

Order


11.03.2019


Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Atta Ur Rehman, SI (Legal) for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is accepted, impugned order dated 07.01.2014 and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry within a period of sixty days after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. The appeal is disposed off accordingly. Parties are left to bear their own cost. File be consigned to the record room.

Announced:


11.03.2019



(Ahmad Hassan)
Member


(Hamid Farooq Durrani)
Chairman

05.10.2018

Mr. Arbab Saiful Kamal Advocate submitted wakalat nama in favor of appellant. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Being freshly engaged, learned counsel for appellant seeks adjournment. Adjourned. To come up for arguments on 05.11.2018 before D.B.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

05.11.2018

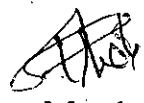
Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 31.12.2018.

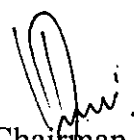

READER

28.12.2018

Miss Uzma Syed, Advocate junior to counsel for appellant and Addl. AG alongwith Attaur Rahman, S.I(Legal) for the respondents present.


Rejoinder on behalf of the appellant has been submitted which is placed on file. To come up for arguments on 13.03.2019 before the D.B.



Member


Chairman

10.04.2018

Counsel for the appellant and Mr. Ziaullah, DDA for respondents present. Rejoinder submitted. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 20.06.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

20.06.2018

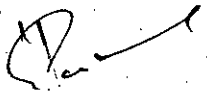
Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Granted. To come up for arguments on 20.07.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

20.07.2018

Due to engagement of the undersigned in judicial proceeding before S.B. further proceeding in the case in hand could not be conducted. To come on 12.09.2018 ^{before} D.B.


Member (J)

12.09.2018

Since 12 September 2018 has been declared as public holiday on account of Muharam Ul Haram. Therefore, the case is adjourned. To come up for the same on

5-10-18


Reader

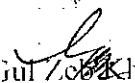
13.11.2017

Appellant in person present. Mr. Kabir Ullah Khattak, Addl: Advocate General alongwith Mr. Atta-ur-Rahman, ASI for the respondents present. Written reply not submitted. Requested for further adjournment. Adjourned. To come up for written reply/comments on 04.12.2017 before S.B.


(Gul Zeb Khan)
Member

04.12.2017

Appellant in person present. Mr. ~~Riaz~~ ^{Paindq} ~~Assist~~ Advocate General Atta-ur-Rahman. SI for respondents present. Written reply submitted. To come up for rejoinder and arguments on 12.02.2018 before D.B.


(Gul Zeb Khan)
Member (E)

12.02.2018

Appellant in person present. Mr. Riaz Paindakhel, Assistant AG for the respondent present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for rejoinder and arguments on 10.04.2018 before D.B.


Member


Chairman

1

Review Petition No. 57/2015
in Appeal No. 1057/2014.
Muhammad Karim vs Govt

12.10.2016

Counsel for the petitioner and Mr. Muhammad Jan, Deputy District Attorney alongwith Attaur Rahman, S.I (Legal) for the respondents present. Arguments heard and record perused.

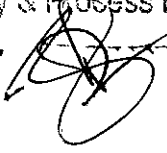
This is a review petition against the order dated 28.5.2015 whereby the service appeal of the petitioner was dismissed under Rule 10 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 due to non deposit of process fee and security.

The learned counsel for the appellant argued that this Tribunal has the jurisdiction to review its earlier order and in this regard he relied upon two judgments reported as 2011-SCMR-1410 and 2012 PLC (C.S) 793.

On the other hand, the learned District Attorney argued that there is no power of Review with this Tribunal in view of judgment reported as 2004-PLC(C.S)527.

The present petition has been filed by the petitioner for restoration of appeal dismissed on 28.05.2015 for non deposit of security and process fee. This Tribunal is afraid that the learned counsel for the petitioner should have applied for the restoration of the appeal dismissed for non deposit of security and not for the review of the said order. Without discussing merit of power of review of this Tribunal the Tribunal has the jurisdiction to restore the appeal in exercise of powers conferred under Order IX Rule 2 read with Rule 4 of the Code of Civil Procedure, 1908. The reason is that the Code of Civil Procedure is applicable to the proceedings of this Tribunal in view of Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. The jurisprudential principle of application of general procedural Code is that when special statute provides a procedure then general procedure is not to be followed. But when special statute is silent about any procedure then general procedure shall come into play. If we go through the Service Tribunal Act, 1974 and rules made

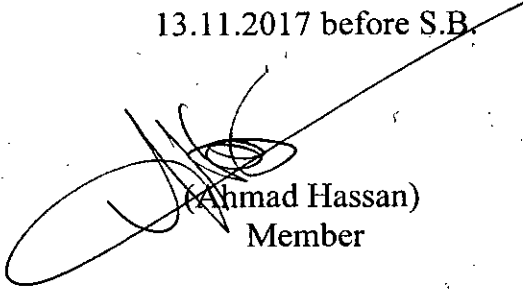
Appellant Deposited
Security & Process Fee

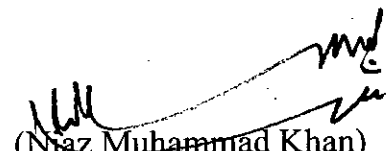


there under there is no provision for restoration of an appeal dismissed for non deposit of security and process fee. In such event this Tribunal has no other option but to resort to the Order IX mentioned above.

The period of limitation for such application is 30 days under Article 163 of the Limitation Act. In the ends of justice this Tribunal converts the present review petition into petition under Rule 4 of Order IX of the Code of Civil Procedure, 1908.

Now this Tribunal is to see whether sufficient cause has been shown by the petitioner for setting aside the dismissal order dated 28.05.2015. In this regard the learned counsel for the petitioner referred to an FIR dated 28.3.2015 registered in Police Station Saru Shah, District, Mardan in which the present petitioner was complainant and was injured and remained in hospital right from 28.03.2015 to 30.3.2015. The order for deposit of security was made by this Tribunal on 25.3.2015 and he was asked to deposit the security and process fee within 10 days but during these 10 days he met an accident and was admitted in hospital. The present petition for restoration having been filed within 30 days of the order of dismissal is also within time. The same is accepted and the order of dismissal dated 28.05.2015 is set aside. The appeal may be entered in the relevant register on its old number and the appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 13.11.2017 before S.B.


(Ahmad Hassan)
Member


(Niaz Muhammad Khan)
Chairman

ANNOUNCED
12.10.2017

18.08.2017

Appellant in person present. Mr. Atta-ur-Rehman, S.I. alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 12.10.2017 before D.B.

MA


(Muhammad Amin Khan Kundi)
Member (J)

H

(Muhammad Hamid Mughal)
Member (J)

12.12.2016

Since 12th December, 2016 has been declared as a public holiday an account of 12th Rabi-ul-awal. Case is adjourned to 11.04.2017 before D.B.



Reader

11.04.2017

Counsel for the appellant present. Mr. Atta-ur-Rehman, S.I (legal) alongwith Mr. Ziaullah, Government Pleader for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on application on 27.07.2017 before D.B.



(Ahmad Hassan)
Member




(Muhammad Amin Khan Kundi)
Member

27.07.2017

Counsel for the appellant and Asst: AG alongwith Mr. Atta ur Rehman, S.I for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 18.08.2017 before D.B.



(Ahmad Hassan)
Member



(M. Hamid Mughal)
Member

26.08.2015

Petitioner in person and Mr. Muhammad Ghani, S.I (legal) alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for reply and arguments on 24.11.2015 before S.B.


Chairman

24.11.2015

Brother of the petitioner and Mr. Muhammad Ghani, S.I alongwith Addl: A.G for respondents present. Reply submitted. To come up for arguments before D.B on 13.4.2016.


Chairman

13.04.2016

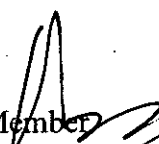
Clerk to counsel for the appellant and Mr. Muhammad Ghani, S.I alongwith Mr. Ziaullah, GP for respondents present. Clerk to counsel for the appellant requested for adjournment as counsel for the appellant is not available today in Tribunal. To come up for arguments on application on 16.8.16


Member


Member

16.08.2016

Applicant in persona and Mr Muhammad Ghani, SI alongwith Mr. Ziaullah, GP for respondent present. Applicant requested for adjournment as his counsel is not available. To come up for arguments on application on 12.12.2016.






Member


Member

FORM OF ORDER SHEET

Court of _____

Review Petition No. 57 /2015

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02/06/2015	<p>The Review Petition submitted by Mr. Muhammad Karim through Khanzada Ajmal Zeb Khan Advocate may be entered in the relevant Register and put up to the Court for proper order please:</p> <p style="text-align: right;"> REGISTRAR</p>
2-	5-6-15	<p>This Review Petition be put up before S. Bench on <u>09-06-2015</u></p> <p style="text-align: right;"> CHAIRMAN</p>
3	09.06.2015	<p>Petitioner with counsel present. Notice to respondents be issued for 23.6.2015 before S.B. Record be also requisitioned for the date fixed.</p> <p style="text-align: right;"> Chairman</p>
4	23.06.2015	<p>Petitioner in person and Addl: A.G for respondents present. To come up for reply and arguments on 26.8.2015 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1057/2014

Date of Institution ...11.08.2014

Date of Decision ... 11.03 .2019

Muhamamd Karim S/o Fazal Rahim R/o Naray Kandar, Fazalabad, Post Office
Khadi Killi, Tehsil Takht Bhai, District Mardan. Sepoy no. FC-2835 Dist: Mardan.
... (Appellant)

VERSUS

D.I.G Mardan Region-I, Mardan and two others. ... (Respondents)

ARBAB SAIF UL KAMAL,
Advocate

--- For appellant.

MR. MUHAMMAD JAN
Deputy District Attorney

--- For respondents.

MR. AHMAD HASSAN,
MR. HAMID FAROOQ DURRANI

--- MEMBER(Executive)
--- CHAIRMAN

JUDGMENT

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

ARGUMENTS

2. Learned counsel for the appellant argued that on the basis of ex-parte disciplinary proceedings, he was awarded major penalty of dismissal from service w.e.f. 03.11.2013 vide impugned order dated 07.01.2014. He filed departmental appeal, which was dismissed on 08.07.2014, hence, the present service appeal. The appellant fell ill seriously and was advised bed rest by the doctor. Record of medical prescriptions is annexed with the service appeal. As the appellant was not associated with the enquiry proceedings and mandatory provisions of law/rules

were flouted by the respondents. Show cause notice was not served on the appellant which is a serious violation of the prescribed procedure duly backed by the numerous judgments of the superior courts which rendered the ensuing proceedings as illegal/unlawful. Opportunity of personal hearing before passing of impugned order was a basic requirement of rules was also not observed, hence, these proceedings lacked the backing of law/rules. Reliance was placed on case law reported as 1987 PLC (C.S) 335, 2012 SCMR 165, 2006 SCMR 434 and 2008 SCMR 214.

3. On the other hand learned Deputy District Attorney argued that the appellant remained willfully absent from duty without permission of the competent authority. He failed to adopt proper procedure of submitting proper application for grant of medical leave duly supported by medical certificate. Punishment was awarded to the appellant after fulfillment of codal formalities.

CONCLUSION

4. The appellant was proceeded departmentally and thereafter major penalty of dismissal from service was awarded to him vide impugned order dated 07.01.2014. It would not be out of place to mention here that the said proceedings were conducted at the back of the appellant. Total period of absence comes to fifty eight days. The appellant fell ill and was unable to submit application for grant of medical leave, however, medical prescriptions etc are available on the case file and those in the absence of proper verification cannot be termed as fake/bogus. On the strength of 2008 SCMR 214, wherein it was held that availing of medical leave

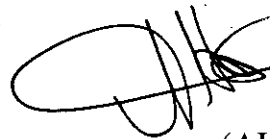
without permission could not be considered an act of gross misconduct entailing major penalty of dismissal from service.

5. In addition to above mandatory requirements of rules pertaining to issuance of show cause notice and opportunity of personal hearing were violated, hence, entire subsequent proceedings were illegal and unlawful. It also deprived the appellant to submit proper defense which was his basic fundamental right under Article-4 and 10-A of the Constitution of the Islamic Republic of Pakistan 1973.

6. As a sequel to above, the appeal is accepted, impugned order dated 07.01.2014 and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry within a period of sixty days after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. The appeal is disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.



(HAMID FAROOQ DURRANI)
CHAIRMAN



(AHMAD HASSAN)
MEMBER.

ANNOUNCED
11.03.2019

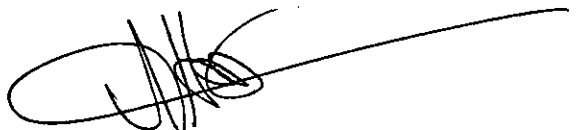
Order

11.03.2019


Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Atta Ur Rehman, SI (Legal) for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is accepted, impugned order dated 07.01.2014 and the appellant is reinstated in service. The respondents are directed to conduct de-novo enquiry within a period of sixty days after the date of receipt of this judgment. The issue of back benefits shall be subject to the outcome of the de-novo enquiry. The appeal is disposed off accordingly. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
11.03.2019



(Ahmad Hassan)
Member

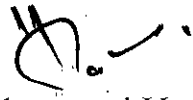


(Hamid Farooq Durrani)
Chairman

05.10.2018

Mr. Arbab Saiful Kamal Advocate submitted wakalat nama in favor of appellant. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Being freshly engaged, learned counsel for appellant seeks adjournment. Adjourned. To come up for arguments on 05.11.2018 before D.B.


(Hussain Shah)
Member


(Muhammad Hamid Mughal)
Member

05.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 31.12.2018.


READER

28.12.2018

Miss Uzma Syed, Advocate junior to counsel for appellant and Addl. AG alongwith Attaur Rahman, S.I(Legal) for the respondents present.


Rejoinder on behalf of the appellant has been submitted which is placed on file. To come up for arguments on 13.03.2019 before the D.B.


Member


Chairman

10.04.2018

Counsel for the appellant and Mr. Ziaullah, DDA for respondents present. Rejoinder submitted. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 20.06.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

20.06.2018


Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Granted. To come up for arguments on 20.07.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

20.07.2018

Due to engagement of the undersigned in judicial proceeding before S.B further proceeding in the case in hand could not be conducted. To come on 12.09.2018 ^{before} D.B.


Member (J)

12.09.2018


Since 12 September 2018 has been declared as public holiday on account of Muharam Ul Haram. Therefore, the case is adjourned. To come up for the same on

5-10-18


Reader


13.11.2017

Appellant in person present. Mr. Kabir Ullah Khattak, Addl: Advocate General along with Mr. Atta-ur-Rahman, ASI for the respondents present. Written reply not submitted. Requested for further adjournment. Adjourned. To come up for written reply/comments on 04.12.2017 before S.B.


(Gul Zeb Khan)
Member

04.12.2017


Appellant in person present. Mr. ~~Riaz Paindak~~ ~~Khel, Assists~~ Advocate General Atta-ur-Rahman, SI for respondents present. Written reply submitted. To come up for rejoinder and arguments on 12.02.2018 before D.B.


(Gul Zeb Khan)
Member (E)

12.02.2018

Appellant in person present. Mr. Riaz Paindakhel, Assistant AG for the respondent present. Counsel for the appellant is not in attendance due to general strike of the bar. To come up for rejoinder and arguments on 10.04.2018 before D.B.


Member


Chairman

1

Review Petition No. 57/2015
in Appeal No. 1057/2014.
Muhammed Karim vs Govt

12.10.2016

Counsel for the petitioner and Mr. Muhammad Jan, Deputy District Attorney alongwith Attaur Rahman, S.I (Legal) for the respondents present. Arguments heard and record perused.

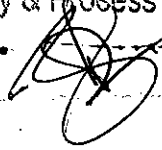
This is a review petition against the order dated 28.5.2015 whereby the service appeal of the petitioner was dismissed under Rule 10 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 due to non deposit of process fee and security.

The learned counsel for the appellant argued that this Tribunal has the jurisdiction to review its earlier order and in this regard he relied upon two judgments reported as 2011-SCMR-1410 and 2012 PLC (C.S) 793.

On the other hand, the learned District Attorney argued that there is no power of Review with this Tribunal in view of judgment reported as 2004-PLC(C.S)527.

The present petition has been filed by the petitioner for restoration of appeal dismissed on 28.05.2015 for non deposit of security and process fee. This Tribunal is afraid that the learned counsel for the petitioner should have applied for the restoration of the appeal dismissed for non deposit of security and not for the review of the said order. Without discussing merit of power of review of this Tribunal the Tribunal has the jurisdiction to restore the appeal in exercise of powers conferred under Order IX Rule 2 read with Rule 4 of the Code of Civil Procedure, 1908. The reason is that the Code of Civil Procedure is applicable to the proceedings of this Tribunal in view of Section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. The jurisprudential principle of application of general procedural Code is that when special statute provides a procedure then general procedure is not to be followed. But when special statute is silent about any procedure then general procedure shall come into play. If we go through the Service Tribunal Act, 1974 and rules made

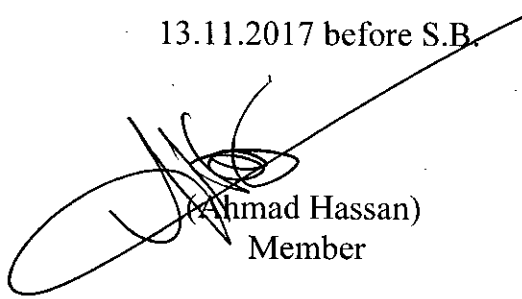
Appellant Deposited
Security & Process Fee

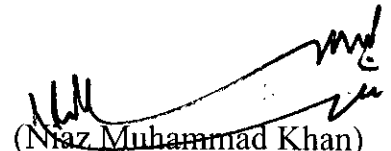


there under there is no provision for restoration of an appeal dismissed for non deposit of security and process fee. In such event this Tribunal has no other option but to resort to the Order IX mentioned above.

The period of limitation for such application is 30 days under Article 163 of the Limitation Act. In the ends of justice this Tribunal converts the present review petition into petition under Rule 4 of Order IX of the Code of Civil Procedure, 1908.

Now this Tribunal is to see whether sufficient cause has been shown by the petitioner for setting aside the dismissal order dated 28.05.2015. In this regard the learned counsel for the petitioner referred to an FIR dated 28.3.2015 registered in Police Station Saru Shah, District, Mardan in which the present petitioner was complainant and was injured and remained in hospital right from 28.03.2015 to 30.3.2015. The order for deposit of security was made by this Tribunal on 25.3.2015 and he was asked to deposit the security and process fee within 10 days but during these 10 days he met an accident and was admitted in hospital. The present petition for restoration having been filed within 30 days of the order of dismissal is also within time. The same is accepted and the order of dismissal dated 28.05.2015 is set aside. The appeal may be entered in the relevant register on its old number and the appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 13.11.2017 before S.B.


(Ahmad Hassan)
Member


(Niaz Muhammad Khan)
Chairman

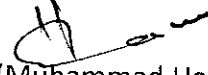
ANNOUNCED
12.10.2017

18.08.2017

Appellant in person present. Mr. Atta-ur-Rehman, S.I alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 12.10.2017 before D.B.



(Muhammad Amin Khan Kundi)
Member (J)



(Muhammad Hamid Mughal)
Member (J)

12.12.2016

Since 12th December, 2016 has been declared as a public holiday an account of 12th Rabi-ul-awal. Case is adjourned to 11.04.2017 before D.B.



Reader

11.04.2017

Counsel for the appellant present. Mr. Atta-ur-Rehman, S.I (legal) alongwith Mr. Ziaullah, Government Pleader for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on application on 27.07.2017 before D.B.



(Ahmad Hassan)
Member




(Muhammad Amin Khan Kundi)
Member

27.07.2017

Counsel for the appellant and Asst: AG alongwith Mr. Atta ur Rehman, S.I for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 18.08.2017 before D.B.



(Ahmad Hassan)
Member



(M. Hamid Mughal)
Member

26.08.2015

Petitioner in person and Mr. Muhammad Ghani, S.I (legal) alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for reply and arguments on 24.11.2015 before S.B.


Chairman

24.11.2015

Brother of the petitioner and Mr. Muhammad Ghani, S.I alongwith Addl: A.G for respondents present. Reply submitted. To come up for arguments before D.B on 13.4.2016.


Chairman

13.04.2016


Clerk to counsel for the appellant and Mr. Muhammad Ghani, S.I alongwith Mr. Ziaullah, GP for respondents present. Clerk to counsel for the appellant requested for adjournment as counsel for the appellant is not available today in Tribunal. To come up for arguments on application on 16.8.16.


Member


Member

16.08.2016

Applicant in persona and Mr Muhammad Ghani, SI alongwith Mr. Ziaullah, GP for respondent present. Applicant requested for adjournment as his counsel is not available. To come up for arguments on application on 12.12.2016.






Member


Member

FORM OF ORDER SHEET

Court of _____

Review Petition No. 57 /2015

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02/06/2015	<p style="text-align: center;">The Review Petition submitted by Mr. Muhammad Karim through Khanzada Ajmal Zeb Khan Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	5-6-15	<p style="text-align: center;">This Review Petition be put up before S. Bench on <u>09-06-2015</u></p> <p style="text-align: right;"> CHAIRMAN</p>
3	09.06.2015	<p style="text-align: center;">Petitioner with counsel present. Notice to respondents be issued for 23.6.2015 before S.B. Record be also requisitioned for the date fixed.</p> <p style="text-align: right;"> Chairman</p>
4	23.06.2015	<p style="text-align: center;">Petitioner in person and Addl: A.G for respondents present. To come up for reply and arguments on 26.8.2015 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE CHAIRMAN SERVICE TRIBUNAL, KPK, PESHAWAR.

Review Petition no. 57/2015

N.W.F Province
Service Tribunal

Diary No. 443

Dated 2/6/15

In Ref. of Service Appeal NO. 1057/2014.

Muhammad Karim S/O Fazal Rahim R/O Naray Kandar, Fazal Abad,
Tahsil Takht Bhai District Mardan..... Petitioner.

Versus.

The D.I.G. Mardan Region NO.1, Mardan and others.... Respondents.

Review Petition against the order dated 28.5.2015
Passed by this respected Tribunal through which
appeal of the Petitioner ^{has} ~~is~~ dismissed.

— On acceptance of this review Petition the order
dated 28.5.2015 may kindly be modified/Set aside
and the appeal of the Petitioner be decided on merits
on the following grounds.

Respectfully Sheweth;-

1. That the above titled service appeal was pending before this respected Tribunal on 28.5.2015.
2. That on the previous date of hearing the Petitioner was directed to deposit the Security fees within 10 days.
3. That the Petitioner was suffering from serious disease and injured condition was not able to attend this respected Tribunal and ^{is} permanent resident of Khadi Killi District Mardan, further submitted that the Petitioner was hit, injured and ^{is} ~~is~~ Compl't; in case FIR NO. 58, Dated 28.03.2015 U/S 324 PPC P.S. Saro Shah, District Mardan. (Copy of the FIR is annexed).
4. That the absence of the Petitioner was not intentional but was due to the reasons ^{as} mentioned above, therefore, the Order dated 28.5.2015 of this respected Tribunal could not ~~be~~ Complied due to the illness of the Petitioner / Appellant.
5. That the order dated 28.05.2015 passed by this respected Tribunal requires to be modified and the Petitioner be given

an opportunity to deposit the Security fees and to decide the appeal of the Petitioner on merits, ^{as} ~~for~~ natural justice.

It is, therefore, humbly requested that the order dated 28.05.2015 passed by this respected Tribunal may kindly be reviewed/ Modified/set aside, and the Petitioner be allowed to deposit the Security fees, and the service appeal of the Petitioner ^{may kindly} be decided on its merits accoringly ^{pl}.

Handwritten signature and notes:
فکریم
Amir
22/6/15

Dated 02.06.2015/

Through:- Khazada Ajmal Zeb Khan,
Advocate Supreme Court
of Pakistan at Peshawar.

Affidavit.

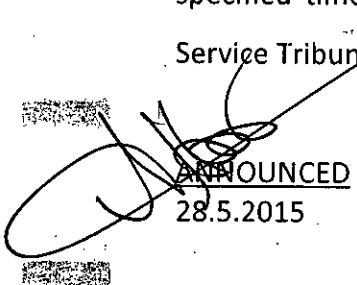
I; Muhammad Karim S/O Fazal Rahim R/O Narai Kandar Fazli Abad, Tehsil Takht Bhai District Mardan, do hereby solemnly affirm and declare on Oath that the contents of this review Petition is true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.

Handwritten signatures and notes:
مصدق
فکریم
Amir
22/6/15

Handwritten notes and stamp:
فکریم
Deponent.
16102-758190-5
شماره پرونده
26.05

28.05.2015

Appellant not in attendance. Add A.G for respondents present.
Appellant has failed to deposit security and process fee within the
specified time as such the appeal is dismissed under Rule 10 of KPK
Service Tribunal Rules, 1974. File be consigned to the record.


ANNOUNCED
28.5.2015


Chairman
28.05.15

6.
25.02.2015

Appellant absent though present on the previous date. Let notice be issued to the counsel for the appellant for preliminary hearing for 25.03.2015 before S.B.


Chairman.

7.
25.03.2015

Counsel for the appellant present. Learned counsel for the appellant argued that was serving as Constable when dismissed from service vide impugned order dated 07.01.2014 on the ground of wilful absence from duty against which he preferred departmental appeal which was rejected vide order dated 08.07.2014 and hence the present service appeal on 11.08.2014.

That the appellant was sick and as such his absence was not wilful and moreover, the enquiry was conducted in the prescribed manners.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 28.05.2015 before S.B.


Chairman

3.
Reader Note:

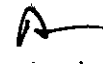
10.11.2014

Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 14.01.2015 for the same.


Reader

6.
14.01.2015

Appellant in person present, and requested for adjournment due to pre-occupation of learned counsel for the appellant in the Islamabad High Court Islamabad. Request accepted. To come up for preliminary hearing on 10.02.2015.


Member

5.
10.02.2015


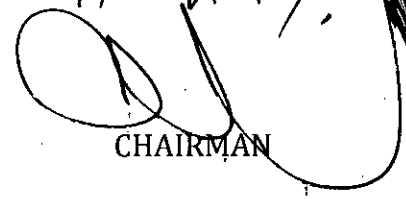
Appellant in person present. Counsel for the appellant is not in attendance due to strike of the Bar. Adjourned for preliminary hearing before S.B to 25.02.2015.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1057/2014

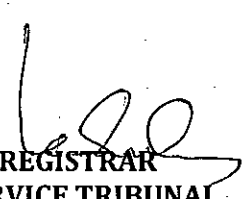
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	19/08/2014	<p>The appeal of Mr. Muhammad Karim resubmitted today by Mr. Khanzada Ajmal Zeb Khan Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	20-8-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>11-11-2014</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Muhammad Karim son of Fazal Rahim FC No. 2835 Distt. Mardan received today i.e. on 11.08.2014 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Law under which appeal is filed is not mentioned.
- 2- 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.
- 3- Copy of departmental appeal is not attached with the appeal which may be placed on it.

No. 1197/S.T,

Dt. 12/8/2014.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

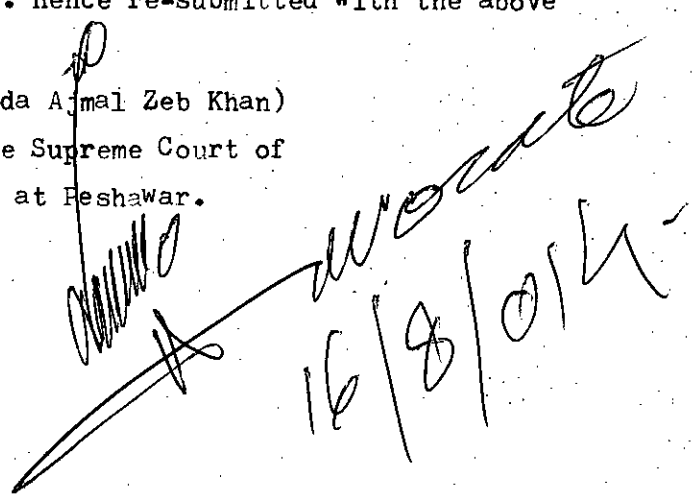
Mr. Khanzada Ajmal Zeb Khan Adv. Pesh.

16.08.2014.

Re-submitted with parawise reply regarding the Objections.

1. The appeal is filed as per Section 4 of the Service Tribunal Act(NWFP). 1975.
2. The Petitioner has been condemned unheard therefore, the copies of charge sheet, statement of allegations, Show Cause Notice, Inquiry report, and replies are not supplied to the Petitioner for the reason that the Petitioner never joined the entire inquiry proceedings and the Petitioner is condemned unheard. Though the Petitioner made requests to competent authorities for the supply of the record but they refused verbally to provide the copies to the Petitioner.(Affidavit is attached) *on page 4/A.*
3. That the Petitioner has submitted an application for supply of copy of the departmental appeal but till date the copies of the Departmental appeal is not supplied to the Petitioner. (Copy of the application is attached at page 5/A with the main appeal.). Hence re-submitted with the above submissions.

(Khanzada Ajmal Zeb Khan)
Advocate Supreme Court of
Pakistan at Peshawar.


16/8/14

Appeal no. 1057/2014

Petition NO. 1057 /2014.

Muhammad KarimVersus..... D.I.G. Mardan etc.

I N D E X.

S.NO.	Description of documents.	Annexure.	Pages.
1.	Appeal.	-	1-3.
2.	Order passed by respondent NO.2, dated 7.1.2014.	-	4.
3.	Office order NO.4777/ES,DT. 8.7.2014, by respondent NO. 1. <i>8 Reciving application</i>	-	5- <i>5/A</i>
4.	Medical Prescription alongwith Laboratyr report dated 3.11.2013.	-	6-7.
5.	-do- dated 19.11.2013.	-	8-9.
6.	:do_ dated 10.12.2013.	-	10-11. <i>11/A</i>
7.	Wakalat Nama.	-	12

Petitioner.

Through:- Khanzada Ajmal Zeb Khan,
Advocate Supreme Court of
Pakistan at Peshawar.



11/8/14

BEFORE THE CHAIRMAN, SERVICE TRIBUNAL, GOVT / KPK, PESHAWAR.

Appeal no. 1057/2014

1063
11/8/2014

Petition NO. /2014.

Muhammad Karim S/O Fazal Rahim R/O Naray Kandara Fazal Abad, Post Office Khadi Killi, Tehl Tahkht Bhai, District, Mardan, Sepo NO. FC-2835 Distt: Mardan..Petitk

— Versus —

1. D.I.G. Mardan Region- I, Mardan.
2. The District Police Officer Distt: Mardan.
3. Mian Naseeb Jan, DSP/ HQR, Mardan..... Respondents.

4 NWFP(S.T.A) 1974

Appeal/against the order dated 7/1/2014, OB NO.61,

District Mardan issued from the office of respondent NO.2 vide which the Petitioner has been ^{awarded} major punishment of dismissal from service, as well as departmental appeal of the Petitioner has also been rejected by respondent NO.1, vide Office order NO.4777/BS, Dated 07.07.2014 vide which the dismissal order was confirmed.

Prayer:-

On acceptance of this appeal both the above mentioned Orders may kindly be set aside and the Petitioner be re-instated in services with all back benefits.

Respectfully Sheweth:-

1. That the Post of Constables were being advertised in the year-2009, the Petitioner was accordingly Selected/appointed as a Constable NO. FC-2835 in the year 2009 at District Police ;Mardan.

That during the service tenure the Petitioner suffered due to serious disease and was advised bed rest by the Medical Officer on 3.11.2013 for two weeks, and thereafter the Petitioner was admitted in the Hospital on 19.11.2013 and after Medical Treatment the Petitioner was again advised by Medical Physiocien to take bed rest for one month from 10.12.2013 all the Medical discriptions/Slips are appended as page wise for perusal.

3. That the Petitioner accordingly sent the all Medical Descript

11/8/14
2/

19/8/14

to the concerned Police quarters at District Mardan, but the Medical Descriptions were not considered by the competent authority and the Petitioner has been marked as absent since 3.11.2013 vide daily Dairy NO.11, dated 3.11.2013 Police Lines, Mardan. and 58 days has been shown as absentia on the part of Petitioner.

4. That the Petitioner has also been shown as absent from duty and leave without pay ~~has~~^{is} being allowed by the Competent authority. therefore, 219 days absentia cannot be taken into consideration as deliberate absentee on the part of the Petitioner.
5. That the Petitioner was seriously ill and during absentia /illness of the Petitioner and ex parte inquiry has been conducted by the concerned authority and the Petitioner has been shown as absent by respondent NO.3 Inquiry Officer.
6. That the Petitioner has never been provided an opportunity to be heard in person and partial inquiry has been conducted by respondent NO.3 against the Petitioner.
7. That no charge sheet and Show Cause notice has been issued /served to the Petitioner to join the inquiry Proceedings regarding the charges, therefore, the entire process conducted by the respondent is absolutely against the rules and law.
8. That there is malafide at the back of above mentioned order on the part of respondent NO.3.,, there is family dispute between the petitioner and respondent NO.3; and the above mentioned order is based on ulterior motive.
9. That the Petitioner contracted 2nd marriage from the family of respondent NO.3. due to which respondent NO.3 ~~was annoyed~~ was annoyed therefore, the present circumstances are being faced by the Petitioner.
10. That the Petitioner is condemned unheated therefore, the entire proceedings is against the law and rules, the Petitioner was seriously ill therefore, ~~no~~ no misconduct on the part of Petitioner is committed.

In view of the above facts and keeping in view the above record the impugned order NO.OB-61, Dated 7.1.2014, as well as Office Order NO.4777?ES, Dated 8.7.2014 may kindly be set aside, and the Petitioner be re-instated on his post as Constable with all back benefits.

Dated 11/8/14

[Handwritten Signature]
Petitioner.

Through:-

Khazada Ajmal Zeb Khan,
Advocate Supreme Court of
Pakistan at Peshawar.



[Handwritten Signature]
11/8/14

Affidavit.

I, Muhammad Karim S/O Fazal Rahim, do hereby solemnly affirmed on Oath that the contents of this Petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.

[Handwritten Signature]
Deponent.

[Handwritten Signatures]



ORDER

It has been reported that he Constable Karim No. 2835, while posted at Police Lines, Mardan committed the following act/acts, which is are gross misconduct on his part as defined in Rules 02 (iii) of Police Rules 1975.

That Constable Karim No. 2835, while posted at Police Lines, deliberately absented himself from the lawful duty vide D.D No. 11 dafed 03.11.2013 to-date (Total 58 days). His pervious absence was 219 days, brining into effect Rule 16.9 of Police Rules.

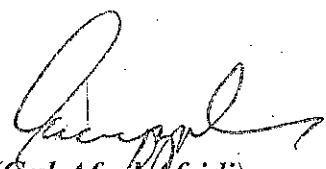
In this connection, Constable Karim No. 2835, was charge sheeted vide this office No. 237/R, date 11.12.2013 and also proceeded against departmentally through, inquiry officer Mjan Naseeb Jan DSP/HQrs Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 12/HQrs, dated 02.01.2014. that the allegation has been established against him.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Karim No. 2835, is herby awarded major punishment of dismissal from service with effect from 03.11.2013. The absence period (Total 58 days) may be treated as leave without pay.

Order announced

O.B No. 61

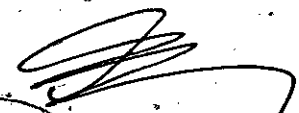
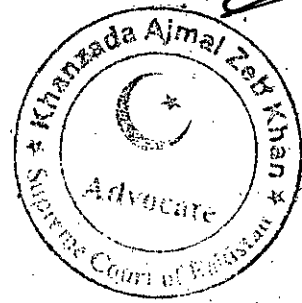
Dated 7/1/2014


(Gul Afzal Afridi)
District Police Officer,
Mardan.

No. 199-203/ dated Mardan the 07-01- /2014

Copy for information and necessary action to:-

1. The S.P Operations, Mardan. -
2. The DSP/HQrs Mardan.
3. The Pay Officer (DPO) Mardan.
4. The E.C (DPO) Mardan.
5. The OASI (DPO) Mardan.



11/8

5

ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Muhammad Kareem No. 2835 of Mardan District Police against the order of District Police Officer, Mardan wherein he was dismissed from service vide District Police Officer, Mardan OB: No. 61 dated 07.01.2014.

Brief facts of the case are that he while posted at Police Lines, Mardan deliberately absented himself from the lawful duty vide daily diary No. 11 dated 03.11.2013 on the date of dismissal. In this connection he was charge sheeted and also proceeded him against departmentally through Inquiry Officer, Mian Naseeb Jan the then Deputy Superintendent of Police Headquarters, Mardan who after fulfilling necessary process submitted his findings to District Police Officer, Mardan, that the allegations were established against him & he was dismissed from Service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 02.07.2014. He failed to justify his absence period and could not advance any ground in his defence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal, not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

ORDER ANNOUNCED.

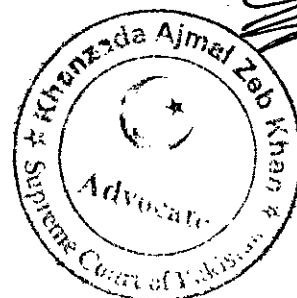
92
(MUHAMMAD SAEED)PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

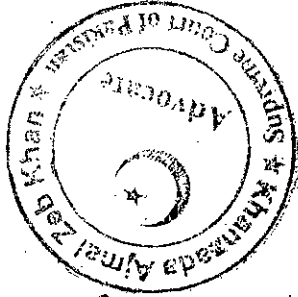
No. 4777 /ES,

Dated Mardan the 08/07 /2014.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 599/LB dated 20.06.2014. His service record is returned herewith.

(*****)





10/7/14

Yes

~~11-07-2014~~

11/7/14

Handwritten signature

Handwritten text in Urdu

8/14/14

Handwritten text in Urdu

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Page No. 5/A

6

Rs. 19/-



Lady Reading Hospital

Peshawar

Out-Patients Department

Yearly No: 2576139-3.

Date: 03-11-2013

Name: M. Karim s/o. Fazal Karim. OPD: medical.

فری ایجوینس سروں کیلئے 137 پرکال کریں۔

- Go - Fever
 - Body aches
 - Stomach pain

Investigation (Typhoid +ve)

Adv:-

- widal
- mp
- Typhidot
(1gm, 196)

Rx.

Tab. Ciproxin 500 mg
 1+1

Tab. Panadol
 1+1+1

Tab. Sensibex-2

1st ①

Advice :- Complete bed rest 2 weeks

DR. SAAD SADIQ
 - Medical Officer
 Medical (B) Ward

Dr. Saad Sb.

7

Public Help Medical Laboratory

Add: Dir Medical Tower Basement Shop No.19 Near
OPD Gate L.R.H Hospital Peshawar City. Mob:0345-9224920

Consultant

Dr. Khalil Khan
MBBS, MCPS

 NAME :- M.KARIM S/O FAZAL RAHIM DATE & TIME :- 03/11/2013
 SEX :- MALE REP NO :- 1180
 AGE :- ? Yrs REF BY :- LRH
 SPECIMEN:- BLOOD
 TEST REQUIRED MP, WIDAL, TYPHIDOT

RESULT

TO = 1/160	TH = 1/320
AO = 1/40	AH = 1/40
BO = 1/40	BH = 1/40

REMARKS:- WIDAL AGGLUTINATION TEST -----POSTIVE.

MP: _ NO MP SEEN

TYPHIDOT IgM POSTIVE (+VE)

TYPHIDOT IgG POSITIVE (+VE)

[Signature]
SIGNATURE

DAY NIGHT EMERGENCY SERVICE.

Signature: _____



Lady Reading Hospital

Peshawar

Out-Patients Department

Rs. 10/-

Yearly No: 8624531

Date: 19-11-2013

Name: M. KARIM s/o Fazal Rahim

OPD: Medical

فری ایبویٹنس سرورس کیلئے 137 پرکال کریں۔

C/o

- Fever

- Throat pain

- Abdomen distention

(Typhoid +ve)

Treatments In ward. Adv Repeat

Rx

- widal

- mp

- Typhidot

① ciproxin Infusion

① + ① bd

② Flagyle Infusion

① + ① bd

③ Inj - vosen Iv

④ Inj - bicycloi

Admitted In
M. SAAD BADIQI
DR. SAAD BADIQI
Medical Officer
Medical (Inward)
Dr. Saad Badiqi

10



Lady Reading Hospital

Peshawar

Out-Patients Department

Rs. 10/-

Yearly No: 7539164

Date: 10-12-2013

Name: محمد کرم خان

OPD: Medical.

فری ایجوینٹس سروں کیلئے 137 پرکال کریں۔

40 - High grade fever since 1 1/2 months

- Body Aches
- Throat Pain
- weakness

Typhoid since 1 1/2 months. Adv.
 already positive. Typhidot

Advised:- Complete Bed Rest

Rest for 1 month

given By

DR. SAAD SADIQI
 Medical Officer
 Medical (B) Ward
 Lady Reading Hospital

P.T.O

د. سعد سادقي
مستشار طبي
المرحلة الثانية

Rx.

Cap. Klaricid 500mg.
1 + 1
بج 10

Tab. Ponstan forte.
1 + 1
بج 6

Tab. Motilium
بج 10
بج 10

Cap. Siseba - 2
بج 1
بج 1

DR. SAAD SADIQI
Medical Officer
Medical (B) Ward
L.R.H.

Dr. Saad Sadiqi

Public Help Medical Laboratory

Add: Dir Medical Tower Basement Shop No.19 Near
OPD Gate L.R.H Hospital Peshawar City. Mob:0345-9224920

Consultant

Dr. Khalil Khan
MBBS, MCPS,

NAME :- M.KARIM S/O FAZAL RAHIM DATE & TIME :- 10/12/2013
SEX :- MALE \ REP NO :- 1180
AGE :- ? Yrs REF BY :- LRH
SPECIMEN:- BLOOD
TEST REQUIRED TYPHIDOT

RESULT

TYPHIDOT IgM POSTIVE (+VE)

TYPHIDOT IgGNEGATIVE (-VE)

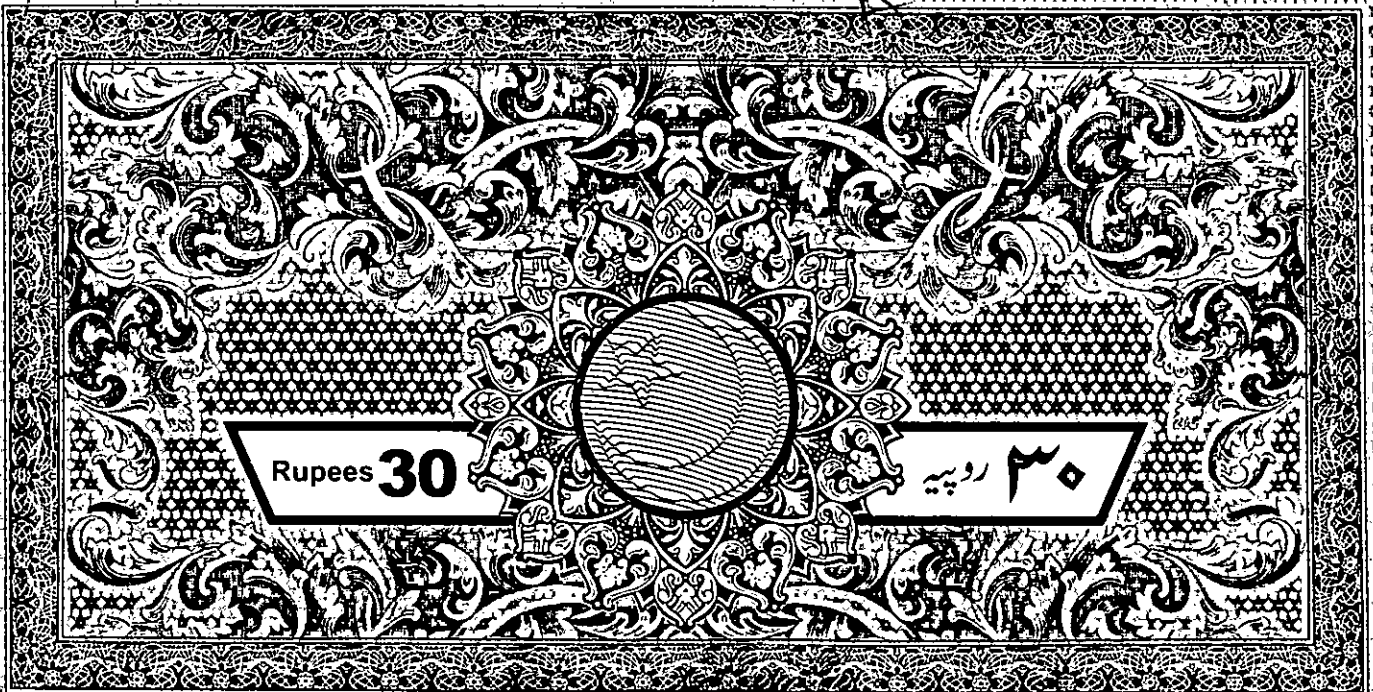
MD Khan
SIGNATURE

DAY NIGHT EMERGENCY SERVICE.

Signature: _____

نوٹ: رپورٹ میں کسی وجہ سے بھی تاخیر ہو سکتی ہے

24 گھنٹے ایمرجنسی سروس



بیانِ صلح :-

کتے محمد کریم ولد فضل رحیم سابقہ پولیس کانسٹیبل بر 2835
 کتے ناٹھی کنڈرے قبیلہ رندہ مددگاروں کا ہوں۔ منہ ستر جلفا
 بکھو دینا ہوں۔ کہ میں محکمہ پولیس کے جی اے اے فرائض سے ہٹا
 حاصل کرنا چاہتا ہوں۔ انکو ان کے کاروبار میں ہٹا کر دینا چاہتا ہوں۔
 کہیں جی اے اے فرائض سے منہ ستر کو جملہ ایک رو دینے سے
 رکھنا ہے۔ اس کے بعد منہ ستر سے جملہ ایک رو دینے سے
 کاروبار سے ملنے میں نہیں آئے۔ بلکہ وہ از میں منہ ستر سے
 نکلیں اور اس کے ساتھ منہ ستر سے جملہ ایک رو دینے سے
 جو منہ ستر سے جملہ ایک رو دینے سے۔ اس کے بعد منہ ستر سے
 منہ ستر سے جملہ ایک رو دینے سے۔

16/04/08

7584390-5

ATTESTED



محمد کریم ولد فضل رحیم سابقہ پولیس کانسٹیبل بر 2835
 محمد کریم

Handwritten signature

16 2
164

13
PHAN T. H. S.

Handwritten signature

RECEIVED
JAN 23 1988
FBI
MEMPHIS

C
کوری

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1057/2014.

Muhammad Karim s/o Fazal Rahim r/o Naray Kandar, Fazal Abad, Tehsil Takht Bhai District
Mardan.....Appellant.

VERSUS

The District Police Officer Mardan &
others.....Respondents.

INDEX

S. No.	Description of Documents	Annexure	Pages.
1.	Written Reply.	----	1-2
2.	Affidavit.	----	3
3.	Copies of Red/bad Entries	A	6
4.	Copy of Police Rules 19.6, 1934,	B	7
5.	Copy of rejection order	C	8
6.	Copy of Charge Sheet Inquiry	D-E	11
7.	Copy of Authority Letter.	----	12

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1057/2014.

Muhammad Karim s/o Fazal Rahim r/o Naray Kandar, Fazal Abad, Tehsil Takht Bhai District
Mardan.....Appellant.

VERSUS

The District Police Officer Mardan &
others.....Respondents.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-


1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder and mis-joinder of necessary parties.


REPLY ON FACTS:-


1. Pertains to record, hence, no comments.
2. Incorrect. The appellant has deliberately absented from duty and this fact could be verified from his previous absence record. Besides, the medical prescriptions, presented now, could not be relied upon for reasons: **Firstly:** It was required to have been presented, through either person of his family, at the time of his illness or at least during inquiry proceedings. **Secondly:** There is proper procedure for availing leave, medical or casual, from the competent authority. The appellant, however, did not bother even to submit a simple application for leave, proving his disinterest in service. **(Copies of red entries are attached as Annexure-A)**
3. Incorrect & baseless. The medical/rest prescriptions could easily be availed by anyone from private clinics or elsewhere and therefore, cannot be relied upon particularly at such belated stage where there is no point of return to the departmental proceedings.
4. Correct as appellant's previous record speak of against him, wherein, he has been found guilty of misconduct under rule 16.9 Police Rules, 1934 as well as Police Rules, 1975. **Besides,** penalty of 'leave without pay' is based on the principle of "No Work No Pay", therefore, the appellant do not deserve to be paid for the period he did not perform duty. **(Copy of Police Rules 16.9, 1934 is attached as Annexure-B)**
5. Incorrect. The appellant has presented fake ground of illness with the hope to earn this tribunal's sympathies. **Further,** the appellant has been proceeded against departmentally as per rules/law, hence, denied.
6. Incorrect. All codal formalities has been complied with by providing opportunity of defence at all departmental forums of appeal. **(Copy of appeal rejection order by DIG Mardan is attached as Annexure-C).**
7. Incorrect. All codal formalities has been complied with. **(Copy of Charge Sheet & Inquiry are attached as Annexure-D & E)**
8. Incorrect and absolutely baseless. This Honourable Tribunal may imagine/observe malafide and ulterior mind of the appellant by passing such statement against respondent No. 03.
9. Incorrect and baseless. The appellant has been punished for misconduct he committed and this fact could be verified from his service record.
10. Incorrect, hence, denied.

PRAYER:-

It is, therefore, prayed that the appeal of appellant being devoid of merits and based on illegal & immoral grounds may be dismissed.


**Deputy Inspector General of Police,
Mardan Region-I, Mardan**
(Respondent No. 01)


**District Police Officer,
Mardan**
(Respondent No. 02)


**Mian Naseeb Jan,
The then DSP/HQrs: Mardan**
(Respondent No. 03)

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

Service Appeal No. 1057/2014.

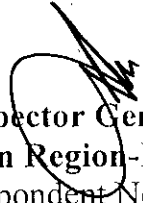
Muhammad Karim s/o Fazal Rahim r/o Naray Kandar, Fazal Abad, Tehsil Takht Bhai District
Mardan.....Appellant.


VERSUS


The District Police Officer Mardan &
others.....Respondents.

COUNTER AFFIDAVIT

We, the respondent do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.


**Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 01)**


**District Police Officer,
Mardan
(Respondent No. 02)**


**Mian Naseeb Jan,
The then DSP/HQrs: Mardan
(Respondent No. 03)**

15 $\frac{85}{10-1-12}$ E/Leave - $\frac{DPO}{MR}$

8 $\frac{671}{5-3-12}$ Leave w/o pay - $\frac{DPO}{MR}$

3 $\frac{1295}{24-4-12}$ do - $\frac{DPO}{MR}$

7 $\frac{2077}{23-7-12}$ do - $\frac{DPO}{MR}$

2 $\frac{2342}{15-8-12}$ do - $\frac{DPO}{MR}$

7 $\frac{2343}{16-8-12}$ do - $\frac{DPO}{MR}$

2 $\frac{2345}{16-8-12}$ do - $\frac{DPO}{MR}$

119 $\frac{667}{1-3-13}$ do - $\frac{DPO}{MR}$

16. LEAVE, ABSENCE AND BREAKS IN SERVICE.
 All Periods not counting as "approved service" to be entered in red ink.

1.		2.			3.	4.
Date		Extent			No. Of District Order	Description of leave i.e privilege hospital, sick leave or of absence, or forfeiture of approved service.
To	Years	Months	Days			
			(5)	581 13-1-10		Leave w/o pay DPO/MR
			(2)	3126 16-8-10		do DPO/MR
			(10)	3367 1-9-10		M-leave DPO/MR
			(10)	3939 6-10-10		Leave w/o pay- DPO/MR
			(2)	4344 10-11-10		do DPO/MR
			(1)	364 21-1-11		do DPO/MR
			(7)	1402 9-9-11		do DPO/MR
			(3)	1600 22-4-11		do DPO/MR
			(10)	2255 8-6-11		do DPO/MR
			(1)	2353 18-6-11		do DPO/MR
			(15)	3854 25-10-11		do DPO/MR
			(24)	4320 22-12-11		do DPO/MR

15. CENSURES AND PUNISHMENTS.

Fined Rs. 500/- wale Pranicpal RTW

Manshara No-53 dt. 20-1-2010

Ⓜ

OB No-501

~

DPo/MR

dt-13-2-2010

Fined Rs: 200/- for his

Absence -

OB No: 802

DPo/MR

18-3-013

~

character roll of any officer whom he is not empowered under Rule 16.12 (2) to punish.

(iii) A District Magistrate is authorized, subject to the limitations prescribed in clause (iv) below, to record a censure in the character roll of any enrolled police officer.

(iv) A censure, whether recorded by a District Magistrate or a police officer, is required to be confined to facts and deductions from such facts. Statements or expressions of opinion amounting to charges of a kind which, if proved, would involve a major punishment shall not be so recorded. Such statements should form the basis of a formal enquiry at which the officer against whom they are made has the opportunity of making his defence. Their record in character rolls *ex-parte* is prohibited.

16.9. Maintenance of discipline: Discipline shall be maintained by patient and continuous instruction, combined with firm, vigorous and sustained control. Superintendents and officers subordinates to them having power to punish shall endeavour to check neglect and misconduct in their subordinates which appear to be due to ignorance or inattention and not to wilful disobedience, by clear instruction and careful explanation. They shall, as far as possible, avoid the constant infliction of minor punishments, and shall, in all cases in which they inflict punishment, pass their orders after full consideration of the facts and circumstances of the case and of the character and position of the officer punished. If the previous record of an officer, against whom charges have been proved, indicates continued misconduct, proving incorrigibility and complete unfitness for police service, the punishment awarded will ordinarily be dismissal from service. When complete unfitness for police service is not, but unfitness for a particular rank is, established, the punishment will normally be reduction.

16.10. Punishment of officers officiating in higher rank: The misconduct of a police officer must be judged in relation to the position he was occupying at the time when such misconduct is alleged to have taken place. For purposes of punishment, therefore, an officer officiating in a higher rank shall be treated as belonging to that rank. This rule shall not prevent an officer being reverted to his substantive rank on being placed under suspension.

16.11. Prosecution under section 29, Act V of 1861: When a disciplinary offence on the part of a police officer can be adequately punished departmentally such officer shall not be prosecuted under Section 29 of the Police Act, and no upper subordinate shall be prosecuted under that section without the sanction of the Deputy Inspector-General.

16.12. Judicial prosecution: When a police officer is departmentally punished for an offence committed in his public capacity for which he is liable to be prosecuted criminally, the Deputy Inspector-General is required to satisfy himself that the course adopted was expedient in the interests of the administration, and may order a criminal prosecution if he considers it desirable.

16.13. Magisterial procedure: (1) All cases against police officers are required by standing instructions of the High Court to be tried by magistrates of the 1st class. Petty charges in which there is no probability of the District Magistrate who is the appellate authority, having been required to advise in his executive capacity, may, however, be

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ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Muhammad Kareem No. 2835 of Mardan District Police against the order of District Police Officer, Mardan wherein he was dismissed from service vide District Police Officer, Mardan OB: No. 61 dated 07.01.2014.

Brief facts of the case are that he while posted at Police Lines, Mardan deliberately absented himself from the lawful duty vide daily diary No. 11 dated 03.11.2013 to the date of dismissal. In this connection he was charge sheeted and also proceeded him against departmentally through Inquiry Officer, Mian Naseeb Jan the then Deputy Superintendent of Police Headquarter, Mardan who after fulfilling necessary process submitted his findings to District Police Officer, Mardan, that the allegations were established against him & he was dismissed from Service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 02.07.2014. He failed to justify his absence period and could not advance any ground in his defence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal, not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

ORDER ANNOUNCED.

(Signature)
(MUHAMMAD SAEED)PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

No. 4777 /ES, Dated Mardan the 08 / 07 /2014.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 599/LB dated 20.06.2014. His service record is returned herewith.

(*****)



835
PC
(Handwritten signature)

(Handwritten signature)

4

POLICE DEPARTMENT

MARDAN DISTRICT

ORDER

It has been reported that he Constable Karim No. 2835, while posted at Police Lines, Mardan committed the following act/acts, which is are gross misconduct on his part as defined in Rules 02 (iii) of Police Rules 1975.

That Constable Karim No. 2835, while posted at Police Lines, deliberately absented himself from the lawful duty vide D.D No. 11 dafed 03.11.2013 to-date (Total 58 days). His pervious absence was 219 days, brining into effect Rule 16.9 of Police Rules.

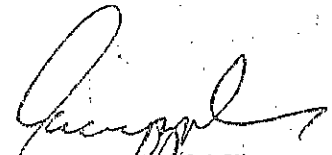
In this connection, Constable Karim No. 2835, was charge sheeted vide this office No. 237/R, date 11.12.2013 and also proceeded against departmentally through, inquiry officer Mjan Naseeb Jan DSP/HQrs Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 12/HQrs, dated 02.01.2014, that the allegation has been established against him.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Karim No. 2835, is herby awarded major punishment of dismissal from service with effect from 03.11.2013. The absence period (Total 58 days) may be treated as leave without pay.

Order announced

O.B No. 61

Dated 7/1 /2014

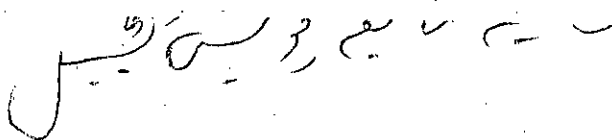
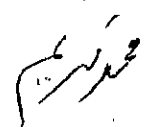

(Gul Afzal Afridi)
District Police Officer,
Mardan.

No. 199-203 dated Mardan the 07-01 /2014

Copy for information and necessary action to:-

1. The S.P Operations, Mardan.
2. The DSP/HQrs Mardan.
3. The Pay Officer (DPO) Mardan.
4. The E.C (DPO) Mardan.
5. The OASI (DPO) Mardan.



835
PC



OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 237 /R/D.A-P.R-1975.

Dated 11-12- /2013

DISCIPLINARY ACTION UNDER NWFP POLICE RULES - 1975

I, Gul Afzal Khan District Police Officer, Mardan as competent authority am of the opinion that Constable Kareem No. 2835 himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of NWFP Police Rules 1975.

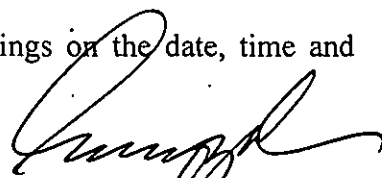
STATEMENT OF ALLEGATIONS

That Constable Kareem No. 2835, while posted at Police Lines, deliberately absented himself from the lawful duty vide DD No. 11 dated 03.11.2013 to-date without any leave / permission of the competent authority. His pay was stopped. He is recommended for departmental action by the DSP/HQrs, Mardan vide his office letter No. 538, dated 28.11.2013.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations Mian Nasib Jan Khan DSP/HQrs: Mardan is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(GUL AFZAL KHAN)
District Police Officer,
Mardan.

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN.

No. 237 /R, dated Mardan the 11-12- /2013.

Copy of above is forwarded to the:

1. DSP/HQrs: Mardan for initiating proceedings against the accused official / Officer namely Constable Kareem No. 2835 Police Rules, 1975.
2. Constable Kareem No. 2835, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

***** !!! *****


CHARGE SHEET UNDER NWFP POLICE RULES 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority charge you **Constable Kareem No. 2835**, as follows.

That you constable, while posted at Police Lines, deliberately absented yourself from the lawful duty vide 11 dated 03.11.2013 to-date without any leave / permission of the competent authority. Your pay was stopped and you are recommended for departmental action by the DSP/HQrs, Mardan vide his office letter No. 538, dated 28.11.2013.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the NWFP Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the NWFP Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in persons.


(GUL AFZAL KHAN)
District Police Officer,
Mardan.

فائنل انکوائری رپورٹ ازاں کنشیل کریم نمبر 2835 متعینہ پولیس لائن مردان

جناب عالی!

بحوالہ چارج شیٹ نمبری 237/R مورخہ 11-12-13 کنشیل کریم نمبر 2835 کے خلاف انکوائری کاغذات موصول ہو کر جسمیں کنشیل مذکورہ کے خلاف الزام لگایا گیا ہے۔ کہ وہ بحوالہ نمبر 11 روزنامہ 03-11-13 کو پولیس لائن سے غیر حاضر ہو کر تا حال غیر حاضر ہے۔

دوران انکوائری کنشیل کریم نمبر 2835 کی اطلاعاتیابی کیلئے محرر تھانہ ساڑوشاہ کو بذریعہ فون مورخہ

16-12-13 بوقت شام 0740 بجے اطلاع دی گئی۔ جو کہ ASI ثناء خوان متعینہ تھانہ ساڑوشاہ کے بیان کے مطابق

اُسے حسب الحکم مورخہ 16-12-13 کو بوقت شام 0815 بجے کنشیل مذکورہ کے بھائی کو اطلاع دے کر بابت اطلاع

پر وائے پراسے بھائی گل کریم ولد فضل رحیم سے انگوٹھا کو پیشی کے متعلق آگاہ کیا۔ لیکن کنشیل مذکورہ حاضر نہ آیا۔

کنشیل کریم نمبر 2835 کا سروس ریکارڈ طلب کرنے کے 20 Bad entries اور کوئی بھی

Good Entry نہیں پائی گئی۔ مذکورہ نے تصدیق دیا کہ 58 یوم غیر حاضر ہو کر مذکورہ سروس ریکارڈ سے اور باوجود بار بار

اطلاعیاتی کے حاضر نہ ہونا اس بات کی دلیل ہے کہ کنشیل مذکورہ نوکری کرنا نہیں چاہتا۔ اور داغدار سروس ریکارڈ سے اس

بات کا بخوبی اندازہ لگایا جاسکتا ہے۔ کہ دوران سروس مذکورہ نے 20 بار کوتاہیاں کی ہیں۔ اور ہر ایک کوتاہی پر اُسے سزا دی

گئی ہے۔ جو کہ اس بابت پولیس روز باب 16 فقرہ 9 واضح ہے۔ کہ بار بار چھوٹی چھوٹی سزائیں دینے سے محکمہ پولیس پر

برا اثر پڑتا ہے۔ اسلئے کنشیل کریم نمبر 2835 کے خلاف یکطرفہ کارروائی کرتے ہوئے بوجہ داغدار سروس ریکارڈ اور طویل

عزیر حاضر 58 یوم مورخہ 03-11-13 سے برطرف کرنے کی سفارش کی جاتی ہے۔

(میاں نصیب جان)

ڈپٹی سپرنٹنڈنٹ آف پولیس ہیڈ کوارٹر مردان

محل قطعات (10)

Approved

My

06. 01

No. 12/HC dated 02/01/2014

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

Service Appeal No. 1057/2014.

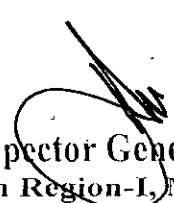
Muhammad Karim s/o Fazal Rahim r/o Naray Kandar, Fazal Abad, Tehsil Takht Bhai District
Mardan.....Appellant.


VERSUS


The District Police Officer Mardan &
others.....Respondents.

AUTHORITY LETTER.

Mr. Atta-ur-Rahman Sub-Inspector Legal Branch, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


**Deputy Inspector General of Police,
Mardan Region-I, Mardan
(Respondent No. 01)**


**District Police Officer,
Mardan
(Respondent No. 02)**


**Mian Naseeb Jan,
The then DSP/HQrs: Mardan
(Respondent No. 03)**

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

In reference Service Appeal No.1057/2014

Muhammad Karim

VERSUS

District Police Officer Mardan and others

PARA-WISE REJOINDER OF THE
COMMENTS SUBMITTED BY RESPONDENTS
ON BEHALF THE APPELLANT.

Respectfully Sheweth:

Reply to the preliminary objections:

- 1- That Para No.1 of the preliminary objections is absolutely wrong, the appellant come to this Hon'ble Court with clean hands.*
- 2- That the appellant is a Government Servant and cause of action therefore, this Para is incorrect.*
- 3- That Para No.3 of the reply is incorrect, the appellant discussed all the relevant facts and circumstances of the case.*
- 4- That departmental of the appellant is dismissed by the respondents, therefore, the present appeal is a legal*

right of the appellant, therefore, Para No.4 of the comments is incorrect.

5- That this is the first appeal to Hon'ble Tribunal of the appellant, therefore, this appeal is maintainable to this Hon'ble Tribunal and also arguable and liable to be accepted, therefore, Para No.5 of the comments is incorrect.

6- That the appellant has made respondents No,1,2 and 3 in the penal of respondents because all of the respondents acted against the appellant, therefore, no question of non-joinder and misjoinder is arises.

Reply to facts of the Comments

- 1) That Para No.1 of the comments accepted to the respondents, therefore, the respondents give no comments.
- 2) That Para No.2 of the comments is absolutely incorrect, in fact the appellant during service suffered due to serious diseases and it was advised bed rest by the competent Medical Officer for two weeks vide OPD Cheat of LRH Peshawar dated 03/11/2013, similarly the appellant is duly admitted in the Hospital LRH Peshawar on 19/11/2013 and discharge on 10/12/2013 with the advised for compete bed rest for one month by the

Medical Officer. (All the Medical Record annexed herewith for perusal). Previous absence of the appellant is considered by the respondent No.2 as leave without pay, therefore, the previous absence of the appellant cannot be considered as absence. (All the OBs No Date-wise is annexed herewith), the Medical Record of the appellant is liable to be considered at this stage because the appellant accordingly sent all the medical record alongwith application for leave through his father to the concerned quarter at Mardan but the same was not considered by the competent authority and the appellant shown as absent since 03/11/2013.

- 3) That all Medical record issued to the appellant by the Government Hospital LRH Peshawar, therefore, is liable for consideration, therefore, Para No.3 of the comments is wrong while Para No.3 of the appeal is correct.
- 4) That Para No.4 of the comments is absolutely based on malafide, hence incorrect. In fact the serious illness of the appellant is proved by the Medical Record which has been issued to the appellant by the concerned MO of the LRH Peshawar during his illness period, therefore, Para No.4 of the appeal is correct.

- 5) That Para No.5 of the comments is absolutely wrong and the appellant was admitted in the Government Hospital LRH at Peshawar, the appellant never served, never informed by the respondent No.3 regarding inquiry and ex parte inquiry is conducted in absence of the appellant and no opportunity of defence is given to the appellant, it is settled law that no one be condemned unheard.
- 6) That Para No.6 of the appeal is true and correct and admitted to the respondents, therefore, the respondents give no comments regarding Para No.6 of the appeal.
- 7) That Para No.7 of the appeal is also correct, the respondents give no comments regarding para No.7 of the appeal, hence para No.7 of the appeal is admitted to the respondents.
- 8) That Para No.8 of the appeal is correct, the respondent never rebut, Para No.8 of the appeal through comments.

9) That Para No.9 of the appeal is correct, therefore, the respondents never rebut, para No.9 of the appeal through comments.

10) That Para No.10 of the appeal is correct, therefore, the respondents never rebut this Para of the appeal through comments.

It is, therefore, requested that on acceptance of the appeal, both the impugned order, vide OB No.61 dated 07/01/2014 as well Office Order No.4777 - ES dated 08/07/2014 may kindly be set aside and the appellant be reinstated on his post with all back benefits accordingly.

Dated 10/04/2018

Appellant
Through

Khanzada Ajmal Zeb Khan
Advocate
Supreme Court of Pakistan

1

BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

In reference Service Appeal No.1057/2014

Muhammad Karim

VERSUS

District Police Officer Mardan and others

Affidavit

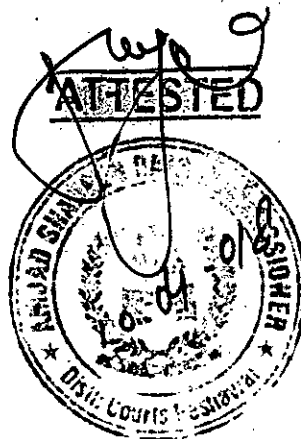
I, Muhammad Karim Son of Fazal Rahim R/o Naray Kandar, Fazal Abad, Tehsil Takht Bhai do hereby solemnly affirm and declare on oath that the contents of the accompanied rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'bel Court.

Mohel Dewa
Deponent

CNIC # 16102-7584590-5

Identified by

[Signature]
Khanzada Ajmal Zeb Khan
Advocate
Supreme Court of Pakistan



6

Lady Reading Hospital

Peshawar

Out-Patients Department

Yearly No: 2576/39-3.

Date: 03-11-2013

Name: M. Kasim So. Fazal Lalim. OPD: medical

U.F.K. 1372-03/11-2013

- Go - Fever
- Body aches
- Stomach pain

Investigation (Typhoid +ve)

ACTV:-

- widal
- mp
- Typhidot (Igm, IgG)

Rx

Tab. Ciproxin 500 mg

1+1

Tab. Panadol

1+1+1

Tab. Sersbea-2

1+1

Advice :- Complete bed rest 2 weeks

DR. SAAD SAADIKS
- Medical Officer
- Medical (B) Ward

Dr. Saad Sb.

7
Public Health Medical Laboratory

Add: Pk Medical Tower Basement Shop No. 19 Near
OPD Gate L.R.H Hospital Doshwarai City. Moh: 9345-8224920

Consultant

NAME :- M:KARIM S/O FAZAL RAHIM DATE & TIME :- 03/11/2013
SEX :- MALE REP NO :- 1180
AGE :- ? Yrs REF BY :- LRIH
SPECIMEN:- BLOOD
TEST REQUIRED MP, WIDAL, TYPHIDOT

RESULT

TO = 1/160 TH = 1/320
AO = 1/40 AH = 1/40
BO = 1/40 BH = 1/40

REMARKS:- WIDAL AGGLUTINATION TEST -----POSITIVE.

MP: NO MP SEEN

TYPHIDOT IgM POSITIVE (+VE)

TYPHIDOT IgG POSITIVE (+VE)


SIGNATURE

DAY NIGHT EMERGENCY SERVICE.

8



Lady Reading Hospital

Peshawar

Out-Patients Department

Yearly No: 8624531

Date: 19-11-2013

Name: M. KARIM s/o. Fazal Rahim

OPD: Medical

فری ایجوویشن ہرڈس کیلئے 137 پرکال کریں۔

C/O

- Fever
- Throat Pain
- Abdomen distention.

(Typhoid tve)

Treatments In ward. Adv Repeat

- widal
- mp
- Typhidot

Rx

- ① ciproxin Infusion
① + ① ad.
- ② Flagyle Infusion
① + ① ad.
- ③ Inj - vosen Jr
- ④ Inj - bicyclol.

Admitted In
M. RAO BADIQI
DR. SAJID OFFICER
Medical (B) Ward
Dr. Medical (B) H

Admitted

9

Public Health Medical Laboratory

Address: Medical Tower Basement Shop No.19 Near
Old Bus Stand, Lower City, Dhaka-1213, Bangladesh

NAME :- M.KARIM S/O FAZAL RAHIM DATE & TIME :- 19/11/2013
SEX :- MALE REP NO :- 1180
AGE :- ? Yrs REF BY :- LRIH
SPECIMEN:- BLOOD
TEST REQUIRED MP, WIDAL, TYPHIDOT

RESULT

TO = 1/160	TH = 1/160
AO = 1/40	AH = 1/40
BO = 1/40	BH = 1/40

REMARKS:- WIDAL AGGLUTINATION TEST ----- POSITIVE

MP: NO MP SEEN

TYPHIDOT IgM POSITIVE (+VE)

TYPHIDOT IgG POSITIVE (+VE)


SIGNATURE

LAY NIGHT EMERGENCY SERVICE

Signature

19/11/2013

(10)

Lady Reading Hospital

Peshawar

Out-Patients Department

Visit No: 2539164

Date: 10-12-2013

ORD: Medical

Name: [Handwritten]

U.S. No: 137 [Handwritten]

High grade fever since 1 1/2 mo.
 Body aches
 Breast pain
 weakness

Typhoid since 1 1/2 months Adv
 already positive Typhoid

advised - Complete Bed R

Rest for 1 month

Given By

DR. SAAD SADIQ
 Medical Officer
 Medical (B) Ward
 PTD

(15) $\frac{85}{10-1-12}$ E/Leave - DPO/MR

(8) $\frac{671}{5-3-12}$ Leave w/o pay - DPO/MR

(3) $\frac{1295}{24-4-12}$ do - DPO/MR

(7) $\frac{2077}{23-7-12}$ do - DPO/MR

(2) $\frac{2342}{15-8-12}$ do - DPO/MR

(7) $\frac{2343}{16-8-12}$ do - DPO/MR

(2) $\frac{2345}{16-8-12}$ do - DPO/MR

(119) $\frac{667}{1-3-13}$ do - DPO/MR

16. LEAVE, ABSENCE AND BREAKS IN SERVICE.
 All Periods not counting as "approved service" to be entered in red ink.

Date	2. Extent			3. No. Of District Order	4. Description of leave i.e privilege hospital, sick leave or of absence, or forfeiture of approved service.
	To	Years	Months		
				581	Leave w/o pay
				13-1-010	DPo/MR
				3126	do
				16-8-10	DPo/MR
				3367	M-Leave
				1-9-10	DPo/MR
				3939	Leave w/o pay
				6-10-10	DPo/MR
				4344	do
				10-11-10	DPo/MR
				364	do
				21-1-11	DPo/MR
				1402	do
				9-9-11	DPo/MR
				1600	do
				22-4-11	DPo/MR
				2255	do
				8-6-11	DPo/MR
				2353	do
				18-6-11	DPo/MR
				3854	do
				25-10-11	DPo/MR
				4320	do
				22-12-11	DPo/MR

فائل انکوائری رپورٹ ازاں کنسٹیبل کریم نمبر 2835 متعینہ پولیس لائن مردان

جناب عالی!

بحوالہ چارج شیٹ نمبری 237/R مورخہ 11-12-13 کنسٹیبل کریم نمبر 2835 کے خلاف انکوائری کاغذات موصول ہو کر جسمیں کنسٹیبل مذکورہ کے خلاف الزام لگایا گیا ہے۔ کہ وہ بحوالہ نمبر 11 روزنامہ 03-11-13 کو پولیس لائن سے غیر حاضر ہو کر تاحال غیر حاضر ہے۔

دوران انکوائری کنسٹیبل کریم نمبر 2835 کی اطلاعاتی کیلئے محرر تھانہ ساڑوشاہ کو بذریعہ فون مورخہ 16-12-13 بوقت شام 0740 بجے اطلاع دی گئی۔ جو کہ ASI ثناء خوان متعینہ تھانہ ساڑوشاہ کے بیان کے مطابق اُسے حسب الحکم مورخہ 16-12-13 کو بوقت شام 0815 بجے کنسٹیبل مذکورہ کے بھائی کو اطلاع دے کر بابت اطلاع پروانہ پر اُسکے بھائی گل کریم ولد فضل رحیم سے انگوٹھا کو پیش کے متعلق آگاہ کیا۔ لیکن کنسٹیبل مذکورہ حاضر نہ آیا۔

کنسٹیبل کریم نمبر 2835 کا سروس ریکارڈ طلب کرنے کے لئے Bad entries اور کوئی بھی

Good Entry نہیں پائی گئی۔ مذکورہ سے منسلک نمبر 58 اور 59 کے سروس ریکارڈ طلب کیے گئے۔ اور باوجود بار بار

اطلاعاتی کے حاضر نہ ہونا اس بات کی دلیل ہے کہ کنسٹیبل مذکورہ نوکری کرنا نہیں چاہتا۔ اور داغدار سروس ریکارڈ سے اس بات کا بخوبی اندازہ لگایا جاسکتا ہے۔ کہ دوران سروس مذکورہ نے 20 بار کوتاہیاں کی ہیں۔ اور ہر ایک کوتاہی پر اُسے سزا دی گئی ہے۔ جو کہ اس بابت پولیس رولز باب 16 فقرہ 9 واضح ہے۔ کہ بار بار چھوٹی سزائیں دینے سے محکمہ پولیس پر بُرا اثر پڑتا ہے۔ اسلئے کنسٹیبل کریم نمبر 2835 کے خلاف یکطرفہ کارروائی کرتے ہوئے بوجہ داغدار سروس ریکارڈ اور طویل

میں حاضر نمبر 58 مورخہ 03-11-13 سے سروس کرنے کی سزا کی جاتی ہے۔

(میاں نصیب جان)

محل قطعات (10)

ڈپٹی سپرنٹنڈنٹ آف پولیس ہیڈ کوارٹرز مردان

No. 12/Nov dated 02/01/2014

Approved

M

06. 01

TREATMENT AT HOME

Tab Naproxen 500mg

Tab Balsam D

Cup Gabbon 300mg

سوڑا کر اسے
دینے کے بعد ہر 12 گھنٹے پر
OPD میں آ کر
دن بعد ناک کے کھولائیں اور

معائنہ کیلئے، پیر، بدھ، جمعہ OPD تشریف لائیں۔
نوٹ:- ہاتھ/پاؤں کو اونچا رکھیں۔ ٹخن ٹیلا یا پیلا پڑنے کی صورت
میں کسی بھی وقت ہسپتال معائنہ کیلئے تشریف لاسکتے ہیں۔

Counter sign by
orthopaedic Surgeon

M/O Register
Signature

Clina: Press 0245-9351110

MALIBARI MEDICAL COMPLEX

MCC

ORTHOPAEDIC & TRAUMA UNIT
DISCHARGE CARD

ASSOCIATES PROFESSOR
Dr. Kifayat - Ullah
M.B.B.S., F.C.P.S (ortho)

Assistant Professor
Dr. Haziq Dad Khan
M.B.B.S., F.C.P.S (ortho)

District Orthopaedic
Trauma Surgeon / AP
Dr. Zulfiqar Durrani
M.B.B.S., M.S (ortho)

Junior Registrar:
Dr. Muhammad Shoaib
M.B.B.S., F.C.P.S-II (ortho)

SMO
Dr. Mualim Shah
M.B.B.S. MS
Dr. Asif
M.B.B.S.

Dr. Pir Alam Said
M.B.B.S., DIP (Diabetologist)

Name of Patient Mohamed Hassan

Age 27yr Sex M ADIN 354-128

Bed No. D.A 28/3/15 DIO D.D 30/3/15

Diagnosis # Distal Tibia / Fibula

Procedure _____

Address Takht Bhai

612/532

Brief History

FAI
Pain & Bleeding RT
Leg, Bury Sculpin
RT

Investigation

Wing RT TIF APV
CP
HbSAF
Anti HCV

Operation Notes

Wj Best ~~HOSPITAL~~

Wj Hove ... 1/11 SOS

Tab Sam on Pms

Tab Quibon 3am
1x OD



MARDAN MEDICAL COMPLEX

Teaching Hospital Mardan KPK

OUTPATIENTS DEPARTMENT

Muhammad Kareem

ORS 10

Name: _____ Sex: Male

Department: Orthopedic Address: Mardan

OPD No. 1150410718 Date: 08-Apr-2015

History

R/- Entered by :- WAHEEDGUL / 09:07:07 AM

Clinical Examination

ORA leg
Aand E
Change of back SL
7

Provisional Diagnosis

Ry

Investigations Required

Fo
In 2 weeks for
In 1 week
In 1 week
In 1 week
In 1 week



MARDAN MEDICAL COMPLEX

Teaching Hospital Mardan KPK

OUTPATIENTS DEPARTMENT

155

Name: _____ Sex: _____

LT Kareem

Male

Department _____ Address: _____

Orthopedic

Mardan

OPD No. _____ Date: _____

150377 R/-

08-May-2018

History

Entered by :- WAHEED GUL, 11:02:58 AM

XRT + [Signature]

Clinical Examination

Provisional Diagnosis

*Pr. Calcaneal P
[Signature]*

Investigations Required

*M
[Signature]
bca
Calcaneal
[Signature]*

[Supreme Court of Pakistan]

Present: Javed Iqbal and Tanvir Ahmed Khan, JJ

Mian GHULAM MUSTAFA and another

Versus

CHIEF CONSERVATOR OF FOREST PUNJAB and others

Civil Petitions No.3213-L and 3214-L of 2001, decided on 19th February, 2003.

(On appeal from the judgment/order dated 29-8-2001 of the Punjab Service Tribunal, Lahore, passed in Appeals Nos. 1516 and 1517 of 2000).

(a) Punjab Service Tribunals Act (IX of 1974)---

---S.4---Constitution of Pakistan (1973), Art.212(3)---Appeal before Service Tribunal---Power of review---Deletion of name of respondent (main rival in appeal) from array of respondents at request of appellant's counsel---Tribunal dismissed appeal as no relief could be granted to appellant against deleted respondent---Contention of appellant that such deletion was due to inadvertent omission, which could have been rectified by Tribunal by reviewing its order by exercising inherent jurisdiction---Validity---Such was not a case of rectification simplicitor--Such order could not be rectified without reviewing same---Power of review could not be exercised by way of discretion, unless conferred by statute---No power of review was conferred upon Service Tribunal--Such order was free from any ambiguity and indicative of the fact that such deletion was sought in a categorical manner and accordingly his name had been got deleted---Same was a gesture of goodwill shown by the appellant in favour of the respondent for reason best known to him, which could not be equated with that of an inadvertent omission--Findings of Tribunal being unexceptionable did not call for any interference---Supreme Court dismissed petition and refused leave to appeal.

(b) Review---

--- Power of review cannot be exercised by way of discretion, unless conferred upon a forum by some law or statute.

(c) Punjab Service Tribunals Act (IX of 1974)---

---Ss. 3 & 4---Exercise of power of review by Service Tribunal--Scope---No such power is conferred upon Service Tribunal as no such provision is available in the Punjab Service Tribunals Act, 1974.

Sh. Masood Akhtar, Advocate-on-Record for Petitioners.

Nemo for Respondents.

date of hearing: 19th February, 2003.

ORDER

JAVED IQBAL, J.---By this order we propose to dispose of the above-captioned petitions for leave to appeal which are directed against the common judgment dated 29-8-2001 passed by learned Punjab Service Tribunal, Lahore, whereby the appeals preferred on behalf of petitioners have been dismissed.

2. Precisely stated the facts of the case as enumerated in the Judgment impugned are to the effect that appellants claimed pro-forma promotion to the post of Sub-Divisional Forest Officer w.e.f. 23-3-1984. After hectic entreaties and running from pillar to post ultimately succeeded in their endeavour on 29-9-1990 and they were granted relief. A new cause of action accrued in their favour when one Ali Muhammad son of Umer Din, formerly arrayed as respondent No.3 stated to be much junior to the appellants was allowed promotion to BS-18 on acting charge/officiating basis on 7-5-1987 against a regular post and later on said Ali Muhammad was promoted on regular basis w.e.f. 23-6-1996. Appellant once again made various representations which were decided to be placed before the Departmental Promotion Committee who were directed to consider the same after giving hearing to parties. The Departmental Promotion Committee in its meeting convened on 9-10-1999 rejected the representations of the appellants and the decision was duly communicated to them on 29-11-1999 by respondent No.2. Appellants filed Service Appeals Nos.3561 and 3544 of 1999 which were dismissed by this Tribunal on 12-1-2000 as per-mature. Appellants thereafter moved the Chief Secretary, Government of the Punjab, on 9-2-2000 against the decision of the Departmental Promotion Committee dated 9-10-1999 which could not be decided within a period of ninety days and consequently the learned Punjab Service Tribunal was approached by means of above-captioned appeals which were dismissed vide judgment impugned, hence these petitions.

3. It is worth mentioning that the name of Ali Muhammad (respondent No.3) was got deleted by the petitioners by means of order dated 14-11-2000 which is reproduced herein-below for ready reference:--

"Comments have been filed by respondents Nos.1 and 2 Learned counsel for the appellant requests for deletion of the name of respondents Nos.3 and 4. Learned DA has no objection. In this view of the matter, the names of respondents Nos.3 and 4 have been deleted from the list of respondents. Let the case be fixed for arguments on 18-1-2001."

4. Sh. Masood Akhtar, learned Advocate-on-Record appeared on behalf of petitioners and contended with vehemence that the order dated 14-11-2000 could have been rectified by the Punjab Service Tribunal by reviewing the same by exercising its inherent jurisdiction. It is also contended that the case of the petitioners should have been decided in accordance with law and they should not be knocked out on the basis of sheer technicalities. It is further contended that Ali Muhammad (respondent No.3) was the only necessary party and deletion of his name could be due to an inadvertent omission and at the best it could be considered a technical hurdle having no substantial bearing on the merits of the case determination whereof should be on merit which would be in the interest of justice.

5. We have carefully examined the contentions as agitated on behalf of the petitioner and perused the

...ent impugned with care and caution. We are not persuaded to agree with the prime contention of learned Advocate Supreme Court on behalf of petitioner that name of Ali Muhammad was got deleted due to an inadvertent omission as the order dated 14-11-2000 negates it which is free from any ambiguity and indicative of the fact that the deletion of the name of Ali Muhammad was sought in a categorical manner and accordingly his name was got deleted. In fact it was a gesture of goodwill shown by the petitioners in favour of Ali Muhammad for the reasons best known to them which cannot be equated to that of an inadvertent omission. It is to be noted that power of review cannot be exercised by way of discretion unless conferred upon a forum by some law or statute. No such power is conferred upon the Service Tribunal. It was not the question of rectification simpliciter because order dated 14-11-2000 could not be rectified without reviewing the same and no such review could have been made by the Service Tribunal as no such provision is available in the relevant law. This aspect of the matter has been dilated upon and decided in a comprehensive manner vide judgment impugned, relevant portion whereof is reproduced herein below for ready reference:--

"9. The next question which attracts the mind is whether in the interest of justice can I review the order dated 14-11-2000 by summoning Ali Muhammad (former respondent No.3) for hearing. In the first instance, I have no power of review; a power which has to be specifically invested in a statute and there being none, resort cannot be made. Arguments of learned counsel for the appellants that order dated 14-11-2000 was not final and therefore, in order to give hearing to Ali Muhammad (former respondent No.3), in the absence, ex parte order can always be recalled is again devoid of force. Name of Ali Muhammad (former respondent No.3) was specifically asked to be deleted and orders were accordingly passed. Construction in appeal is in the hands of the appellant and cannot be controlled by the hearing authority. In the present form, appeals are not properly constructed, therefore, no relief can be granted to the appellants. His rival has been erased from the array of respondents. Even otherwise, leaving the objection aside, if Ali Muhammad, is now summoned by the Tribunal, he can raise a very valid objection that the appeal is grossly time-barred so far as he is concerned as he was the main person against whom the relief is claimed. At this junction, it would be pertinent to mention that earlier Service Appeals Nos.3561 of 1999 and 3544 of 1999 by the appellants were dismissed on the ground that representation, essential under section 4 of the Punjab Service Tribunals Act, 1974, was not resorted to. Appellants made representation to the Chief Secretary on 9-2-2000 i.e. after 30 days from 29-11-1999; the order now impugned. On this score, these appeals in their, present, form as urged by the District Attorney are barred by time. These observations are by way of passing reference, in any case the main question is the hurdle created by the order dated 14-11-2000 which the appellants had to surmount but failed to do so, resultantly, both the appeals being improperly constructed, no relief can be granted to the appellants against a person who was made a party but later on, on a request of the counsel of the appellants, his name stood deleted."

The conclusion as arrived at by the learned Punjab Service Tribunal being unexceptionable hardly calls for any interference. The petitions being merit less are dismissed and leave refused.

S.A.K./G-190/S

Leave refused.

10/9/2017, 9:04 AM

Case Judgement

For the foregoing reasons, the present petition stands dismissed and leave to appeal is refused.
S.A.K./D-30

Leave refused.

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A. No. 1057/2014

Muhammad Karim

versus

D.P.O & Others

REPLICATION**Respectfully Sheweth,****PRELIMINARY OBJECTIONS:**

All the preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why the appellant has not come to this hon'ble Tribunal with clean hands, without cause of action, appellant has concealed material facts, estoppel, maintainable and the same is bad in law for mis and non-joinder of necessary parties.

ON FACTS:

1. Not commented upon by the respondents.
2. Incorrect. The absence of appellant was never deliberate but was due to Typhoid for which was treated at hospital with advised bed rest by the doctor. The officials at Police Line was informed about the illness but they took it lightly; besides previous laxities cannot be made basis in the present case as Charge Sheet was only to the extent of absence with effect from 03-11-2013. Moreover, inquiry was conducted without associating him.
3. Incorrect. The prescriptions were issued by responsible doctor of LRH which is the most standard Institution of Pakistan, so cannot be considered fabricated.
4. Misconceived, 16.9 Police Rules was not applicable in the instant case, besides when absence was treated as leave without pay, then there was no need of dismissing the appellant from service.
5. Incorrect. As stated above, the prescriptions were issued by competent doctor of LRH which is a standard Institute of Pakistan.

6. Incorrect. No chance of defense and hearing was provided to the appellant even personal hearing which is mandatory provision of law was also not provided to appellant.
7. Denied. Procedure has not been followed.
8. As above.
9. Incorrect. The appellant was ill, treated by the competent doctor of LRH, so absence was not willful but to the compelling circumstances which was beyond his control so is not misconduct. Dismissal is harsh punishment according to judgments of the hon'ble Supreme Court of Pakistan and of this hon'ble Tribunal.
10. Not replied to the contents so admitted correct.

G R O U N D S:

All the grounds of the appeal are legal and correct while that of the reply are illegal and incorrect. The same are again adopted.

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

M-Kain

Appellant

Through

3
3 *Meh Khan*
Saadullah Khan Marwat

Advocate,

Dated: 31-08-2018

A F F I D A V I T

I, Aftab Ahmad appellant do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

M-Kain

DEPONENT.

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 428 /ST

Dated 18 - 3 - / 2019

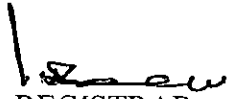
To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Mardan.

Subject: - JUDGMENT IN APPEAL NO. 1057/2014, MR.MUHAMMAD KARIM.

I am directed to forward herewith a certified copy of Judgement dated 11.03.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

51395



ایڈویکیٹ:
بار کونسل ایسوسی ایشن نمبر:
رابطہ نمبر:

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: KP Service Tribunal Peshawar

دعویٰ:	منجانب:
علت نمبر:	اپپلنٹ
مورخہ:	محمد کم ایم
جرم:	بنام
تھانہ:	Police

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ عظیمیٰ دہلیہ
آن مقام Peshawar کیلئے ادباً و کلاماً ایڈووکیٹ کو وکیل 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 تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ 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 وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

M-1/2018

Acceptance

المرقوم: 10-10-2018

المقام: _____

المقام: Peshawar کے لیے منظور ہے۔

①

2013 SCMR 1410

[Supreme Court of Pakistan]

Present: Muhammad Sair Ali and Khilji Arif Hussain, JJ

ABDUL RAFIMAN QURESHI -Petitioner

Versus

AUDITOR-GENERAL OF PAKISTAN and others---Respondents

Civil Petition No. 617- L of 2010, decided on 8th June, '2011.

(Against order dated 29-1-2010 of Federal Service Tribunal, Lahore, passed in M.P. No. 379 of 2008).

Service Tribunal Act (LXX of 1973)---

----S. 3---Service Tribunal---Review, power of---Scope---Service Tribunal has power of review---
Second review petition before Tribunal not maintainable.

Petitioner in person.

Ms. Yasmin Saigol, D.A.-G. along with Sharif Bhatti, AAO (Legal) for Respondents.

Date of hearing: 8th June, 2011.

ORDER

MUHAMMAD SAIR ALI, J--- Petitioner's Appeal No.540(L)CS of 2000 was decided by the Federal Service Tribunal, Lahore (hereinafter referred to as 'the Tribunal') on 3-12-2003. His claim that he should have been allowed one increment on getting selection grade and for revision of his pension accordingly was rejected. However, the amount already paid to him was protected by the Tribunal because the payment so made was due to the error of the respondent-department. In view thereof, the appeal was partly accepted in the following manner:--

"The result is that the appeal is accepted partly. The claim of the appellant for restoration of his pay slip in which he had been allowed advance increment is rejected. His second prayer that no recovery should be effected from him is allowed. This order would be effective only if payments have already been received by the appellant. The appellant shall be paid monthly pension on the basis of PPO dated 23-8-1999."

In the year 2004, the petitioner filed a review application to get rectification of the order regarding PPO dated 23-8-1999. The Tribunal, accommodating the petitioner, treated the said review application as M. P. No.725 of 2004 and decided the same as under:--

"The respondents have submitted a bill of commutation of pension arrears and also approval for payment of commutation and gratuity regarding the grievance in the cause and also a letter dated 2-6-2006 stating that the petition has borne fruit and the judgment stands implemented in toto. The learned counsel for the appellant has no further cause of

✓
1st Review
is maintainable
✓

grievance. Petition disposed of having borne fruit."

The petitioner moved yet another review application, which again was treated as M. P. No.379 of 2008. The Tribunal disposed of the said M.P. by holding that the judgment of the Tribunal had already been implemented. This order was passed on 29-1-2010 and forms the subject matter of the present petition for leave to appeal.

2. The petitioner is present in person. The learned Deputy Attorney-General, in response to the notice is also present and has how assisted the Court. The learned DAG took us through the record to show that the judgment of the Tribunal dated 3-12-2003 implemented and had attained finality. Further assured t at petitioner's case had been duly considered by the department sympathetically rectification, as sought, was made. In answer, the petitioner read out order dated 3-12-2003 and sought further change therein.

3. We are afraid, the Tribunal had no power of review. The petitioner had filed two review applications, on which the Tribunal accommodated him. The petitioner conceded that the judgment of the Tribunal dated 3-12-2003 had been duly implemented in toto and as such his grievance stood redressed. The petitioner was unable to show to us that his second review petition before the Tribunal was maintainable or 13 that he had any grievance to agitate before this Court, after he had conceded in the Tribunal that the order stood implemented and his grievance fully redressed. We also find that no question of law of public importance within the contemplation of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, arises in this petition.

4. For the foregoing reasons, the present CPLA is dismissed and leave to appeal in declined.

S.A.K./A-33/SC

Leave refused.

2012 P L C (C.S.) 793

[Supreme Court of Pakistan]

Present: Muhammad Sair Ali and Khilji Arif Hussain, JJ

DEPUTY DIRECTOR, FOOD and others ↗

versus

Mehr ASIF NADEEM

Civil Petition No. 547-L of 2011, decided on 8th June, 2011.

(Against judgment dated 23-12-2010 of Punjab Service Tribunal, Lahore, passed in Appeal No. 2964 of 2009).

Punjab Service Tribunals Act (IX of 1974)---

---S. 4---Service Tribunal, powers of---Scope---Tribunal had jurisdiction to re-examine and re-assess material, which remained before departmental authorities, to conclude as to legality and justification of penalties imposed.

Zaka-ur-Rehman Awan, Addl. A.-G. and Zulfiqar Ahmed, Enforcement Officer, Food Deptt. D.G. Khan for Petitioners.

Ch. M. Anwar Ghuman, Advocate Supreme Court for Respondent.

Date of hearing: 8th June, 2011.

ORDER

MUHAMMAD SAIR ALI, J.---Through the present petition, the petitioner-department seeks leave to appeal against judgment dated 23-12-2010, passed by Punjab Service Tribunal, Lahore.

2. The learned Additional Advocate-General, Punjab, appearing for the petitioner-department has contended that the respondent was proved guilty of charges in the inquiry, through inquiry report, which was duly maintained by the departmental authority by rejecting his departmental appeal. Further that as the departmental authorities were concurrent on the question of proof of respondent's guilt, therefore, the Tribunal should not have reanalyzed the evidence and to pass the impugned judgment upsetting the penalty of dismissal from service and modifying the same to the reduced penalty of reduction in pay by two stages for a period of two years. And that instead the Tribunal should have maintained the penalties of dismissal and recovery etc, as imposed by the departmental authorities.

3. Learned counsel for the respondent has read out the detailed reasoning of the Tribunal as contained in paras 6, 8 and 9 of the impugned judgment. He has contended that the Tribunal had the authority to re-look into the evidence, inquiry proceedings as well as the inquiry report to make an assessment qua justification of the penalties imposed by the department.

4. After hearing the learned Advocate Supreme Court for the parties, we are of the opinion that no question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, has been raised by the petitioner-department to justify grant of leave to appeal. Instead, we believe that the Tribunal duly and properly exercised the jurisdiction vested in it to re-analyze and re-examine the evidence led during the inquiry to make an independent assessment of the same outside the hierarchy of the department. It is well settled that the Tribunal possesses the requisite jurisdiction to re-examine the material which is before the departmental authorities, and re-assess the same to conclude as to the legality and justification of the penalties imposed. We find the jurisdiction has been fairly exercised by the Tribunal in terms of settled principles of law.

c

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Revision Petition No. 57/2015.

In reference of Service Appeal No. 1057/2014.

Muhammad Karim s/o Fazal Rahim r/o Naray Kandar, Fazal Abad, Tehsil Takht Bhai District
Mardan.....Petitioner.

VERSUS

The DIG Mardan Region-I, Mardan &
others.....Respondents.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

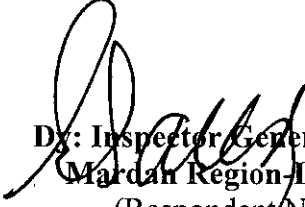
1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder and mis-joinder of necessary parties.

REPLY ON FACTS:-

1. No comments.
2. Pertains to record.
3. Subject to proof.
4. Subject to proof.
5. Incorrect. This Honourable Tribunal has got no jurisdiction to review the orders/judgment issued by this Honourable Tribunal as there is no review provision in service laws of this Honourable Tribunal.

PRAYER:-

It is, therefore, humbly prayed that the appellant has been found guilty for the misconduct he committed. His appeal is baseless and devoid of merit & must be dismissed with costs.


Dy: Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 1)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Revision Petition No. 57/2015.

In reference of Service Appeal No. 1057/2014.

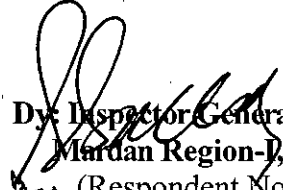
Muhammad Karim s/o Fazal Rahim r/o Naray Kandar, Fazal Abad, Tehsil Takht Bhai District
Mardan.....Petitioner.

VERSUS

The DIG Mardan Region-I, Mardan &
others.....Respondents.

COUNTER AFFIDAVIT

I, the respondent do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.


Dy. Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 1)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Revision Petition No. 57/2015.

In reference of Service Appeal No. 1057/2014.

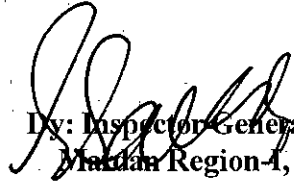
Muhammad Karim s/o Fazal Rahim r/o Naray Kandar, Fazal Abad, Tehsil Takht Bhai District
Mardan.....Petitioner.

VERSUS

The DIG Mardan Region-I, Mardan &
others.....Respondents.

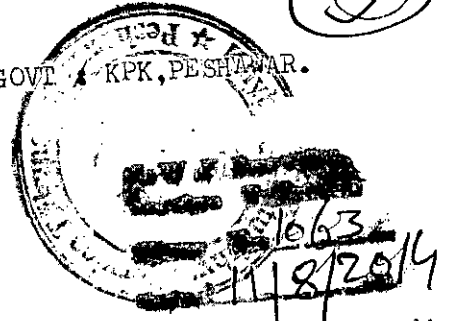
AUTHORITY LETTER.

Mr. Muhammad Shafiq Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondent. He is also authorized to submit all required documents and replies etc. as representative of the respondent through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


By: Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 1)

3

Appeal no. 1057/2014



Petition NO. /2014.

Muhammad Karim S/O Fazal Rahim R/O Naray Kandara Fazal Abad, Post Office Khadi Killi, Tehl Tahkht Bhai, District, Mardan, Sepo NO. FC-2835 Distt: Mardan..Petitie

— Versus —

1. D.I.G. Mardan Region- I, Mardan.
2. The District Police Officer Distt: Mardan.
3. Mian Naser b Jan, DSP/ HQR, Mardan..... Respondents.

4 NWFP(S.T-A) 1974

Appeal/against the order dated 7/1/2014, OB NO.61, District Mardan issued from the office of respondent NO.2 vide which the Petitioner has been awarded major punishment of dismissal from service, as well as departmental appeal of the Petitioner has also been rejected by respondent NO.1, vide Office order NO.4777/BS, Dated 8.07.2014 vide which the dismissal order was confirmed.

Prayer:-

On acceptance of this appeal both the above mentioned Orders may kindly be set aside and the Petitioner br re-instated in services with all back benefits.

Repsectfully Sheweth:-

1. That the Post of Constables were being advertised in tye year-2009, the Petitioner was accordingly Selected/appointed as a Constable NO. FC-2835 in the year 2009 at District Police ;Mardan.

That during the service tenuare the Petitioner suffered due to serious disease and was advised bed rest by the Medical Officer on 3.11.2013 for two weeks, and thereafter the Petitione was admitted in the Hospital on 19.11.2013 and after Medical Treatment the Petitioner was again advised by Medical Physiocian to take bed rest for one month from 10.12.2013 .

all the Medical discriptions/Slips are appended as pagewise for peruseal.

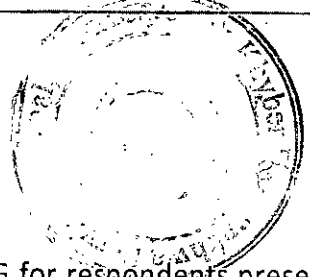
That the Petitioner accordingly sent the all Medical Desc

11/8/14

19/8/14

Khyber Pakhtunkhwa
SERV...

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8

28.05.2015

Appellant not in attendance. Addl: A.G for respondents present.
Appellant has failed to deposit security and process fee within the
specified time as such the appeal is dismissed under Rule 10 of KPK
Service Tribunal Rules, 1974. File be consigned to the record.

ANNOUNCED
28.5.2015

sd/
Chairman

Certified to be a true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

800
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2.6.2015
2.6.2015
2.6.2015

بعدالت جناب چیئرمین صاحب سروس ریٹائرمنٹ کے لئے

منجانب: ایڈووکیٹ

(۱) مورخہ: ۲۰۱۶ء ۱۱-۸

محمد کسب نام DIG مردان ضلع

(۲) دعویٰ:

(۳) جرم (فوجداری)

(۴) اپیل: سروس اپیل

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام لیس و لیس کے لئے

خانزادہ اجمل زیب خان ایڈووکیٹ سپریم کورٹ آف پاکستان

کو مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ بر حلف دینے، دعویٰ، جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرانے اجراء اور وصولی چیک دروپہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق ذرائع پر دستخط کرنے کا اختیار ہوگا۔ اور بصورت مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو جملہ اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخست منظور و قبول ہوگا اور دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ اس کے استحقاق وکیل صاحب موصوف ہوں گے۔ نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا۔ اگر کوئی تاریخ پیشی مقام دورہ پر ہو یا جگہ ست باہر تو وکیل صاحب پابند نہ ہوں گے۔ کہ پیروی مقدمہ مذکور کریں۔ علاوہ ازیں اپیل، دیوانی، و فوجداری نگران وغیرہ دور کرنے کا بھی اختیار سونپ دیا گیا ہوگا۔

(۱) اگر مابین فریقین راضی نامہ ہو جائے یا ہر قسم کی کارروائی جس سے فریقین کے مابین مقدمہ پایہ تکمیل تک پہنچ جاوے تو وکیل موصوف مقرر کردہ کو ادا شدہ فیس اقساط کی شکل میں ادا کی گئی ہو یا یکمشت ادا کی گئی ہو اس کی واپسی کے مطالبے کا اختیار منسوخ/حقدار نہ رہوں گے۔

(۲) اگر بصورت فوجداری مقدمہ کے وکیل موصوف کو جس طرح سے فیس ادا کر دی جاوے اور وکالت نامہ بحق وکیل خود دستخط/انموٹھا ثبت کروا دیا جاوے تو ایسی صورت میں بھی ادا شدہ جملہ فیس خواہ اقساط کی شکل میں ادا کی گئی ہو یکمشت ادا کی گئی ہو۔ وکیل خود سے واپس مطالبے کا حقدار منسوخ ہوگا۔ اور نہ ہی آئندہ مستقبل میں فیس کی واپسی کا مطالبہ نہ کروں گا مزید کوئی غیر پیشہ ورانہ معاہدہ کرنے کا مجاز نہ ہوں۔ اور قانوناً بھی ممنوع ہے۔

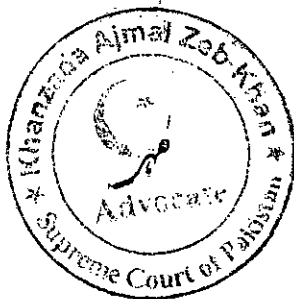
(۳) اور یہ کہ ہر تحریر کردہ لفظ بروکالت نامہ بحق وکیل خود از پڑھنے و سمجھنے جانے انموٹھا/دستخط ثبت کر دیا ہے اور وکالت نامہ سنداً بحق وکیل صاحب دے دیا ہے۔

2014

المقوم

Attested &

Accepted By



خانزادہ اجمل زیب خان ایڈووکیٹ

سپریم کورٹ آف پاکستان

0332-9091299

ENIC # 16102-7584570-5