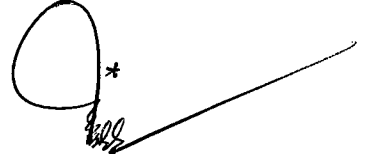


20.07.2022

Counsel for the appellant present.

Learned counsel for the appellant though addressed his arguments to some extent, yet the question of limitation could not be addressed properly with solid justification and plausible reason(s). The instant service appeal is impliedly hit by Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and is not maintainable.

In view of the above, the Service Appeal may be posted to Bench to be presided over by another learned Member. To come up for preliminary hearing on 21.09.2022 before other S.B.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a vertical stroke and a long horizontal line extending to the right. A small asterisk is placed above the vertical stroke.




(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 418/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	24/03/2022	<p>The appeal of Mr. Farman Ali Shah resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<p><i>Noted by Counsel 9/4/22</i></p>	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>13.05.2022</u> notices be issued to the appellant and his counsel for the date <u>fixed</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	12.05 2022	<p>Learned counsel for the appellant present and requested for adjournment to further prepare the brief. Last opportunity is granted. To come up for preliminary hearing before the S.B on 20.07.2022.</p> <p style="text-align: right;"> (Kalim Arshad Khan) Chairman</p>

The appeal of Mr. Farman Ali Shah Ex-Constable No. 1172 Police Line Bannu received today i.e. on 17.03.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Appeal has not been flagged/marked with annexures marks.
- 4- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 683 /S.T,

Dt. 17-3- /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv. Peshawar.

Respected Sir.

- 1- Removed
- 2- Removed
- 3- Removed
- 4- ~~copies~~ Charge sheet statement of allegations, show cause notice, enquiry report were not provided to the appellant, therefore he cannot annexed that with the appeal.
- 5- Removed.

Resubmitted after compliance



24/3/22.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE, TRIBUNAL
PESHAWAR.

APPEAL NO. 418 /2022

Farman Ali Shah

V/S

Police Department

INDEX

Sr.No.	Documents	Annexure	Page
01.	Memo of Appeal	-----	01-03
02.	Affidavit	-----	04
03.	Condonation of delay application	-----	05-06
04.	Copy of order dated 05.07.2010	A	07
05.	Copies of departmental appeal and revision	B&C	08-09
06.	Copies of judgments	D	10-28
07.	Vakalat Nama	-----	29

APPELLANT

THROUGH:


TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

Room No. Fr-8, 4th Floor,
Bilour Plaza, Peshawar Cantt;
Contact No. 03339390916

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

APPEAL NO. _____/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 414

Dated 17/03/2022

Farman Ali Shah, Ex-Constable No.1172,
Police Line Bannu.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region, Mardan.
3. The District Police Officer, Bannu.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974
AGAINST THE ORDER DATED 05.07.2010, WHEREBY THE
APPELLANT WAS DISMISSED FROM SERVICE AND
AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL
APEPAL and revision OF THE APPELLANT WITHIN THE
STATUTORY PERIOD OF NINETY DAYS.

Filed to-day
Registrar
17/3/2022
PRAYER:

THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER
DATED 05.07.2010 MAY KINDLY BE SET ASIDE AND THE
APPELLANT MAY BE REINSTATED INTO HIS SERVICE
WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY
OTHER REMEDY WHICH THIS AUGUST TRIBUNAL
DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE
AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant was appointed as constable in the respondent department in the year 2003 and since his appointment the appellant has performed his duty with great devotion and honesty, whatsoever, assigned to him and no complaint has been filed by his superiors regarding his performance.
2. That while serving in the said capacity, the appellant faced some domestic problems due to which he was unable to perform his duty and was compelled to remain absent from his duty.
3. That inquiry was conducted against the appellant in which ex parte proceeding was initiated as the appellant was never associated with the inquiry proceeding, even the inquiry report was not provided to the appellant.
4. That without issuing charge sheet and conducting proper inquiry the appellant was dismissed from service from the date of absence vide order dated 05.07.2010. **(Copy of dismissal order dated 05.07.2010 is attached as Annexure-A)**
5. That the appellant filed departmental appeal against the dismissal order on 16.04.2013, but no action has been taken on his departmental appeal and when 11-A was inserted in police Act 1975 through amendment in 2014, then he filed revision on 08.12.2021, which was also not responded within the statutory period of ninety days. **(Copies of departmental appeal and revision are attached as annexure-B&C)**
6. That the appellant has no other remedy except to file the instant service appeal in this Honourable Service Tribunal on the following grounds amongst others.

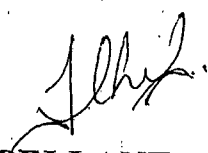
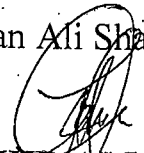
GROUND:

- A) That the impugned orders dated 05.07.2010 and not taking action the departmental appeal and revision are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B) That the inquiry proceeding was not conducted according to the prescribed procedure as the appellant was not associated with the inquiry before passing the impugned order of dismissal from service, which is violation of law, rules and inquiry proceeding.

- C) That no charge sheet and statement of allegation were served upon the appellant before passing the impugned order of dismissal from service which is violation of law and rules.
- D) That show cause notice was not communicated to the appellant before passing the impugned order of dismissal from service, even the inquiry report was not provided to the appellant, which is against the norms of justice and fair play.
- E) That the penalty of dismissal from service is very harsh, which is passed in violation of law and rules, therefore, the same is not sustainable in the eyes of law and liable to be set aside.
- F) That the appellant did not intentionally absent from his duties, but due some domestic, he was unable to perform his duty and was compel to remain absent from his duty. Therefore, needs to be treated with a lenient view.
- G) That the appellant has been condemned unheard and has not been treated according to law and rules.
- H) That similar nature appeal have been allowed by this honorable Tribunal and the appellant being similarly placed person also entitle the same relief under the rule of consistency. **(Copies of judgments are attached as Annexure-D)**
- I) That the appellant seeks permission of this Honourable Tribunal to advance others grounds and proofs at the time of hearing.

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

THROUGH:


APPELLANT
Farman Ali Shah

TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. _____/2022

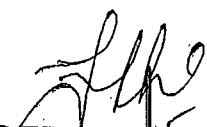
Farman Ali Shah

V/S

Police Department

AFFIDAVIT

I, Farman Ali Shah, Ex-Constable No.1172, Police Line Bannu (Appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this Honourable Tribunal.


DEPONENT
Farman Ali shah
(APPELLANT)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2022

Farman Ali Shah

V/S

Police Department

.....
APPLICATION FOR CONDONATION OF DELAY IN THE
INSTANT APPEAL

RESPECTFULLY SHEWETH:

1. That the instant appeal is pending before this Honourable Tribunal in which no date is fixed so far.
2. That the impugned dismissal order dated 05.07.2010 was passed with retrospective effect and such like orders are declared as void orders by the Honourable Supreme Court in its various judgment and no limitation run against the void order.
3. That the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking-out the litigants on technicalities including limitation. Therefore, appeal needs to be decided on merit (PLD-2003(SC)-724).
4. That the instant appeal may kindly be decide on merit as the appellant has good case to be decided on merit.

It is therefore most humbly prayed that on the basis of above submission, the instant appeal may be decided on merit by condoning the delay to meet the ends of justice.

THROUGH:

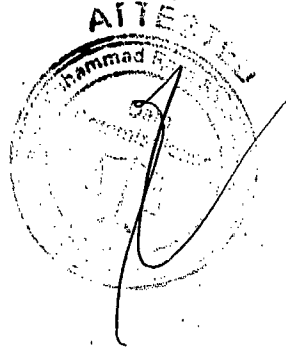

APPELLANT


TAIMUR ALI KHAN
(ADVOCATE HIGH COURT)

AFFIDAVIT

It is affirmed and declared that the contents of application are true and correct to the best of my knowledge and belief and nothing has been concealed from this august Tribunal.


DEPONENT



ORDER:

A ②

My this order will dispose off departmental proceeding initiated against constable Farman Ali Shah No. 1172, S/O Gul Saidan Shah NO Torka Surani PS Basya Khel who while posted to Police Lines, Bannu absented himself from govt. duty with effect from 20-11-2009 to date without any leave Or prior permission from the competent authority. Resultantly, he was proceeded departmentally under RSO, 2000 and proper enquiry was conducted through DSP/HQrs. The Enquiry officer submitted his findings, wherein he reported that the defaulter constable was summoned time and again to face the enquiry proceeding but he failed to appear before the enquiry officer to record his statement. Therefore, the enquiry officer recommended exparte action into the enquiry

Subsequently, final Show cause notice was framed and served, by the local police at his home address, upon Bahar Ali Shah (brother of the defaulter constable). Statement of his brother was recorded on the FSCN by DFC Police Station Basya Khel, which revealed that the defaulter constable had gone abroad since 4/5 months ago.

His service record was also perused which transpired that he had been warned already on 11 different occasions for his deliberate absence.

Keeping in view the findings and recommendations of the Inquiry Officer, material on record and other connected papers, the undersigned has got no other option except to impose him major punishment of dismissal from service.

Therefore, I Sajjad Khan District Police officer, Bannu in exercise of the power vested in me under KPK, removal from Service Special Power Ord: 2000, hereby dismiss him from service from the date of effect

District Police Officer,

Bannu.

the 5-7 /2010.

Basya Khel and all concerned for necessary

CAF Dina

ORDER

My this order will dispose-off departmental proceeding initiated against constable Farman Ali Shah No.1172, S/o Gul Saidan Shah R/o Torka Surani Police Station Basya Khel while posted to Police Line, Bannu absented himself from Govt. duty with effect form 20.11.2009 to date without any leave or prior permission from the competent authority. Resultantly, he was proceeded departmentally under RSO, 2000 and proper enquiry was conducted through DSP/HQrs. The Enquiry Officer submitted his findings, wherein he reported that the defaulter constable was summoned time and again to face the enquiry proceeding but he failed to appear before the enquiry officer to record his statement. Therefore, the enquiry officer recommended exparte action into the enquiry.

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Sd/-

District Police Officer

Bannu

2010

B(8)

بخدمت جناب ریجنل پولیس آفیسر صاحب بنوں ریجن بنوں

مضمون: رقم درخواست (Mercy Petition) دربارہ بحال کرنے بعدہ کا ڈیپلیمینٹ بر خلاف O.B. NO.800

مورخہ 05.07.2010 عماریہ جناب ڈسٹرکٹ پولیس آفیسر صاحب بنوں ریجن بنوں

جناب عالی!

سائل آپ کی خدمت میں ذیل عرض درساں ہے:-

☆ یہ کہ سائل سال 2003ء میں محکمہ پولیس آپریشن سٹاف ضلع بنوں میں بطور ریکارڈنگ ڈیپلیمینٹ بھرتی ہوا تھا۔

☆ یہ کہ بعد از ٹریننگ سائل ضلع خود میں پولیس لائن اور چوکیات وغیرہ میں بخوبی ڈیوٹی سرانجام دے چکا ہے۔ مزید یہ کہ سائل

ATS (VIP) اور Heavy Weapons جیسے کورسز کو ایفائیڈ ہے۔

☆ یہ کہ دوران سروس افسران بالا کو کسی قسم کی شکایت کا موقع نہیں دیا ہے۔

☆ یہ کہ بحوالہ آرڈر بک نمبر متذکرہ بالا جناب DPO صاحب نے سائل کے خلاف کیٹرفورڈ کارروائی کرتے ہوئے سپیشل پاور آرڈیننس

2000 کے تحت ملازمت سے Remove کیا گیا۔

☆ یہ کہ جناب DPO صاحب نے سائل کو ذاتی طور پر سننے کا موقع نہیں دیا جو کہ خلاف قانون و قواعد ہے۔

☆ یہ کہ سائل اپنے خاندان کا واحد کفیل اور سہارا ہے۔ مہنگائی کے اس دور میں ملازمت چھوٹ جانے سے معاشی مشکلات کا سامنا ہے۔

لہذا عاجزانہ استدعا ہے کہ مندرجہ بالا حالات و واقعات کو مد نظر رکھتے ہوئے سائل کو دوبارہ ملازمت پر بحال کرنے کے

احکامات صادر فرما کر مشکور فرمادیں۔ سائل اپنی ڈیوٹی بخوبی سرانجام دیتا رہے گا اور افسران بالا کو دوبارہ کسی قسم کی شکایت کا موقع نہیں دے گا۔

سائل اور سائل کے چھوٹے چھوٹے بچے آنجناب کے لئے تاجر دعا گو رہیں گے۔

Dated - 16/4/2013

العارض

سائل فرمان علی شاہ Ex کا ڈیپلیمینٹ نمبر 1172 تحصیل و ضلع بنوں

بخدمت جناب پراونشل پولیس آفیسر صاحب، خیبر پختونخوا پشاور

6

مضمون: رحم درخواست (Mercy Petition) دربارہ بحال کرنے بعدہ کانسٹیبل برخلاف O.B. NO.800

مورخہ 05.07.2010 مجاریہ جناب ڈسٹرکٹ پولیس آفیسر صاحب بنوں

جناب عالی!

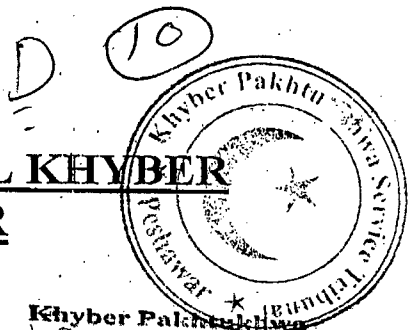
سائل آپ کی خدمت میں ذیل عرض رساں ہے:-

- ☆ یہ کہ سائل سال 2003ء میں محکمہ پولیس آپریشن سٹاف ضلع بنوں میں بطور کانسٹیبل بھرتی ہوا تھا۔
 - ☆ یہ کہ بعد از ٹریننگ سائل ضلع خود میں پولیس لائسن اور چوکیات وغیرہ میں بخوبی ڈیوٹی سرانجام دے چکا ہے۔ مزید یہ کہ سائل
 - ☆ ATS (VIP) اور Heavy Weapon جیسے کورسز کو ایفائیڈ ہے۔
 - ☆ یہ کہ دوران سروس افسران بالا کو کسی قسم کی شکایت کا موقع نہیں دیا ہے۔
 - ☆ یہ کہ بحوالہ آرڈر بک نمبر متذکرہ بالا جناب DPO صاحب نے سائل کے خلاف یکطرفہ کارروائی کرتے ہوئے سپیشل پاور آرڈیننس
 - ☆ 2000 کے تحت ملازمت سے Remove کیا گیا۔
 - ☆ یہ کہ جناب DPO صاحب نے سائل کو ذاتی طور پر سننے کا موقع نہیں دیا جو کہ خلاف قانون و قواعد ہے۔
 - ☆ یہ کہ سائل نے اس سے قبل بھی جناب RPO صاحب بنوں کو بابت، بحالی درخواست گزار ہی تھی مگر کوئی شنوائی نہ ہو سکی۔
 - ☆ یہ کہ سائل اپنے خاندان کا واحد کفیل اور سہارا ہے۔ مہنگائی کے اس دور میں ملازمت چھوٹ جانے سے معاشی مشکلات کا سامنا ہے۔
- لہذا عاجزانہ استدعا ہے کہ مندرجہ بالا حالات و واقعات کو مد نظر رکھتے ہوئے سائل کو دوبارہ ملازمت پر بحال کرنے کے احکامات صادر فرما کر مشکور فرماویں۔ سائل اپنی ڈیوٹی بخوبی سرانجام دیتا رہے گا اور افسران بالا کو دوبارہ کسی قسم کی شکایت کا موقع نہیں دے گا۔
- سائل اور سائل کے چھوٹے چھوٹے بچے آنجناب کے لئے تاعمر دعا گو رہیں گے۔

Dated = 08/12/2021

العراض

سائل فرمان علی شاہ حال برخاست شدہ کانسٹیبل نمبر 1172 تحصیل و ضلع بنوں



IN THE HON'BLE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

In Re S.A. 627 /2017

Khyber Pakhtunkhwa Service Tribunal

Diary No. 665

Dated 15-6-2017

Ex-constable No.787/SB

Shujahat Ali S/o Lal Muhammad R/o Umarabad Gulabad Pul Sardheri, Charsadda.

.....Appellant

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.
2. Additional Inspector General of Police Special Khyber Pakhtunkhwa Peshawar.
3. Superintendent of Police Admn Special Branch Khyber Pakhtunkhwa Peshawar.
4. I.G.P. Police Khyber Pakhtunkhwa.

.....Respondents

APPEAL U/S 04 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 31/01/2014 WHERE THE APPELLANT WAS DISMISSED FROM SERVICE AND AGAINST THE APPELLATE ORDER DATED 16/11/2016 COMMUNICATED TO THE APPELLANT ON 17/05/2017 HAS BEEN REJECTED ON NO GOOD GROUNDS

Filed to-day
 Registrar
 15/6/17

ATTESTED

 REGISTRAR
 KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
 PESHAWAR

111

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.627/2017

Date of Institution ... 15.06.2017
Date of Decision ... 13.10.2020



Shujahat Ali S/O Lal Muhammad R/O Umarabad Gulabad Pul Sardheri,
Charsadda.

... (Appellant)

VERSUS

1. Provincial Police Officer Khyber Pakhtunkhwa Peshawar and (03) Others.

... (Respondents)

Present:

Miss. Roeeda Khan,
Advocate ... For appellant.

Mr. Riaz Khan Paindakheil,
Assistant Advocate General. ... For respondents.

ROZINA REHMAN ... MEMBER (J)
ATIQU-UR-REHMAN WAZIR ... MEMBER (E)

JUDGMENT

ROZINA REHMAN, MEMBER : Appellant Shujahat Ali was a Constable in the Technical Section of Special Branch. He was dismissed from service under Police Rules, 1975, vide order dated 31.01.2014. It is the legality and validity of this order which has been challenged by him in his present service appeal filed U/S 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974.

2. Brief facts of the case are that appellant was initially appointed as Constable in the year 2008 in the Technical Section of Special Branch. He

ATTESTED

13/10/20
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

was nominated for Basic Recruit Course at PTC Hangu but he remained absent without any leave w.e.f 13.02.2013. Departmental inquiry was conducted and he was dismissed from service. Later on, he submitted mercy petition to the Additional IGP Special Branch which was accepted and order of dismissal was set aside by the competent authority. He was reinstated in service and was directed to undergo Basic Recruit Course but he again absented himself from training without any leave. He was again dismissed from service, against which, he preferred departmental appeal which was also rejected, hence the present service appeal.

3. Learned counsel for appellant contended that the appellant was initially appointed as Constable in Special Branch in the year 2008. He fell ill during training at PTC Hangu and he was advised bed rest by medical officer. He came to know about his dismissal on 10.02.2014, he, therefore, preferred departmental appeal. She argued that all codal formalities for initiating an inquiry were not complied with and that no opportunity of personal hearing was afforded to the appellant. She submitted that availing medical leave without permission could not be considered as an act of gross misconduct entailing major penalty of dismissal from service. She submitted that departmental appeal was preferred on 20.02.2014 and it was responded to by the respondents on 16.11.2016 but was communicated to the appellant on 17.05.2017 where after he filed the instant service appeal. She submitted that as per judgments of the superior court where a departmental appeal is filed within the prescribed period, the affectee or civil servant has to wait for

12/19/20

90 days in case of filing appeal. If within the stipulated period, the civil

servant is not communicated the decision of the competent authority, he had

an option to file appeal within 30 days without waiting the decision or he can

wait till the time of communication of the decision by the departmental

ATTESTED

[Signature]
 12/19/20

authority and from the said date, he could file appeal within next 30 days. Reliance was placed on 2013 SCMR 1053; 2003 PLC (C.S) 365 and 2007 SCMR 834.

4. Conversely, learned AAG argued that the appellant is a habitual absentee who was nominated for Basic Recruit Course at PTC Hangu but he deliberately absented himself from training without any leave/permission. He submitted that he was dismissed from service after observing all the codal formalities. He argued that final show cause notice was also issued which was received by brother of appellant. He raised question of limitation and requested this Tribunal to dismiss this appeal being time barred.

5. This Tribunal examined the facts and grounds mentioned in the memo of appeal and documents annexed thereto as well as the comments of the respondents and arguments of the learned counsel for the parties in detail. Admittedly he was nominated for Basic Recruit Course at PTC Hangu and was relieved on 08.01.2013. He joined the said recruit course and remained absent without any leave from 13.02.2013. After departmental inquiry he was dismissed from service. Later on he was reinstated in service by the competent authority and he was once again nominated for the said course w.e.f 05.10.2013. Due to his ailment, he failed to attend course. As per law, availing of medical leave without permission could not be considered an act of gross misconduct entailing major penalty of dismissal from service. Charge against the appellant is not so grave as to propose any major penalty. Major penalty of dismissal from service is harsh and did not commensurate with the nature of charge. Reliance is placed on 2008 SCMR 214. So far as limitation is concerned, the appellant was dismissed from service vide order dated 31.01.2014. He preferred departmental appeal well within time i.e. on


13/10/20

TESTED
S. J. K. K. K. K. K.
vice-Tribunal
Peshawar


20.02.2014. The appellate authority vide order dated 16.11.2016 disposed of his petition but the same was not communicated to the appellant well within time. The record is silent as to when this order was communicated to the appellant. Where within the stipulated period of 90 days, decision of departmental authority is not communicated to the civil servant, he has an option to either file appeal before the Service Tribunal within the next 30 days without waiting for decision of departmental authority, or he could wait till the date of communication of decision of departmental authority and from said date, he could file appeal within the next 30 days. Reliance is placed on 2013 SCMR 1053. The departmental appeal filed by the appellant to the IGP was disposed of with the remarks that the appellant had not preferred appeal to the appellate authority i.e. Additional IGP. The departmental appeal, if not filed before the appropriate authority, then it is the duty of the authority to forward that appeal to the competent departmental authority. Reliance is placed on 2008 PLC (C.S) 1302. As he remained absent because of illness, therefore, his absence was not willful and deliberate and we are of the view that the penalty awarded to the appellant seems to be harsh.

6. The long & short of the above discussion is that appeal is partially accepted and the penalty of dismissal from service is converted into stoppage of three annual increments for three years. The absence period and intervening period shall be treated as leave without pay. No order as to costs. File be consigned to the record room.

ANNOUNCED.
13.10.2020


(Attiq ur Rehman Wazir)
Member (E)

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(Rozina Rehman)
Member (J)

the charges of absence. The appellant filed the instant service appeal with prayers that the impugned orders dated 05-06-2013, 13-03-2014, 06-03-2015 and 29-04-2014 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the law were badly violated; that no proper procedure has been followed before dismissal of the appellant from service, neither he has been served with charge sheet/statement of allegations nor he has been associated with the inquiry proceedings; that the whole proceedings were conducted ex-parte and the appellant was not afforded opportunity of defense, hence the whole proceedings are liable to be set aside; that the appellant was kept deprived of personal hearing and was condemned unheard; that no show cause notice was served upon the appellant before imposition of major penalty; that the period for which the appellant remained allegedly absent has been regularized by treating it leave without pay, thus the very ground on which the appellant was proceeded against has vanished and no penalty could lawfully be imposed upon him. Reliance was placed on 2012 TD (Services) 348; that the appellant was proceeded twice for the same charges; that it is needless to mention that the dismissal orders dated 29-04-2014 was issued at the time when the appellant was already dismissed from service and such order is having no legal effect; that the appellant has been awarded penalty with retrospective effect and no order of penalty can be made to operate with retrospective effect as such the impugned order is liable to be set aside on this score alone; that the penalty so imposed is harsh, which does not commensurate with guilt of the appellant.

03. Learned Assistant Advocate General appearing on behalf of respondents has contended that the appellant absented himself from lawful duty w.e.f 23-02-2012 till 14-05-2012 and 29-11-2012 till 29-04-2013 without permission/leave from the

competent authority; that the appellant was properly proceeded against under the relevant law and was rightly penalized. The learned admitted that the appellant was dismissed twice as during the course he was transferred to another station, where he again absented from lawful duty, hence he was proceeded against and in the process, he was dismissed again on the charges of absence, not knowing that he was already dismissed.

04. We have heard learned counsel for the parties and have perused the record. Record reveals that the appellant was dismissed vide order dated 05-06-2013, against which the appellant filed departmental appeal dated 23-09-2013, which was rejected vide order dated 13-03-2014. The appellant filed revision petition, copy of which is not available on record, but its rejection order dated 06-03-2015 transpires that the appellant had filed revision petition within time as the same was not dismissed on ground of limitation. The instant appeal was filed by the appellant on 07.04.2015 which is within time.

05. What is available on record is a charge sheet/statement of allegations dated 05-04-2012 containing the charges of absence w.e.f 23-02-2012 to 05-04-2012 and for the purpose, SDPO/Suburb was appointed as inquiry officer. Final show cause dated 10-08-2012 is also available on record, but nothing is available on record to suggest that charge sheet/statement of allegations/ final show cause notice was served upon the appellant, as the appellant was not available for such service. The appellant in his appeal has contended that he was seriously ill and he duly informed the office regarding his illness, but which was not considered. Placed on record is medical prescriptions suggesting that the appellant was advised bed rest for months, which can be considered as true as the respondents neither deny nor objected to such prescriptions, which reveals that his absence was not willful and the Supreme Court of Pakistan in its judgment reported in 2008 SCMR 214 have held that leave without permission on medical grounds does not constitute gross misconduct.

entailing major penalty of dismissal from service. Placed on record is an inquiry report submitted by SDPO/Suburb, which reveals that ex-parte action was taken against the appellant and the appellant was not associated with the inquiry proceedings. It is also a well-settled legal proposition in light of judgments of the apex court that regular inquiry is must before imposition of major penalty of dismissal from service, which however was not done in case of the appellant. The Supreme Court of Pakistan in its judgment reported in 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would be imposed upon him without adopting the required mandatory procedure, resulting in manifest justice. Obviously the appellant was not associated with the process of disciplinary proceedings and was condemned unheard. The appellant was ultimately awarded major punishment of dismissal from service vide order dated 05-06-2013 by Superintendent of Police Head Quarters Peshawar, and his absence period was also treated as leave without pay, the relevant portion of the impugned order is reproduced as under:-


"In light of findings of the inquiry officer and other material available on record, the undersigned came to the conclusion that the alleged official found guilty of the charges, he is hereby dismissed from service under Police & Disciplinary Rules, 1975 with immediate effect, hence the period, he remained absent from duty for 08 months is treated without pay".

The appellant was proceeded against on the ground of willful absence for the mentioned period, however the authority has treated the mentioned period, as such the very ground, on the basis of which the appellant was proceeded against, has vanished away. Wisdom in this respect derived from the judgment of the august

Supreme Court of Pakistan, reported as 2006 SCMR 434 and 2012 TD (Services) 348. Needless to mention that the appellant was also dismissed from service under the same charges of absence vide order dated 29-04-2014 by Superintendent of Police City and inquiry report placed on record was conducted by DSP/Sadar Circle and in this case also, the appellant was proceeded ex-parte, but such order have no legal sanctity as by the time, the appellant was already dismissed from service vide order 05-06-2013, but which definitely expose the level of coordination amongst offices of police department.

06. In light of the above discussion, the appeal in hand is accepted and the appellant is re-instated in service, however the intervening period of his absence from duty be treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
10.09.2021



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(ATTIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)

20

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 172 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 106

Dated 24-1-2019

Taj Muhammad, EX- Constable, No.8385
FRP Kohat Range.

.....(Appellant)

VERSUS

1. The Commandant Frontier Reserve Police, KPK, Peshawar.
2. The District Police Officer Karak.

.....(Respondents)

Filed to-day
Registrar
24/1/19

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 05.01.2008 WHEREBY, THE APPELLANT HAS BEEN DISMISSED FROM SERVICE AND AGAINST THE REJECTION ORDER DATED 27.12.2018 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE Orders DATED 05.01.2008 AND 27.12.2018 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

(21)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 172/2019

Date of Institution ... 24.01.2019

Date of Decision ... 02.02.2022

Taj Muhammad, Ex-Constable, no. 8385 FRP Kohat Range.

... (Appellant)

VERSUS

The Commandant Frontier Reserve Police, Khyber Pakhtunkhwa Peshawar and
one another. ... (Respondents)

Uzma Syed,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that

the appellant while serving as constable in police department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 05.01.2008. Feeling aggrieved, the appellant filed departmental appeal which was rejected vide order dated 27.12.2018, hence the instant service appeal with prayers that the impugned orders dated 05-01-2008 and 27-12-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

02 Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice and void ab initio as has been passed with retrospective effect, therefore, not tenable and liable to be set aside. Reliance

was placed on 2002 SCMR 1129 and 2006 PLC (CS) 221; that there is no order in black & white to dispense with regular inquiry, which is violation of law and rules and without charge sheet/statement of allegations, the appellant was dismissed from service vide order dated 05-01-2008 without personal hearing, hence the whole procedure is nullity in the eye of law; that the appellant has not been treated in accordance with law, hence his rights secured under the law has badly been violated; that absence of the appellant was not willful but was due to compelling reason of some domestic issues; that the penalty so awarded is harsh, which does not commensurate with gravity of the guilt.

03. Learned Additional Advocate General for the respondents has contended that the appellant was deputed for basic recruited course to Police Training College at Hangu and remained absent w.e.f. 08.11.2007 without any leave/prior permission of the competent authority; that the appellant was proceeded against departmentally wherein the allegations leveled against the appellant stood proved; that the appellant was proceeded under Police Rules 12-21 as his service was less than 03 years and under Police Rules 12-21, there is no need of issuing of charge sheet and show cause notice, therefore, the impugned order was rightly passed; that the appellant was dismissed from service vide order dated 05.01.2008 and after a lapse of 10 years the appellant filed departmental appeal which is badly time barred, therefore, the instant appeal is not maintainable in the eye of law which is liable to be dismissed.

04. We have heard learned counsel for the parties and have perused the record.

05. We have observed that the petitioner remained absent for longer time without any valid reason. The time spoiled between his dismissal and departmental appeal shows his reckless approach towards his responsibilities. The contention of the learned attorney appearing on behalf of respondents to the effect that regular inquiry was not necessary in the case of appellant as he was proceeded against while still in the probation period, also hold force, but

simultaneously the appellant was also a civil servant and the question as to whether the appellant was supposed to be proceeded against under RSO 2000 or Police Rules cannot be ignored, as RSO 2000 having overriding effect over other laws at that particular time and provision in ordinance existed for the appellant. Section 11 of the ordinance is reproduced as under:

"The provisions of this ordinance shall have effect notwithstanding anything to the contrary contained in the Civil Servants Act, 1973 (LXXI of 1973) and the rules made there under and any other law for the time being in force."

06. The learned Additional Advocate General for respondents when confronted with such proposition was still of the opinion that he was rightly proceeded against under police rules, as there was no other option with the respondent to proceed him as the appellant was still in probation period. Contention of the learned Additional Advocate General is correct to the extent of probation period, but section 11 of the ordinance bars the respondents to proceed him under any other law except the Ordinance and other option was also available in the Ordinance. The ordinance vide section 3 (a) provides:-

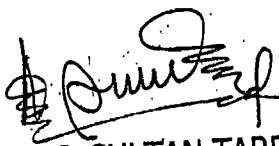
"that dismissal, removal and compulsory retirement of certain persons in Govt. or corporation service etc, where in the opinion of the competent authority, a person in Govt. or corporation service is inefficient or has ceased to be efficient for any reason; or is guilty of being habitually absent from duty without prior approval of leave, the competent authority, after inquiry by the committee constituted under section 5, may notwithstanding anything contained in any law or the terms and conditions of service of such person, by order in writing dismiss or remove such person from service, compulsory retire from service or reduce him to lower post or pay scale, or impose one or more minor penalties as prescribed in the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 1973 made under Section 25 of Civil Servant Act, 1973."

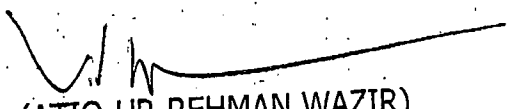
So in presence of Removal from Service (Special Powers Ordinance) 2000, the proceeding under police rules is void ab initio in the eye of law and which also disposes of the question of limitation.

07. This Tribunal is of the view that in order to meet the ends of justice, the present service appeal is partially accepted and the appellant is reinstated in service for the purpose of De Novo inquiry with directions to the respondents to conduct de novo inquiry within 90 days strictly under law & rules. No orders as to costs. File be consigned to record room.

ANNOUNCED

02.02.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

25

(1)

BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR

In Re S.A 1039 /2018



1304

Dated: 18-8-2018

Mohammadia Bibi D/O Badshah Khan R/O Village Bagatto
Hangu District Hangu.

----- (Appellant)

VERSUS

1. Secretary of Government of Khyber Pakhtunkhwa Elementary and Secondary Education at Peshawar.
2. The Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar.
3. District Education Officer (Female) District Hangu.

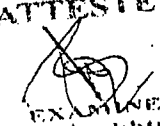
----- (Respondents).

APPEAL U/S 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 AGAINST THE
ORDER DATED 22/04/2014, WHEREBY THE
APPELLANT WAS TERMINATED WITH
RETROSPECTIVE EFFECT AND NOT DECIDING
DEPARTMENTAL APPEAL OF THE APPELLANT

PRAYER:

ON ACCEPTANCE OF THE INSTANT APPEAL
THE IMPUGNED ORDER DATED 22/04/2014 MAY
KINDLY BE DECLARED VOID ABINATIO
SETTING ASIDE THE SAME AND THE
APPELLANT MAY KINDLY BE REINSTATED
INTO SERVICE WITH ALL BACK BENEFITS

ATTESTED

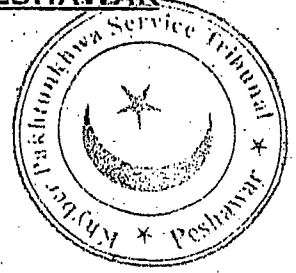

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1039/2018

Date of Institution ... 18.08.2018

Date of Decision ... 22.12.2021



Mohammadia Bibi D/O Badshah Khan R/O Village Bagatto Hangu District Hangu
... (Appellant)

VERSUS

Secretary of Government of Khyber Pakhtunkhwa Elementary and Secondary
Education at Peshawar and two others. ... (Respondents)

Noor Muhammad Khattak,
Advocate

... For Appellant

Noor Zaman Khattak,
District Attorney

... For respondents

AHMAD SULTAN TAREEN ...
ATIQU-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT**ATIQU-UR-REHMAN WAZIR MEMBER (E):-**

Brief facts of the case are that the appellant, while serving as Primary School Teacher, was proceeded against on the charges of absence from duty and was ultimately terminated from service vide order dated 12-04-2014. Feeling aggrieved, the appellant filed departmental appeal, upon which respondent No. 2 appointed an inquiry officer, who conducted inquiry and submitted its report, but the appellant was not informed of any development within the statutory period, hence the instant service appeal with prayers that the impugned order dated 22-04-2014 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned order is against law, rule and principle of natural justice, hence void ab initio; that

TESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

neither the appellant was proceeded against under RSO 2000 nor under Rule-9 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011; that no absence notice or publication in two leading newspaper had been issued; that no charge sheet/statement of allegations was served upon the appellant and the appellant was condemned unheard; that no regular inquiry had been conducted against the appellant nor the appellant was afforded any opportunity of personal hearing; that the inquiry conducted on departmental appeal of the appellant as well as comments of respondent No. 3 endorses the contention of the appellant with respect to the worst law and order situation; that the impugned order has been passed with retrospective effect, hence void ab initio.

03. Learned District Attorney for the respondents has contended that the appellant performed her duty with effect from 24-09-2009 to 10-10-2010 for a period of one year and fourteen days; that the appellant disappeared from duty for longer time, for which notices were sent at her home address; that showcause notice was also published in newspaper, but the appellant failed to resume her duty; that upon submission of her departmental appeal, an inquiry was conducted but the inquiry officer did not recommend her to be re-instated due to the reason that her absence was long and appeal was also barred by time; that termination order of the appellant is correct and in accordance with law; that the appellant was proceeded against under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000; that termination order was issued from the date of absence of the appellant from duty.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant was appointed as PST in a primary school, where she served for one year and fourteen days, thereafter she did not attend her duty due to obvious reason of terrorism in the area and this fact has already been admitted by the inquiry officer as well as by the District Education

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Officer Hangu in his letter dated 16-12-2016 addressed to the Director Education. The inquiry officer in his report admits that in those days, law and order situation in the district was not under control and it was rather impossible particularly for female employees to attend to her duty. In view of the admittance note of the inquiry officer and district education officer Hangu, it can safely be inferred that stance of the appellant regarding her absence from duty is true.

06. As per stance of the respondents, the appellant was proceeded against under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000, but there is no provision available in Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000, for willful absence, or the penalty of termination from service exist in the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance 2000, hence the impugned order is void. We have observed that the appellant was haphazardly proceeded against, neither any inquiry was conducted nor the appellant was afforded any opportunity to defend her cause. It however is a well settled legal proposition that regular inquiry is must before awarding major punishment. We have observed that absence of the appellant was not willful but was due to compelling reasons, which cannot be ignored. We are also mindful of the question of limitation that the appellant preferred departmental appeal with delay of almost two years but since the impugned order is void, hence no limitation runs against void order.


07. In a situation, we are constrained to accept the instant appeal. The impugned order dated 22-04-2014 is set aside and the appellant is re-instated in service. The intervening period is treated as extra ordinary leave without pay.


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

Certified to be true copy

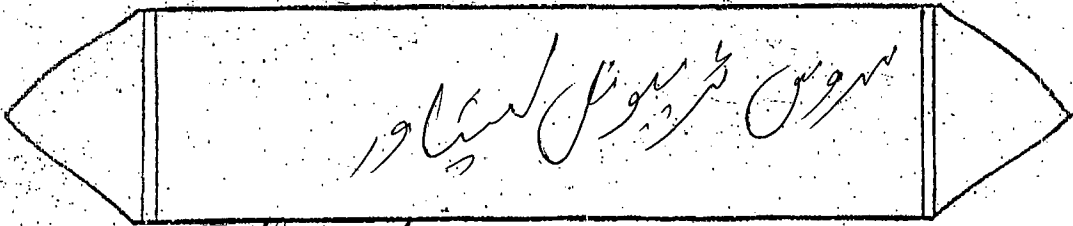
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ANNOUNCED
22.12.2021


(AHMAD SULTAN TAREEN)
CHAIRMAN)


(ATTIQ-UR-REHMAN WAZIR)
MEMBER (E)

بعدالت



فرمان علی گڑھ 2، مخانب
فرمان علی گڑھ پنجم حکمہ پورس

سورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی اور جواب دہی دکن کاروائی متعلقہ
آن مقام ~~سرویں ٹریڈنگ کمپنی اور~~ کیلئے ~~ٹریڈنگ کمپنی~~ مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
دکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
ذرائع 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 یا اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا اوکالت نامہ لکھ دیا کہ سند ہے۔

Accepted
&
Alles
[Signature]

المرقوم _____ ماہ _____ 20 _____

کے لیے منظور ہے۔

[Signature]

بمقام