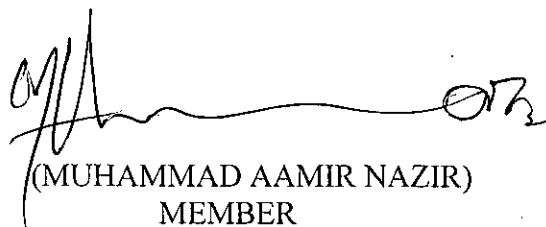


S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	06.09.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;"><b>APPEAL NO. 258/2014</b> (Sher Afsar Khan-vs- Inspector General of Police Khyber Pakhtunkhwa Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER:</u></p> <p>Counsel for the appellant (Mr. Sahibzada Asadullah, Advocate) and Mr. Javid Afsar, Inspector(Legal) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.</p> <p>2. Appellant joined the Police Department as Constable on 20.07.2007, he was dismissed from service on the charge of willful absence from duty w.e.f. 22.06.2013 to 10.09.2013( two months and eighteen days) vide order dated 07.01.2014 against which order his departmental appeal was also rejected vide order dated 06.02.2014, hence this appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.</p> <p>3. Arguments heard and record perused.</p> <p>4. Learned counsel for the appellant submitted that absence of the appellant was not willful but due to chronic illness of the appellant due to which he was on bed rest on the advice of the Medical Authority. He further submitted that when once the absence period was treated by the competent authority as leave without pay, the appellant cannot be dismissed from service on the same ground. He also argued that the punishment is too harsh and opportunity of defense has not been provided to the appellant.</p>

5. This appeal was resisted by learned AAG who submitted that absence of the appellant is proved on record and further that the impugned order was passed after observing all the codal formalities. He submitted that the appeal may either be dismissed or the matter may be referred back to the departmental authority for the decision afresh.


6. We have carefully perused the record and have heard pro & contra arguments. A careful perusal of the enquiry report on file dated 03.12.2013 shows that the medical papers produced by appellant were not believed by the enquiry officer to be ~~truthful~~. But this opinion of the enquiry officer is not based on any evidence based on statements of the concerned medical officers or on opinion of any medical board. On record the bed rest advised is not from a single doctor but according to appellant, the bed rest was advised to him by Dr. Main Said Dost and Dr. Tariq. Beside, this factual position on record, while going through the original impugned order, it was observed that the absence period has been treated as leave without pay of the appellant. The record also conveys that the appellant by the time <sup>was</sup> on duty when he was dismissed from service. We are of the considered view that proper opportunity of defense has not been given to the appellant. Consequently, the impugned orders are set aside. The respondent-department is directed to have enquiry *de-novo* against the appellant for which purpose appellant is reinstated into service. The proceedings shall be completed within a period of one month after receipt of this judgment. The issue of back benefits be subject to the outcome of these fresh inquiry proceedings. The appeal is disposed of in the above terms. Parties are left to bear their own cost. File be consigned to the record room.

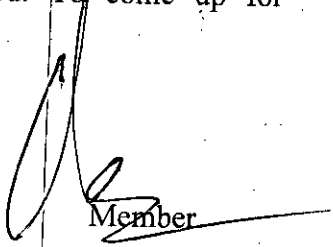
  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

  
(PIR BAKHSH SHAH)  
MEMBER

04.07.2016

Appellant alongwith counsel and Mr. Muhammad Jan, GP for the respondents present. Learned counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 06.09.2016 before 'D.B.'

  
Member

  
Member

17.09.2015

Appellant in person and Mr. Muhammad Saeed, Inspector  
alongwith Assistant AG for respondents present. Due to non-  
availability of learned counsel for the appellant therefore,  
arguments could not be heard. To come up for arguments on

11-12-15



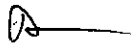
MEMBER



MEMBER

11.12.2015

Counsel for the appellant and Mr. Pervez Inspector (Legal)  
alongwith Mr. Muhammad Jan, GP for respondents present.  
Arguments could not be heard due to shortage of time. Therefore,  
the case is adjourned to 10.5.2016 for arguments.



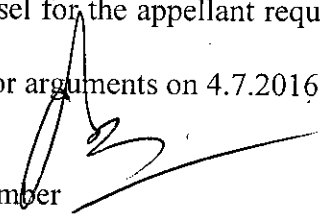
Member



Member

10.5.2016

Counsel for the appellant and Mr. Zeb Ahmad, ASI  
alongwith Mr. Muhammad Jan, GP for respondents present.  
Learned counsel for the appellant requested for adjournment.  
To come up for arguments on 4.7.2016.

  
Member  
Member

26.2.2015

Appellant with counsel and Add. AG for the respondents present. Case is adjourned to 10.3.2015 for order.

  
MEMBER

  
MEMBER

10.3.2015

Counsel for the appellant and Addl. AG with Inamul Haq, ASI for the respondents present. This appeal has erroneously been fixed for arguments alongwith case No. 233/2014, of Balizar and others. Therefore, case to come up for arguments on 16.6.2015. Parties are directed accordingly.

  
MEMBER

  
MEMBER

16.06.2015

Counsel for the appellant and Assistant A.G for respondents present. The learned Member (Judicial) is on leave, therefore arguments could not be heard. To come up for arguments on 17.9.2015.

  
Member

22.12.2014

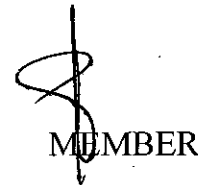
Junior to counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Imranullah, SI (Legal) for the respondents present. The Tribunal is incomplete. To come up for the same on 19.01.2015.



READER

19.1.2015

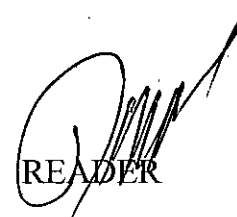
Junior for counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. It was submitted on behalf of the appellant that cases of similar nature have been fixed for arguments on 20.1.2015 and request made for adjournment to 20.1.2015. As such, case to come up for arguments on 20.1.2015.



MEMBER

21.01.2015

Since 20<sup>th</sup> January has been declared as public holiday by the provincial government, therefore, case to come up for the same on 2.2.2015.



READER

2.2.2015

Appellant with counsel and Mr. Muhammad Adeel Butt, AAG with Imranullah, SI (Legal) for the respondents present. Arguments heard. To come up for order on 26.2.2015.



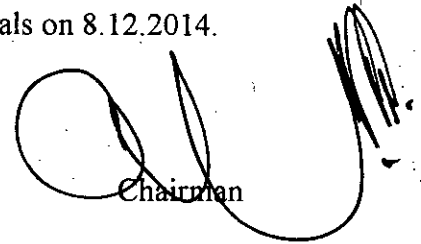
MEMBER



MEMBER

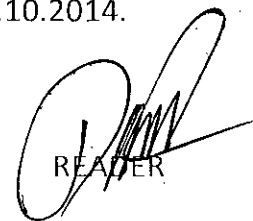
08.08.2014

Counsel for the appellant and Mr. Imranullah, SI (Legal) on behalf of the respondents with AAG present. Written reply/para-wise comments received on behalf of the respondents, copy whereof is handed over to the learned counsel for the appellant for rejoinder alongwith connected appeals on 8.12.2014.

  
Chairman

15.09.2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Imranullah, SI (Legal) for the respondents present. The learned Member (Judicial) is not working due to a recent order of the Hon'ble Peshawar High Court affecting his status as District & Sessions Judge. To come up as before on 10.10.2014.

  
READER

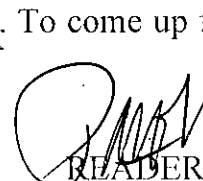
10.10.2014

Junior to counsel for the appellant and Mr. Kabeerullah Khattak, Asstt. A.G for the respondents present. Rejoinder received and placed on file. Copy handed over to the learned AAG. To come up for arguments on 25.11.2014 alongwith connected appeals.

  
MEMBER

25.11.2014

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP with Imranullah, SI (Legal) for the respondents present. The Tribunal is incomplete. To come up for the same on 22.12.2014.

  
READER

Appeal No. 258/2014  
Mr. Sher Akbar Khan

16.04.2014

Clerk of counsel for the appellant present and requested for adjournment due to general strike of the Bar. To come up for preliminary hearing on 02.05.2014.

  
Member

02.05.2014

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 07.01.2014, he filed departmental appeal on 07.01.2014, which has been rejected on 06.02.2014, hence the present appeal on 25.02.2014. He further contended that the impugned order dated 06.02.2014 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. Appellant has also filed an application for suspension of the impugned orders dated 07.01.2014 and 06.02.2014. Notice of application should also be issued to the respondents for reply/arguments. To come up for written reply/comments on main appeal as well as reply/arguments on application on 03.06.2014.

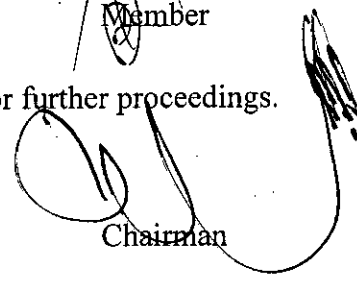
Amount Deposited  
Security amount of Rs 180/- Bank  
Recd. with File.



  
Member


08.05.2014

This case be put before the Final Bench 1 for further proceedings.

  
Chairman

3. C. 1

The Hon'ble bench to on Bar  
Pres. can be set B 8.8.14



  
Recd.



Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 258/2014

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. Sher Afsar Khan presented today by Mr. Sahibzada Asadullah 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	26-2-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>16-4-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

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

Service Appeal No. 258 /2014

Sher Afsar Khan .....(Appellant)

**VERSUS**

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

And others.....(Respondents)

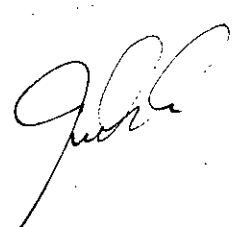
**I N D E X**

<b>S.No</b>	<b>Description of Documents</b>	<b>Pages</b>
1.	Service Appeal	1-6
2.	Affidavit	7
3.	Addresses of the parties	8
4.	Copy of Naql Mad No. 67 dated 22/06/2013 and Naql Mad No. 43 dated 01/10/2013	9-10
5.	Copies of Medical Certificates	11-21
6.	Copies of Charge sheet, reply to charge sheet, final show cause notice, order dated 07/01/2014 and appeal to respondent No. 2, order dated 06/02/2014	22-29
7.	Wakalat Nama	30

  
Appellant

Through

Dated: 17/02/2014

  
**Sahibzada Asadullah**  
Advocate Supreme Court  
Of Pakistan.  
Cell No. 0313-9772262

①

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

Service Appeal No. 258/2014

Sher Afsar Khan S/o Khan Said

R/o Khandaro, District Bunir.....(Appellant)

278  
25/2/14

**VERSUS**

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer (DIG), Malakand at Saidu Sharif, Swat.
3. District Police Officer, Bunir.....(Respondents)

**APPEAL U/S 4 OF THE N.W.F.P (KHYBER  
PAKHTUNKHWA) SERVICE TRIBUNAL ACT 1974  
AGAINST THE IMPUGNED ORDERS DATED  
07/01/2014 AND 06/02/2014 PASSED BY THE  
DISTRICT POLICE OFFICER BUNIR AND  
REGIONAL POLICE OFFICER, MALAKAND AT  
SAIDU SHARIF SWAT RESPECTIVELY.**

**Respectfully Sheweth:**

Brief facts giving rise to the instant appeal are as under:

25/2/14  
**FACTS:**

1. That the appellant joined the Police Department as Constable in BPS-5 on 26/07/2007. Since the date of his appointment he did his duties with devotion and

punctuality and no complaint whatsoever was made against him from any quarter.

2. That the appellant got seriously ill suffering from Kidney disease and had left on emergency leave for three days vide Naqal Mad No. 23 dated 18/06/2013, but he could not recovered and his illness went prolonged. In this respect when getting treatment from different doctors lastly he reported back vide Naqal Mad No. 43 dated 01/10/2013. (Copy of Naqal Mad No. 67 dated 22/06/2013 and 43 dated 01/10/2013 are attached).

3. That the appellant was treated by the following doctors i.e. Dr. Tariq where 4 weeks rest was advise but when he could not recover he went to one Dr. Mian Said Dost on 22/07/2013 where he was advised to 2 weeks bed rest then again to Dr. Tariq on 06/08/013 where along with medicines 4 weeks bed rest was advised, after 4 weeks bed rest where after again 10 days bed rest after wards the appellant visited Daggar Hospital Bunir where again 3 days bed rest was advised, thereafter Dr. Tariq again 7 days bed rest and lastly the doctor at B.H.U Nagari advised bet rest for 3 days. When his condition became

stable he reported at his duty place on 01/10/2013.

(Copies of medical certificates are attached).

4. That this is unfortunate to say that the appellant was served with a charge sheet dated 22/10/2013 to which he submitted his reply on 27/10/2013 and with a final show cause notice dated 31/12/2013 to which the appellant submitted his reply, but without conducting any inquiry the respondent No. 3 dismissed him from service vide order dated 07/01/2014 against which. The appellant preferred appeal to respondent No. 2 on 17/01/2014 which was also dismissed vide order dated 06/02/2014. (Copies of charge sheet, reply to charge sheet, final show cause notice, order dated 07/01/2014 and appeal to respondent No. 2 with order dated 06/02/2014 are attached).

5. That being aggrieved the appellant prefers this appeal on the following grounds amongst others inter-alia:

**GROUND:**

- A. That the impugned orders are arbitrary, mechanical and without the application of judicial mind and passed in vacuum needs interference of this august Tribunal.

▶ B. That the appellant performed his duties to the satisfaction of his high-ups and never ever remained absented from his duties throughout the period he served and no complaint against him till the time of his dismissal.

C. That the appellant had left on emergency leave with permission and was duly entered in daily diary No. 23 dated 18/06/2013 Police Lines Daggar, but during these three days the appellant developed severe illness and got Kidney infection, so there was no way out but to concern doctors in that respect, so that he could be treated. The absence is not willful and the appellant produced the prescriptions of all the doctors along with the advised bed rest to the authorities concerned which has explained the absence in a planned manner and he there and then reported back at his duty when got recover.

D. That the appellant is a poor person and his service was the only source of livelihood of his family and there is no other source of income which would enable the appellant's family to live a respectable life, hence the impugned orders in a way has brought to an end the happy life of the appellant and his family.

- E. That the impugned orders are arbitrary and without the compliance of the codal formalities and without conducting any inquiry by providing an opportunity of hearing to the appellant which needs interference of this august Tribunal.
- F. That the act of the appellant even if not convincing despite the detailed medical prescription even then the act of the respondents by imposing major penalty of dismissal from service is unjustified and finds no legal justification and the appellant has been condemned unheard which invites the interference of this august Tribunal.
- G. That the respondents have acted in a hast and the appellant has not been provided any opportunity to explain his position in the way as has been laid down by the rules and procedure and the career of the petitioner will single stroke of pen has been ruined.

It is, therefore, humbly prayed that on acceptance of this service appeal, the appellant may kindly be re-

(6)

instated to his post with all back benefits and the impugned orders dated 07/01/2014 and 06/02/2014 passed by respondents No. 2 and 3 may kindly be set aside.


OR

Any other relief which this august Tribunal deems appropriate may kindly be awarded to meet the ends of justice.

  
Appellant

Through

Dated: 17/02/2014

  
**Sahibzada Asadullah**  
Advocate Supreme Court  
Of Pakistan.



7

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

Service Appeal No. \_\_\_\_/2014

Sher Afsar Khan .....(Appellant)

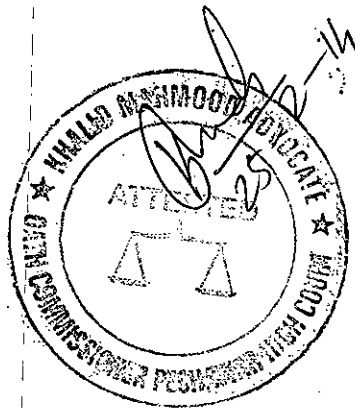
**VERSUS**

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.

And others.....(Respondents)

**AFFIDAVIT**

I, Sahibzada Asadullah Advocate, as per instruction of my client, do hereby solemnly affirm and declare, that all the contents of accompanying Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Hon'ble Tribunal.



*Sahibzada Asadullah*  
**ADVOCATE**

8

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

Service Appeal No. \_\_\_\_/2014

Sher Afsar Khan .....(Appellant)

**VERSUS**

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.  
And others.....(Respondents)


**ADDRESSES OF THE PARTIES**

**APPELLANT:**

Sher Afsar Khan S/o Khan Said  
R/o Khandaro, District Bunir


**RESPONDENTS:**

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer (DIG), Malakand at Saidu Sharif, Swat.
3. District Police Officer, Bunir.

  
Appellant

Through

Dated: 14/02/2014

  
**Sahibzada Asadullah**  
Advocate Supreme Court  
Of Pakistan.

6

MHCPR/B  
29.10.13  
[Signature]

સાચા માત્રામાં મોકલવામાં આવેલ છે.

સાચા માત્રામાં મોકલવામાં આવેલ છે અને તેને સંબંધિત દસ્તાવેજો સાથે મોકલવામાં આવેલ છે.

સાચા માત્રામાં મોકલવામાં આવેલ છે અને તેને સંબંધિત દસ્તાવેજો સાથે મોકલવામાં આવેલ છે.

સાચા માત્રામાં મોકલવામાં આવેલ છે અને તેને સંબંધિત દસ્તાવેજો સાથે મોકલવામાં આવેલ છે.

સાચા માત્રામાં મોકલવામાં આવેલ છે અને તેને સંબંધિત દસ્તાવેજો સાથે મોકલવામાં આવેલ છે.

સાચા માત્રામાં મોકલવામાં આવેલ છે અને તેને સંબંધિત દસ્તાવેજો સાથે મોકલવામાં આવેલ છે.

સાચા માત્રામાં મોકલવામાં આવેલ છે અને તેને સંબંધિત દસ્તાવેજો સાથે મોકલવામાં આવેલ છે.

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28.1.13

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(10)

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Public Health Specialist

**Dr. Tariq**

MBBS, MPH (Pesh)

Medical Officer,

DHQ Hospital Daggar

Cell: 0308-8415471

0333-9693147



11

**ڈاکٹر طارق**

ایم بی بی ایس، ایم پی ایچ (پشاور)

میڈیکل آفیسر ڈسٹرکٹ ہیڈ کوارٹرز ہسپتال ڈگر

کلینک: یونیورسٹی کیمپس سنٹر اینڈ میڈیٹل ہوم

دیوانہ بابا روڈ سواڑی یونیورسٹی

med for msc purp

Pt's name Shah Afzal age 31 year sex M Date 21/06/13

**Clinical record**

*Rx*

90  
Pac 5th pher  
K... ..

- 3. D/Salin 100/4 12
- 3. Noidalab 100/4 12
- 7. Flapyl 100/4 12
- 3. Vover 50

2  
TC  
UN/R  
SGP5

120780

Tab Noidalab 50mg

Tab Vover 50

Sup Fedvath

Cup Ocuropa 20

**ATTESTED**

Admin head rest at  
med for 09 med

21/06/13

CHARGE SHEET

1. ASIF B Q BAL MOHAMMAD District Police Officer, as competent

authority do hereby charge you Const. SAsr No. 118 while posted

Police Lines Dargan as follows.

It has been reported against you that you while posted as Constable

Police Lines Dargan committed the following acts:

Your name is posted Police Lines Dargan, Absentia

without leave or prior

Permission no. of 22-06-2013 to 10-9-2013

(Total 8) months (18 days) vide D.O. No. 67

dt 22-06-2013. You have already issued with 500

Which is / are gross misconduct on your part as defined in Rules 2 (iii) of Police

Disciplinary Rules, 1975.

2. By reason of above, you appear to be guilty of mis-conduct and have rendered

yourself liable to all or any of the penalties specified in Rule-4 of the Disciplinary Rules, 1975.

3. You are therefore, required to submit your written reply within 7 days of the

receipt of this charge sheet to the enquiry Officer.

4. Your written reply, if any, should reach to the Enquiry Officer within the specified

period. In case failing, it shall be presumed that you have no defense to put-in and an ex-

parte action will be followed against you.

5. Intimate, as to whether you desire to be heard in person or not?

6. Statement of allegation is enclosed.

DISTRICT POLICE OFFICER,  
BUNER

6

No. 525 /DC  
Dated 29-10-2013

(22)

(2)

ATTESTED

میں نے اس پر دستخط کیا ہے۔ (میں نے) 119 نمبر (18/06/2013) تاریخ 19/06/2013

انا

27/10/2013

میں نے اس پر دستخط کیا ہے۔ (میں نے) 119 نمبر (18/06/2013) تاریخ 19/06/2013  
اس کی تصدیق کرنے کے لئے اس پر دستخط کیا ہے۔  
Medical Leave سے متعلق ضروریات کے مطابق  
میں نے اس پر دستخط کیا ہے۔ (میں نے) 119 نمبر (18/06/2013) تاریخ 19/06/2013  
میں نے اس پر دستخط کیا ہے۔ (میں نے) 119 نمبر (18/06/2013) تاریخ 19/06/2013  
میں نے اس پر دستخط کیا ہے۔ (میں نے) 119 نمبر (18/06/2013) تاریخ 19/06/2013  
میں نے اس پر دستخط کیا ہے۔ (میں نے) 119 نمبر (18/06/2013) تاریخ 19/06/2013  
میں نے اس پر دستخط کیا ہے۔ (میں نے) 119 نمبر (18/06/2013) تاریخ 19/06/2013  
میں نے اس پر دستخط کیا ہے۔ (میں نے) 119 نمبر (18/06/2013) تاریخ 19/06/2013

22/10/2013 No. 525/EC/2013  
27/10/2013

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24

FINAL SHOW CAUSE NOTICE.

WHERE AS YOU Constable Shah Afroz No. 119 while  
 Posted Police Lines Dargos, absented total  
 under D.D. Report No. 67 dt. 22-06-2013 (Total  
100 days). In your connection departmental  
Engineering test conducted against you wherein  
 the B.O. recommended your name  
 for major penishment. You are asked  
 appear to appear before the senior  
signed in any working day for per  
hearing.

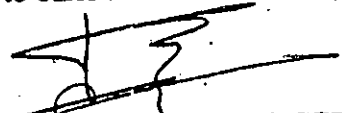
You have committed misconduct which is punishable under rules 4 of Police Rules 1975

NOW THEREFORE as required by the N.W.F.P. Police 1975 I MR. ASIF JOBAL MAJOR District Police Officer, Buner call upon to show cause why you should not be awarded major punishment as defined U/R-4 (b) of the said rules.

Your explanation should reach the undersigned within (7) days of the date of this notice.

You should state to us whether you wish to be heard in person or not.

In case your explanation is not received within the specified period, it should be presumed that you have no defence to offer.

  
DISTRICT POLICE OFFICER,  
BUNER.

No. 633  
Dated 31/12/13

9

26

**ORDER**

This order will be disposed off departmental enquiry conducted by D.S.P Hqrs: against Constable Sher Afsar No. 119 while posted Police Lines Daggar on account of (100) days period of absence vide D.D Report No. 67, dated 22.06.2013 with issuing proper charge sheet / summary of allegation vide this office No. 526/EC, dated 22.10.2013.

On 03.12.2013 the E.O submitted finding report with the conclusion that there are 27 previous bad entries in his service roll. During the course of enquiry the defaulter Constable Sher Afsar No. 119 did not produce any proof in his defense and thus the E.O recommended his name for major punishment.

He was also issued / served with final show cause notice and heard in person in OR on 02.01.2014 but he failed to produce any cogent reason in his defense.


I Asif Iqbal Mohmand D.P.O Buner competent authority see no reasons to believe that the defaulter Constable Sher Afsar No. 119 could be change his attitude in future, I agree with the recommendation of E.O and award the defaulter Constable Sher Afsar No. 119 major punishment i-e Dismissal from service with immediate effect. His period of absence w.e.f 22.06.2013 to 01.10.2013 (100) days is counted as leave without pay. While his pay of the remaining period is hereby released.

Order announced.

  
**DISTRICT POLICE OFFICER,  
BUNER**

OB No. 3

Dated 7/01 2014.

  
**ATT/STED**

To,

The Regional Police Officer,  
Malakand Region at Saidu Sharif Swat.

Subject: - **DEPARTMENTAL APPEAL AGAINST THE ORDER OF DISTRICT POLICE OFFICER, BUNER OB NO. 03 DATED 07.01.2014 WHEREBY THE APPELLANT WAS ILLEGALLY DISMISSED FROM SERVICE.**

Respectfully Sheweth,

1. That appellant was appointed as constable in BPS - 05 in 26 July 2007 on the strength of district police Buner.
2. That appellant was dismissed from service on account of unavoidable absence on 07.01.2014 vide OB No. 03.
3. Actually the appellant was seriously suffering from kidney decease and the receiving treatment from the authorized registered Medical Practitioners Dr. Mian Said Dost and Dr. Tariq at Daggar Buner.
4. That the appellant was dismissed from service on account of absence, whereas the absence from duty was unavoidable and beyond human control.
5. That the penalty awarded to me is harsh and requested to be set-aside on humanitarian grounds.

**Grounds:-**

- (a). That the impugned order is illegal and in violation of law / rules.
- (b). That the order of dismissal is void abinitio, therefore the appellant deserves to be re-instated in service.
- (c). That no proper and full fledged departmental enquiry was not conducted against the appellant.
- (d). That no final show cause notice was issued to the appellant.
- (e). That the opportunity of cross examination was not provided to the appellant.

**ATTESTED**

- (f). That the Appellant was not associated with the enquiry proceedings and the principle of Natural Justice "Audi Alterm Partem" has been violated. (28)
- (g). That as per judgments of the superior courts holding of departmental enquiry before awarding any kind of departmental punishment is necessary and binding on the competent authority failing which the penalty awarded assumes the status of void abinitio and illegal.

**Prayer:-**

Keeping in view the above facts and grounds, your good self is requested to kindly set aside the impugned order of District Police Officer, Buner OB No. 03 dated 07.01.2014, whereby the Appellant was dismissed from service and re-instate the appellant with all back / consequential benefits, please.

Enclosed = (Order of Dismissal + Medical Documents)

**APPELLANT**

  
**(EX-CONSTABLE SHER AFSAR NO. 119 )**

**Dated 17 January 2014.**

  
**ATTESTED**

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

**ORDER:**

This order will dispose off the appeal preferred by Ex-Constable Sher Afsar No. 119 of Buner District for reinstatement in service.

Brief facts are that, the above named Ex-Constable was absented willfully from his lawful duty vide DD Report No. 67 dated 22/06/2013 Police Lines Daggar with effect from 22/06/2013 to 01/10/2013 (total 100 days). Proper departmental enquiry was conducted by DSP / Hqrs: Buner against the defaulter Constable. The enquiry officer submitted finding with the conclusion, that there are 27 previous bad entries in his service roll, during the course of departmental enquiry the appellatant could not produce any cogent proof in his defence and thus the Enquiry Officer recommended his name for major punishment.

He was also served with Final Show Cause Notice and heard in person in Orderly Room by District Police Officer, Buner, but he failed to produce any cogent reason in his defence and as such he was dismissed from service under Police Rules 1975, on account of his prolong absence vide District Police Officer, Buner Office OB No. 03 dated 07/01/2014.

The appellatant 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, Buner, whereby the appellatant has been awarded major punishment for dismissal retirement from service.

Order announced.



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

No. 1129-30 /E,

Dated 6/2 /2014.

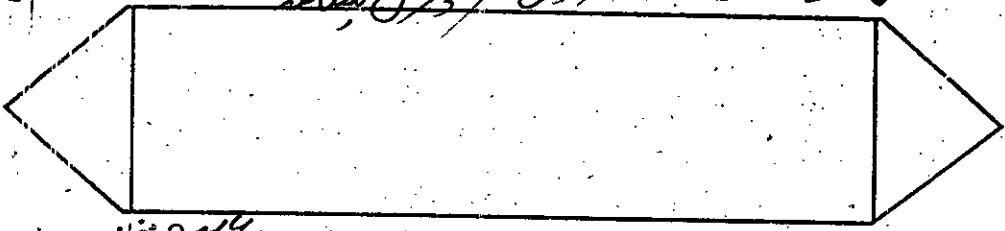
Copy for information and necessary action to the:-

1. District Police Officer, Buner with reference to his office Memo: No. 2665/E, dated 29/01/2014.
2. Ex- Constable Sher Afsar No. 119 of Buner District.

\*\*\*\*\*

**ATTESTED**

# بعدالت سرورس لیکچر



تیسرا حصہ خان بنام ای جی بی وغیرہ

مورخہ  
مقدمہ  
دعوی  
جرم

## باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ  
 آن مقام کے لئے صاحبزادہ اسد اللہ کیلئے  
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز  
 وکیل صاحب کو راضی نامہ کرنے و تقررات ہ فیصلہ بر حلف 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 باختیارات حاصل ہوں گے اور اس کا ساختہ  
 پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے دہوگا۔  
 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 سندر ہے۔

المرقوم 16 ماہ فروری 2014

وہ الع کے لئے منظور ہے۔

Attested & Accepted by  
Salimzada Asadullah  
Advocate

سید فرخان ولد خان سید  
سکنہ کھنڈر بیرون کونسل آمازی 10/2/14

①

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE**

**TRIBUNAL, PESHAWAR**

C.M No. \_\_\_\_\_/2014

In

S.A. No. 268/2014

475  
5/6/14

Sher Afsar Khan.....(Petitioner)

VS

I.G.P and others.....(Respondents)

**APPLICATION FOR EARLY HEARING.**

**Respectfully Sheweth:**

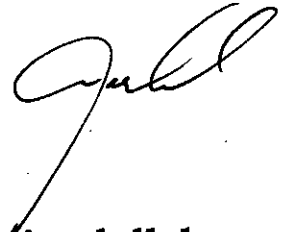
1. That the above captioned appeal is pending adjudication before this august Tribunal which is fixed for hearing on 08/08/2014.
2. That the urgency is involved in the above appeal and delay will cause serious damage to appellant.

2

3. That other appeals pertaining to the same Division and District also pending before this august Tribunal titled Behar Ali and others vs D.P.O and others.

It is, therefore humbly prayed that on acceptance of this application the date may kindly be accelerated and the appeal may kindly be club with other appeals title above mentioned so that there will be no conflicting judgments on same issue.

Applicant



Through

Dated: 05/06/2014

**Sahibzada Asadullah**  
Advocate, Supreme Court  
of Pakistan





(2)

خانہ بدوش

Accepted

حوالہ خانہ بدوش نمبر 5389 سے 22  $\frac{10}{13}$  تا 23  $\frac{10}{13}$  صحت نامہ

نام۔ کیشن سٹراوسر 119 پولیس اسٹیشن

خانہ 1

حوالہ کیشن سٹراوسر نمبر 67 تا 22  $\frac{10}{13}$  پولیس اسٹیشن ڈسٹرکٹ سٹراوسر

نمبر 10 تا 23  $\frac{10}{13}$  ان ترقی صحت کیشن سٹراوسر 119 تا 23  $\frac{10}{13}$  صحت نامہ

اس نوم خصلت ان ترقی صحت سٹراوسر نمبر 67 تا 22  $\frac{10}{13}$  صحت نامہ

حوالہ 10 تا 23  $\frac{10}{13}$  صحت نامہ کیشن سٹراوسر 119 تا 23  $\frac{10}{13}$  صحت نامہ

صحت نامہ کیشن سٹراوسر 119 تا 23  $\frac{10}{13}$  صحت نامہ

ان ترقی صحت سٹراوسر نمبر 67 تا 22  $\frac{10}{13}$  صحت نامہ

کیشن سٹراوسر 119 تا 23  $\frac{10}{13}$  صحت نامہ

صحت نامہ کیشن سٹراوسر 119 تا 23  $\frac{10}{13}$  صحت نامہ

ان ترقی صحت سٹراوسر نمبر 67 تا 22  $\frac{10}{13}$  صحت نامہ

حوالہ 10 تا 23  $\frac{10}{13}$  صحت نامہ کیشن سٹراوسر 119 تا 23  $\frac{10}{13}$  صحت نامہ

صحت نامہ کیشن سٹراوسر 119 تا 23  $\frac{10}{13}$  صحت نامہ

ان ترقی صحت سٹراوسر نمبر 67 تا 22  $\frac{10}{13}$  صحت نامہ

حوالہ 10 تا 23  $\frac{10}{13}$  صحت نامہ کیشن سٹراوسر 119 تا 23  $\frac{10}{13}$  صحت نامہ

صحت نامہ کیشن سٹراوسر 119 تا 23  $\frac{10}{13}$  صحت نامہ

6001387-9810094



کے متعلق ایسی باتوں کی اطلاع دی جا رہی ہے کہ...

میں نے اس بارے میں جانچ کر دیکھا ہے کہ...  
معلوم ہے کہ اگر اس واقعے کو نوآبادی کے تحت...

DSP Mr. Bener  
03-02-2013

Issue final  
show cause  
notice.

D.P.O. Bener

Dismiss

11/11/14

Attested

Distt. Police Officer  
Bener

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No. 1498 /ST

Dated 15 / 9 / 2016


To

The D.P. O,  
Bunir.

Subject: - **JUDGMENT**

I am directed to forward herewith a certified copy of Judgement dated 6.9.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

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

Rejoinder

In

Service Appeal No.258/2014

Sher Afsar.....VS.....I.G.P. K.P.K and others

**REJOINEDER ON BEHALF OF**  
**APPELLANT IN RESPONSE TO REPLY**  
**FILED BY RESPONDENTS.**

Respectfully Sheweth,

**Preliminary Objections:**

Preliminary Objections raised by answering respondents are erroneous and frivolous, the detailed replies thereof are as under:

1. Para No. 1 is incorrect the appeal is with in time.
2. Para No. 2 is incorrect.
3. Para No.3 is incorrect, all who were responsible have been arrayed as respondents being necessary party.
4. Para No.4 is incorrect, the impugned order is illegal, devoid of reasons and a void order can be challenged any time.
5. Para No.5 & 6 is incorrect being aggrieved of the orders passed the appellant has the cause of action to file appeal.
6. Para No. 6 is incorrect being aggrieved the appellant has the local standi.

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

Rejoinder

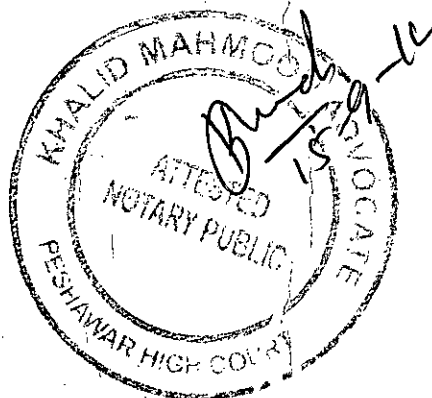
In

Service Appeal No.258/2014

Sher Afsar.....VS.....I.G.P. K.P.K and others

**AFFIDAVIT**

I, **Sahibzada Asadullah** Advocate, as per information furnished by my client do hereby solemnly affirm and declare that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



*[Handwritten Signature]*  
**ADVOCATE**







اساتذہ کی ایچ بی کارڈ کے ساتھ ساتھ 27 تاریخ کو...

کہ اس کی کاپیاں دی جائیں گی اور اس کے ساتھ ساتھ اس کی کاپیاں دی جائیں گی...

DSP. H.Q. Buner  
03-12-2012

Assess final  
broad cause  
notice.

D.P.O. Buner

Dismiss

1/1/2014  
Representative

Attested

Distr. Police Officer  
Buner