

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 405/2013

Date of institution ... 15.02.2013

Date of institution ... 17.01.2017

Attaullah Shah Ex-Constable No-86
District Police Tank S/O Hidayatullah Shah
R/o village Ama Khel Faqir Abad, Mullzai District Tank.

... (Appellant)

VERSUS

1. District Police Officer Tank, Khyber Pakhtunkhwa .
2. Deputy Inspector General of Police Dera Ismail Khan Region.
3. Provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
4. Bashir Khan DSP, (Inquiry Officer) Rural, Tank Khyber Pakhtunkhwa.

... (Respondents)

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER
DATED 17.05.2012 PASSED BY RESPONDENT NO. 2 AND ORDER
DATED 29.07.2012 PASSED BY RESPONDENT NO. 1 AGAINST THE
APPELLANT MAY VERY GRACIOUSLY BE SET-ASIDE AND THE
APPELLANT MAY VERY KINDLY BE REINSTATED IN HIS SERVICE
WITH ALL BACK BENEFITS.

Mr. Muhammad Arif Jan, Advocate.
Mr. Ziaullah, Government Pleader.

.. For appellant.
.. For respondents.

MR. AHMAD HASSAN
MR. ASHFAQUE TAJ

.. MEMBER (EXECUTIVE)
.. MEMBER (JUDICIAL)

JUDGMENT

AHMAD HASSAN, MEMBER: The appellant Attaullah Shah, filed the instant appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned order dated 17.05.2012 and rejection of his departmental appeal dated 19.07.2012, hence, the instant service appeal.

2. Brief facts giving rise to the above appeal are that the appellant was recruited as Constable in Police Department, Tank. He was posted in Police Station Gomal. On account of willful absence from duty disciplinary proceedings was initiated against the appellant and major penalty of dismissal from service was imposed on him.

3. Learned counsel for the appellant argued that the appellant due to serious illness in July, 2010 he was advised one month bed rest by the doctors. However, he did not get leave from the Department. The appellant remained absent from 17.07.2010 to 18.10.2010. The inquiry officer in his report recommended imposition of minor penalty but he was dismissed from service vide order dated 29.07.2011. No charge sheet/statement of allegations, opportunity of personal hearing and show cause notice were served on the appellant. Neither the statement of witnesses was recorded nor the appellant provided in opportunity to cross-examine the witnesses. Departmental appeal of the appellant was also rejected. The appellant having eight years service at his credit was given harsh penalty of dismissal from service.

4. Reliance was also placed on 2011 SCMR 1504 the court held that in case of disagreement of authority with findings of inquiry officers or authorized officer, authority in such case ought to record proper reasons. 2007 SCMR 1860 held that the principles of natural justice demands issuance of show cause notice before imposition of major penalty of dismissal from service. 2008 PLC (CS) 246 also settled the above issue. PLJ 2005 SC 113 in case of awarding major penalty, proper inquiry has to be conducted in accordance with law where opportunity of defense has to be provided to delinquent officer.

5. Learned Government Pleader argued that the appellant had admitted absence from duty before the inquiry officer. He further contended that the appeal was time barred and according 2009 SCMR 1435 each and every day delay will have to be

justified. Similarly reliance was also placed on 2011 SCMR 676 AND 2013 SCMR 2011 pertaining to the issue of limitation.

6. Arguments heard and record perused.

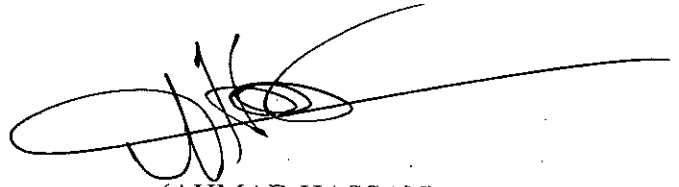
7. Having gone through the record of the case, it transpired that inquiry proceedings were not conducted in the mode and manner prescribed in the rules. Non issuance of Charge Sheet and Statement of Allegations, Show Cause Notice, recording statement of witnesses and affording opportunity to the accused to cross-examine the witnesses proved that inquiry proceedings were conducted in violation of invogue rules. As inquiry proceedings were conducted in contravention of the invogue rules, as such they were biased against the norms of justice and fair play. It is proved beyond doubt that opportunity of fair trial as envisaged in Article 10 (A) of the Constitution and judgments of the Supreme Courts was not provided to the appellant. Moreover, the competent authority did not agree with the recommendations of the inquiry officer but failed to record reasons of disagreement. Hence, imposition of major penalty of dismissal from service upon the accused was nullity in the eyes of law as held by the Supreme Court in its judgments highlighted above.

8. In view of the foregoing, we are constrained to accept the appeal and reinstate the appellant in service from the date of dismissal and to direct the respondents to conduct *de-novo* inquiry in this case in which the appellant may be fully associated with the inquiry proceedings and all required formalities prescribed in the rules should be followed in letter & spirit. The inquiry proceedings shall be completed within a period of three months from the date of receipt of this judgment. Issue of payment of arrears of pay and allowances may be decided in the light of the findings of the *de-novo* inquiry. In case inquiry proceedings are not concluded within the stipulated period, the appellant shall be deemed to have been reinstated in

service the date of dismissal. Parties are, however, left to bear their own costs. File
be consigned to the record room.

ANNOUNCED
17.01.2017


(ASHFAQUE TAJ)
MEMBER


(AHMAD HASSAN)
MEMBER

03.10.2016

Since 3rd October, 2016 has been declared as public holiday on account of 1st Muharram therefore, case is adjourned for the same on ~~17-1-17~~


Reader

17.01.2017

Counsel for the appellant and Mr. Ziaullah, GP for respondents present.

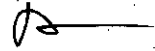
Vide our detailed judgment of today consists of four pages placed on file, we are constrained to accept the appeal and reinstate the appellant in service from the date of dismissal and to direct the respondents to conduct de-novo inquiry in this case in which the appellant may be fully associated with the inquiry proceedings and all required formalities prescribed in the rules should be followed in letter & spirit. The inquiry proceedings shall be completed within a period of three months from the date of receipt of this judgment. Issue of payment of arrears of pay and allowances may be decided in the light of the findings of the de-novo inquiry. In case inquiry proceedings are not concluded within the stipulated period, the appellant shall be deemed to have been reinstated in service the date of dismissal. Parties are left to bear their own costs. File be consigned to the record room.


(AHMAD HASSAN)
MEMBER


(ASHFAQUE TAJ)
MEMBER

29.09.2015

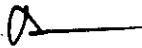
Counsel for the appellant and Addl. AG for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I. Khan, therefore, case is adjourned to 22-1-16 for arguments.



Member

22.01.2016

Counsel for the appellant and Mr. Kabeerullah, AAG for the respondents present. Counsel for the appellant requested for adjournment. Therefore, case to come up for arguments on 1-4-16.



MEMBER



MEMBER

01.04.2016

Junior to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Junior to counsel for the appellant requested for adjournment as senior counsel for the appellant is not available today. Adjourned for arguments to 13-6-16 before D.B.



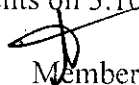
Member



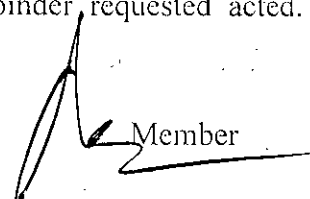
Member

13.6.2016

Counsel for the appellant and Mr. Muhammad Khan, HC alongwith Assistant AG for respondents present. Counsel for the appellant requested for time to file rejoinder requested acted. To come up for arguments on 3.10.2016.



Member



Member

01.7.2014

Mr. Fazal Maabood, Advocate on behalf of counsel for the appellant and Mr. Muhammad Khan, Reader to Inspector (legal) on behalf of respondents with Mr. Usman Ghani, Sr. GP present. Rejoinder has not been received, and request for further time made on behalf of the appellant. Another chance is given for rejoinder on 30.10.2014.


Chairman

30.10.2014

Mr. Fazal Mabood, Advocate on behalf of counsel for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. Rejoinder has not been received, and the learned Advocate appearing on behalf of counsel for the appellant stated that there was no need to file rejoinder, and requested for fixation of the appeal for arguments. To come up for arguments on 29.04.2015.


Chairman

29.4.2015

Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. The learned Member(Judicial) is on official tour to D.I.Khan, therefore, case is adjourned to 29.09.2015 for arguments.


Member

10.9.2013

No one is present on behalf of the appellant. Mr. Muhammad Hussain, Inspector (Legal) Tank for respondents with AAG present. To come up for written reply/comments on 2.1.2014.


CHAIRMAN

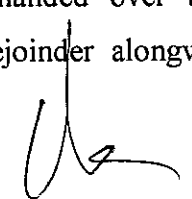
02.01.2014

Mr. Fazal Muhammad, Advocate on behalf of counsel for the appellant and Mr. Imam Muhammad, SI for respondents with AAG present. Written reply has not been received, and request for further time made on behalf of the respondents. Another chance is given for written reply/comments on 1.4.2014.


Chairman.

01.4.2014

Appellant with counsel and Mr. Muhammad Khan, Reader on behalf of 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 appeal on 1.7.2014.


Member

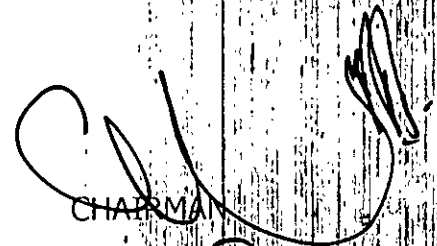
Mr. Atul Kesh Singh

S.A No. 405/2013

29.03.2013

Appellant deposited
security & process
fee Rs. 2000/- Bank
receipt is attached
with file

Counsel for the appellant present and heard. Contended that the appellant has not been treated in accordance with the law. He has been dismissed from service vide the impugned order without fulfilling the legal requirements as required under the law. No charge sheet/statement of allegations and no show cause notice were issued to the appellant. No enquiry has been conducted against the appellant and he has been condemned unheard. Counsel for the appellant has also submitted an application for condonation of delay. Copy of application also be sent to the respondents. Points raised 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, notice be issued to the respondents. Case adjourned to S-6 .2013 for submission of written reply on main appeal as well as written reply/arguments on application.


CHAIRMAN

29.3.2013

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


CHAIRMAN

5.6.13



The Honble bench is on leave,
therefore case is adjourned to 10.9.13
D
Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 405 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15/02/2013	<p>The appeal of Mr. Attaullah Shah presented today by Mr. Muhammad Arif Jan 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	20-2-2013.	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>29-3-2013.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE HONORABLE KHYBER PUKHTON KHAWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No-⁴⁰⁵-----/2013

Attaullah Shah Ex -Constable No- 86

District Police Tank S/o Hidayatullah Shah

R/o village Ama Khel Faqir Abad ,Mullazai District Tank.....Appellant.

VERSUS

District Police Officer Tank ,KPK and others.....Respondant

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6.	Copy of order dated 29-07-2011	B	9
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8.	Wakalatnama		13

Petitioner

Through


Muhammad Arif Jan

Date: /02/2013

Advocate, Peshawar

Office:Office No. 6, 2nd Floor, Pabbi
Medical Centre, G.T. Road
Peshawar.

Cell: 0333-2212213

BEFORE THE HONORABLE KHYBER PUKHTON KHAWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No-⁴¹⁰⁵-----/2013

Attaullah Shah Ex -Constable No- 86

District Police Tank S/o Hidayatullah Shah

R/o village Ama Khel Faqir Abad ,Mullazai District Tank.....Appellant

M. W. J. Peshawar
District Police
No. 410
Date 15/2/13

VERSUS

- 1: District Police Officer Tank ,KPK.
- 2: Deputy Inspector General of Police Dera Ismail Khan Region .
- 3: Provisionsal Police Officer Khyber Pukhton Khawa , Peshawar.
- 4: Bashir Khan DSP,(Inquiry officer) Rural , Tank KPK.....Respondants

APPEAL UNDER SECTION 4 OF KHYBER PUKHTON KHAWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED ^{17.5.2012} ~~29/07/2011~~ PASSED BY RESPONDANT NO. 2 AND ORDER DATED ^{29.7.2012} ~~17/05/2012~~ PASSED BY RESPONDANT BY NO. 1 AGAINST THE APPELLANT MAY VERY GRACIOUSLY BE SET-ASIDE AND THE APPEALANT MAY VERY KINDLY BE REINSTATED IN HIS SERVICE WITH ALL BACK BENIFITS .

Prayer in Appeal

On acceptance of the instant appeal , the impugned order dated ~~29/07/2011~~ passed by respondent No. 2 and order dated ^{17/05/2012} ~~17/05/2012~~ passed by respondent No. 1 against the appellant may very graciously be setaside and the appellant may very kindly be reinstated in his service with all back benifits .

Respectfully sheweth;

1. That the appellant was recruited as Constable in Police Department , Tank and was posted in Police Station ,Gomal where he served the Department to the best satisfaction of his superiours.
2. That the appellant became seriously ill in the month of July, 2010 whereby after examination by Doctors , He was diagnosed for suffering in Chronic and life taking diseases " INEFFECTIVE HEPATITIS" and advised for complete bed rest for one month vide medical documents .

[Handwritten signature]
5/2/13

[Handwritten signature]
17-5-2012

3. That the appellant was shown absent from duties and was recommended for disciplinary action for period of 17/07/2010 to 18/10/2010 that is i.e three months and one day .
4. That departmental enquiry was conducted/initiated against the appellant and in the findings he was recommended for minor punishment by respondent No.4 (Copy of recommendation of inquiry officer is attached as annex -A).
5. That astonishingly the appellant was informed that he was dismissed due to absence from his service/duties vide order dated 29/07/2011 passed by respondent No.1 with out giving an opportunity of explanation , show cause notice , charge sheet , inquiry and personal hearing .(Copy of order dated 29/07/2011 is attached as annex -B)
6. That the appellant preferred an appeal against the impugned order dated 29/07/2011 of respondent No.1 before respondent No.2 but that too was filed on 17/05/2012(Copies of appeal along with order dated 17/05/2012 are attached as annex C&D respectively).
7. That being aggrieved from the impugned orders and having no other efficacious remedy except to file the instant appeal on the following amongst other grounds .

GROUND:-

- a. That both the orders (here in after impugned) dated 29/07/2011 and 17/05/2012 are illegal , unlawful, without lawful authority, of no legal effect, hence be set aside.
- b. That the impugned orders are very harsh and does not commensurate with the facts and law and other circumstances of the case, where the volume of service i.e 8 years shall also be keeping in mind while imposing / awarding such like major penalty .
- c. That the respondent No.1 also ignored the recommendation of inquiry officer where in the appellant was just recommended for minor punishment and this act of the respondent No.1 clearly shows violation of laid down principles and dictums declared by august Supreme Court of Pakistan.

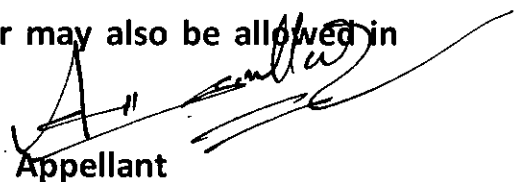
16-5-2018

(3)

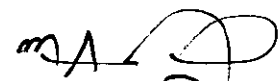
- d. That the appellant was not absent but lying ill. The medicale documents have been submitted to the police officer for examination and consideration well in time.
- e. The the respondants were legally bound to sanction his medical leave/rest on full pay under the prescribed Medical rules.
- f. That the enguiry officer neither examine any PW in the presence of appellant nor any chance of explanation was provided which was legal and basic right of the appellant.
- g. That all the proceeding initiated and completed against the appelant were violative of law and against the mandatory provisions of rules. The impugned order thus liable to be set asid at naught.
- h. The appellant is jobless since his illegal and unlawful order of dismissal from service.
- i. That the any other ground which has not been taken may also be permitted to rise at the time of hearing.

It is therefore, most humbly prayed that on acceptance of the instant appeal, the impugned order dated ¹⁷⁻⁵⁻¹² 29/07/2011, passed by respondant No-3 and order dated ^{20-7-2011 H-2} 17/05/2012 passed by respondant No-1 against the appellant may very graciously be setaside and the appellant may very kindly be reinstated in his service with all back benifits .

Any other remedy which deems fit and not asked for may also be allowed in favor of the appellant.


Appellant

Through


Muhammad Arif Jan
Advocate, Peshawar.

(14)

BEFORE THE HONORABLE KHYBER PUKHTON KHAWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No-----/2013

Attaullah Shah Ex -Constable No- 86

District Police Tank S/o Hidayatullah Shah

R/o village Ama Khel Faqir Abad ,Mullazai District Tank.....Appellant.

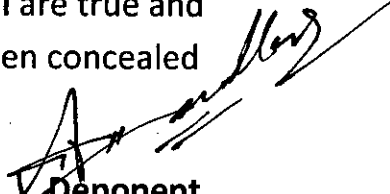
VERSUS

District Police Officer Tank ,KPK and others.....Respondants

AFFIDAVIT

I Attaullah Shah Ex -Constable No- 86 District Police Tank S/o Hidayatullah Shah

R/o village Ama Khel Faqir Abad ,Mullazai District Tank do hereby solemnly affirm and declare on oath that the contents of the Accompanying **appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.


Deponent

5

BEFORE THE HONORABLE KHYBER PUKHTON KHAWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No-----/2013

Attaullah Shah Ex -Constable No- 86

District Police Tank S/o Hidayatullah Shah

R/o village Ama Khel Faqir Abad ,Mullazai District Tank.....Appellant.

VERSUS

District Police Officer Tank ,KPK and others.....Respondants

ADDRESSES OF THE PARTIES

Appellant

Attaullah Shah Ex -Constable No- 86

District Police Tank S/o Hidayatullah Shah

R/o village Ama Khel Faqir Abad ,Mullazai District Tank

Respondants

1.District Police Officer Tank ,KPK.

2: Deputy Inspector General of Police Dera Ismail Khan Region .

3: Provisionsal Police Officer Khyber Pukhton Khawa , Peshawar.

4: Bashir Khan DSP,(Inquiry officer) Rural , Tank KPK.

Appellant

Through



Muhammad Arif Jan

Advocate,Peshawar

6

BEFORE THE HONORABLE KHYBER PUKHTON KHAWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No-----/2013

Attaullah Shah Ex -Constable No- 86

District Police Tank S/o Hidayatullah Shah

R/o village Ama Khel Faqir Abad ,Mullazai District Tank.....Appellant.

VERSUS

District Police Officer Tank ,KPK and others.....Respondants

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth;

1. That the appellant filed the instant appeal before this Hon;ble Court where in no date of hearing has yet been fixed .
2. That the brother of the appellant was killed on 27/11/2011 on his wedding night , thus due to shock the appellant was not able to approach to this honorable Court well with in time .
3. That if the delay has not been condond , the appellant will suffer with irreparable loss which will not be count in shape of coins .
4. That the appellant has a good arguable case .

It is therefore ,most humbly prayed , that the delay by filing the instant appeal , may very graciously be condond to the appellant for the ends of Law , fairness and Justice .


Appellant

Through


Muhammad Arif Jan

Advocate,Peshawar.

7

BEFORE THE HONORABLE KHYBER PUKHTON KHAWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No-----/2013

Attaullah Shah Ex -Constable No- 86

District Police Tank S/o Hidayatullah Shah

R/o village Ama Khel Faqir Abad ,Mullazai District Tank.....Appellant.

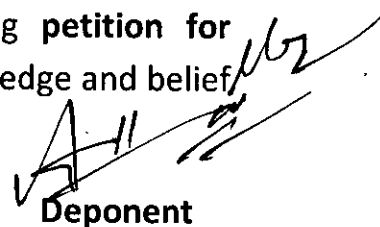
VERSUS

District Police Officer Tank ,KPK and others.....Respondants

AFFIDAVIT

I Attaullah Shah Ex -Constable No- 86 District Police Tank S/o Hidayatullah Shah

R/o village Ama Khel Faqir Abad ,Mullazai District Tank do hereby solemnly affirm and declare on oath that the contents of the Accompanying **petition for condonation of delay** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Deponent

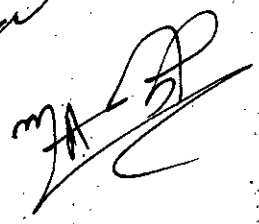
10 Amx
 17/7 (8) بحوالہ مدت 10۔ بدوران کئی عملداریاں کیں۔ مذ
 9 (9) ہم جو جو دیگر عملداریاں درج ذیل روزانہ پھرتی تھی اور سفر 10/10
 کو بحوالہ مدت 10 روزانہ پھرتی تھی۔ مگر کئی کئی عملداریاں مذکورہ کی صاف
 درج ہو کر ڈیوٹی سرانجام دے رہا ہے۔

سفر 18/3 کو من DSP رول نے کیں۔ مذکورہ کے پیش کردہ
 میڈیکل سرٹیفکیٹس برائے تصدیق (DHO) سہیل
 ٹانگ بھوکے جو کہ بعد تصدیق دست اور مطابق ریکارڈ
 پائے جا کر لف انکوائری ہڈا کیے۔

کہ گئی انکوائری کے لئے یہاں تا اب میڈیکل کاغذات
 کی تصدیق کی رو سے من DSP رول اس نتیجے پر
 پہنچا ہوں کہ کئی کئی عملداریاں مذکورہ واقعی ہمارے ہوا تھا
 لیکن اس نے صحت منظر روزانہ میں عملداریاں ہمارے

کئی روایتی رول کی تھی۔ جو کہ خلاف دستاویز ہے
 بدیں وجہ یہ کہ عملداریاں صاف 17/7 سے 18/10 تک
 بلا شکوہ کرنے، شکوہ کھونے اور آئندہ کئی سمت
 وارننگ دینے کی سفارش کی جاتی ہے۔


 سید جاں
 ڈی ایچ سی رول ٹانگ
 انکوائری آفیسر

Attest


ORDER

This is an order in the Departmental Enquiry of Constable Attaulah Shah No. 86 of PS Gomal of this District Police committed the following acts of omission commission:-

That he while posted at Police Station, Gomal remained absent from duty without any leave/permission or reasonable cause w.e.from 17.07.2010 to 18.10.2010.

He was issued charge sheet and statement of allegation under the NWFP Removal from Service (special Powers) Ord: 2000. Mr. Bashar Khan DSP/Rural, Tank was nominated to conduct proper departmental enquiry into the matter. The enquiry officer completed the inquiry and submitted inquiry report.

On having been gone through the findings, recommendation of the Enquiry Officer, and material placed on record, I, MUHAMMAD IJAZ ABID, District Police Officer, Tank (Competent Authority) do hereby award Major Punishment of **DISMISSAL FROM SERVICE** to Constable Attaulah Shah No. 86. His period of absence is counted his leave without pay. His Pay already stopped is hereby released and the period for which he performed duties be paid to him.

Order Announced.

M. Ijaz Abid
(MUHAMMAD IJAZ ABID)
District Police Officer,
Tank. *SAA*

OB No. 1057

29.7.11

Attaulah Shah
M. Ijaz Abid

Amma
(B)

Subject:- PETITION/REPRESENTATION OF APPELLANT CONSTABLE
ATTA ULLAH SHAH NO. 86 AGAINST THE IMPUGNED ORDER
FOR HIS DISMISSAL FROM SERVICE OF DPO/TANK VIDE
ORDER BOOK NO. 1057 DATED 29.07.2011.

R/Sir,

With due regard, I appellant submit my petition/ representation against the unlawful and harsh order bearing No. cited above whereby the appellant was awarded major punishment of dismissal from service from service.

PRAYER IN APPEAL:-

On acceptance of this petition, the Impugned Order of my dismissal from service may kindly be set aside and the appellant may be reinstated in service with full back wages and benefits of service or any other relief may deemed proper also be allowed.

1. That the appellant was enlisted as Constable in Police Department, Tank 08.12.2004 and served the department to the best satisfaction of my seniors and no chance of complaint was provided.

2. That the appellant while performing duties at Police Station, Gomal became ill seriously and proceeded Hospital for treatment. The Medical documents have already been produced in the office of DPO/Tank for sanction.

3. That instead to encourage the appellant, I was shown absent from duty and recommended for disciplinary action. Copy is enclosed.

4. That the Authority without examining/providing an opportunity of personal hearing, awarded Major Punishment of Dismissal from Service which is unlawful. Copy of order is enclosed.

That the impugned order is illegal, unlawful and against the express provision of law thus liable to be set aside inter alias on the following grounds:-

GROUND IN APPEAL:-

a. That the appellant was not absent but was ill and the medical documents have already been produced in the office of DPO/Tank for sanction.

b. That the competent authority never examined any witness in my presence nor I was examined which was legal and basic right of the appellant.

c. That all the proceedings conducted against the appellant were violative of law and against the mandatory provisions of Rules. The impugned order is thus liable to be set at naught.

d. That the proceeding conducted against appellant were illegal and unlawful as it run counter to the express provision of Police Rules.

e. That the appellant was never allowed personal hearing not allowed the right to produce my defense in support of my innocence.

f. That the appellant is jobless since my illegal and unlawful Dismissal from Service.

j. That the appellant seeks the permission of Hon ' able Appellant Authority to rely on additional grounds at the hearing of this appeal.

PRAYER:- It is, therefore prayed that on acceptance of this Petition/Representation the impugned order of my Dismissal From Service may kindly be set aside and the appellant may be reinstated in service with full back wages and benefits of service any other relief may deemed proper may also be allowed.

Thanking an anticipation.

Obediently yours.

Atta Ullah Shah
30/07/011

(ATTA ULLAH SHAH NO. 86)
Ex- Constable Police Department, Tank,
R/o Moh: Faqir Abad, Ama Khel
District Tank.

(12)

OFFICE OF THE DEPUTY INSPECTOR GENERAL OF POLICE,

DERA ISMAIL KHAN:

APPELLATE AUTHORITY

Amix-D' (11)

ORDER:

This order is meant to dispose off the petition/ representation preferred by Ex- Constable Atta Ullah Shah No.86 of Tank District against the order of dismissal from service, awarded to him by DPO Tank vide OB No.1057 dated 29.07.2011. He was proceeded against on the ground that he while posted at Police Station Gomal remained absent from duty without any leave/ permission or reasonable cause with effect from 17.07.2010 to 18.10.2010 i.e. 3 months and 1st day. The Enquiry Officer conducted departmental enquiry and submitted his findings in which the defaulter Constable was found guilty of the charges leveled against him, therefore the competent authority awarded him major punishment of dismissal from service.

The appellant/ Ex-Constable Atta Ullah Shah No.86 preferred the instant petition against the order of DPO Tank. I have gone through the enquiry file as well as service record of the appellant and head him in person on 09.05.2012 and found that the appellant absented himself from lawful duty, he failed to proceed for treatment through proper channel and with due permission, therefore DPO Tank has correctly passed an order which needs no interference.

Therefore considering the fore-going, I find no strength in the petition and hence I am not inclined to intervene therefore this appeal is dismissed and filed.




(QAZI JAMIL-UR-REHMAN)
Deputy Inspector General of Police,
Dera Ismail Khan Region

No. 1453

IES. dt. 17-05-2012.

Copy to the District Police Officer, Tank for information with reference to his office memo No.1794 dated 14.04.2012. The Service Record of Ex-Constable is also returned herewith for record.

Encl) ① S. Rall
① F. Mittal



(QAZI JAMIL-UR-REHMAN)
Deputy Inspector General of Police,
Dera Ismail Khan Region

WAKALATNAMA

IN The Honble KPK Service Tribunal, Peshawar

Attallah Shah

(Petitioner)
(Plaintiff)
(Applicant)
(Complainant)
(Decree Holder)

V E R S U S

DPO Tank 3 others

(Respondent)
(Defendant)
(Accused)
(Judgment Debtor)

Case Svc - Appeal ————— 2013

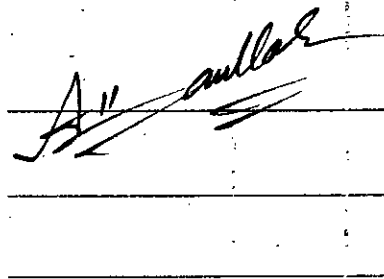
I/We, Attallah Shah do hereby appoint and constitute **Muhammad Arif Jan Advocate** High Court, Peshawar, to appear. Plead, act, compromise, withdraw or refer to arbitration to me/ us as my/ our Counsel in the above noted matter, without any liability for their default and with the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.

Attested & Accepted

CLIENT/S



Muhammad Arif Jan
Advocate, High Court, Peshawar.
Office No. 6, 1st Floor
Pabbi Medical Centre, G.T. Road
Peshawar.
Mobile: 0333-2212213



Subject: Service Appeal No. 405/2013.

Attaullah Shah Ex-Constable No. 86.

(Appellant)

Versus

1. District Police Officer, Tank, KPK.....

(Respondents)

2. Deputy Inspector General of Police Dera Ismail Khan Region.

3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

4. Bashir Khan DSP, (Inquiry Officer) Rural, Tank KPK.

PRELIMINARY OBJECTION

1. That the appellant has got no cause of action
2. That the appeal is bad for misjoinder/non-joinder of necessary parties.
3. That the appeal is time barred
4. That the appellant has not come with clean hands.
5. That the appeal is bad due to non joinder of necessary party.
6. That the appellant is stopped due to his own conduct.
7. That the appellant has concealed the material facts from Honorable Tribunal.
8. That the honorable Tribunal has no jurisdiction to entertain the present Service Appeal.

Respectfully Sheweth:

Para wise Comments from respondents No. (1,2& 3).

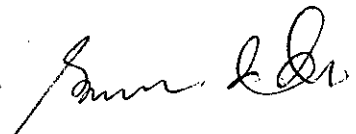
1. On fact Appellant was posted in Police Station Gomal District Tank but his service record is adverse.
2. Incorrect. The service record shows him habitual absentee and not interested in his official duties.
3. The appellant was intentionally absent from lawful duties for sufficient period w.e from 17-07-2010 to 18-10-2010 that is three month and one day vide DD No. 10 dat: 17-7-2010 PS Gomal.
4. Incorrect. A proper departmental inquiry was conducted in which the allegation of absence were established.
5. Incorrect. A proper charge sheet & show cause notice were issued, proper departmental enquiry was conducted in which allegation of absence from duties were established.
6. The appellant was also heard in person by the Appellate Authority and his appeal was dismissed.
7. The Appellant has got no cause of action to file this appeal.
8. Correct to the extent that appellant was recruited as constable and posted to ps Gomal the remaining portion of the para is incorrect.

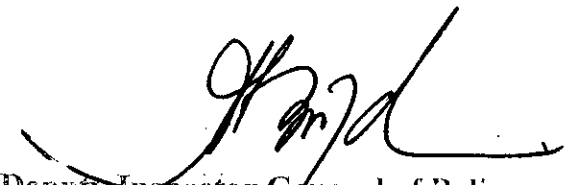
GROUNDS:-

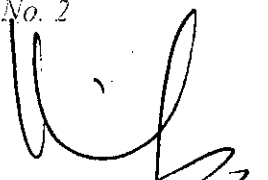
- a. Incorrect. The order of dismissal dated 29-07-2011 was passed after proper departmental enquiry in accordance with law/ Police Rules, Similarly the appellant was heard in person by the appellate Authority and his appeal was dismissed.
- b. Incorrect. His service record shows him to be habitual absentee and not interested in official duties. The order was passed by the competent authority after thoroughly examining the service record.
- c. Incorrect in fact during departmental inquiry allegation of absence were established and keeping in view his service record the order was passed under the rules.
- d. Incorrect the petitioner has not acted in accordance with Police Rules, His previous record reveals that he always used to manage Medicinal rest.
- e. Incorrect the appellant has not acted as per Police Rules while proceeding for treatment, Similarly the Medical report is not for the impugned period of absence i.e 17-07-2010 to 18-10-2010 vide DD No. 10 dated 17-7-2010 but it relates to period from 19-11-2010 to 15-01-2011.
- f. Incorrect. The enquiry was conducted in accordance with law /rules.
- g. Incorrect. All the proceedings were held in accordance with law /rules.
- h. Incorrect. The allegations were established and the record proved him to be not interested in duties and habitual absentee.
- i. Incorrect. That no such provision exists.

In view of above, it is humbly prayed that the appeal of the appellant may kindly be dismissed being meritless. /

Jahid
Govt Head
GOVT HEAD
DERA ISMAIL KHAN


District Police Officer,
Tank.
Respondent No. 1


Deputy Inspector General of Police,
Dera Ismail Khan Region.
Respondent No. 2


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
Respondent No. 3

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 405/2013

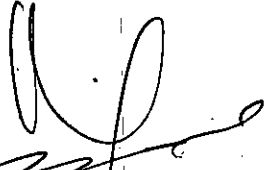
Attaullah Shah Ex-Constable No. 86..... (Appellant).

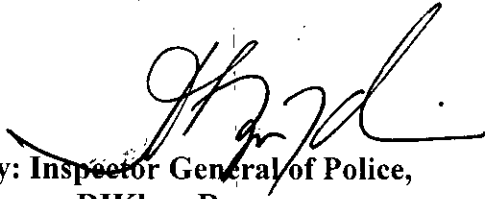
Versus

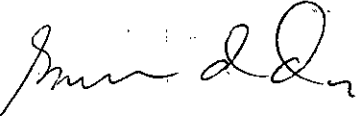
- 1) Inspector General of Police Khyber Pakhtunkhwa Peshawar..... (Respondents).
- 2) Deputy Inspector General of Police DIKhan Region...
- 3) District Police Officer Tank

Subject: **AUTHORITY LETTER.**

DSP, Legal Dera Ismail Khan is hereby authorized to appear before the Honorable the Service Tribunal Khyber Pakhtunkhwa Peshawar on our behalf. He is also authorized to deposit any reply/documents/record etc: before the Court on our behalf.


(Inspector General of Police)
Khyber Pakhtunkhwa Peshawar.
(Respondent-1)


Dy: Inspector General of Police,
DIKhan Range.
(Respondent-2).


District Police Officer,
Tank.
(Respondent-3)

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 236 /ST

Dated 30 / 1 / 2017

To

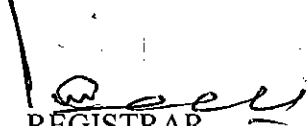
The District Police Office,
Government of Khyber Pakhtunkhwa,
Tank.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 17.01.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.