

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CAMP COURT SWAT.

Service Appeal No.1046/2014

Date of Institution ... 15.08.2014

Date of Decision ... 08.01.2019

Mr. Mohammad Naeem, Constable no. 132, Police Line Javed Iqbal Shaheed Kabal,
District Swat. ... (Appellant)

VERSUS

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

MR. SHAAZULLAH YOUSAFZAI,
Advocate

--- For appellant.

MIAN AMIR QADAR,
District Attorney

--- For respondents

MR. AHMAD HASSAN,
MR. MUHAMMAD AMIN KHAN KUNDI

--- MEMBER (Executive)
--- MEMBER (Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS.

2. Learned counsel for the appellant argued that at the height of militancy in Swat, he was forced by the circumstances to stay away from official duty. That on the allegations of absence from duty major penalty of removal from service was awarded to him vide impugned order dated 21.02.2009 against which departmental appeal was filed on 24.11.2011. On rejection of his departmental appeal he invoked the jurisdiction of this Tribunal through service appeal no. 75/2012 decided on 05.03.2012. Certain directions were conveyed through the above judgment to the respondents. That vide order dated 09.04.2013 the appellant was reinstated in service from the date of award of major punishment, while the period of absence and intervening period were treated as Extra Ordinary Leave without pay. As back benefits were denied without any rhyme and

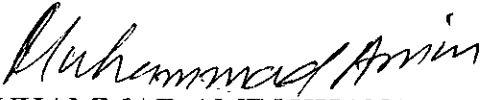
reasons so again the appellant has agitated his grievances through the present service appeal. The respondents have not given any justification for denying back benefits to the appellant, so their action is arbitrary and against the spirit of the rules.

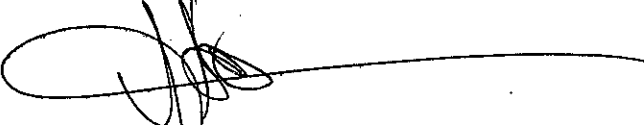
3. Learned District Attorney argued that the police officials who deserted during militancy showed extreme cowardness and were proceeded departmentally. In pursuance of directions of this Tribunal contained in judgment dated 05.03.2012 and taking lenient view of the situation the appellant was reinstated in service vide order dated 09.04.2013. Though the appellant joined duty but never raised the issue of back benefits at departmental level as is evident from an application dated 08.08.2014 for grant of copy of reinstatement order. The present service appeal was filed on 15.08.2014 which was badly time barred and no justification for delay in performing the present service appeal was available on record.

CONCLUSION.

4. We are inclined to agree with the arguments of the learned District Attorney that the appellant was reinstated in service vide order dated 09.04.2013, while present service appeal was filed on 15.08.2014. In these circumstances the present appeal is time barred. Learned counsel for the appellant during the course of arguments was confronted on this point but was unable to convince this Tribunal through assertions or documentary support. Being a case barred by time is not worth consideration.

5. As a sequel to above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.


(MUHAMMAD AMIN KHAN KUNDI)
Member


(AHMAD HASSAN)
Member
Camp court Swat

ANNOUNCED
08.01.2019

06.12.2018 Appellant in person and Mr. Usman Ghani learned District Attorney for the respondents present. Adjournment requested. Adjourn. To come for arguments on 08.01.2019 before D.B at Camp Court Swat.



Member

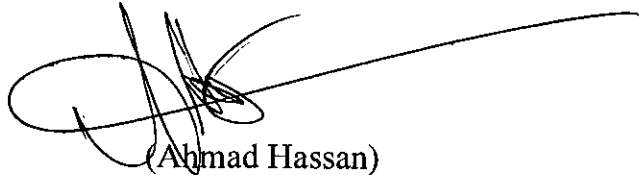

Member
Camp Court Swat

ORDER

08.01.2019 Counsel for the appellant present. Mian Amir Qadir, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today placed on file, the appeal is dismissed. In the circumstances, parties are left to bear their own costs. File be consigned to the record room.



(M. Amin Khan Kundi)
Member



(Ahmad Hassan)
Member
Camp Court Swat

ANNOUNCED
08.01.2019

04.07.2018

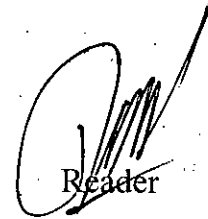
Appellant Muhamamd Naeem in person present. Mr. Usman Ghani District Attorney on behalf of the respondents present. Appellant requested for adjournment that his counsel could not reach from Peshawar. Granted. To come up for arguments on 09.08.2018 before the D.B at camp court, Swat.


Member


Chairman
Camp court, Swat

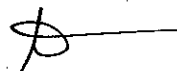
09.08.2018

Appellant in person present. Due to summer vacation the case is adjourned to 04.10.2018 for the same at camp court Swat.


Reader

04.10.2018

Mr. Muhammad Maaz Madni, Advocate counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Learned counsel for the appellant requested for adjournment. Granted but as a last chance. Being an old case of 2014 is adjourned to 06.12.2018 for arguments before D.B at camp court Swat.


Member


Chairman
Camp Court Swat

31.01.2018

Counsel for the appellant present and Addl: AG for the respondents present. Counsel for the appellant seeks adjournment. Granted. To come up for arguments on 04.04.2018 before D.B at C+amp Court, Swat.

Member

Chairman
Camp Court, Swat

04.04.2018

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Muhammad Shoaib, ADO for the respondents present. Appellant seeks adjournment as his counsel is not available today. Granted. To come up for arguments on 09.05.2018 before D.B at Camp Court, Swat.

MA
Member

Chairman
Camp court, Swat

09.05.2018


The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 04.07.2018 before the D.B at camp court, Swat.

Reader

04.1.2017


Appellant in person and Mr. Muhammad Zubair, Senior Government Pleader for respondents present. Counsel for the appellant has sent request for adjournment from Peshawar. Adjourned for final hearing to 03.05.2017 before D.B at camp court, Swat.


Member


Chairman
Camp court, Swat

03.05.2017


Appellant in person present. Amir Qadar, Deputy Attorney for the respondents also present. Due to non-availability of learned counsel for the appellant as well as incomplete bench arguments could not be heard. To come up for arguments on 09.08.2017 before D.B at Camp Court Swat.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
Camp Court Swat

09.08.2017

Appellant in person and Mr. Muhammad Zubair, District Attorney for the respondents present. Counsel for the appellant has not turned up from Peshawar. Appellant seeks adjournment. Adjourned. To come up for arguments on 04.12.2017 before the DB at camp court, Swat.



Member


Chairman
Camp court, Swat

04.12.2017

Junior to counsel for the appellant and Addl. AG for the respondents present. Senior counsel for the appellant has not turned up from Peshawar. Seeks adjournment. Granted. To come up for arguments on 31.01.2018 before the D.B at camp court, Swat.



Member


Chairman
Camp court, Swat

1046/14

05.04.2016


None present for the appellant. Mr. Mushtaq Inspector (Legal) alongwith Mr. Amir Qadir, GP for respondents present. Due to non-availability of D.B arguments could not be heard. To come up for final hearing before D.B on 11.07.2016 at Camp Court, Swat.


Chairman
Camp court, Swat.

11.07.2016

Appellant in person and Mr. Muhammad Zubair, Sr. G.P for the respondents present. Counsel for the appellant is not in attendance due to strike of the bar. Adjourned for final hearing on 5.10.2016 before D.B at camp court, Swat.



Member


Chairman
Camp court, Swat.

05.10.2016

Appellant in person and Mr. Muhammad Zubair, Sr.GP for the respondents present. Counsel for the appellant has not turned up from Peshawar. Seeks adjournment. Adjourned for final hearing before the D.B on 04.1.2017 at camp court, Swat.


Member


Chairman
Camp court, Swat


1.6.2015

Appellant in person and Mr. Mushtaq Ahmad, S.I (legal) alongwith Mr. Anwar-ul-Haq, G.P for respondents present. Comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 8.9.2015 at camp court Swat.


Chairman
Camp Court Swat


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. Rejoinder submitted. To come up for final hearing before D.B on 10.12.2015 at Camp Court Swat.


Chairman
Camp Court Swat

10.12.2015

Appellant in person and Mr. Farhan, H.C alongwith Mr. Muhammad Zubair, Sr.GP for respondents present. Due to non-availability of D.B arguments could not be heard. To come up for final hearing before D.B on 5.4.2016 at Camp Court Swat.


Chairman
Camp Court Swat

Appeal No. 1046/2014
Mr. Mohammad Naeem

1046/14

23.2.2015

Counsel for the appellant present and submitted that the appellant while working as Constable in the FRP Malakand Range, Swat, removed the appellant from service on 21.2.2009. Feeling aggrieved, the appellant filed appeal before this Tribunal and vide order dated 05.3.2013, departmental appeal of the appellant was remanded to respondent No. 2 for decision on merit. Vide impugned order dated 09.4.2013, the appellant was reinstated into service but the absence and intervening period were treated as extraordinary leave without pay. The learned counsel for the appellant further argued that no regular enquiry was conducted and that the respondents acted in arbitrary manner.

Appellant deposited process fee & Security

Points raised need consideration. The appeal is admitted to regular hearing, subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. Case to come up for written reply on 17.4.2015.


MEMBER

17.04.2015

Counsel for the appellant and Mr. Ihsanullah, ASI (legal) alongwith Additional Advocate General for respondents present. Requested for adjournment. The appeal pertains to territorial limits of Malakand Division and as such to be posted at Swat. To come up for written statement at Camp Court Swat on 1.6.2015.


Chairman

3.

Reader Note:

17.11.2014

Counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 20.01.2015 for the same.


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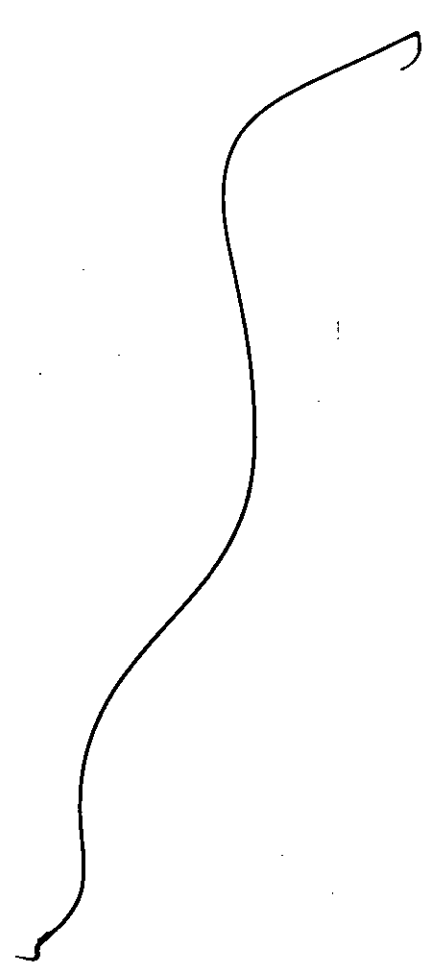
4.

Reader Note:

21.01.2015

Since 20th January has been declared as public holiday by the provincial government, therefore, case is adjourned to 23.02.2015 for the same.

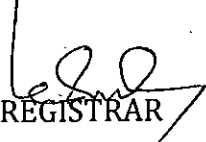


Reader



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1046/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15/08/2014	<p>The appeal of Mr. Muhammad Naeem presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	19-8-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 17-11-2014.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO 1046 /2014

MOHAMMAD NAEEM

VS

POLICE DEPARTMENT

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5.	Forwarding letters	C	8- 9.
6.	Rejection order	D	10.
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APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 1046 /2014

Mr. Mohammad Naeem, Constable No.132,
Police Line Javed Iqbal Shaheed Kabal, District Swat.

1081
15/8/2014

..... **Appellant**

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Additional Inspector General of Police/ Commandant, Frontier Reserve Police (FRP), Khyber Pakhtunkhwa, Peshawar.
- 3- The District Police Officer, District Swat.
- 4- The Superintendent of Police, Frontier Reserve Police (FRP), Malakand Range, Swat.

..... **Respondents**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE APPELLATE ORDER DATED 09-04-2013 COMMUNICATED TO THE APPELLANT ON 08-08-2014 WHEREBY THE APPELLANT WAS RE- INSTATED IN TO SERVICE WITH OUT BACK BENEFITS

PRAYER:

That on acceptance of this appeal the impugned appellate order dated 09-04-2013 communicated to the appellant on 08-08-2014 may vary kindly be modify/rectify to the extent of back benefits and the respondents may be directed to grant/allow back benefits to the appellant with effect from 07-08-2008 till 9.4.2013. Any other remedy which this august Tribunal deems fit may also be awarded in favor of the appellant.

15/8/14

R/SHEWETH:

ON FACTS:

1. That appellant was enlisted in the Frontier Reserve Police (FRP) Malakand range Swat vide order dated 02-11-2004. That after appointment the appellant started performing his duty as constable quite efficiently and to the entire satisfaction of his superiors.

2. That appellant while working as constable in the Frontier Reserved Police (FRP) Malakand range Swat, the so called Militancy was started in the region, during which life, property and fame of every person was at stake, slaughtering of people and destroying the public and Government property was a routine matter in valley Swat.
3. That during the above crisis, the so called Taliban had threatened the police force of dire consequences if they did not quit the force. That police personnel in their individual capacity were also been warned to leave the force or face death punishment.
4. That like other police personnel, the appellant was also personally warned twice and again to leave the police force or face death punishment. That as the Taliban were very active at village Qambar and unfortunately the appellant also belonged to village Qambar, therefore the appellant and his colleagues have no other choice but to escape/go under ground to save their lives.
5. That in result the appellant absented him self from the duty and in result the appellant was finally removed from service vide order dated 21-02-2009. That feeling aggrieved the appellant filed Departmental appeal but the same was rejected on no good grounds vide order dated 24-11-2011. Copies of the removal order, Departmental appeal , forwarding letter, and rejection order are attached as Annexure **A, B, C & D.**
6. That feeling aggrieved the appellant knock the door of this august Service Tribunal in appeal No.75/2012 which was decided on 05-03-2013 with the directions to the respondent Department for "Decision on merit, while furnishing the reasons in accordance with Section 24-A sub section (2) of the General clause Act,1897. Copies of the Memo of appeal and judgment are attached as Annexure **E & F.**
7. That the respondent No.4 re- instated the appellant in service and directed the appellant to resume his duty. That it pertinent to mention that the order of the re- instatement was not communicated/issued to the appellant. That appellant after join the duty was informed through a reliable source that though he was re- instated with out back benefits. Copy of the re- instatement order of the respondent No. 4 is attached as Annexure **G.**
8. That the re- instatement order issued by the respondent No. 2 was communicated by appellant on the application submitted the appellant vide .dated 08-08-2014. Copies of application and order are attached as Annexure **H & I.**

9. That it is very pertinent to mention that other colleagues of the appellant have been re-instated with all back benefits, but the appellant was deprived from similar relief as meted out his other colleagues.
10. That feeling aggrieved from the appellate order dated 09-04-2013 communicated to the appellant on 08-08-2014 the appellant prefer this appeal on the following grounds amongst the others.

GROUND:

- A- That the impugned order dated 09-04-2013 communicated to appellant on 08-08-2014 issued by the respondent No.2 is against the law, facts, norms of natural justice and materials on record, therefore not tenable and liable to be set aside.
- B- That the appellant has not been treated in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Pakistan 1973.
- C- That not granting/allowing the back benefits of the appellant is against the law, facts and norms of natural justice.
- D- That the appellant is treated by the respondent Department indifferently amongst his similarly placed colleagues by not granting/allowing the back benefits.
- E- That the respondent Department acted in arbitrary and malafidy manner and as such the respondents violated the existing laws and rules by not granting/allowing back benefits to the appellant.
- F- That no regular inquiry has been conducted by the respondents before issuing the impugned orders dated 21.2.2009 and 9.4.2013 against the appellant which is as per Supreme Court judgments is necessary in punitive actions.
- G- That other colleagues of the appellant who have been dismissed from service during the said crises have been re-instated with all back benefits but the appellant has been ignored from similar relief.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated:13.8.2014

APPELLANT



MUHAMMAD NAEEM

THROUGH:



**NOOR MOHAMMAD KHATTAK
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2014

MOHAMMAD NAEEM

VS

POLICE DEPARTMENT

APPLICATION FOR CONDONATION OF
DELAY IN FILING THE ABOVE NOTED
APPEAL

R.SHEWETH:

- 1- That the appellant has filed an appeal along with this application in which no date has been fixed so far.
- 2- That the appellant prays for the condonation of delay in filing the above noted appeal inter alia on the following grounds:

GROUND OF APPLICATION:

- A- That valuable rights of the appellant are involved in the case hence the appeal deserve to decide on merit.
- B- That it has been the consistent view of the Superior Courts that cases should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is therefore prayed that on acceptance of this application the delay in filing the above noted appeal may please be condoned.

APPELLANT



MOHAMMAD NAEEM

THROUGH:



NOOR MOHAMMAD KHATTAK
ADVOCATE

ORDER

F.C Muhammad Naim No. 4487. Platoon No. 72 Swat FRP, Malakand Range, has remained absent from lawful duty from 07.08.2008 to date.

A-61

He was proceeded against departmentally under the NWFP Removal from Service (Special Powers) Ordinance, 2000, with duly constituted Inquiry Committee comprising the following police officers:

1. Hazrat Ali Khan, DSP FRP Swat.
2. S.I Rehmat Ali Khan, R.I FRP Lines, Swat.
3. S.I Bacha Khan, L.O FRP Lines, Swat.

The Inquiry Committee had completed all the requisite codal formalities and submitted the enquiry report, wherein it has been observed that the defaulter F.C Muhammad Naim No. 4487 was enlisted in FRP on 02-11-2004. The defaulter F.C Muhammad Naim No. 4487 deserted the force during an emergency situation and thus demonstrated cowardice in the line of duty. Later on, he was given the opportunity to join his duty but he failed to do so. In the light of the above inquiry report, the Inquiry Committee has found the defaulter constable guilty of charges and recommended his removal from service.

I, the undersigned, have thoroughly perused the enquiry report and the inquiry papers of the Inquiry Committee. The defaulter constable has been provided an ample amount of opportunity for personal hearing but he never availed this Chance. I fully agree with the findings and recommendations of the Inquiry Committee. Therefore, the defaulter F.C Muhammad Naim No. 4487, Platoon No. 72 FRP, Swat Malakand Range, is hereby removed from service from the first date of his absence of official duty.

Order announced.

[Signature]
Superintendent of Police,
FRP, Malakand Range, Swat

No. 238
Dated 21/2 /2008

Copy to the worthy Commandant, Frontier Reserve Police, N.W.F.P, Peshawar, for favour of kind information, please.

OB 23
Dth- 21-2

[Signature]
Superintendent of Police,
FRP, Malakand Range, Swat

ATTESTED
[Signature]

B-7

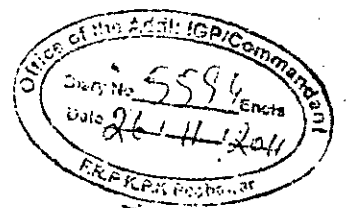
بجھور جناب کمانڈنٹ صاحب ایف۔ آر۔ پی صوبہ خیبر پختون خواہ پشاور۔

جناب عالی!

اداب بجھور انور ہیکہ کہ سائل گاؤں قمر تھانہ رحیم آباد ضلع سوات کا اصل سکونتی باشندہ ہے۔ سائل سال 02/11/2004 کو محکمہ پولیس ایف۔ آر۔ پی ملاکڈ ریٹج میں بھرتی ہوا تھا۔ سائل کا پولیس فورس کے ساتھ از حد محبت تھا۔ اور مستقبل میں قوم کے شب روز خدمت اور ملک کے بقا کے خاطر ایک ایماندار پولیس آفیسر بننا چاہتا تھا۔ صرف یہ نہیں بلکہ پولیس ملازمت سائل کے عمر رسیدہ، اور سفید ریشی تک پہنچے ہوئے ماں باپ، چھوٹے بہن بھائیوں کے پیٹ پالنے کا ایک ذریعہ بھی تھا۔ مگر بد قسمتی سے تقریباً سال 2009 ملاکڈ ڈویژن کے میں ملک و سماج دشمن عناصر نے اپنے ناپاک ارادوں سے دہشت گردانہ سرگرمیاں شروع کر دی۔ اور ہاے روز اپنے مزموم مقصد کے بناء بے گناہ اور معصوم لوگوں کے جانوں سے کھیلتے ہوئے دہشت گردی کو عروج پر پہنچا دیا۔ دہشت گردانہ سرگرمیاں تو پورے ضلع سوات میں رہی مگر گاؤں قمر زیادہ متاثر ہوا۔ چونکہ سائل اسی گاؤں کا باشندہ تھا۔ اسلئے خود سائل، اور سائل کے گھر والوں کو شب و روز گاؤں چھوڑنے سائل کو اس دہشت گردوں کے حوالے کرنے اور گھربار جلانے کی دھمکیاں ملتی رہی۔ چونکہ حکومت کی رٹ ختم ہو چکی تھی۔ ہر طرف ان دہشت گرد ظالموں نے اپنے مزموم مقاصد اور ناپاک عزائم کے حصول کے لیے جہلکا مچایا تھا۔ اسلئے سائل کو اپنے گھرانے سمیت ضلع سوات سے باہر جانا پڑا۔ بدیں وجہ اپنے ملازمت سے قدر غیر حاضر رہا۔ حکومتی رٹ بحال ہونے اور ان قائم ہونے کے بعد جب سائل واپس آیا۔ تو معلوم ہوا کہ اسی غیر حاضری کی پاداش میں سائل کو آفسران بالانے ملازمت سے بحوالہ آرڈر نمبر 23 مورخہ 21/02/2009 کو محکمہ ہذا سے ڈسچارج کیا گیا ہے۔ سائل کو اپنے ضعیف العمر ماں، باپ، چھوٹے بہن بھائیوں کو محفوظ مقام پر منتقل کرنے کے علاوہ دوسرا کوئی چارہ نہیں تھا۔ بدیں وجہ بہ امر مجبوری ملازمت سے قدر غیر حاضر رہا۔

سائل اپنے گھر کے 12 افراد پر مشتمل کنبے کا واحد کفیل ہے۔ اور سائل کو کوئی ذریعہ معاش نہیں ہے۔ مہنگائی کے اس دور میں سائل کو شدید مشکلات کا سامنا ہے۔ لہذا درخواست بجھور اقدس ہیکہ ماتحت پروری کے تحت اگر سائل کو ملازمت میں دوبارہ بحال کیا جائے۔ تو سائل آپ کے اس احسان عظیم کا ہمیشہ ہمیشہ کے لیے مشکور رہے گا۔

العارض۔



سابقہ کنسٹیبل محمد نعیم نمبر 4487

گاؤں قمر تھانہ رحیم آباد ضلع سوات۔

Attested

E.C.

20/11/11

ATTACHED

For Addl. IGP/Commandant FRP
Peshawar

From: - The Superintendent of Police, FRP,
Malakand Range, Swat.

C-8

To: - The Addl: IGP/Commandant,
Frontier Reserve Police,
Khyber Pukhtoon Khwa Peshawar.

No. 1171/EC, Dated Saidu Sharif the 13/12/2011.

Subject:- APPEAL FOR RE-INSTATEMENT IN SERVICE.

Memorandum.

Kindly refer to your office Memo: No. 8081/EC, dated 26/11/2011.

Detail comments on the subject appeal is submitted herewith as under:-

The Ex-Constable Muhammad Naeem No. 4487 was enlisted as Constable in Police Department on 02/11/2004.

During the tens situation in the Region he while posted to Platoon No. 72 District Swat, deserted the force vide D.D report No. 05 dated 07/08/2008. Therefore departmental enquiry was started against him and charge sheeted vide this office Endst: No. 657/EC, dated 30/10/2008, but reply to the charge sheet was not received in the stipulated period and was also given the opportunity to join his duty vide parwana No. 1377/EO, dated 08/11/2008, but he never availed this chance and as such he was issued final show cause notice vide this office Endst: NO. 885/EC, dated 03/01/2009 but reply to the final show cause notice was not received in the stipulated period and the enquiry papers were entrusted to the enquiry committee for submission of the finding report. The enquiry committee in his finding report recommended the defaulter Constable for removal from service. Therefore after completion all the codal formalities and in the light of recommendation of the enquiry committee the defaulter Constable Muhammad Naeem No. 4487 was removed from service from the first date of his absence i.e. 07/08/2008 vide O.B NO. 23 dated 21/02/2009.

Application received vide your office Memo: No. mentioned above alongwith service record and D. File containing 29 sheets is submitted herewith for your kind perusal and further order, which may kindly be returned to this office for record, when no longer required please.

Encls: Application.

Service Roll.

D. File.

ATTESTED

Superintendent of Police FRP,
Malakand Range, Swat.

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 Office of I.S.P.
 No. 1074
 Date 29-11-11
 C. I. R. S.

From: - The Addl: IGP/Commandant FRP
 Khyber Pakhtunkhwa, Peshawar.
 To: - The Superintendent of Police FRP
 Malakand Range Swat.
 No. 8551 /EC dated Peshawar the, 26/11/2011
 Subject: - APPEAL FOR REINSTATEMENT IN SERVICE
 Memo: -

Enclosed please find herewith an appeal submitted by Ex-Constable
Muhammad Naeem No. 4487 of your Range for reinstatement in service for detail comments
 His service record alongwith departmental file may also be sent to this office for disposal of his
 appeal.

EC/OSI
 For ma
SP/FRP/Swat
29/11

M. Naeem
 OFFICE SUBJECT:
 For Addl. IGP/Commandant FRP
 Khyber Pakhtunkhwa Peshawar
26-11-2011

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915/200
 For ma
SP/FRP/Swat
4/1/12

M
 Addl: IGP/Commandant
 Frontier Reserve Police
 Khyber Pakhtunkhwa Peshawar.

No. 8664-65 /EC dated Peshawar the 24/12 2011. 20-12-2011

Copy of above is sent for information and necessary action to:-

1. SP FRP Malakand Range Swat w/r to his Memo: No. 1171/EC dated 13.12.2011.
 Service record and departmental enquiry file are returned.
2. Ex-Constable Mohamn ad Naeem No. 4487 S/o Bahram Gul village, Quamber
 Rahim Abad District Swat.

محمد نعيم
4487
g.

OBNO 5
2-1-012

ATTESTED
g.

E - 11

BEFORE THE CHAIRMAN, SERVICE TRIBUNAL, KHYBER
PUKHTOON-KHWA, AT PESHAWAR.

Service Appeal No. 75 of 2012.

Muhammad Naeem, ex-F.C No.4487,
Platoon No.72-FRP, Swat, Malakand Range.....APPELLANT.

VERSUS:

1-The Superintendent of Police, FRP,
Malakand Range, at Swat,

2-Additional IGP/Commandant,
Frontier Reserve Police(FRP) Khyber
Pukhtoonkhwa, PeshawarRESPONDENTS.

APPEAL AGAINST BOTH THE IMPUGNED ORDERS OF THE
LOWER FORUMS I.E, DATED 21.2.2009 OF RESPONDENT NO.1
WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE
AND DATED 24.12.2011 OF THE RESPONDENT NO.2, WHEREBY,
APPEAL OF THE APPELLANT HAS BEEN REJECTED.

Prayer:

On accepting this appeal, both the impugned orders dated
01.02.2009 and dated 24.12.2011 (copies annexure-A and B respectively)
may kindly be set aside and appellant reinstated on his post with all back
benefits and privileges like others. Any other legal remedy, deems proper by
this Hon'ble court, may also be granted.

Respectfully sheweth

1)- That as evident from the impugned order dated 21.2.2009, the
appellant was enlisted/appointed as constable in the FRP Malakand Range,
Swat on 21.1.2004 and after successfully getting the required training and
completing the probation period of three years, the applicant joined his
duties. Later on, he was transferred to Mansehra, etc and lastly posted in
Swat.

2)- That in all the stations of his posting, the appellant performed
his duties honestly, efficiently and up to the entire satisfaction of his
superiors. Moreover, no complaint whatsoever has been made against the
appellant from any quarter during his whole period of service, meaning
thereby that he has got an excellent & unblemished record of service.

ATTESTED
af

3)- That while working at his posting place in Swat, the so-called Taliban/insurgent launched rebellious movement against the government and general public, during which; life, property and fame of every person was at stake and blasting, slaughtering of people, defense forces, looting and destroying public and government properties and attacking the law enforcement agencies, was a routine matter in Swat. Police force was particularly under the direct target/threat of the Taliban/insurgent.

4)- That during the above crises, the so-called Taliban had threatened the police force of dire consequences if they did not quit the force. Police personnel in their individual capacity were also being warned to leave the force or face death punishment.

5)- That like other police personnel, the appellant was also personally warned time and again by insurgents to leave the police force or face death punishment. As the Taliban/insurgent were very active at village Qambar and unfortunately, the appellant also belonged to Qambar; therefore, the life of appellant was surely in danger. As such, the appellant had no other choice but to escape/go underground and save his life. As the Taliban were in search of the appellant; resultantly, on the advice of some well-wishers, he went abroad in order to avoid his sure assassination by the hands of the insurgents.

6)- That few months back, when the appellant came to know about his removal from service vide the impugned order of the Respondent No.1 dated 21.2.2009, he returned from abroad and filed departmental appeal dated _____ 2011 (Annexure-C) before the Respondent No.2, who unjustly dismissed the said appeal vide his impugned order dated 24.11.2011. Hence, this appeal against both the impugned orders, on the following, amongst other grounds:

(a)- That both the impugned orders are discriminatory, illegal, unjust, against law and natural justice; hence, liable to be set aside.

(b)- That the appellant has not been given the opportunity of being heard and was illegally condemned unheard; hence both the impugned orders are liable to be quashed and appellant reinstated on his post.

(c)- That before dismissing from service, neither the appellant has been properly served with any show cause notice etc, nor delivered him any

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[Signature]

statement of allegation, charge-sheet, enquiry report or final show cause notice.

(d)-That the alleged enquiry was conducted at the back of appellant and he was illegally awarded a major harsh punishment of his removal from service, causing serious miscarriage of justice.

(e)-That the worst situation in Swat was very well in the notice of the respondents and even the world at large, which was even beyond the control of law enforcement agencies, but despite these facts, the appellant was dismissed from service and that too without giving him the opportunity of being heard.

(f)-That most of the police personnel, escaped due to Talibans' atrocities, have been reinstated after their appeals, but unfortunately, the present appellant has been singled out for discriminatory treatment by awarding him such a harsh punishment. This clearly shows malafide on the part of the competent authorities/respondents.

(g)-That service of the appellant was the only source of income of his family members and in case he is not reinstated like others, it would cause serious problems to the appellant including starvation, etc.

(h)-That the appellant is a trained constable. His overall service record is accurate and unblemished. There is no complaint whatsoever against him from any quarter during his entire service period. In presence of these facts, either he should have been reinstated like others; or at least, lenient view should have been taken against him.

(i)-That certain directions have reportedly been issued for reinstatement of such like police personnel, but surprisingly, the appellant has been treated discriminately by awarding him major penalty. Copies of Directions and reinstatement orders of some individual concerned will be produced before this Honourable Tribunal as a proof, during arguments.

In view of the above, it is humbly prayed that on acceptance of this appeal, both the impugned orders dated 21.2.2009 and dated 24.2.2011 may kindly be set aside the appellant reinstated on his post like others, with all back benefits and privileges.

APPELLANT
M. Naeem
EX-F.C MUHAMMAD NAEEM-4487
Through:

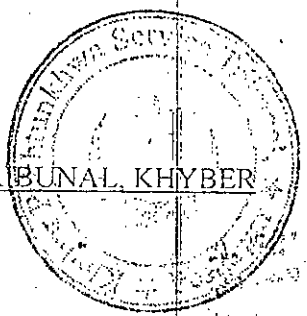
IJAZ AHMAD ADVOCATE, SWAT.

Dt.01.02.2012.

ATTESTED
P. J.

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F-14



BEFORE THE CHAIRMAN, SERVICE TRIBUNAL, KHYBER
PUKHTOON-KHWA, AT PESHAWAR.

Service Appeal No. 75 of 2012.

173
Dated 1/02/12

Muhammad Nacem, ex-F.C No.4487,
Platoon No.72-FRP, Swat, Malakand Range..... APPELLANT.

VERSUS:

1-The Superintendent of Police, FRP,
Malakand Range, at Swat,

2-Additional IGP/Commandant,
Frontier Reserve Police(FRP) Khyber
Pukhtoonkhwa, Peshawar

RESPONDENTS:

APPEAL AGAINST BOTH THE IMPUGNED ORDERS OF THE
LOWER FORUMS I.E, DATED 21.2.2009 OF RESPONDENT NO.1
WHEREBY THE APPELLANT HAS BEEN REMOVED FROM SERVICE
AND DATED 24.12.2011 OF THE RESPONDENT NO.2, WHEREBY,
APPEAL OF THE APPELLANT HAS BEEN REJECTED.

Prayer:

On accepting this appeal, both the impugned orders dated
01.02.2009 and dated 24.12.2011 (copies annexure-A and B respectively)
may kindly be set aside and appellant reinstated on his post with all back
benefits and privileges like others. Any other legal remedy, deems proper by
this Hon'ble court, may also be granted.

1/2/12

Respect fully sheweth

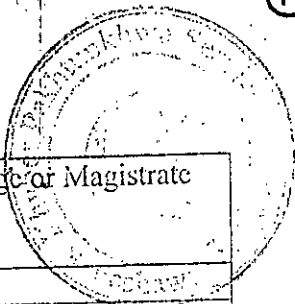
1)- That as evident from the impugned order dated 21.2.2009, the
appellant was enlisted/appointed as constable in the FRP Malakand Range,
Swat on 2.11.2004 and after successfully getting the required training and
completing the probation period of three years, the applicant joined his
duties. Later-on, he was transferred to Mansehra, etc and lastly posted in
Swat.

2)- That in all the stations of his posting, the appellant performed
his duties honestly, efficiently and up to the entire satisfaction of his
superiors. Moreover, no complaint whatsoever has been made against the
appellant from any quarter during his whole period of service, meaning
thereby that he has got an excellent & unblemished record of service.

ATTESTED
KHYBER SERVICE TRIBUNAL,
PUKHTOONKHWA
PESHAWAR

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15



S.No. of order or 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
	05.03.2013	<p style="text-align: center;"><u>Appeal No. 177/2012</u> <u>(Muhammad Naeem-vs-S.P. FRP, Malakand Range & another)</u></p> <p>Appellant with counsel and Mian Amir Qadir, G.P for the respondents present. Arguments heard at some length. During the course of arguments, the learned counsel for the appellant produced copies of orders dated 21.12.2009 and 06.1.2010 whereby the appellate authority i.e. Commandant, FRP, KPK, Peshawar had re-instated police officials/officers who were charged with absence from duty. The learned counsel for the appellant also contented that a number of similarly placed persons have been re-instated by the respondent-department. On the other hand, the appellant had also preferred a departmental appeal to the appellate authority, which was not disposed of by the latter within the statutory period, therefore, he had to approach the Tribunal for redressal of his grievance. Needless to say that it was the duty of the appellate authority to have decided the departmental appeal within time prescribed by the law; and by not making any decision on the departmental appeal, the appellate authority failed to discharge his legal obligation.</p> <p>In the circumstances, notwithstanding merits of the case, the departmental appeal of the appellant is remanded to the appellate authority i.e. Commandant, FRP, KPK, Peshawar (Respondent No. 2) for decision on merits, while furnishing reasons for his decision in accordance with section 24-A (2) of General Clauses Act, 1897, in accordance with law/rules, within reasonable time, but in no case later than thirty days of the receipt of this order; whereafter, if the appellant still felt aggrieved of the final order of the appellate authority, he may have recourse to</p>

Mr. [Signature]
 JUDGE
 PESHAWAR TRIBUNAL
 KYBER PAKHTUNKHWA
 SERVICE TRIBUNAL,
 PESHAWAR

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 17

legal remedy available to him. The appeal is accordingly disposed of, with no order as to costs.

ANNOUNCED
05.3.2013

sdf= chairman
camp court Swat
sdf= Members

Certified true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of	1200	11/3/13
Monday	8-00	
Tuesday	2-00	
Wednesday	10-00	
Thursday	11-3-13	
Friday	11-3-13	

ATTESTED
[Signature]

CHARACTER ROLL OF

14—COMMENDATORY ENTRIES—concl'd.

Serial No.

ORDER.

Re-Instatement in service
 by Honourable Service Tribunal KPK
 Peshawar order announced on 5³/₀₁₃
 vide Adld: IUP/ Commandant, PRP KPK
 Peshawar order analst: NO. 2523/EC
 dt: 9.4.2013 and this office OB
 NO. 122 dt: 11.4.2013 and pay fixed
 @ Rs: 6440/-

✓ Supt: of Police PRP,
 Mkd: Range Swat.

CP: 1629 dt 6-5-13
 Draw pay and all
 wef 11⁴/₁₃ to 30⁴/₁₃

CP-318 dt 3-7-13
 Draw pay of A pay and
 RISK and RISK wef
 15⁶/₁₃ to 30⁶/₁₃ Rs/6020/-

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EC

02/28/2014
LO/Swat

forwarded

Sir

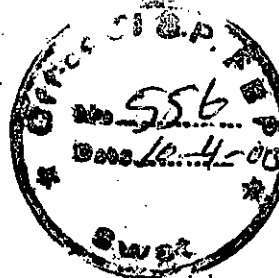
08-08-2014

مستقبلہ قلمی اسٹیٹمنٹ کے لیے
اٹارنہ اسٹیٹمنٹ کے لیے 132
مستقبلہ قلمی اسٹیٹمنٹ کے لیے

مستقبلہ قلمی اسٹیٹمنٹ کے لیے
مستقبلہ قلمی اسٹیٹمنٹ کے لیے
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مستقبلہ قلمی اسٹیٹمنٹ کے لیے

H-18

On 8/8/2014



I-19

ORDER.

This order shall dispose of the appeal lodged by Es-Constable Muhammad Naeem No.4487 of FRP Swat against the order of SP FRP. Malakand Range Swat. 3990

Brief, facts of the case are that he absented himself from duty w.e.f. 07.08.2008 till the date of his removal from Service i.e. 21.02.2009, for a period of 06 months and 14 days. He was issued Charge Sheet alongwith Summary of allegations and an Enquiry Committee, was constituted. After conducting departmental enquiry the Enquiry Committee submitted their findings wherein the defaulter official was recommended for Major punishment.

Keeping in view his prolong absence as well as recommendation of Enquiry Committee the Competent Authority removed him from service vide order No.238 dated 21.02.2009. He had submitted departmental appeal on 26.11.2011, which was rejected vide this office order No. 8664 dated 24.12.2011.

Feeling aggrieved he filed a Service Appeal before the Hon'ble Service Tribunal Peshawar, against the order of his removal from service. The Hon'ble Tribunal remanded back his departmental appeal to this office for decision on merit vide judgment dated 05.03.2013.

In the light of the order of Hon'ble Tribunal his departmental appeal was re-examined and he was also heard in person.

Keeping in view the tense situation in those days at Swat a lenient view is taken and the order regarding award of punishment i.e. Removal from service is hereby set aside. The Appellant is re-instated in service from the date of removal from service. The period of absence and the intervening period from service are treated as extra ordinary leave with out pay.

OB/EE/asc
Peshawar
SP/FRP/swat
10/11/14

Add: IGP/Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

No. 2523 / EC dated Peshawar the 09 04/2013.

Copy of above is forwarded for information & n/action to the Superintendent of Police, FRP Malakand Range, swat.

ATTESTED
9

OB No:- 122
10-04/2013

VAKALATNAMA

IN THE COURT OF RPK Service Tribunal Peshawar

OF 2014

Mohammad Naeem

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Department

(RESPONDENT)
(DEFENDANT)

I/We Mohammad Naeem

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2014

Mohammad Naeem

CLIENT

67
ACCEPTED

NOOR MOHAMMAD KHATTAK
(ADVOCATE)

OFFICE:

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

Phone: 091-2211391

Mobile No.0345-9383141

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1046/2014

Ex- Constable Mohammad Naeem No. 4487/3990 of FRP/MKD Swat
.....(Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
2. The Addl:IGP/Commandant FRP/KPK Peshawar.
3. The District Police Officer District Swat.
4. The Superintendent of Police FRP/MKD, Swat Respondents)

Subject:- **COMMENTS ON BEHALF OF RESPONDENTS.**

Respectfully Sheweth!

Preliminary Objections:-

1. That the appellant has no cause of action.
2. The appellant is not maintainable in the present form.
3. The appeal is bad for mis- joinder necessary and non-joinder of necessary parties.
4. The appellant is estopped by his own conduct to file the appeal.
5. The appeal is barred by law and limitation.
6. The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

- 1) Pertains to the appellant record needs no comments.
- 2) Correct to the extent that when the appellant was serving in FRP, deserted/absented himself from lawful duties during the militancy situation in Swat.
- 3) Correct to the extent that the Police force was threatened from Taliban and the officials/Officers including the appellant who deserted from their duties by showing extreme cowardice were proceeded against departmentally and finally all of them had been removed from police force after adopting all codal formalities.
- 4) Incorrect, that the Police force is obligated under the rules for maintaining the law & order and public security. It is binding on each officials/officers to perform his duties in all situations. However, the

01-06-15

appellant deserted himself from lawful duties and has advanced lame excuses of treat of militants to cover his prolong absence.

- 5) Correct to the extent that the appellant was deserted/absented himself from lawful duties and after fulfilled all codal formalities the Competent Authority removed him from service. Departmental appeal submitted by the appellant was thoroughly examined and rejected on sound grounds.
- 6) Para No. 6 pertain to the Honorable Tribunal record needs no comments.
- 7) Incorrect, that the appellant was re-instated in service by respondent No. 2 i. e Addl:IGP/Commandant FRP/KPK Peshawar, the departmental appeal of the appellant was reconsidered and he was heard in person, during the personal hearing the Appellate Authority informed the appellant that he is re-instated in service on compassionate grounds without back benefits.
- 8) As replied in above Para.
- 9) Incorrect, that all such colleagues of the appellant were re-instated in service without back benefits (copies attached as annexure A" B")
- 10) Incorrect, the appeal of appellant on ground advanced by him are not sustainable.

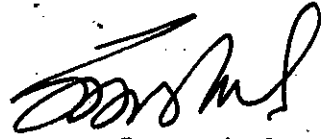
GROUNDS:-

- (A) Incorrect, the Para has already explained in the proceeding Para No. 7 of facts. Moreover, the order is legal and justified and in accordance with law.
- (B) Incorrect, the allegations are false and baseless. However, the appellant has not deserved the back benefits, while he has re-instated in service by the respondents by taking lenient view. Moreover, the respondent has never violated the rules in the case of appellant.

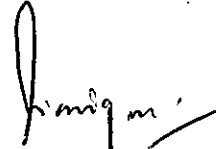
- (C) Incorrect, that the appellant was reinstated in service by the Competent Authority in view of lenient view otherwise the punishment of removal from service was commensurate with the gravity of his gross misconduct. Therefore, he is legally not entitled for the back benefits of the period of absence/intervening period from service as he has never performed his official duties. Moreover, the order is legal and in accordance with law.
- (D) Incorrect, the allegations are false and baseless and this para has already been explained in the proceedings Para 9 of facts.
- (E) Incorrect, that the appellant was re-instated in service on compassionate grounds and for larger interest of Govt., his absence period /intervening period from service have been treated extra ordinary leave with out pay. Therefore, the order passed by the respondents sincerely which is legally justified and in accordance with law.
- (F) Incorrect, the appellant left his duties by showing extreme cowardice. He was proceeded against proper departmentally, during enquiry proceedings the appellant deliberately failed to explain his position, as he was charge sheeted and enquiry committee was constituted, he summoned time and again but he failed to submit his reply or appear before the enquiry committee. Moreover, the cases mentioned in the Para are not at par with the case of the appellant.
- (G) Incorrect, that the appellant trying to mislead this Honorable Court by producing false and baseless grounds as the officials whose re-instated in service without back benefits. Moreover, it is pertinent to mention here that a similar case recently dismissed by this Honorable Court in Service Appeal No. 827/2012 vide judgment dated 11.05.2015.
- (H) The respondents may also be permitted to raise addl. grounds at the time of hearing of the case.

PRAYER :-

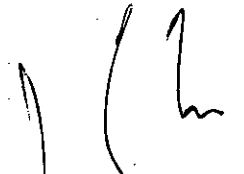
It is therefore, prayed that the appeal of appellant may be dismissed with cost.



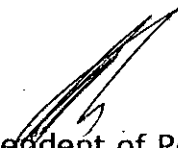
Inspector General of police,
Khyber Pakhtunkhwa, Peshawar.
(Respodent No.1)



Addl:IGP/Commandant,
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.
(Respodent No.2)



District Police Officer,
Swat.
(Respodent No.3)



Superintendent of Police FRP,
Malakand Range Swat.
(Respodent No.4)

0-16 "A" 11/7


ORDER.

This order shall dispose off the appeal of Ex-Constable Dildar Muhammad No. 4685 of FRP Malakand Range Swat.

Brief facts of the case are that he was deputed for emergency duty at Police Station Besham Distt: Shangla, from where he absented himself from duty w.e.f 20.11.08 till the date of removal from service for a total period of 03 months and 1 day without any leave/permission of the competent authority. He was issued charge sheet/statement of allegation and DSP, RI/LO/FRP Malakand Range Swat were appointed as enquiry officers. After conducting enquiry, the enquiry officers submitting their findings wherein the above named official was recommended for major punishment.

Keeping in view his prolong absence as well as recommendation of Enquiry Officers he was removed from service from the date of his absence by the SP FRP Malakand Range Swat vide his OB No. 23 dated 21.02.2009. /

Keeping in view I take a lenient view and the order regarding award of punishment i.e Removal from service is hereby set aside. **He is re-instated in service from the date of removal and the period of his absence is treated as leave without pay.**

of
/c

COMMANDANT
FRONTIER RESERVE POLICE
NWFP, PESHAWAR.
S-1 2010

No. 472 /EC dated Peshawar the 06/01/09.

Copy of above is forwarded to the Supdt: of Police FRP Malakand Range Swat for information and necessary action w/r to his m/No.1306/EC dated 3.08.2009.. His service roll and departmental file is return herewith.

P-16 B ۱۶/۱۱

ORDER.

This order shall dispose of the appeal lodged by Ex-Constable Amara Khan No.4772 of FRP Malakand Range Swat against the order of SP FRP Malakand Range wherein he was removed from service.

Brief facts of the case are that he absented himself from duty with effect from 01.03.08 till the date of removal from service without any leave permission of the competent authority for a total period of 05 months and 27 day. He was issued charge sheet/statement of allegation and DSP. RI-10 FRP Malakand Range Swat were appointed as enquiry officers. After conducting enquiry, the enquiry officers submitting findings wherein the above named official was recommended for punishment.

Keeping in view his prolong absence as well as recommendation of enquiry officers-he was removed from service from the date of his first absence by the SP FRP Malakand Range Swat vide his OB N. 128 dated 29.08.2008.

Keeping in view the prevailing law and order situations in Swat a lenient view is taken and the order regarding awarding of punishment of Removal from service is set aside. He is re-instated in service from the date of removal and the period of absence is treated as leave without pay.

[Signature]
COMMANDANT
FRONTIER RESERVE POLICE
NWFP, PESHAWAR.
91/12
21/12

9164

FC dated Peshawar the

Copy of above is forwarded to the Superintendent of Police FRP Malakand Range Swat for information and necessary action. His service roll is returned herewith.

عصود چاہا۔ چہرہ میں عمامہ سر میں ٹریٹمنٹ ہوئی۔
صفا بہ عالی۔

عرض ہے کہ سائل نے اپیل نمبر 1046/014 بنام محمد نعیم
محمد بولیں سوڈان مقام ٹاٹا اور رہائش داخل کیا تھا۔
اب سائل کو معلوم ہوا ہے کہ سائل کا کوئی ٹاٹا
سے سوڈان نہیں لےوا گیا اور دفتر ہوا ہے۔

سائل کا وکیل ضلع ٹاٹا اور کراچی کے والد ہے۔

گنڈو گھوٹالی و دیگر سائل کا کوئی دوبارہ ضلع ٹاٹا اور
سرحد ٹریٹمنٹ ٹریٹمنٹ کرنے کا حکم صادر فرما سکی۔
نوٹیشن ہوگی۔

العارض:؟ مارچ 1981
محمد نعیم اپیل نمبر 1046/14
بولیں سوڈان

الف

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 1046/2014

MOHAMMAD NAEEM

VS

POLICE DEPARTMENT

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

R/ SHEWETH:

PRELIMINARY OBJECTIONS:

(1 TO 6):

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

ON FACTS:

- 1- Admitted correct by the respondents hence needs no comments.
- 2- Incorrect and not replied accordingly. That appellant right from appointment till date has served the respondent Department quite efficiently and up to the entire satisfaction of his superiors and has never absented himself from his duty.
- 3- Incorrect and not replied accordingly. That appellant while working as constable in the Frontier Reserved Police (FRP) Malakand range Swat, the so called Militancy was started in the region, during which life, property and fame of every person was at stake, slaughtering of people and destroying the public and Government property was a routine matter in valley Swat. That during the above crisis, the so called Taliban had threatened the police force of dire consequences if they did not quit the force. That police personnel in their individual capacity were also been warned to leave the force or face death punishment. That due to the above mentioned circumstances the appellant was unable to perform his duties.
- 4- Incorrect and not replied accordingly. That like other police personnel, the appellant was also personally warned twice and again to leave the police force or face death punishment. That

as the Taliban were very active at village Qambar and unfortunately the appellant also belonged to village Qambar, therefore the appellant and his colleagues have no other choice but to escape/go under ground to save their lives. That in result the appellant absented him self from the duty and in result the appellant was finally removed from service vide order dated 21-02-2009. That feeling aggrieved the appellant filed Departmental appeal but the same was rejected on no good grounds vide order dated 24-11-2011.

From 5 to 10:

Incorrect and not replied accordingly. That as stated above that appellant has absented himself due to militancy in the area. That though the appellant was later on re-instated by the respondents but without back benefits. That other employees of different departments have been re-instated with all back benefits but in the case of appellant the appellant has been re-instated without back benefits. That the appellant has been discriminated and as such the respondents violated Article 4 and 25 if the Constitution of Pakistan 1973.

GROUND:
(A TO H):

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless hence denied. That the impugned order dated 09-04-2013 communicated to appellant on 08-08-2014 issued by the respondent No.2 is against the law, facts, norms of natural justice and materials on record, therefore not tenable and liable to be set aside. That the appellant has not been treated in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Pakistan 1973. That not granting/allowing the back benefits of the appellant is against the law, facts and norms of natural justice. That the appellant is treated by the respondent Department indifferently amongst his similarly placed colleagues by not granting/allowing the back benefits. That no regular inquiry has been conducted by the respondents before issuing the impugned orders dated 21.2.2009 and 9.4.2013 against the appellant which is as per Supreme Court judgments is necessary in punitive actions. That other colleagues of the appellant who have been dismissed from service during the said crises have been re-instated with all back benefits but the appellant has been ignored from similar relief.

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

APPELLANT

Naem

MOHAMMAD NAEEM

THROUGH:

N
**NOOR MOHAMMAD KHATTAK
ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

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

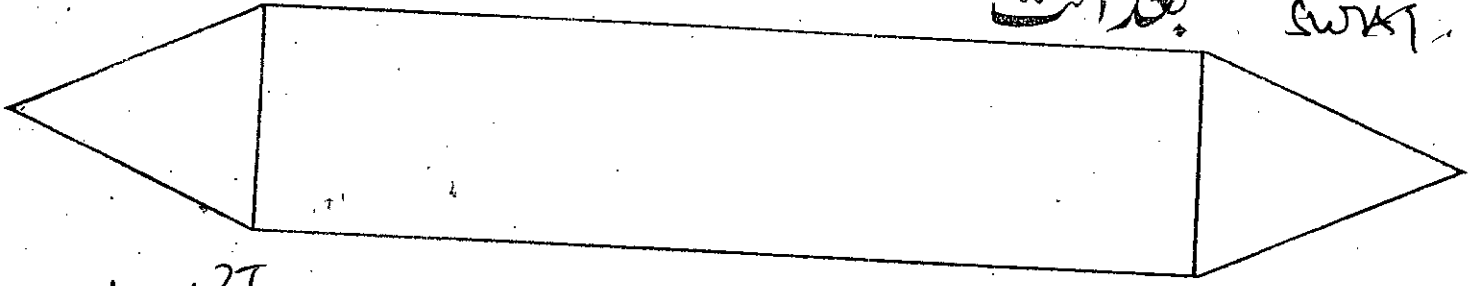
APPELLANT

M. Naem

MOHAMMAD NAEEM

THROUGH:

N. Khattak
**NOOR MOHAMMAD KHATTAK
ADVOCATE**



APPELLANT 2018ء منجانب

مورثہ 6-12-18

کے لئے

بنام

مقدمہ

SERVICE APPEAL

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دیکھ
کارروائی متعلقہ آن مقام کے لئے سید احمد رضا اور ولیہ عالی
مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو کرنے راضی نامہ و تقرر ثالث و فیصلہ بر حلف دیے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک نہ روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمد اور
منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ اور بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور
اس کا ساختہ پداختہ منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے مقدمہ کے
سبب سے ہوگا۔ اس کے مستحق وکیل صاحب موصوف ہوں گے۔ نیز بقایا و خرچہ کی وصولی کرنے کا
بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہے تو وکیل صاحب پابند نہ ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

وکیل صاحب کو

Shahin

20

ماہ

الرقوم

Shahin
6/12/18

العبد گواہ شہد العبد

کے لئے منظور ہے۔

بقام