be
		consigned to the record room. (Hamid Faroog Durrani) Chairman
		(Muhammad Jamal Khan) Member (Judicial)
		<u>ANNOUNCED</u> 10.07.2020

Due to COVID19, the case is adjourned to 10/7 /2020 for the same as before.

Reader

24.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council learned counsel for the appellant is not available today. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Adjourned to 13.03.2020 for arguments/further proceedings before D.B.

(M. Amin Khan Kundi) Member (Hussain Shah) Member

13.03.2020

Clerk to counsel for the appellant present. Mr. Muhammad Jan, DDA for respondents present. Clerk to counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 27.04.2020 before D.B.

Member

Member

23.10.2019

Counsel for the appellant present. Mr. Zia Ullah Deputy District Attorney alongwith Mr. Arif Saleem Stenographer for the respondents present.

Learned counsel for the appellant requests for adjournment as learned senior counsel for the appellant is engaged before Honourable High Court today.

Adjourned to 21.11.2019 before D.B.

Mf Member

Chairman

01.11.2019

Appellant with counsel present. Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Arif Saleem Stenographer present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 11.12.2019 before D.B.

Member

Member

11.12.2019

Appellant in person present. Addl: AG alongwith Mr. Arif Saleem, ASI for respondents present. Appellant seeks adjournment due to general strike of the Bar. Adjourned. To come up for arguments on 24.01.2020 before D.B.

Member

// /// Member 08.04.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Ishaq Gul DSP present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourn. To come up for arguments on 24.06.2019 before D.B

Member

Member

24.06.2019

Appellant with counsel and Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 07.08.2019 before D.B.

Member

Member

07.08.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Arif Salim Stenographer present. Representative of the respondent department submitted additional documents placed on file. Adjournment requested. Adjourn. To come up for arguments on 23.10.2019 before D.B.

A Member

Member

17.10.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that he was dismissed from service vide impugned order dated 15.05.2018 followed by departmental appeal on 30.08.2018, which was dismissed on 29.06.2018, hence, the instant service appeal. As proper enquiry was not conducted against the appellant so opportunity of due process and fair trial was denied to him and was condemned unheard.

Appellant Deposited
Security & Process Fee

Points urged need consideration. Admit, subject to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 29.11.2018 before S.B.

(AHMAD HASSAN MEMBER

29.11.2018

Appellant with counsel and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Ishaq Gul DSP legal for the respondents present. Written reply not received. Representative of the respondents seeks adjournment. Adjourn. To come up for written reply/comments on 11.01.2019 before S.B.

english and the

Member

11.1.2019

Counsel for the appellant and Addl. AG alongwith Bilal Ahmad H.C for the respondents present.

Parawise comments on behalf of respondents have been submitted. To come up for hearing before the D.B on 08.04.2019. The appellant may furnish rejoinder within a fortnight, if so advised.

Chairman^N

Form- A FORM OF ORDER SHEET

Court or	
Case No.	218 /2018

	Case No	1218/2018
S.No.	Date of order	Order or other proceedings with signature of judge
	proceedings	
1	2	3
	<u> </u>	3
	04/10/2018	The appeal of Mr. Iqtidar Ali presented today by Mr. Taim
1-	04/10/2018	
		Ali Khan Advocate may be entered in the Institution Register and p
-		up to the Learned Member for proper order please.
	5-10-18	REGISTRAR WILL
_	3-10-18	This case is entrusted to S. Bench for preliminary hearing
2-		be put up there on $17-10-2018$
		be put up there on
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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 12-18/2018

Iqtidar Ali	· V/S	Pelice Deptt:
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APPELLANT

THROUGH:

(TAIMUR ALI KHAN) ADVOCATE HIGH COURT,

&

ASAD MAHMOOD (ADVOCATE HIGH COURT)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 12 18/2018

Iqtidar Ali, Ex-Constable, No.629, District Police Kohat.

Khyber Pakhtukhwa Bervice Tribumi

Diary No. 1452

Dated 04/10/20/8

(APPELLANT)

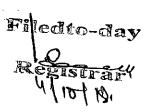
VERSUS

- 1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 2. The Regional Police officer, Kohat Region, Kohat.
- 3. The District Police Officer, Kohat.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 26.09.2018, WHEREBY THE DEPARTMENTAL APPEAL HAS BEEN REJECTED AGAINST THE ORDER DATED 15.08.2018, WHEREIN THE APPELLANT WAS DISMISSED FROM SERVICE FOR NO GOOD GROUND.

PRAYER:



THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 26.09.2018 AND 15.08.2018 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the police force in the year 2009 and completed all his due training etc and also have good service record throughout.

- 2. That the appellant has kidney problem due to which he went to doctor and the doctor recommended complete bed rest for 17 days from 10.05.2018 to 27.05.2018 and due to illness he was unable to performed his duty and was remained absent from his duty for 17 days and after recovering from the illness the appellant again joined his duty. (Copies of medical report and medical leaving certificate are attached as Annexure-A)
- 3. That during performing his duty, charge sheet and statement of allegation were issued to the appellant which was duly replied by the appellant in which he gave the reason of his absence. (copies of charge sheet, statement of allegations and reply to charge sheet are attached as Annexure-B,C&D)
- 4. That inquiry was conducted against the appellant in which no proper chance of defence was provided to the appellant and the basis of that inquiry, the show cause notice was served to the appellant, which was also replied by the appellant in which he mentioned that the reply to charge sheet may be considered as reply to show cause notice. It is pertinent to mention here that no inquiry report was not provide to the appellant, therefore he is unable to annex the same with this appeal. (Copy of show cause notice and reply to show cause notice are attached as Annexure-E&F)
- 5. That on the basis 17 days absence, major punishment of dismissal from service was imposed upon the appellant vide order dated 15.08.2018 under Police Rules 1975 (amended in 2014) and his absence period was also treated as leave without pay. (Copy of order dated 15.08.2018 is attached as Annexure-G)
- 6. That against the impugned dismissal order, the appellant field departmental appeal on 30.08.2018, which was rejected on 26.09.2018 for no good grounds. (Copies of departmental appeal and rejection order are attached as Annexure-H&I)
- 7. That now the appellant come to this august tribunal on the following grounds amongst others.

GROUNDS:

- A) That the impugned order dated 26.09.2018 and 15.08.2018 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.

- C) That inquiry was not conducted against the appellant according to the prescribed and on the basis of irregular inquiry, the appellant was dismissed from service, which is not permissible in law. Even the inquiry report was handed over to the appellant, therefore, the impugned order is liable to be set aside on this ground alone.
- D) That the appellant was ill and due to that reason the appellant was unable to perform his duty and the concerned doctor also gave medical leave certificate, but the inquiry officer did not consider his medical certificate during the inquiry proceeding.
- E) That the appellant was remained absent for only 17 days due to illness and after recovery from illness he joined again his duty and performed his duty till dismissal order.
- F) That the penalty of dismissal from service for just 17 days absence is very harsh, which is not sustainable in the eyes of law and therefore liable to be set aside.
- G) That the appellant did not intentionally absent from his duties but due to illness he was unable to perform his and was compel to remain absent from his duty.
- 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 may be accepted as prayed for.

APPELLANT

Iqtidar Ali

THROUGH:

(TAIMUR ATTICKHAN)
ADVOCATE HIGH COURT,

atidanAli

&

(ASAD MAHMOOD)
ADVOCATE HIGH COURT

DHU TEACHING HOSPITAL KDA KOHAT Clinical Findings/Investigation/Treatment/REferral/Test Finding Renal Chilchlins Re Cly Amlex Medical Officer of Trus on & DHQ Hospital Kohat of

Alder

GOVERNMENT OF KHYBER PAKHTUNKHWA DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient /atedao Alli
Certified that Mr./Ms. 19 fc. day Ali S/DWO Dilday Ali
resident of Us forear Payon Kohat
Designation Courtable Department Police
having CNIC No. 143al - 269c879-3' has been examined in this hospital vide
Emergency / O.P.D / Admission No. 2939 dated 1-/5/298
He/She is suffering from Renal Calculus Das
and is advised bed home rest along with the medications prescribed for a period of
w.e.f. $\frac{18}{5/2018}$ to $\frac{27}{5/2018}$ for the restoration of his / her health.
Not Valid for MLC / Court Purpose

Late?

DOCTOR'S SIGNATURE DHQ TEACHING HOSPITAL KOHAT

Medical Officer DHQ Hospital Kohat



Office of the District Police Officer, Kohat

Dated <u>04-6-/2018</u>

CHARGE SHEET.

I, ABBAS MAJEED KHAN MARWAT, DISTRICT POLICE OFFICER, KOHAT, as competent authority under Khyber Pakhtunkhwa Police Rules 1975 (amendments 2014) am of the opinion that you Recruit Constable Iqtidar Ali No. 629 rendered yourself liable to be proceeded against, as you have committed the following act/omissions within the meaning of Rule 3 of the Police Rules 1975.

You were detailed to PTS Swabi for basic recruit course but deliberately did not join the recruit course and declared as unqualified vide DIG Training Peshawar letter No. 4904-10/Trg dated 23.05.2018.

- ii. You were previously repatriated as unqualified from recruit course vide PTS Mansehra letter No. 2572-76/Trg: dated 28.02.2017.
- iii. Your conduct speaks of disintrest in discharge of lawful duty and mere burden on public exchequer.
- 2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 of the Police Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the Rule 4 of Police Rules 1975.
- 3. You are, therefore, required to submit your written statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

Your written defense if any should reach the Enquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put in and ex-parte action shall be taken against you.

A statement of allegation is enclosed.

DISTRICT POLICE OFFICER,

Allan



Office of the District Police Officer. Kohat

Dated _____/2018

DISCIPLINARY ACTION

ABBAS MAJEED KHAN MARWAT, DISTRICT POLICE OFFICER, KOHAT, as competent authority, am of the opinion that you Recruit Constable Iqtidar Ali No. 629 have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

You were detailed to PTS Swabi for basic recruit course but deliberately did not join the recruit course and declared as unqualified vide DIG Training Peshawar letter No. 4904-10/Trg dated 23.05.2018.

- You were previously repatriated as unqualified from ii. recruit course vide PTS Mansehra letter No. 2572-76/Trg: dated 28.02.2017.
- Your conduct speaks of disintrest in discharge of iii. lawful duty and mere burden on public exchequer.
- For the purpose of scrutinizing the conduct of said accused with reference to the above allegations Mr. Ishaq Gul DSP-Legal Kohat is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Rule-1975, provide reasonable opportunity of hearing to the accused official, record his findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

> DISTRICT POLICE OFFICER, KOHAT M 4/6

No. 5559-60/PA, dated 04-6- /2018.

Copy of above to:-

Mr. Ishaq Gul DSP Legal Kohat :- The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.

The Accused Official:- with the directions to appear before the 2. Enquiry Officer, on the date, time and place fixed by him, for the purpose of enquiry proceedings.

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3/6/1/204 06 2018 D) 5559-601 477 10 019.

وملور ف لنظر ل افرزار على لمدوك في مولارما بورس لاس لاس العدائي العدائ

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Clarge Shoet

OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT

Tel: 0922-9260116 Fax 9260125

E(9)

No 6575/PA dated Kohat the 63/7/2018

FINAL SHOW CAUSE NOTICE

- I, Sohail Khalid, District Police Officer, Kohat as competent authority, under the Khyber Pakhtunkhwa Police Rules 1975, (amended 2014) is hereby serve you, Recruit Constable Iqtidar Ali No. 629 as fallow:
 - i. That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide office No. 5559-60/PA dated 04.06.2018.
 - ii. On going, through the finding and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the inquiry officer.

I am satisfied that you have committed the following acts/omissions, specified in section 3 of the said ordinance.

You were detailed to PTS Swabi for basic recruit course but deliberately did not join the recruit course and declared as unqualified vide DIG Training Peshawar letter No. 4904-10/Trg dated 23.05.2018.

- a. You were previously repatriated as unqualified from recruit course vide PTS Mansehra letter No. 2572-76/Trg: dated 28.02.2017.
- b. Your conduct speaks of disinterest in discharge of lawful duty and mere burden on public exchaquer.
- 2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you major penalty provided under the Rules **ibid**.
- 3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you also intimate whether you desire to be heard in person.
- 4. If no reply to this notice is received within 07 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.a

5. The copy of the finding of inquiry officer is enclosed.

DISTRICT POLICE OFFICER, KOHAT # 2/1 7/7

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OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT

Tel: 0922-9260116 Fax 9260125

ORDER

This order will dispose of departmental proceedings initiated against Recruit Const. Iqtidar Ali No. 629 (hereinafter called accused official) under the KP, Police Rules, (amendment 2014). 1975

Facts arising of the proceedings are that the accused official was detailed to basic recruit course at PTS Swabi, but he deliberately absented himself and did not join the recruit course. Hence, the accused official was reported/declared as unqualified vide DIG Training Peshawar letter No. 4904-10/Trg dated 23.05.2018. He was also previously repatriated as unqualified from recruit course from Police Training Centre and School. Therefore, the accused official was served with charge sheet alongwith statement of allegations under the **rules ibid** as under:-

- He was detailed to PTS Swabi for basic recruit course but deliberately did not join the recruit course and declared as unqualified vide DIG Training Peshawar Letter No. 4904-10/Trg: dated 23.05.2018
- ii. He was previously repatriated as unqualified from recruit course vide PTS Mansehra letter No. 2572-76/Trg: dated 28.02.2017.
- iii. ¹ His conduct speaks of disinterest in discharge of lawful duty and mere burden on public exchequer.

DSP Legal, Kohat was appointed as enquiry officer to scrutinize the conduct of accused official. The enquiry officer examined the concerned witnesses in presence of accused official and he was afforded ample opportunity of defense. The enquiry officer held him guilty of the charge and recommended for major punishment.

Final Show Cause Notice alongwith copy of finding was served upon the accused official, reply received unsatisfactory. Hence, he was heard in orderly room held on 13.08.2018, but he failed to explain his position.

Record gone through which indicates that the accused official was enlisted as constable on 01.08.2009. He was detailed for basic recruit course on several occasions as under, but willfully absented from the Training Center/School and repatriated as unqualified.

S.No	OB No. & Date of dispatching for training	Training Center/School	Date of repatriation as unqualified
1	466 dt: 02.06.2010	Armed Training Center Nowshera	14.06.2010
2	654 dt: 20.01.2011	PTC Hangu	28.02.2011
3 .	7086 dt: 11.07.2011	PTC Hangu	30.04.2011
4	95 dt: 20.01.2016	PTS Mansehra	07.03.2016
5	888 dt: 03.10.2017	PTS Kohat	17.11.2017
6	477 dt: 08.05.2018	PTS Swabi	Did not report to training centre, absented from Police Lines Kohat

Alganeword fruit indicates that previously he was also removed/dismissed from seemed, but later

remotated in beside by

departmental appellate authority & KP Service Tribunal with all back benefits on vide order dated 17.05.2011 and 31.05.2016 respectively.

In view of the above and available record, I reached to the conclusion that the accused official is found unlikely to prove an efficient Police official during his **09 year service**. Furthermore, there is no hope to improve himself in future. Hence his retention in a discipline force is a burden and loss to the public exchequer.

Therefore, in exercise of powers conferred upon me under the rules ibid I, Sohail Khalid, District Police Officer, Kohat, impose a major punishment of dismissal from service on recruit constable lqtidar Ali No. 629 with immediate effect and his absence period 17 days is treated as leave without pay. Kit etc issued to him be collected.

Announced 13.08.2018

(SOHAIL KHALID) PSP DISTRICT POLICE OFFICER, KOHAT

OB No. ____/2018

No<u>767-79</u>/ PA dated Kohat the <u>75 - 75 X 2018.</u>
Copy of above for necessary action to the:-

R.I, Reader, Pay officer, SRC and OHC

2. Accused official for information

Aluse W

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE KOHAT REGION KOHAT

SUBJECT: APPEAL AGAINST THE IMPUGNED ORIZER DATED 15-08-2018 VIDE O.B NO-861

UPON THE FINDINGS OF ENQUIRY OFFICER THE APPELLANT IQTIDAR ALI CONSTABLE 629

WAS AWARDED MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE AND THE ABSENTED

PERIOD 17 DAYS CONSIDER WITHOUT PAY.

Respectfully Sheweth,

With great veneration the instant department appeal is preferred by the appellant on the following grounds:-

Facts:

Briefly facts are that the appellant was appointed as constable in Police Department as as constable in the year 2009. That after appointment the appellant started performing his duties with full devotion.

That on 10-05-2018 the appellant fell ill and doctor advised him—days bed rest vide medical certificate dated 10-05-2018 and subsequently, the appellant was charge sheeted on the ground that appellant returned unqualified from Basic Recurit Course and also absented form the duty without permission w.e.f 10-05-2018 to 27-05-2018

That on the basis of charge sheet and statement of allegations, an enquiry was conducted and finally appellant was served with a show cause notice on -3-7-18.

That so far as the allegation No-1 & II is concern the appellant has not qualified basic recruit course at PTC Hangu, it is evident that the appellant was not allowed to participate on the course as he failed to deposit security fee on second time he was returned on the same day as he was a bit late to reach a PTC training school hangu and appellant was not allowed to undertake basic recruit course, therefore it can not be construed that the appellant has failed to qualify the course and the absence from duty is concerned, the appellant remained ill and in this respect the appellant was advised bed rest by the doctor as per medical prescription available on file.

That it is worth mentioning here that the department returned the appellant on administrative ground mentioned above which can not construed a ground that the appellant has not qualified the basic recruit course.

That without considering the defense of the appellant the competent authority awarded major punishment of dismissal from service to the appellant vide impugned order mentioned above.

That there was no other person except the appellant to inform the high ups regarding the ill ness of the appellant (Copy of medical reports attached)

That again an unjust has been done with the appellant by not giving ample opportunity of heard in person nor properly enquired the allegation. Just on the basis

Allow

- of enquiry finding report of the enquiry officer the appellant recommend guilty by enquiry officer without following the prescribed rules relating to enquiry proceedings as per Police Rules 1975 (amended 2014).
- 1. That the all the proceedings conducted against the appellant are against the police rules.
- 2. That there is nothing on record which connects the appellant with the allegation.
- 3. That nothing has been proved beyond any shadow of doubt that the appellant has committed any disinterest in service burden on Police department.
- 4. That there are numerous good entries in the service record of the appellant which could be verified but this fact has not been taken in consideration while awarding the major punishment which is against to the canon of justice.
- 5. That the appellant was neither provided an opportunity to cross examine the witnesses nor to produce defense evidence and the enquiry proceedings accordingly defective. Furthermore the requirements of service rules have not been observed while awarding the impugned punishment.

Grounds:

- a. That during enquiry none from the general public was examined in support of the absentee charges leveled against the appellant. No allegation mentioned above are properly enquired by any enquiry officer.
- b. That the appellant was neither intimated nor informed by any source of medium regarding enquiry proceedings for any disciplinary action which shows bias on the part of quarter concern.
 - c. That the appellant is honest and dedicated one and leave no stone unturned to discharge his duties:
- d. That as per universal declaration of human rights 1948 prohibits the arbitral /
 - e. That the DPO Kohat has acted whimsically and arbitrary, which is apparent from the impugned order.
 - f. That the impugned order is not based on sound reasons and same is not sustainable in the eyes of law. The same is based on wrong assumption of facts.
 - g. That the departmental enquiry was not conducted according to the rules.
 - h. That the impugned order is outcome of surmises and conjecture.

Pray

In the view of above circumstances it is humbly prayed that the impugned order of DPO Kohat may please be set aside for the end of justice and the appellant may please be graciously be reinstated in service with all back benefits

Date: 30/8/2018.

Atida O A li (Appellant)

lqtidar Ali (Ex-Constable) No. 629 Kohat.

Miser

ORDER.

This order will dispose of a departmental appeal, moved by Ex-Constable Iqtidar Ali No. 629 of Kohat district Police, against the punishment order, passed by DPO Kohat vide OB No.861, dated 15.08.2018 whereby he was awarded major punishment of dismissal from service. Facts are that the appellant was detailed to PTS Swabi for basic recruit course but he deliberately absented himself and did not join the training. He was returned back to district as unqualified. He was dealt with departmentally and awarded major punishment of dismissal from service.

He preferred the instant appeal before the undersigned, upon which comments were obtained from DPO Kohat and perused. He was also heard in person in orderly room held in this office on 26.09.2018 and crossly examined but he did not advance any plausible explanation in his defense.

Record indicates that the appellant had also been returned as unqualified on 06 different occasions from various training schools. The allegations leveled against him are proved and his appeal is hereby **rejected**.

Order Announced 26.09.2018

(MUHAMMAD LAZ KHAN) PSP Region Police Officer,

Kohat Region.

No. 10275 /EC,

C, dated Kohat the

/2018.

Copy for information and necessary action to the District Police Officer, Kohat w/r to his office letter No. 20374/LB, dated 13.09 2018. His Fauji Missal / Enquiry File is returned herewith.

(MUHAMMAD IJAK KHAN) PSP Region Police Officer, Kohat Region.

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service appeal No. 1218/2018		
Iqtidar Ali Ex-Rec-Constable No. 629	÷	Appellant

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa & others

......Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

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BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service appeal No. 1218/2018		
lqtidar Ali Ex-Rec-Constable No. 629	*** ***	Appellar

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa & others

...... Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectively Sheweth:-

Parawise comments are submitted as under:-

Preliminary Objections:-

- a) That the appellant has got no cause of action.
- b) That the appellant has got no locus standi.
- c) That the appeal is not maintainable in the present form.
- d) That the appellant is estopped to file the instant appeal for his own act.
- e) That the appellant has not come to this Hon: Tribunal with clean hands.
- f) That the appellant during his 09 years-service deliberately absented / repatriated from training centers/schools due to willful absence on 06 occasions and willfully avoided to undergo the basic recruit course.
- That the appellant was earlier removed from service on 30.03.2011, however, the punishment of removal from service was modified in shape of time scale for a period of 03 years and reinstated in service by departmental appellate authority order dated 17.05.2011. Similarly, on account of absence from training vide order dated 28.11.2018, however, subsequently reinstated in service in compliance with the judgment of this honorable Tribunal judgment dated 31.05.2016 he was reinstated in service and got all financial back benefits.

FACTS:-

1. Correct to the extent of recruitment of appellant in the rank of constable. However, the remaining para is incorrect. The appellant was a habitual absentee. He did not qualify / undergo the basic recruit course. The appellant was detailed for basic / mandatory recruit course, but deliberately did not join the course or absented himself from Training School / Centers. It is added that the appellant was awarded different kind of punishments including dismissal from service, but did not improve himself and there is no

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hope that the appellant will be an efficient official. The appellant from the date of appointment (2009) remained absent or out of service (including removal / dismissal and reinstatement in service) for a period of about 05 years.

- 2. This para is incorrect, the appellant had a practice for submitting medical report regarding his illness. The appellant did not move any application for his illness, leave etc to the competent authority. The annexure / medical leave certificate was verified from Medical Superintendent, DHQ Teaching Hospital Kohat. The Medical Leave cannot be verified by the concerned authorities and submitted that Medical Officer is not authorized to advise medical leave for more then 03 days. Hence, the medical leave seems fake. Copies are annexure A & B.
- 3. Correct, the appellant was served with charge sheet alongwith statement of allegation on account of his willful absence / not joining the basic recruit course at Police Training School, Swabi and declared unqualified by the authorities concerned. The charge sheet also includes previous conduct of the appellant and disinterest in the duty.
- 4. Incorrect, the appellant was associated with the inquiry proceedings by the inquiry officer and afforded opportunity. He was also questioned by the inquiry officer, replied by the appellant. The appellant during cross examination admitted his absence from training schools/centers till 2010. Copy of statement of the appellant is annexure C
- 5. Incorrect, the appellant was not dismissed sole on the grounds of 17 days absence, but infect he was found inefficient, willful absence from basic recruit training at PTS Swabi detailed on 08.05.2018. In addition, the medical leave certificate annexed by the appellant cannot be verified by the MS, DHQ Teaching Hospital Kohat.
- 6. The departmental appeal of the appellant was correctly rejected vide speaking order by respondent No. 2.
- 7. The appellant did not come to this Honorable Tribunal with clean hands.

Grounds:-

- A. Incorrect, the orders passed by the respondent No. 2 & 3 are based on facts / record and legal one.
- B. Incorrect, the appellant was associated with inquiry proceedings, afforded defense opportunity by the inquiry officer and competent authorities. Furthermore, final show cause notice was issued to the appellant by the respondent No. 3. The appellant was heard in person by the respondents No. 2 & 3.

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- C. Incorrect, the departmental inquiry was conducted against the appellant in accordance with law & rules.
- D. Incorrect, the appellant did not submit any leave certificate to the inquiry officer. The appellant took false plea of his illness. Previously, the appellant also took similar plea on different occasions of his willful absence from duty and basic recruit course. Copy is **annexure D & E**.
- E. Incorrect, the appellant was not dismissed on account of 17 days absence.

 The appellant was dismissed on the charges detailed in charge sheet / statement of allegations and previous conduct.
- F. Incorrect, the appellant was proceeded with departmentally on account of willful absence from basic recruit course detailed at PTS Swabi on 08.05.2018.
- G. Incorrect, the appellant deliberately absented from basic recruit course on 06 occasions during his 09 years service, which is mandatory for newly appointed constable and there is no hope that the appellant will become an efficient official.
- H. Incorrect, the appellant took false plea as his previous practice.
- The respondents may also be allowed to advance other grounds at the time hearing.

Keeping in view of the above, it is submitted that the appeal is against facts without merit. It is, therefore, prayed that the appeal may kindly be dismissed with cost please.

Regional Police Officer,

(Respondent No. 2)

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

District Police Officer, Kohat

(Respondent No. 3)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBLINAL PESHAWAR

Service appeal No. 1218/2018 Iqtidar Ali Ex-Rec-Constable No. 629

.....Appellant

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa & others

..... Respondents

COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.

Regional Folice Officer,

(Respondent No. 2)

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

District Rollice Officer, Kohat

(Respondent No. 3)



Office of the District Police Officer, Kohat

Ph: #. 0922-9260116 Fax #. 0922-9260125

dated Kohat the 21/11 /2018

To:

The

Medical Superintendent,

DHQ, Hospital Kohat.

Subject:

VERIFICATION OF MEDICAL LEAVE CERTIFICATE.

Memo:

It is stated that Ex-Constable Iqtidar Ali s/o Dildar Ali r/o Usterzai Payan, Kohat has submitted a medical an OPD Slip No. 2939 with medical leave certificate issued by DHQ Hospital. Copies enclosed.

It is requested that the above OPD and certificate may be verified and report at the earliest please.

ED

DISTRICT POLICE OFFICER, KOHAT

OFFICE OF THE MEDICAL SUPERINTENDENT DHQ TEACHING HOSPITAL KDA; KOHAT

/F-5A

Dated Kohat the 30/11/2018

To

The District Police Officer

Kohat.

Office of the D.S.M.

Dy: No. .854..... Dated 3-12-2/8

Subject:-

VERIFICATION OF MEDICAL LEAVE CERTIFICATE

Memo:

Reference your office letter No.25589/LB dated 21.11.2018 on the subject cited above and to state that the OPD Chit bearing No.2939 dated 10.05.2018 is having record in the CRC Register but the prescription and signatures of the Medical Officer cannot be verified. Moreover Medical Officer is not authorized to advise medical leave for more than 03 days.

Hence leave cannot be verified.

Dillhegu

ッ MEDICAL SUPERINTENDENT DHQ TIMCHING HO

PPs attached

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District Police Afficei

Amment & Blacks 3/0/1/104 06 DION 5559-601 1/17/10 C/2 e OP1 11675 Do BLy & Co Us Col so Col on S س، رحی بوما بع اور سائل ال فاعلاج هستال سه رمای - حس نے سائی کولرسٹ کیلے کا انھا ایسی دل سائی کے اردول میں سین درد ماورع هي أسال هيشال دالرع جيل آب ليالي الدوائر Colons Colome Colonde Wall Colons مناس كوكروول في سفات كفلف بلوما باورائع روز بعي آرج تفي رس وهم سال دالرے مسور سے دسک کیلی سی گیا الحق علی سه کای بیری قسوی بوری می دی دی از رال الا از شاک لی ای باشاع سال شارع وسال سرد دوری و وام سر نشان س رع معايد إس كم استها بع كم سائل كواس دفعه معاف كما مان سام) کے ہے ۔ سال کا) کردعائوہ رہے گا اسرعاع ك المورى كوفائل كيا حائد رمكروف كنش ل افتدار على لمبر 9 كالمدين الورس ليل 20/6/18 P. Po

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DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

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DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

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MEDICAL LEAVE CERTIFICATE

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Father's/Husband's

Annex F

period

DETAILS OF APPELLANT'S WILLFUL ABSENCE/FROM DUTY AND OUT OF SERVICE FROM DISMISSAL AND REINSTATEMENT

S #	Date of Absence	Days	Punishment Awarded
1.	07.09.2009 to 08.09.2009	01 day	Extra dill
2.	14.06.2010 to 30.06.2010	16 days	Medical Leave
3.	04.01.2011 to 20.01.2011	17 days	Leave with pay
4.	01.03.2017 to 02.03.2017 and 12.03.2017 to 13.03.2017	02 days	Leave with pay
5.	01.11.2017 to 27.11.2017	26 days	Leave without pay
6.	08.05.2018 to 24.05.2018	17 days	Leave without pay
7.	09.03.2011 to 17.05.2011	17 days	Leave without pay
8.	19.10.2010 to 24.10.2010	05 days	Leave without pay
9.	21.09.2011 to 20.01.2011	16 days	Leave without pay
10.	Dismissed from service 30.03.2011 and reinstated 24.05.2011	54 days	Leave without pay
11.	Dismissed from service 28.11.2011 and reinstated 16.06.2016	04 years, 06 months & 11 days (out of service)	Out of service, however, given financial back benefits.

Establishment Clerk
DPO Office Kohat

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.1218/2018

Iqtidar Ali

VS

Police Deptt:

REJOINDER ON BEHALF OF APPELLANT

RESPECTFULLY SHEWETH:

Preliminary Objections:

(a-g) 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:

- Incorrect. The appellant mentioned in his departmental appeal that he was not allowed to participate in in the course as he failed to deposit security fees and on the second time he was returned on the same day as he was a bit late to reach a PTC training school Hangu and the appellant was not allowed to undertake basic recruit course. Furthermore he also mentioned in his reply to charge sheet that he is ready to participate in the course whenever the high-ups want to send him for the course. Moreover as per court judgments previous omissions could not be made the justification for subsequent penalties particularly when omission had been adjudicated upon administratively. Which means that the appellant was punished for previous omissions which could not made base for subsequent omission.
- 2. Incorrect. The appellant was ill due to which the doctor advised him bed rest for 17 days in medical leave certificate which was verified and the MS of the concerned Hospital also mentioned in his report that the OPD Chit bearing No.2939 dated 10.054.2018 is having record in CRC Register.
- 3. It is correct that charge sheet and statement of allegations were served to the appellant and replied to the charge sheet in which he mentioned the detail about his illness. Moreover the charge sheet contains the previous conduct of the appellant and as per court judgments previous omissions could not be made the justification for subsequent penalties particularly when omission had been adjudicated upon administratively. Which means that the appellant

was punished for previous omissions which could not made base for subsequent omission.

- 4. Incorrect. No proper opportunity of defence was provided to the appellant in the inquiry proceeding. Moreover in the departmental appeal the appellant mentioned that he was not allowed to participate in in the course as he failed to deposit security fees and on the second time he was returned on the same day as he was a bit late to reach a PTC training school Hangu and the appellant was not allowed to undertake basic recruit course. Furthermore he also mentioned in his reply to charge sheet that he is ready to participate in the course whenever the high-ups want to send him for the course.
- 5. Incorrect. The appellant was ill due to which the doctor advised him bed rest for 17 days and due to illness he was compel to remain absent from duty and did not participate in the training on which he was dismissed from service and his absence period was also treated as leave without pay which means that the absence period was condoned by declaring his absence period as leave without pay.
- 6. Incorrect. While para 6 of the appeal is correct.
- 7. Incorrect. The appellant has come to this Honourable Tribunal with clean hands.

GROUNDS:

- A) Incorrect. The impugned orders are not in accordance with law, facts, norms of justice and material therefore not tenable and liable to set aside.
- B) Incorrect. While para B of the appeal is correct.
- C) Incorrect. The inquiry was not conducted against the appellant in accordance with law and rules as no proper opportunity of defence was provided to the appellant.
- D) Incorrect. The appellant was ill due to which the doctor advised him bed rest for 17 days in medical leave certificate which was verified and the MS of the concerned Hospital also mentioned in his report that the OPD Chit bearing No.2939 dated 10.054.2018 is having record in CRC Register.
- E) Incorrect. The appellant was ill due to which the doctor advised him for bed rest 17 days and due to illness he was compel to remain absent from duty and did not participate in the course. Moreover the appellant mentioned in his departmental appeal that he was not allowed to participate in in the course as he failed to deposit security fees and on the second time he was returned on the same day as he

was a bit late to reach a PTC training school Hangu and the appellant was not allowed to undertake basic recruit course. Furthermore he also mentioned in his reply to charge sheet that he is ready to participate in the course whenever the high-ups want to send him for the course. Moreover as per court judgments previous omissions could not be made the justification for subsequent penalties particularly when omission had been adjudicated upon administratively. Which means that the appellant was punished for previous omissions which could not made base for subsequent omission.

- F) Incorrect. The appellant was ill due to which the doctor advised him bed rest for 17 days and due to illness he was compel to remain absent from duty and did not participate in the course.
- G) Incorrect. The appellant was ill due to which the doctor advised him bed rest for 17 days and due to illness he was compel to remain absent from duty and did not participate in the course. Moreover the appellant mentioned in his departmental appeal that he was not allowed to participate in in the course as he failed to deposit security fees and on the second time he was returned on the same day as he was a bit late to reach a PTC training school Hangu and the appellant was not allowed to undertake basic recruit course. Furthermore he also mentioned in his reply to charge sheet that he is ready to participate in the course whenever the high-ups want to send him for the course.
- H) Not mentioned in the appeal.

I) Legal.

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

Through:

Notary Public

(TAIMUR ALI KHAN) ADVOCATE HIGH COURT

latidat APPELLANT

<u>AFFIDAVIT</u>

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

DEPONENT



OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT

Tel: 0922-9260116 Fax 9260125

ORDER

This order will dispose of departmental proceedings initiated against Recruit Const. Iqtidar Ali No. 629 (hereinafter called accused official) under the KP, Police Rules, (amendment 2014). 1975

Facts arising of the proceedings are that the accused official was detailed to basic recruit course at PTS Swabi, but he deliberately absented himself and did not join the recruit course. Hence, the accused official was reported/declared as unqualified vide DIG Training Peshawar letter No. 4904-10/Trg dated 23.05.2018. He was also previously repatriated as unqualified from recruit course from Police Training Centre and School. Therefore, the accused official was served with charge sheet alongwith statement of allegations under the rules ibid as under:-

- He was detailed to PTS Swabi for basic recruit course but deliberately did not join the recruit course and declared as unqualified vide DIG Training Peshawar Letter No. 4904-10/Trg: dated 23.05.2018
- ii. He was previously repatriated as unqualified from recruit course vide PTS Mansehra letter No. 2572-76/Trg: dated 28.02.2017.
- iii. His conduct speaks of disinterest in discharge of lawful duty and mere burden on public exchequer.

DSP Legal, Kohat was appointed as enquiry officer to scrutinize the conduct of accused official. The enquiry officer examined the concerned witnesses in presence of accused official and he was afforded ample opportunity of defense. The enquiry officer held him guilty of the charge and recommended for major punishment.

Final Show Cause Notice alongwith copy of finding was served upon the accused official, reply received unsatisfactory. Hence, he was heard in orderly room held on 13.08.2018, but he failed to explain his position.

Record gone through which indicates that the accused official was enlisted as constable on 01.08.2009. He was detailed for basic recruit course on several occasions as under, but willfully absented from the Training Center/School and repatriated as unqualified.

S.No	OB No. & Date of dispatching for training	Training Center/School	Date of repatriation as unqualified
1	466 dt: 02.06.2010	Armed Training Center Nowshera	14.06.2010
2	654 dt: 20.01.2011	PTC Hangu	28.02.2011
3	7086 dt: 11.07.2011	PTC Hangu	30.04.2011
4	95 dt: 20.01.2016	PTS Mansehra	07.03.2016
5 .	888 dt: '03.10.2017	PTS Kohat	17.11.2017
6	477 dt: 08.05.2018	PTS Swabi	Did not report to training centre, absented from Police Lines Kohat
			vide DD No: 05 dated 10.05.2018 (17 days) and reported unqualified

Record further indicates that previously he was also removed/dismissed from service, but later on re-instated in service by

Adepartmental appellate authority & KP Service Tribunal with all back benefits on vide order dated 17.05.2011 and 31.05.2016 respectively.

In view of the above and available record, I reached to the conclusion that the accused official is found unlikely to prove an efficient Police official during his **09 year service**. Furthermore, there is no hope to improve himself in future. Hence his retention in a discipline force is a burden and loss to the public exchequer.

Therefore, in exercise of powers conferred upon me under the rules ibid I, Sohail Khalid, District Police Officer, Kohat, impose a major punishment of dismissal from service on recruit constable Iqtidar Ali No. 629 with immediate effect and his absence period 17 days is treated as leave without pay. Kit etc issued to him be collected.

<u>Announced</u> 13.08.2018

(SOHAIL KHALID) PSP DISTRICT POLICE OFFICER, KOHAT 15/8.

No 7/2-79 / PA dated Kohat the 1/2 2018.

Copy of above for necessary action to the:R.I. Reader, Pay officer, SRC and OHC

2. Accused official for information

R/Sir

It is submitted that I have been appointed as inquiry officer in departmental inquiry initiated against recruit constable liquidar Ali No. 629 (hereinafter called accused official) Police Lines, Kohat.

Short facts of the inquiry are that charge sheet alongwith statement of allegations were issued to the accused official by your good office vide No. 5559-60/PA dated 04.06.2018 on the following score of allegations.

- i. You were detailed to PTS Swabi for basic recruit course but deliberately did not join the recruit course and declared as unqualified vide DIG Training Peshawar Letter No. 4904-10/Trg dated 23.05.2018.
- ii. You were previously repatriated as unqualified from recruit course vide PTS Mansehra letter No. 2572-76/Trg: dated 28.02.2017.
- iii. Your conduct speaks of disinterest in discharge of lawful duty and mere burden on public exchequer.

The above charge sheet alongwith statement of allegations were served upon him, reply received, wherein he took plea that he was ill and doctor has advised him do not join the training.

In order to proceed properly against the accused official and ascertain facts, the following concerned officials/witnesses were called and examined.

- 1. IHC Abdul Hameed, Muharrar, Police Lines Kohat.
- 2. Khan Afsar, OHC, DPO office Kohat.

Muharrar Police Lines, submitted that the accused official was enrolled as constable on 01.08.2009 and he is habitual absentee. He further stated that the accused official was previously dismissed from service on willful absence from service. He produced daily diary No. 5 dated 10.05.2018, wherein it has been reported that the accused official alongwith other recruits were detailed for basic recruit training, but he absented himself from training and Police Lines. The accused official made his arrival report at Police Lines on 28.05.2018 vide DD No. 37.

OHC, DPO office, Kohat stated that the accused official was recruited as constable on 01.08.2009. He was detailed for basic recruit course on 06th time and absented from the training centers. Therefore, he was returned unqualified from Police Training Schools.



The accused official was questioned, wherein he admitted his willful absence from Training Schools, once time dismissal from service and subsequently reinstated in service by Khyber Pakhtunkhwa, Service Tribunal, Peshawar.

Service record of the accused official was requisitioned, gone through which transpired as under:-

The accused official was recruited on 01.08.2009:-

S #	OB No & date of dispatching for training	Training Center / School	Date of repatriation as unqualified
1	466 dt 02.06.2010	Armed Training Center Nowshehra	14.06.2010
2.	654 dt: 20.01.2011	PTC Hangu	28.02.2011
3.	7086 dt: 11.07,2011	PTC Hangu	30.04.2011
4.	95 dt: 20.01.2016	PTS Mansehra	07.03.2016
5.	888 dt: 03.10.2017	PTS Kohat	17.11.2017
6.	477 dt: 08.05.2018	PTS Swabi	Did not report to Training Center, absented from Police Lines Kohat and
			reported unqualified.

Record further transpired that the accused official is a habitual absentee, has no interest in discharge of lawful duty. He remained absent on several occasions and awarded different kind of punishments. Furthermore, the accused official was also awarded punishments on the charge of willful absence from training centers and repatriated as unqualified, but he did not improve himself.

In addition to the above, the accused official was removed from service on the charge of absence from Armed Training Center, Nowshehra vide order dated 30.03.2011, however, he was reinstated in service by DIG Kohat vide order dated 17.05.2011 and order of removal from service was modified to time scale constable for the period of 03 years. The accused official was again dismissed from service vide order dated 28.11.2011. He filed an appeal before the KP Service Tribunal, against the impugned order and on acceptance of his service appeal, he was reinstated in service with all back benefits vide judgment dated 31.05.2016. Now, the accused official exhibited his previous conduct and deliberately absented to undergo basic recruit course at PTS Swabi.

Keeping in view of the above and available record, I reached to the conclusion that besides his habitual absentee and disinterest in discharge of his lawful obligations and minor punishments. The accused official was dismissed I removed from service two times on the same conduct. The accused official remained out of service w.e.from 28.11.2011 till 31.05.2016 during pendency of his service appeal and received huge amount about Rs. 7/8 lac on his subsequent reinstatement in service and caused loss to the public exchequer.

10 08/6/241

(8)

Therefore, the accused official is found unlikely to prove an efficient Police official during his 09 year service. Furthermore, there is no hope to improve himself in future. Hence his retention in a disciplined force is a burden and loss to the public exchequer. The charges levelled against the accused official have been established beyond any shadow of doubt. Therefore, the recruit constable lqtidar Ali No. 629 is found inefficient and recommended for dismissal from service in the best interest of Police department.

Submitted please.

WIDPO Kohat

DSP Legal, Kohat Enquiry Officer

72/1/22/8



Office of the District Police Officer, Kohat

Dated <u>64-6-/2018</u>

CHARGE SHEET.

I, ABBAS MAJEED KHAN MARWAT, DISTRICT POLICE OFFICER, KOHAT, as competent authority under Khyber Pakhtunkhwa Police Rules 1975 (amendments 2014) am of the opinion that you Recruit Constable Iqtidar Ali No. 629 rendered yourself liable to be proceeded against, as you have committed the following act/omissions within the meaning of Rule 3 of the Police Rules 1975.

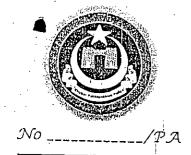
You were detailed to PTS Swabi for basic recruit course but, deliberately did not join the recruit course and declared as unqualified vide DIG Training Peshawar letter No. 4904-10/Trg dated 23.05.2018.

- ii. You were previously repatriated as unqualified from recruit course vide PTS Mansehra letter No. 2572-76/Trg: dated 28.02.2017.
- iii. Your conduct speaks of disintrest in discharge of lawful duty and mere burden on public exchequer.
- 2. By reasons of the above, you appear to be guilty of misconduct under Rule 3 of the Police Rules 1975 and have rendered yourself liable to all or any of the penalties specified in the Rule 4 of Police Rules 1975.
- 3. You are, therefore, required to submit your written statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

Your written defense if any should reach the Enquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put in and ex-parte action shall be taken against you.

A statement of allegation is enclosed.

DISTRICT POLICE OFFICER, KOHAT MALL



Office of the District Police Officer, Kohat

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DISCIPLINARY ACTION

I, ABBAS MAJEED KHAN MARWAT, DISTRICT POLICE OFFICER, KOHAT, as competent authority, am of the opinion that you Recruit Constable Iqtidar Ali No. 629 have rendered yourself liable to be proceeded against departmentally under Khyber Pakhtunkhwa Police Rule 1975 (Amendment 2014) as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

You were detailed to PTS Swabi for basic recruit course but deliberately did not join the recruit course and declared as unqualified vide DIG Training Peshawar letter No. 4904-10/Trg dated 23.05.2018.

- ii. You were previously repatriated as unqualified from recruit course vide PTS Mansehra letter No. 2572-76/Trg: dated 28.02.2017.
- iii. Your conduct speaks of disintrest in discharge of lawful duty and mere burden on public exchequer.
- 2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations Mr. Ishaq Gul DSP Legal Kohat is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Rule-1975, provide reasonable opportunity of hearing to the accused official, record his findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

DISTRICT POLICE OFFICER, KOHAT MA 4/6

No. 5.558-60/PA, dated 04-6-/2018.

Copy of above to:-

1. Mr. Ishaq Gul DSP Legal Kohat: The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.

The <u>Accused Official:</u> with the directions to appear before the Enquiry Officer, on the date, time and place fixed by him, for the purpose of enquiry proceedings.



OFFICE OF THE DISTRICT POLICE OFFICER, KOHAT

Tel: 0922-9260116 Fax 9260125

No. 6396 /PA dated Kohat the 63 / 7 /2018

FINAL SHOW CAUSE NOTICE

1. I, Sohail Khalid, District Police Officer, Kohat as competent authority, under the Khyber Pakhtunkhwa Police Rules 1975, (amended 2014) is hereby serve you, Recruit Constable Iqtidar Ali No. 629 as fallow:-

- That consequent upon the completion of inquiry conducted against you by the inquiry officer for which you were given opportunity of hearing vide office No. 5559-60/PA dated 04.06.2018.
- ii. On going, through the finding and recommendations of the inquiry officer, the material on record and other connected papers including your defense before the inquiry officer.

I am satisfied that you have committed the following acts/omissions, specified in section 3 of the said ordinance.

You were detailed to PTS Swabi for basic recruit course but deliberately did not join the recruit course and declared as unqualified vide DIG Training Peshawar letter No. 4904-10/Trg dated 23.05.2018.

- a. You were previously repatriated as unqualified from recruit course vide PTS Mansehra letter No. 2572-76/Trg: dated 28.02.2017.
- b. Your conduct speaks of disinterest in discharge of lawful duty and mere burden on public exchequer.
- 2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you major penalty provided under the Rules ibid.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you also intimate whether you desire to be heard in person.

If no reply to this notice is received within 07 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.a

5. The copy of the finding of inquiry officer is enclosed.

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DISTRICT POLICE OFFICER, KOHAT A. 217

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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 12 18/2018

Iqtidar Ali, Ex-Constable, No.629, District Police Kohat.

Mary No. 1452

Dates 04/10/20/8

(APPELLANT)

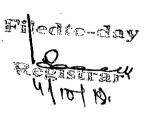
VERSUS

- 1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
- 2. The Regional Police officer, Kohat Region, Kohat.
- 3. The District Police Officer, Kohat.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 26.09.2018, WHEREBY THE DEPARTMENTAL APPEAL HAS BEEN REJECTED AGAINST THE ORDER DATED 15.08.2018, WHEREIN THE APPELLANT WAS DISMISSED FROM SERVICE FOR NO GOOD GROUND.

PRAYER:



THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 26.09.2018 AND 15.08.2018 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT, AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the police force in the year 2009 and completed all his due training etc and also have good service record throughout.

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2006 S C M R 1120

For appellant

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry and Mian Muhammad Ajmal, JJ

SECRETARY TO GOVERNMENT OF THE PUNJAB FOOD DEPARTMENT, LAHORE and another---Petitioners

Versus

JAVED IQBAL and others---Respondents

Civil Petitions Nos.2558-L, 2598 to 2601-L of 2003, decided on 20th February, 2004.

(On appeal from the judgment/order, dated 1-8-2003 passed by Punjab Service Tribunal, Lahore in Appeals Nos.274, 346, 347, 354, 410 of 2003).

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

----S. 3---Service Tribunals Act (LXX of 1973), Ss.4 & 5---Constitution of Pakistan (1973), Art.212(3)--- Misconduct'--- Connotation--- Quantum of punishment--- Principle--- Reduction in penalty---Service Tribunal, jurisdiction of---Civil servants were dismissed from service on the charges of inefficiency and negligence but Service Tribunal converted the penalty from dismissal into reduction in pay scale---Validity---Definition of word 'misconduct' in Punjab Removal from Service (Special Powers) Ordinance, 2000, was almost the same which had been assigned to it in Punjab Civil Servants (Efficiency and Discipline) Rules, 1999---Charges of guilty of misconduct or corruption were always considered at higher pedestal than the charge of inefficiency---Competent authority had jurisdiction to award any of the punishments mentioned in law to the Government employee but for the purpose of safe administration of justice such punishment should be awarded which commensurate with the magnitude of the guilt otherwise the law dealing with the subject would lose its efficacy---Civil servants were not guilty of the charge of misconduct or corruption, therefore, extreme penalty of removal from service for the charge of inefficiency or negligence was on higher side---Service Tribunal had rightly reduced the quantum of punishment awarded to the Civil servants by the competent authority---Supreme Court declined to interfere with the judgment passed by Service Tribunal---Leave to appeal was refused. Ms. Yasmin Sehgal, Assistant A.-G. (Punjab) and Mian Ghulam Hussain, Advocate Supreme Court for Petitioners (in all cases). Abdul Wahid Chaudhry, Advocate. Supreme Court and Ch. Mehdi Khan Mehtab, Advocate-on-Record for Respondents (in C.Ps. Nos. 2558-L and 2598-L to 2600-L of 2003). Nemo for Respondents (in C.P. No.2601-L of 2003).

Date of hearing: 20th February, 2004.

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, J.--- By means of instant common judgment we intend to dispose of listed petitions for leave the appeal arising out of the judgment, dated 1st August, 2003 passed by Punjab Service Tribunal, Lahore in pursuance whereof quantum of punishment awarded to respondents of removal from service altered to the following effect:---

Sr.No Name of respondent and C.P. No. Punishment awarded.

1	Javed Iqbal Tariq Mehmood	Respondent (in C.P. No.2558-L of 2003) Respondent (in C.P. 2601-L of 2003)	Reduction in pay by three stages.
State of the contract of the c	Rana M. Irshad Mehdi Shah Rana M. Amin	Respondent (in C.P.2598-L of 2003) Respondent (in C.P.2599-L of 2003) Respondent (in C.P.2600-L of 2003).	Reduction to the lower post for a period of two years with effect from 22-10-2002.

Concluding para. from the impugned judgment being identical in all the cases for convenience is reproduced hereinbelow:---

"All the appellants were awarded punishment of removal from service. Appellants are definitely guilty of culpable negligence, dereliction of duty, want of care and caution and utter slackness. The question, however, hounds the mind is whether the penalty was commensurate with the gravity of the charges or was too harsh. Anjum Sardar, A.C.I. of Food Directorate, Lahore was entrusted with the job of fumigation. P.W.2 in his statement has placed equal blame on Anjum Sardar that he had to check the results of fumigation and to re-fumigate if necessary, in case desired results were 'not achieved. Anjum Sardar, as deposed by P.W.2 did not care to know about the results of fumigation. He fumigated 20 shells on 24-6-1999 and again six shells on 5-7-1999, but on second visit he did not bother to check the results of 11 days earlier fumigation of 20 shells. In other words, Anjum Sardar ran off with a minor penalty, though recommended major by enquiry officer, although he contributed towards the negligence as much as the appellants. All said and done penalty of removal from service awarded to appellants Rana Muhammad Irshad, Mehdi Shah and Rana Muhammad Ameen to major penalty of reduction to the lower post for a period of 2 years w.e.f. 22-10-2002. They shall be reinstated in service and period from the date of removal from service till their reinstatement shall be treated as leave extraordinary without pay. As regards, Tariq Mehmood, appellant in Appeal No.410/2003, who was inducted in service as Food Grains Supervisor, his penalty of removal from service is altered to reduction in pay sale by 3 stages. He shall be also reinstated in service and the intervening period between his removal from service and reinstatement shall be treated as leave extraordinary without pay.

- (2). Precisely stating the facts of the case are that petitioners were proceeded against departmentally under the provisions of Punjab Removal from Service (Special Powers) Ordinance, 2000 [hereinafter referred to as the Ordinance, 2000] on stated allegations being inefficient etc. in performing their duties at P.R. Centre Musa Virk, District Khanewal in 1999. Additional Director of the Directorate of Food, Punjab visited the said P.R. Centre in November, 1999 and submitted a report to the Secretary Food Department in respect of heavy infestation in the Godowns. Each employee i.e. respondents alleged to have been guilty of negligence and inefficient in performance of their duties relating to fumigation to the stocks etc. The Investigating Officer so appointed recommended against each of the respondents for punishment of removal from service. Such recommendations were, however, accepted by the competent authority as such, they were removed from service. On appeal learned Service Tribunal vide impugned judgments, separately passed in each case but by making common conclusion, while maintaining the punishment reduced its quantum, details of which have already been furnished hereinabove. As such instant petitions for leave to appeal have been filed by the Department.
- (3). Ms. Yasmin Sehgal, learned Assistant Advocate-General appeared on behalf of Government of Punjab and contended that the respondents are responsible for causing huge damage to the wheat stock meant for the supply throughout in the Province of Punjab on account of their inefficiency

and negligence, therefore, the punishment of removal from service was rightly awarded to the respondents by the department but learned Service Tribunal without assigning any strong justification had reduced the same.

- (4). It is to be noted that respondents vide Civil Petitions Nos.2523-L, 2531-L and 2532-L/2003 had also challenged the impugned judgments but during arguments withdrew the same with the permission of the Court.
- (5). It is important to note that under section 3 of the Ordinance,
- 2000 the competent authority can award one of the following punishments if in its opinion a person is found inefficient or has ceased to be efficient for any reason or guilty of misconduct or corrupt or may reasonably be considered as corrupt:---
- (a) Removal from service; or
- (b) compulsory retirement from service; or
- (c) reduction to lower post or pay scale; or
- (d) one or more minor penalties as prescribed in the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999.
- (6). It is also important to note that the word 'inefficient' has not been defined in this Ordinance, however, definition of the word 'misconduct' is almost the same which has been assigned to it in Punjab Civil Servants (Efficiency and Discipline) Rules, 1999. There is no gain in saying that charges of guilty of misconduct or corruption are always considered at higher pedestal than the charge of inefficiency. No doubt the competent authority had jurisdiction to award any of the above punishments to the Government employee but for the purpose of safe administration of justice, such punishment should be awarded which commensurate with the magnitude of the guilt otherwise the law dealing with the subject will lose its efficacy. In instant case admittedly respondents are not guilty of the charge of misconduct or corruption, therefore, extreme penalty of removing them from service for the charge of inefficiency or negligence was on a high side. As such we are of the opinion that to meet the ends of justice learned Service Tribunal has rightly reduced the quantum of punishment awarded to the respondents by the competent authority. As the judgment of the Service Tribunal has proceeded on recognized principles of law as has been discussed herein above, therefore, impugned judgment admits no interference by this Court. Thus for the foregoing reasons instant petitions are dismissed and leave declined.

M.H./S-31/SC Petitions dismissed.

pewers ommission

2002 P L C (C.S.) 391

[Punjab Service Tribunal]

Before Ch. Muhammad Sarwar, Member

MUHAMMAD SALIM

vėrsus

INSPECTOR-GENERAL OF POLICE, PUNJAB, LAHORE and 2 others

Appeal No. 1195 of 2000, decided on 20th July, 2001.

Punjab Police (Efficiency and Discipline) Rules, 1975---

dismissed from service after issuing show-cause notice, but without holding any inquiry against him---Charge against civil servant was that he applied for leave, but could not get the same sanctioned---Plea of civil servant that he remained absent because his brother-in-law was, seriously injured in an accident and despite his efforts he died, was not considered by the Authority---Major penalty of dismissal from service was awarded to the civil servant on the ground of his previous record which had shown that during his service in the past he was granted punishment for irregularities--Validity ---Previous omissions --ould not be made the justification for subsequent penalties particularly when omission had been adjudicated upon administratively----Major punishment of dismissal from service was converted into minor punishment of censure----Civil servant was reinstated in service with back benefits.

PLD 1993 SC 1393 and 1998 PLC (C.S.) 648 ref.

Muhammad Rafique Warraich for Appellant.

District Attorney for Respondent.

Date of hearing: 13th July, 2001.

JUDGMENT

This is an appeal under section 4 of the Punjab Service Tribunals Act, 1974 against the order dated 26-1-1999 by which the appellant was awarded the major punishment of dismissal from service.

Briefly stated the facts leading to the appeal are that the appellant was Constable in Police Department and was posted at Police Lines, Lahore. On 5-1-1999 during night the appellant received a message that his brother in-law was injured seriously in an accident. The appellant applied for leave but he could not get it sanctioned. The appellant reached the place of accident and took his brother-in-law to the hospital but his brother-in-law died after a few days. After 21 days he reported duty at Police Lines. Lahore. Proceedings under Punjab Police E&D) Rules, 1975

were initiated against the appellant and he was given show-cause notice on 25-1-1999. His reply dated 26-1-1989 was not considered satisfactory. He was summoned in the orderly room and was heard in person. He was dismissed from service vide order dated 26-1-1999. His Departmental Representation was rejected on 19-7-1999 and revision petition was also rejected on 22-3-2000. Hence this appeal.

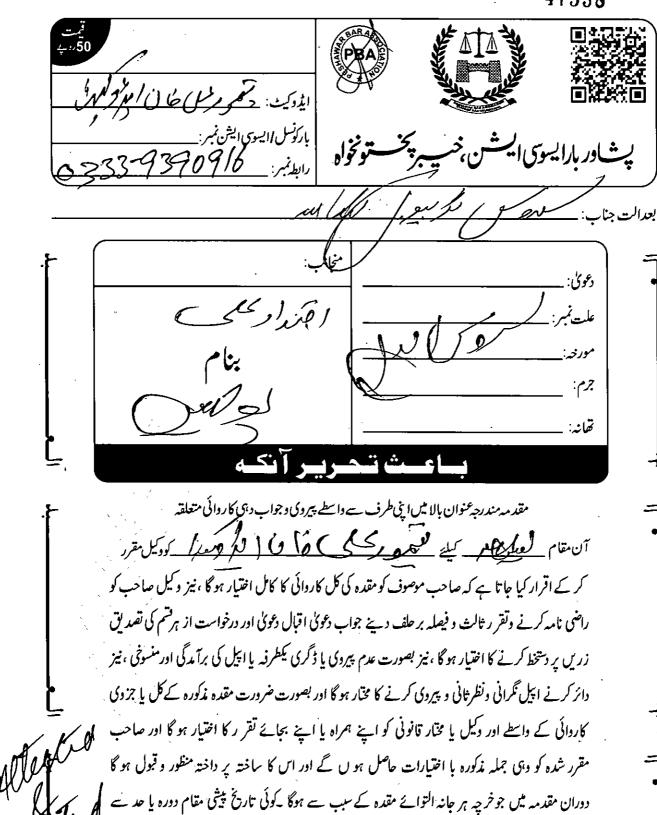
- 2. I have heard the learned counsel for the appellant, District Attorney and have perused the record and objections to the memorandum of appeal submitted by the respondents.
- 3: Learned counsel for the appellant argued that absence of the appellant was due to unavoidable circumstances. The appellant was dismissed from service on the ground that he is habitual absentee and has already remained absent on seven different occasions. Vide order dated 19-7-1999 his appeal was rejected on the ground that he has chequered service record as there are as many as 39 punishments to his discredit all on the charge of absence. This is his 3rd dismissal. He has rendered 12 years service out of which 10 years service is not qualified towards pension as he has been awarded the punishment of forfeiture of 8 years' approved service and two years as leave without pay during his entire service. Learned counsel for the appellant further argued that the, appellant was awarded the major punishment of dismissal from service without conducting proper inquiry.
- 4. The respondents in their objections to the memorandum of appeal have stated that the appellant has chequered service record as there are as many as 39 punishments at his discredit, all on the charge of absence. This is his 3rd dismissal. He has rendered 12 years service out of which 10 years is not qualified towards pension as he has been awarded the punishments of forfeiture of 8 year's approved service and two years as leave without pay during his entire service. His written as well as oral explanation have been considered and found unsatisfactory. He is an habitual absentee and incorrigible type of person. His appeal is, therefore, rejected being without any substance.
- 5. The appellant in his departmental appeal before D.I.-G. stated that on 5-1-1999 the applicant was present in District Police, Lines, Lahore. At night, during the rest, the applicant received message that his brother-in-law received severe injuries during an accident. The applicant applied for the leave but unfortunately, he could not get it. In this tense situation, the applicant went to the place of accident to take his brother-in-law to hospital without leave or permission. The applicant had to arrange for the blood which was a difficult task. There are seven children of his sister and besides him, there was no one to look after him. All the efforts of the applicant were in view because he could not save the life of his brother-in-law. He died. The applicant remained absent for 21 days. The applicant was only one to help his sister during the critical time. The applicant was issued show-cause notice and summoned in orderly room. The applicant was dismissed from service but his appeal was rejected on account of his previous service record without considering his plea and without conducting regular inquiry against him. It was held in 1993 SCMR 828 that if allegations against accused civil servant/employee are of serious in nature and if he denied the name, regular inquiry cannot be dispensed with. According to the memorandum No.2856-2898/p.i. dated 2-10-1996 of the I.-G.P., to all D.I.-G.s and all S.Ps. Punjab the regular inquiry must be conducted into the matter.
- 6. The appellant was awarded the major punishment of dismissal from service mainly on the ground of his previous service record. It is admitted by 'the respondents that 8 years service was forfeited and two years service was treated without pay. During his entire service the appellant was thus, already granted punishment for his previous irregularities. Previous omissions could not be made the justification for future penalties, particularly when omission has already been adjudicated upon administratively, Reliance is placed. on 1998 PLC (C.S.) 648. The appellant was removed

from service on the ground of 21 days absence. The plea of the appellant that he remained absent because his brother-in-law was seriously injured in an accident and dispite all his efforts he died was not considered/verified by the respondents. The punishment awarded to the appellant does not commensurate the punishment awarded to the appellant.

7. I, therefore, partially accept the appeal. The major punishment of dismissal from service is converted into minor punishment of Censure under rule 49(a) of Punjab Police (E&D) Rules, 1975. The appellant is reinstated in service with back benefits. The intervening period shall be treated as extraordinary leave without pay.

H.B.T./60/P (S. Trib.)

Order accordingly.



باہر ہوتو وکیل صاحب یابند نہ ہوں گے کہ پیروی ندکورہ کریں ،الہذا وکالت نامہ لکھ دیا تا کہ سند رہے

نوث:اس وكالت نامه كى فو توكا لى نا قابل قبول موكى ـ

obidar Alli