

No. of proceedings	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	02.05.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT SWAT.</u></p> <p style="text-align: center;"><u>APPEAL NO.256/2014</u></p> <p style="text-align: center;"><u>(Fazal Tawab-vs-District Police Officer, Swat and one another).</u></p> <p><u>JUDGMENT</u></p> <p><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u> Counsel for the appellant and Mr. Imranullah, Inspector (legal) alongwith Mr. Muhammad Zubair, Senior Government Pleader for respondents present.</p> <p>Fazal Tawab, hereinafter referred to as the appellant, has preferred the instant appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with a prayer to set-aside the impugned order dated 30.9.2013 vide which he was dismissed from service on the allegations of wilful absence and there-against his departmental appeal dated 14.10.2013 was rejected on 07.02.2014.</p> <p>Brief facts of the case of the appellant are that the appellant was serving as Constable when subjected to inquiry on the allegations of willful absence for a period of 13 days 16 hours and 25 minutes and vide impugned order dated 30.09.2013 dismissed from service.</p> <p>Arguments heard and record perused.</p> <p>Perusal of the record would suggest that the appellant was initially charged for absence from duty without prior permission vide Daily Dairy No. 53 with effect from 10.4.2013 to 23.4.2013 (13 days and 16 hours). The inquiry officer has conducted the inquiry and according to his report the mother of the</p>

appellant was sick and admitted to hospital constraining the appellant to remain with his mother. The inquiry officer has recommended that the period of the absence of the appellant be treated as leave without pay and that he be fined to the tune of Rs. 500/-.

It is evident from the record that the District Police Officer Swat was not the competent authority for conducting the inquiry as the appellant was transferred and posted at Shangla District vide office order dated 24.6.2013. Furthermore the said authority has relied on certain other periods of absence of the appellant in his final order for which the appellant was neither charge-sheeted nor any opportunity of hearing was ever afforded to him nor the same are reflecting from the findings of the inquiry officer as such the punishment imposed by the said authority in the shape of dismissal from service is found excessive and unwarranted.

In view of the above we are constrained to accept the instant appeal and reinstate the appellant in service with immediate effect . We do not deem it appropriate to order de-novo inquiry as the alleged absence period spreading over 13 days and 16 hours may not warrant major punishment. The said period as well as period after dismissal from service of the appellant is treated by ~~the~~ us as leave of the kind due. The appellant shall report for duty to respondent No. 2 (Regional Police Officer Malakand Range Saidu Sharif Swat) for future posting. Parties are, however, left to bear their own costs. File be consigned to the record room.

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02.05.16

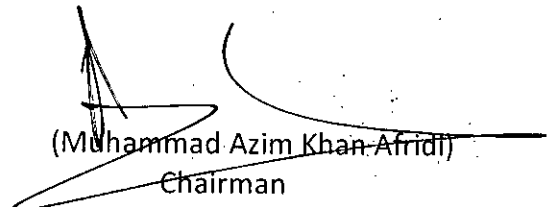
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(Abdul Latif)
Member



(Muhammad Azim Khan Afridi)
Chairman
Camp Court Swat

02.05.16.

ANNOUNCED
02.05.2016

8.9.2015

Appellant in person and Mr. Mushtaq Khan, S.I (legal) alongwith Mr. Muhammad Zubair, Sr. G.P for respondents present. Arguments could not be heard due to non-availability of D.B. To come up for final hearing before D.B on 9.12.2015 at camp court Swat.


Chairman
Camp Court Swat

09.12.2015

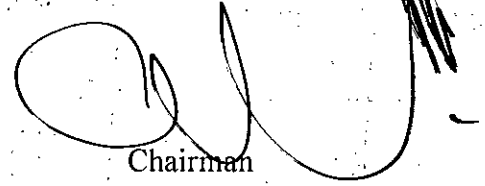
Appellant with counsel and Mr. Amir Qadir, GP for respondents present. Wakalat Nama submitted on behalf of the appellant. Due to non-availability of D.B arguments could not be heard. To come up for final hearing before D.B on 2.5.2016 at Camp Court Swat.


Chairman
Camp Court Swat

7-

24.09.2014

Appellant in person and Mr. Khawas Khan, SI (legal) on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Written reply has not been received. To come up for written reply/comments, positively, on 26.01.2015.



Chairman

08

26.01.2015

Appellant in person and Mr. Khawas Khan, S.I (legal) on behalf of respondents alongwith learned Addl. A.G present. Written reply submitted. To come up for rejoinder as well as final hearing/arguments before D. B on 23.07.2015.



Chairman

23.07.2015

Appellant in person and Asstt. AG with Khawas Khan, SI (Legal) for the respondents present. Appellant stated that he belongs to District Shangla and the case pertains to territorial limits of Malakand Division. He requested for transfer of the case to Touring Bench Swat. Therefore, case to come up for arguments on 08-09-2015 at camp court, Swat.



MEMBER



MEMBER

Appeal No. 256/2014
Mr. Fuzal Tambe.

3.

21.04.2014

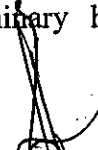
Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 21.05.2014.


Member

4.

21.05.2014

Appellant in person present and requested for adjournment. Request accepted. To come up for preliminary hearing on 03.07.2014.



Member

5.

03.07.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the original order dated 30.09.2013, he filed departmental appeal on 14.10.2013, which has been rejected on 07.02.2014, hence the present appeal on 25.02.2014. He further contended that the impugned order dated 07.02.2014 has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules 1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 24.09.2014.

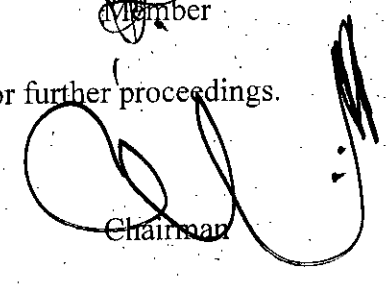
Appellant Deposited
Security & Process Fee
Rs. 180/- Bank
Receipt is Attached with File.


Member

6.

03.07.2014

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

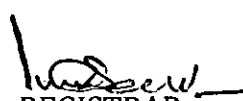
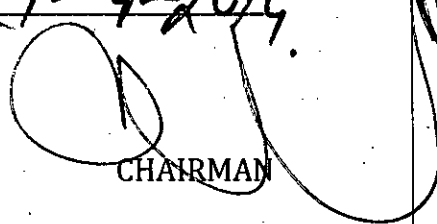

Chairman

Form-A

FORM OF ORDER SHEET

Court of _____

Case No. 256/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25/02/2014	<p>The appeal of Mr. Fazal Tawab presented today by Haji Shamsul Qamar 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	3-3-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>21-4-2014</u>.</p> <p style="text-align: right;">  CHAIRMAN </p>

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. 256/2014

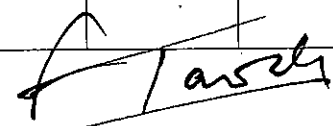
Fazal Tawab **Appellant**

V E R S U S

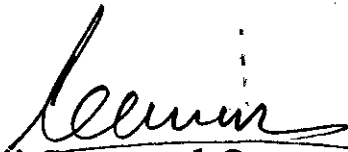
District Police Officer, Swat and another..... **Respondents**

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Memo of Appeal		1-6
2.	Impugned Orders of Respondents No.1 and 2	A-B	7-8
3.	Copy of appeal to Respondent No.2	B/1	9-12
4.	Copy of final show cause notice	C-D	13-14
5.	Copy of Medical Certificate	E	15-16
6.	Copy of transfer order to Shangla	F	17
7.	Wakalat Nama		

Through  **Fazal Tawab**
Appellant

Date: 24.2/2014


Haji Shamsul Qamar
Advocate, Peshawar
(0301-8806554)

BEFORE THE SERVICE TRIBUNAL KHYBER

PAKHTUNKHWA PESHAWAR

Service Appeal No. 256/2014

25/2/14

Fazal Tawab Ex-Constable No.1190 District Swat.....**Appellant**

V E R S U S


1. District Police Officer, Swat
2. Regional Police Officer, Malakand Division Saidu Sharif.....**Respondents**

Appeal U/S 4 of Service Tribunal Act against the order of respondent No.1, vide Order Book No.158 dated 30.09.2013 whereby the appellant was dismissed from service and that of respondent No.2, who rejected the appeal of the appellant vide his order No.1153-54-E dated 07.02.2014 (Annexure A-B).

25/2/14

Prayer:

That the order may please be declared against law, rules, principle of natural justice and be set aside with directions



to the respondents to re-instate the appellant with all back benefits.

Respectfully Sheweth:

1. That the appellant joined Police service as a Constable on 01.07.2007 and passed recruit course.
2. That the appellant is a matriculate, and further passed A (i) course and Weapon Training course.
3. That the appellant was serving the police force very honestly, efficiently with complete devotion.
4. That the appellant was suffering from some decease, and went to hospital on 10.04.2013 when the Medical Officer advised some treatment and 13 days complete bed rest.
5. That the Moharrir of P.S instead of taking action accordingly marked the appellant absent.
6. That on the expiry of the bed rest the appellant attended the PS for duty.

7. That in this connection the respondent No.1 served a charge sheet and statement of allegation on the appellant to which the appellant submitted explanation. (Copies of the same will be submitted later on).
8. That the DSP Khwaza Khela was appointed Enquiry Officer who submitted his finding.
9. That on receipt of finding of the E.O the respondent No.1 served final show cause notice on the appellant to which the appellant submitted explanation. (Annexure C-D).
10. That thereafter the respondent No.1 passed the impugned order. (Annexure-A).
11. That the respondent No.2 dismissed appeal (Annexure B/1) of the appellant and therefore finding no other remedy the appellant knock the doors of this Honourable Tribunal for relief as prayed.

GROUND S:

- A. That the absence was due to illness and not deliberate, which is supported by medical certificate (Annexure E).

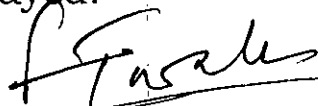
- B. That the respondent No.1 did not supply copy of the finding of the Enquiry Officer as per law, however the final show cause notice would reveal that he (Enquiry Officer) has recommended only imposing a fine of Rs.500/- on the appellant and considering the absence as leave without pay.

- C. That the Respondent No.1 while passing the impugned orders has charged the appellant for some other absence which was neither included in charge sheet, nor in final show cause notice and as such no opportunity producing defence was given to the appellant in this connection and was condemned illegally.


- D. That the impugned order of respondent No.1 is also incorrect as for as its relates to once earlier dismissal on 30.09.2012.
- E. That it is also incorrect that the appellant was called for appearing in orderly room.
- F. That the appellant was earlier transferred to Shangla District by respondent No.2 vide his order No.5217-18 E of 24.06.12013 (Annexure F) and was already relieved for Shangle District on 16.09.2013 vide DDNo.4 of Police lines and the same order was still effective hence the respondent No.1 was not competent to pass the impugned order.
- G. That the respondent No.2 has also not applied his judicial mind to the documents on record and has passed the impugned order the appellant had also explained the actual position to him.

H. That the appellant seek the permission of this Learned Tribunal to rely on additional grounds at the time of hearing.

It is, therefore, requested that the appeal may please be accepted as prayed.


Appellant

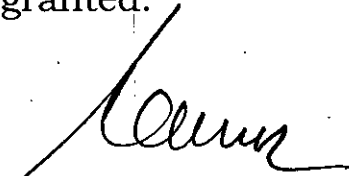
Through


Haji Shamsul Qamar
Advocate, Peshawar
(0301-8806554)

Date: 24/2/2014

Note:

An application has been submitted to the respondent No.1 for supply of copy of charge sheet, statement of allegation, explanation of appellant and other documents which will be submitted when these are granted.


Haji Shamsul Qamar
Advocate, Peshawar

ORDER

This order will dispose off the departmental enquiry against Constable Fazal Tawab No.1190 who absented himself from his lawful duties without prior permission or leave vide D.D. No.50 w.e.f. 14-10-2012 for 30 days, D.D. No.84 w.e.f. 04-12-2012 for 27 days, D.D. No.55 w.e.f. 10-04-2013 for 13 days, D.D. No.26 w.e.f. 30-05-2013 for 102 days D.D. No.53 w.e.f. 10-04-2013 for 13 days (Total 185 days).

He was issued Charge Sheet alongwith Statement of Allegations and DSP/Khwaza Khela Swat was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent Officer and recorded the statements of all concerned officers. He provided ample opportunity to the delinquent officer to present justification for his absence from lawful duties. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended the delinquent officer for Major Punishment. Consequently he was issued Final Show Cause Notice with the direction to submit his reply within seven days of the receipt of Final Show Cause Notice. He was called in Orderly Room on 26-08-2013, 09-09-2013, 16-09-2013, 23-09-2013 and on 30-09-2013. However, he did not appear.

Having perused his Service Record, it was patently evident that the delinquent officer Constable Fazal Tawab No.1190 is addicted to habitual absenteeism and is not interested to continue his service. For his unlawful absence from duties he has been dismissed from service vide O.B. No.158, dated 30-09-2012. Foregoing in view the undersigned is of considered opinion that there are no chances that Constable Fazal Tawab No.1190 can become an efficient Police Officer. His further retention in the service is bound to affect the discipline of the entire force. In exercise of the powers vested in the undersigned in Rules 2 (iii) of Police Disciplinary Rules-1975, I, Sher Akbar S.S.I. P.S.P. District Police Officer, Swat as a competent authority am constrained to award him the punishment of dismissal from service from the date of his absence.

Me an
24/2/14


District Police Officer, Swat

O.B. No. 158
Dated 30/09 /2013.

**OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND
REGION, AT SAIDU SHARIF SWAT**


ORDER:

This order will dispose off the appeal preferred by Ex-Constable Fazal Tawab No. 1190 of Swat District for reinstatement in service:

Brief is that, the above named Ex-Constable while posted to JIS Police Lines Swat absented from lawful duty with effect from 14/10/2012 to 13/11/2012, 04/12/2012 to 31/12/2012, 10/04/2013 to 22/04/2013 and 30/05/2013 to 10/09/2013 without permission of the high-ups. DSP/ Khwaza Khela Swat conducted proper departmental enquiry against him. The Enquiry Officer held him responsible and recommended for major punishment. After completion of all codal formalities of the enquiry he was found guilty of the charges. Hence the District Police Officer, Swat dismissed him from service under Police Rules 1975 vide OB No. 158 dated 30/09/2013.

The appellant was called in Orderly Room on 06/02/2014 and heard in person, but he did not produce any substantive materials in his defense. Therefore I uphold the order of District Police Officer, ~~Swat~~, whereby the appellant has been awarded major punishment for dismissal from service.

Order announced.


(ABDULLAH KHAN) PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat
Naqi

No. 1153-54 /E,

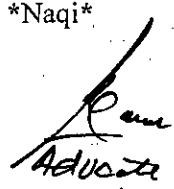
Dated 7-02- /2014.

Copy for information and necessary action to the:-

- ✓ 1. District Police Officer, Swat with reference to his office Memo: No. 15215/E, dated 05/11/2013.
2. Ex- Constable Fazal Tawab No. 1190 of Swat District.

EC / OASi
for attention

DSP Swat
07/02/14


Advocate

محضور جناب ڈی آئی جی صاحب مالا کنڈریج بمقام سید و شریف سوات

سابقہ کانٹریبیٹ فضل تو اب سوات بیلٹ نمبر 1190 شانگلہ بیلٹ نمبر 498 ولد طالع زرکنہ دانا کول چکیسر
تحصیل الہوری ضلع شانگلہ

ایپلانٹ

بنام

D.P.O صاحب ضلع سوات

ریسپانڈنٹ

عنوان :- اپیل برخلاف حکم مقررہ ازاں ریسپانڈنٹ 158 OB No. مصدرہ

30/09/2013 جسکی رو سے ایپلانٹ کو خلاف قانون و انصاف ملازمت سے برخاست کرنے کا حکم صادر

فرمایا۔ نقل حکم مقررہ ناف اپیل ہذا ہے۔

استدعا :-

Alame
Advis etc

بمظہوری اپیل ہذا حکم مقررہ مندرجہ عنوان بالا منسوخ و کالعدم قرار دیکر جملہ استفادات کیساتھ

ایپلانٹ کو اپنے عہدہ پر بحال کرنے کا حکم صادر فرمایا جائے۔

جناب عالی! ایپلانٹ حسب ذیل عرض رساں ہے۔

۱۔ یہ کہ ایپلانٹ محکمہ پولیس کے ریگولر فوٹوز میں بحیثیت کانٹریبیٹ مورخہ 01/07/2007 کو بھرتی

ہو کر بعد ضروری ٹریننگ ملازمت شروع کی۔

۲۔ یہ کہ ایپلانٹ میٹرک کو ایف ایف ایڈ ہونے کے ناطے A One کا امتحان ضلع شانگلہ سے پاس

کیا ہے۔

(جاری ہے)

۳۔ یہ کہ ایپلانٹ نے بھاری ہتھیاروں کے استعمال کا کورس 37 ڈویژن ہٹل سکول کانجوکمپ اور فیلڈ فارنگ رینجرز نو شہرہ سے پاس کیا۔ نقل سرٹیفکیٹ لف اپیل ہذا ہے۔

۴۔ یہ کہ جنوری 2012 میں ایپلانٹ کا تبادلہ ضلع شانگلہ سے ضلع سوات کو ہو کر تھانہ جارباغ میں نو مہینے اور تھانہ خوازہ حیلہ میں ایک سال فرائینس منضبی سرانجام دی ہے۔

۵۔ یہ کہ ایپلانٹ ڈرائیور بھی رہا ہے اور حسب الحکم افسران بالا سابقہ ایم پی اے حیدر علی خان کیساتھ چار ماہ بحیثیت ڈرائیور فرائینس سرانجام دی ہے اور بعدہ پولیس لائن سوات مورخہ 16/9/2013 کو تبادلہ ہوا۔

۶۔ یہ کہ بحوالہ مذکورہ نمبر 53 روز نامہ چہ تھانہ خورشید خان شہید خوازہ حیلہ مورخہ 10/04/2013 سے تیرہ یوم غیر حاضر ظاہر کیا۔ اگرچہ ایپلانٹ کے ایکسڈنٹ میں مجروحیت کی وجہ سے باوجود میڈیکل سرٹیفکیٹ کے ایپلانٹ کو غیر حاضر تصور کیا۔

۷۔ یہ کہ بحوالہ نقل مذکورہ نمبر 41 روز نامہ مورخہ 16/09/2013 J.I.S پولیس لائن سوات ایپلانٹ کا تبادلہ بحوالہ حکم ریجنل پولیس افسر یعنی حضور والہ نے نمبر 5217-18/E مورخہ 26/06/2013 کو ہوا۔

۸۔ یہ کہ ایپلانٹ مذکورہ نمبر 41 روز نامہ مورخہ 16/09/2013 کو حضور والہ کے حکم کی تعمیل میں ضلع شانگلہ روانہ ہوا تو بدوران سفر بذریعہ موبائل فون تھانہ خورشید خان شہید خوازہ حیلہ کے محرر نے واپسی کی ہدایت کی کہ چنانچہ بلاتا خیر سفر سے واپس تھانہ خورشید خان شہید خوازہ حیلہ آیا اور وہاں سے حسب الحکم و ہدایت محررہ J.I.S پولیس لائن حاضر آیا جہاں پر دوبارہ غیر حاضری تیرہ یوم کا شوکار نوٹس ملا اور یوں اس نسبت باقاعدہ ٹکمانہ انکوائری شروع ہوئی۔

۹۔ یہ کہ ریپاٹنٹ ڈسٹریکٹ نے بند آنکھوں سے حکم معترضہ صادر کیا۔

- ۱۰۔ یہ کہ حکم معترضہ بوجوہات ذیل قابل منسوخی ہے۔
- i۔ یہ کہ حکم معترضہ خلاف قانون و انصاف و شریعت محمدی ﷺ ہے۔
- ii۔ یہ کہ ایپلانٹ کے غیر حاضری بوجہ ایکسیڈنٹ میں مجروحیت کے ہوئی اور اس نسبت ایپلانٹ نے میڈیکل سرٹیفکیٹ پیش کیا۔ لیکن میڈیکل رخصت کے بجائے غیر حاضر ظاہر کیا۔ مذکورہ مبینہ غیر حاضری جو کہ مورخہ 10/4/2013 تا 23/4/2013 تک کی نسبت مجروحیت بوجہ ایکسیڈنٹ ہونے کے ناطے ظاہر کیا گیا ہے میڈیکل رپورٹ لف ہے۔
- iii۔ یہ کہ چارج شیٹ اور فائل شوکاژ نوٹس میں آیام غیر حاضری 10/4/2013 سے ظاہر کی گئی ہے۔ جو کہ تیرہ یوم بنتے ہیں جبکہ حکم معترضہ میں 14/10/2012 سے تیس یوم کا حوالہ روز نامہ نمبر 84 میں مورخہ 4/12/2012 سے 27 یوم اور یوں روز نامہ نمبر 26 میں غیر ضروری طور پر ایک سو دو یوم غیر حاضری ظاہر کی گئی ہے۔ افسران بالا کے منظور شدہ رخصت کو دوبارہ حکم معترضہ کا حصہ بنایا گیا ہے۔ جو کہ خلاف قانون واقعات اور روئیداد مثل ہے۔
- iv۔ یہ کہ ریپانڈنٹ موصوف کے سامنے صرف نمبر 53 مورخہ 10/4/2013 تیرہ یوم کے غیر حاضری کی نسبت محکمانہ انکوائری زیر تجویز تھی۔
- v۔ یہ کہ حکم معترضہ قانونی موٹنگائیوں سے چھانی ہے۔
- vi۔ یہ کہ جملہ سروس ریکارڈ میں رخصتیں میڈیکل 102 یوم بنتے ہیں جبکہ حکم معترضہ میں 185 یوم ظاہر کی گئی ہے۔ جو کہ خلاف قانون و ضابطہ ہونے کا بین ثبوت ہے۔
- vii۔ یہ کہ ایپلانٹ نے ان آیام میں محکمہ پولیس میں ملازمت اختیار کی جب جملہ پولیس اہلکاران نوکریاں چھوڑنے پر مجبور ہوئے تھے۔ کیونکہ دہشت گردی کا دور تھا اور کوئی بھی اپنے جان خطرہ میں نہیں ڈالتا تھا لیکن ایپلانٹ نے جملہ حقائق جاننے اور سامنے ہونے کے باوجود محکمہ پولیس میں ملازمت اختیار کر کے اپنے فرائض منصبی سرانجام دیئے۔
- viii۔ یہ کہ ایپلانٹ نے انتہا پسندی اور دہشت گردی کے تاریک ترین آیام میں جبکہ محکمہ پولیس کے اہلکاران خصوصی نشانہ اور ٹارگٹ تھے ایپلانٹ نے اپنے جان کی پروا کئے بغیر فرائض منصبی بہ طریق احسن سرانجام دیا ہے۔

(جاری ہے)

Amal
Advocate

- ix یہ کہ تیرہ یوم یعنی مورخہ 10/4/2013 سے بحوالہ بد نمبر 53 جسکے نسبت میڈیکل رپورٹ موجود ہے۔ سابقہ بند شدہ اور منظور شدہ بابت کو دوبارہ کھول کر اپیلانٹ کو بلا جواز طور پر غیر حاضری کا مرتکب قرار دیا گیا ہے بلکہ جملہ غیر حاضری کی نسبت منظور شدہ میڈیکل سرٹیفکیٹ کو درخور اعتناء نہیں سمجھا گیا ہے۔
- x یہ کہ اپیلانٹ نے اپنے فرائض منصبی عبادت سمجھ کر سرانجام دی ہے اور کبھی بھی افسران بالا یا عوام کو شکایت کا موقع نہیں دیا ہے۔
- xi یہ کہ اس مہنگائی اور بے روزگاری کے دور میں شاید کوئی دیوانہ ہی بلا جواز غیر حاضری کا مرتکب ہو سکے۔
- xii یہ کہ سائل عام فرائض منصبی کے علاوہ بحیثیت ڈرائیور ڈیوٹی سرانجام دے چکا ہے۔ اور یوں اپیلانٹ محکمہ کیلئے ایک سرمایہ ہے نہ کہ ایک بوجھ۔

Alum
Advocate

بحالت بالا استندعا کی جاتی ہے کہ بمنظوری اپیل ہذا حکم معترضہ درج عنوان بالا OB No. 158 مصدرہ 30/09/2013 کو منسوخ و کالعدم قرار دیکر اپیلانٹ کو جملہ استفادات کیساتھ اپنے عہدہ پر

بحال کرنے کا حکم صادر فرمایا جائے۔ دادرسی ہوگی۔ درج 14-10-2013

F. Ahmad

عریضہ

سابقہ کانسٹیبل فضل تو اب سوات ہیلٹ نمبر 1190 شانگہ
ہیلٹ نمبر 498 ولد طالع زر سکنہ دانہ کول چکیسر تحصیل ایپوری
ضلع شانگہ (اپیلانٹ)

Annex C

FINAL SHOW CAUSE NOTICE

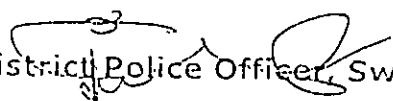
10/05/2013

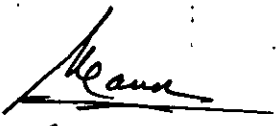
That you Constable Fazal Tawab No.1190, of Police Station Khurshid Khan Shaheed, Khwaza Kheia, Swat has absented yourself from duty without prior permission or leave vide D.D. No.53 w.e.f 10-04-2013 to 23-04-2013 (Total 13days & 26 hours) as per report of S.H.O. Police Station Khurshid Khan Shaheed, Swat dated 30-05-2013. Proper Charge Sheet No.76/EB, dated 08/05/2013 was issued to you & SDPO/Khwaza Kheia, Swat was appointed as Enquiry Officer to conduct Proper Departmental Enquiry against you.

The Enquiry Officer SDPO/Khwaza Kheia, Swat in his finding report recommended the absence period (13days & 16 hours) may be counted as Leave With-out Pay and Fine Rs.500/-

You are, therefore, served with this Final Show Cause Notice to show reason in written within seven (7) days of the receipt of this notice as to why the proposed action should not be taken against you.

No. 76-A /EB,
Dated: 10.7 /2013.
Constable Fazal Tawab No.1190.


District Police Officer, Swat.


Advocate

محور جناب SDPO صاحب خواہ خیلہ سوات


سائل حسب ذیل عرض رساں ہے

جناب عالی!

یکہ جیسا کہ میڈیکل رپورٹ مورخہ 30-05-2013 (مشمولہ) سے واضح ہے۔ سائل نے موضع گا شکاڑ کے قریب نہ سواری موٹر سائیکل بوجہ پھسل ہونے کے شدید ایکسیڈنٹ کا باعث بنا جسکے نتیجے میں سائل کا باپا ہاتھ اور کندھ پر شدید ضربات پڑنے پر زخمی ہو چکا۔ جو کہ سائل مدہوشی کے حالت میں دیگر کسان نے بغرض علاج معالجہ سیدو نیچنگ ہسپتال شعبہ حادثات لایا گیا۔ پی کرنے کے بعد چونکہ ہسپتال میں انتہائی رش ہونے کے وجہ سے خالی کمرے نہیں تھے۔ لہذا انچارج شعبہ نے سائل کو گھر پر علاج معالجہ کے ہدایت کے تھے۔ لہذا جب ہدایت سائل ضروری ادویات خرید کر گھر خود (جو کہ ضلع شگلہ چکیسر) میں واقع ہے۔ چلا گیا تھا اور وہاں گھر پر حسب ہدایت ڈاکٹر صاحب علاج معالجہ کرتا رہا تھا۔ جو کہ سائل کی گھر انتہائی غیر وسائل اور زرائع آمدورفت کی دور دراز فاصلہ پر واقع ہونے کی وجہ سے نہ تھا نہ اور نہ ہی پولیس لائین اطلاع دینے سے مجبور تھا کیونکہ سائل شدید زخمت کے وجہ سے بستر علالت پر پڑا تھا اور گھر میں سائل کے علاوہ دیگر نارینہ فرد نہیں تھا کہ وہ سائل بیماری کا اطلاع بروقت کرتے لہذا اس انتہائی مجبوری کی پیش نظر سائل بلا ارادہ فرانس منصبی کی سرانجام دہی سے مجبور تھا اب صحت زرا نیک ہونے پر سائل نے اب اصل حقائق کیساتھ آپ صاحبان کے حضور پیش خدمت ہے کہ سائل کے غیر حاضری قصدا اور عمدہ نہیں تھے۔ بلکہ انتہائی مجروحیت کے بنیاد پر وقوع پزیر ہوا۔ بلکہ سائل ایک غریب قابل رحم کٹر لاعیال گھرانے سے تعلق رکھتا ہے لہذا اس روزگاری زندگی کے علاوہ سائل کی دیگر زرائع معاش نہیں ہے۔ لہذا سائل آپ صاحبان کو مکمل یقین دہانی دلاتا ہے کہ انشاء اللہ آئندہ کیلئے سائل سے اس قسم کے مجبوری نہیں ہوگا اور اپنی فرانس منصبی انتہائی احساس ذمہ داری اور پابندی کیساتھ انجام دیتا رہے گا لہذا سائل شوکانوٹس درگزر فرما کر بحال روزنامچہ میں حاضری کی حکم سنائے جائے تو سائل تاحیات دعا گوہ رہوگا۔

فرمانبردار کنٹینیل فضل تو اب نمبر 1190 متعینہ تھانہ خواہ خیلہ ضلع سوات


العبد


Advocate

Annex E

Page 15

Medical No. 2

No.

OUT-PATIENTS DEPARTMENT

NAME Fajal Tawad

YEARLY NO. 1269

DATE 10-4-2013

DISEASE

- Pain Hypochondria
- Pain down back
- Dr. Ranaul [unclear]
- Cap. Volosef 500
- Tab. [unclear]
- Tab. Spasmodol

Heur
Advante

Bed rest for 13 days
See after 13 days.

RECEIVED
23.04.2013

Annex E

continue

Page 16

Saidu Teaching Hospital Swat
Casualty Department

Yearly No: R0895
Name: ajmal Tawab
RID: PC-100
Dated: 30-05-2013 Age: 32 years
Disease:

B.P: 130
Temp: 98.6
Short History: Admit
Down left shoulder
in left hand

Accident
Admission

(L) hand oblique view

Chin # 111 M B (L) hand
Ref to ortho OT
for B.S. study
for x-ray of
left shoulder
for B.S. study

Annex F

Page - 17



ORDER:

Constable Fazal Tawab No. 1190 of Swat District is hereby transferred and posted to Shangla District with immediate effect.

Signature
(ABDULLAH KHAN) PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat
Naqi

No. S217-18 /E,

Dated 24/6 /2013.

Copy for information and necessary action to the:-

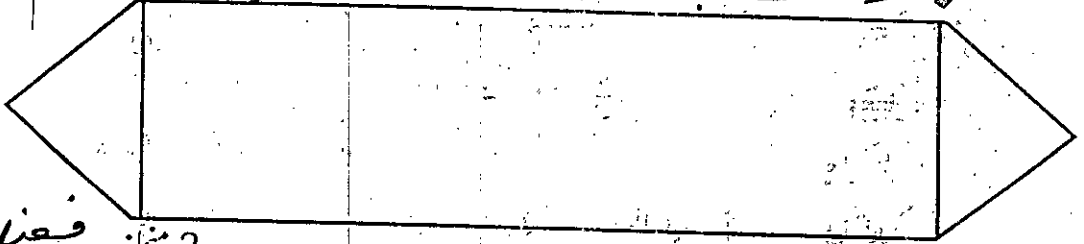
1. District Police Officer, Swat.
2. District Police Officer, Shangla.

Signature
Advocate

~~ED/OB~~

~~DPO / *Signature*~~

بعدالت حساب سرسپینڈیشن فیصلہ کی درخواست



2، پنجاب فضل تو اب
بنام 1195
ex - Constable
D. H. Swat.

مورخہ 21.2.2014

مقدمہ
دعویٰ
سرسپینڈیشن
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ اندر سے
آن مقام کے لئے جاری ہے۔

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار دگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا ادکالت نامہ لکھ دیا کہ سند ہے۔

الرقوم 21
فروری 2014

وہ کے لئے منظور ہے۔

بمقام لٹور

فضل تو اب سابقہ کنسل 1195
ضلع سوات
Janab

Kumar
Advocate

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 256/2014.

Fazal Tawab Ex-Constable No. 1190 District Swat.

Appellant

VERSUS

1. District Police Officer, Swat.
2. Deputy Inspector General of Police Malakand Region, Swat

Respondents.

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Shewith,

The comments on behalf of Respondents are submitted as below.

Preliminary Objections.

1. That the appellant has got no Cause of action and locus standi to file the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come to the Tribunal with clean hands.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant concealed the material facts from this Hon'ble Tribunal.
8. That the appellant has been estopped by his own conduct to file the appeal.

Facts:

1. Para No.1 of appeal pertains to service record, hence no comments.
2. Para No.2 of appeal pertains to service record, hence no comments.
3. Para No. 3 of appeal is incorrect. Appellant proved himself an inefficient Police official by absenting himself from lawful duties without the permission of competent authority for different periods mentioned in the order dated 30.09.2013, attached as Annexure-A with appeal.
4. Para No. 4 of appeal is incorrect. Appellant has not sanctioned any medical leave and proceed on leave on his own for different periods, for which he was proceeded against departmentally for such a long absence, hence after recommendations awarded Major Punishment of dismissal from service (copy of enquiry is attached as Annexure-B).
5. Para No. 5 of appeal is correct to the extent of marking absent, but the same is due to his willful absence.
6. Para No. 6 of appeal is incorrect. Appellant proceed on leave on his own without any sanctioned leave and after availing unsanctioned leave he was already marked absent, therefore proceeded against departmentally.
7. Para No. 7 of appeal is correct, however appellant has also been charge sheeted for different absence period.
8. Para No. 8 of appeal is correct, however enquiries in respect of appellant were also pending with other Enquiry Officers on account of his absence for different period, in which he was found guilty.

Handwritten signature and date: 26/11/15

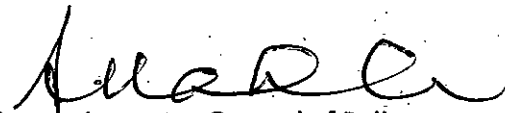
9. Para No. 9 is correct, however after receipt of recommendations from the Enquiry Officers, it has been proved that appellant is habitual absentee, therefore, awarded major punishment of dismissal from service in accordance with rules.
10. The order of respondent No. 1 is quite legal and commensurate with the guilt of appellant.
11. The departmental appeal was rightly dismissed by the appellate authority being meritless.

Grounds:

- A. Incorrect: appellant is habitual absentee as is evident from his service record.
- B. Incorrect: appellant has been proceeded against on account of absence for different period for which different Enquiry Officers found him guilty.
- C. Incorrect: appellant was properly served charge sheet, for each absence period and after recommendations of Enquiry Officers awarded major punishment. All the codal formalities were fulfilled.
- D. Incorrect: order of respondent is legal.
- E. Incorrect: proper opportunity of hearing was provided to the appellant.
- F. Incorrect: appellant's excuse is not valid.
- G. Incorrect: orders of respondents are quite legal in accordance with law and rules.
- H. That the respondents also seek the permission of the Tribunal to rely on additional grounds at the time of hearing.

It is therefore, requested, that the appeal of appellant may kindly be dismissed with cost being devoid of merits and without any legal substance


District Police Officer, Swat.
Respondent No. 01.


Deputy Inspector General of Police,
Malakand Region, Swat.
Respondent No. 02.

BEFORE THE SERVICE TRIBUNAL KHYBER PUKHTOON KHWA PESHAWAR

Service Appeal No. 256/2014

Ex Constable Fazal Tawab No. 1190 of District Swat

(Appellant)

VERSUS

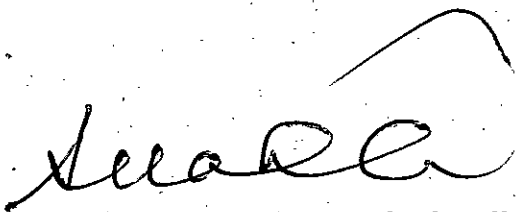
- 1. District Police Officer, Swat**
- 2. Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat.**

(Respondents)

AFFIDAVIT:-

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

1- 
District Police Officer, Swat.
(Respondent No.1)

2. 
Deputy Inspector General of Police,
Malakand Region, Saidu Sharif Swat
(Respondent No.2)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 256/2014

Fazal Tawab Ex-Constable No. 1190 District Swat.

Appellant

VERSUS

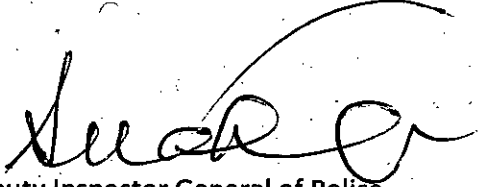
1. District Police Officer, Swat.
2. Deputy Inspector General of Police, Malakand Rang, Saidu Sharif Swat.

Respondents.

POWER OF ATTORNEY.

We, the undersigned No. 1 to 2 do hereby appoint Aziz Ur Rahman DSP Legal Swat as special representative on our behalf in the above noted appeal. He is authorized to represent us before the Tribunal on each and every date fixed and to assist the Govt: Pleader attach to Tribunal in Submission of record.

**District Police Officer, Swat.
Respondent No. 01.**


**Deputy Inspector General of Police,
Malakand Region, Swat.
Respondent No. 02.**

Annex A

ORDER

This order will dispose off the departmental enquiry against Constable Fazal Tawab No.1190 who absented himself from his lawful duties without prior permission or leave vide D.D. No.50 w.e.f. 14-10-2012 for 30 days, D.D. No.84 w.e.f. 04-12-2012 for 27 days, D.D. No.55 w.e.f. 10-01-2013 for 13 days, D.D. No.26 w.e.f. 30-05-2013 for 102 days D.D. No.53 w.e.f. 10-04-2013 for 13 days (Total 185 days).

He was issued Charge Sheet, alongwith Statement of Allegations and DSP/Khwaza Khela, Swat was deputed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the delinquent Officer and recorded the statements of all concerned officers. He provided ample opportunity to the delinquent officer to present justification for his absence from lawful duties. After conducting proper departmental enquiry, the Enquiry Officer submitted his findings wherein he recommended the delinquent officer for Major Punishment. Consequently he was issued Final Show Cause Notice with the direction to submit his reply within seven days of the receipt of Final Show Cause Notice. He was called in Orderly Room on 26-08-2013, 09-09-2013, 16-09-2013, 23-09-2013 and on 30-09-2013. However, he did not appear.

Having perused his Service Record, it was patently evident that the delinquent officer Constable Fazal Tawab No.1190 is addicted to habitual absenteeism and is not interested to continue his service. For his unlawful absence from duties he has been dismissed from service vide O.B. No.158, dated 30-09-2012. Foregoing in view the undersigned is of considered opinion that there are no chances that Constable Fazal Tawab No.1190 can become an efficient Police Officer. His further retention in the service is bound to affect the discipline of the entire force. In exercise of the powers vested in the undersigned in Rules 2 (iii) of Police Disciplinary Rules-1975, I, Sher Akbar S.St. P.S.P. District Police Officer, Swat as a competent authority am constrained to award him the punishment of dismissal from service from the date of his absence.

O.B. No. 158
Dated 30/09 /2013.


District Police Officer, Swat.

11.06/2013

فائل رپورٹ

صاحب عالیٰ محمد مشولہ ڈسپنری ایلین، اجارج سٹیٹ ٹیری 76/E وارنہ
8.5.2013

مقامی DPO صاحبہ ضلع سوات برصغیر کینٹیل فضل توابع 1195 سکھنہ سدانہ
ٹورٹریخان شعبہ معروض خدمت ہوں۔ کہ

الزام علیہ کینٹیل فضل توابع 1195 کو سلسلہ انٹوائٹری سبب قلمبندی

بیان دفتر طلبہ کے اپنے بیان میں واضح کیا کہ اس کا والدہ کا عمر 36 سے

گرددے کے بیماری میں مبتلا ہے۔ موزن 15 کلوگرام کم ہے ملازمین ہسپتال سڈپو
2013

لے جا کر یہ معافیہ دامن ہسپتال کر کے آئیہ لہفتہ تک زیر علاج رہا۔ ہسپتال

سے فراغت پر ڈاکٹر صاحبہ نے دوائی تجویز کر کے گھر لے آئی۔ جہاں پر اس

کے علاوہ اور کوئی فریضہ فرد موجود نہیں ہے۔ والدہ کی خدمت کی وجہ سے

یہ آمر قبوری غیر حاضر ہوا ہے۔

اس بابت طاوس خان SHO نے کینٹیل مذکورہ کی ریم غیر حاضری

بلا متخواہ شمار کرنے کی سفارش فرمائی ہے۔

عملہ حالات واقعات سے میں اس نتیجہ پر پہنچا ہوں۔ کہ الزام

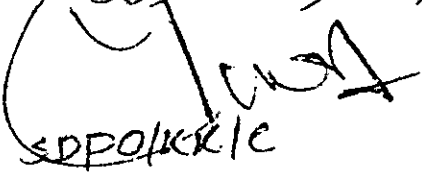
علیہ کینٹیل فضل توابع 1195 کی والدہ واقعی بیمار ہے۔ دوران قلمبندی

بیان والدہ کے بیماری کے کاغذات پیش کر کے لفٹ انٹوائٹری ہے۔ صبح کی وجہ


سے کینٹیل مذکورہ کل (13) یوم (16) گھنٹہ (25) منٹ غیر حاضر رہ سکا ہے۔

لہذا اگر صاحبہ والا متفق ہو۔ تو کینٹیل فضل توابع 1195 کی ریم

غیر حاضری بلا متخواہ شمار اور مبلغ (500) روپے جرمانہ کرنے کی سفارش کی جاتی ہے


SDO/KK/IC

11-06-2013

Sir,
Submitted for F.O. perusal
and orders please.
D.P./P.N. 18/06/13

W.D.P.O. Swat.

Before the Service Tribunal & PK B.1

Ref: 1000

Service Tribunal

Diary No. 73

Dated 13-2-15

In the matter of SA No. 256/14

Fazal Tanab ex-constable (Appellant)
Vs

1. D. P. O. Swat and another
(Respondents)

Application for early hearing of
the appeal of the appellant.

Sir

1. That the appeal of the
appellant is fixed for hearing
(Arguments/Rejoinder) on 23.7.2015.

2. That the appellant request
that the appeal may please
be fixed on an early date
for hearing/disposal.

Dated 13/02
20/15

Appellant
Fazal Tanab
Fazal Tanab.
(1190) Swat.
ex-constable

4. *Para No 5. It is admitted that the MC was properly submitted, hence no comments as the appellant has complied with rules.*
5. *Para No 6 incorrect, Para No 6 of the appeal is correct. It is not according to rules. Before dismissal the appellant. It is not known as to how he was once on 24/06/2013 transferred to Shangla by DIG Malakand, Moharrir cleared him and relieved him for Shangla on 16/09/2013 and later on respondent No 1 issued the impugned order on 30/09/2013 when the transfer order was still in force and the appellant was not on roll of Swat.*
6. *Para No 7. It now clear from reply that other absence was not mentioned in FSC notice, hence no comments.*
7. *Para No 8/9 not admitted as no record produced by respondents in the enquiry and charge sheet.*
8. *Para No 10/11 the impugned order is illegal and unlawful, hence requested to be set aside.*

Grounds:-

- A. *Not admitted.*
- B. *Incorrect as per above points and grounds B of appeal.*
- C. *Incorrect, Para C of appeal is correct.*

- D. *Incorrect, Para D of appeal has not been replied correctly.*
- E. *Incorrect, Para E of appeal is correct.*
- F. *It is not correct, reply to Para F of appeal.*
- G. *Para G of appeal is correct.*
- H. *AS in appeal.*

It is, requested that the order may please be set aside and appellants may please be reinstated in service with all back benefits.

Dated:- 22/07/2015

Appellant

Through:-

Shamsul
Haji Shamsul Qamar
Advocate, Peshawar.
Cell No:- 0301-8806554

AFFIDAVIT

I, Fazal Tawab appellant do hereby solemnly affirm and declare on oath that the contents of this accompanying Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Attested
23-7-2015

Fazal Tawab
DEPONENT

SHAKEEL AHMED
ADVOCATE
NOTARY PUBLIC
PESHAWAR 03369703662

4. *Para No 5. It is admitted that the MC was properly submitted, hence no comments as the appellant has complied with rules.*
5. *Para No 6 incorrect, Para No 6 of the appeal is correct. It is not according to rules. Before dismissal the appellant. It is not known as to how he was once on 24/06/2013 transferred to Shangla by DIG Malakand, Moharrir cleared him and relieved him for Shangla on 16/09/2013 and later on respondent No 1 issued the impugned order on 30/09/2013 when the transfer order was still in force and the appellant was not on roll of Swat.*
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7. *Para No 8/9 not admitted as no record produced by respondents in the enquiry and charge sheet.*
8. *Para No 10/11 the impugned order is illegal and unlawful, hence requested to be set aside.*

Grounds:-

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- E. *Incorrect, Para E of appeal is correct.*
- F. *It is not correct, reply to Para F of appeal.*
- G. *Para G of appeal is correct.*
- H. *AS in appeal.*

It is, requested that the order may please be set aside and appellant may please be reinstated in service with all back benefits.

Dated:- 22/07/2015

Through:-

Appellant

[Signature]
Advocate, Peshawar.
Cell No:- 0301-8806554

AFFIDAVIT

I, Fazal Tawab appellant do hereby solemnly affirm and declare on oath that the contents of this accompanying Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Affirmed
23-7-2015

[Signature]
DEPONENT

[Signature]
SHAKEEL AMAN
ADVOCATE
NOTARY PUBLIC
PESHAWAR 0336970352

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 779 /ST

Dated 13 / 5 / 2016

To

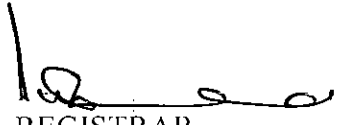
The R.P.O Malakand
Range at Saidu Sharif Swat.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 2.5.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.