

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	18.10.2017	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;">Service Appeal No. 1388/2013</p> <p>Date of Institution ... <u>17.09.2013</u> Date of Decision ... <u>18.10.2017</u></p> <p>Dawood Khan Constable No.. 1811/2411 Son of Muhammad Raheem R/o of Anees Abad No. 1, Yousafabad Dalazak Road, Tehsil and District Peshawar.</p> <p style="text-align: right;">Appellant</p> <p style="text-align: center;">Versus</p> <ol style="list-style-type: none"> 1. The Inspector General Police, Government of Khyber Pakhtunkhwa, Peshawar. 2. The Superintendent of Police, Head Quarter, Khyber Pakhtunkhwa, Peshawar. 3. The Deputy Superintendent of Police, Head Quarter, Khyber Pakhtunkhwa, Peshawar. 4. Capital police Officer, Peshawar. 5. The Government of Khyber Pakhtunkhwa, through Secretary, Home Department, Peshawar. <p style="text-align: right;">Respondents</p> <p><u>JUDGMENT</u></p> <p><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Learned counsel for the appellant and learned Deputy District Attorney for respondents present.</p> <p>2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the respondents wherein he made impugned order dated 14.12.2012 of respondent</p>

D.M.M.

NO. 2 whereby he was dismissed from service on the ground of absence from duty. The appellant also challenged the order of respondents No. 4 whereby the departmental appeal dated 22.08.2013 of the appellant against the order of dismissal was rejected/filed.

3. Learned counsel for the appellant contented that both the impugned orders are illegal. Further argued that the absence of the appellant from duty was beyond his control as his mother was seriously injured, moreover his abnormal son was under treatment who later on died. Further argued that the impugned orders are harsh and not sustainable.

4. Learned District Attorney while opposing the present appeal argued that the appellant was dismissed from service due his willful absence without leave/permission. Further argued that the impugned order of his dismissal from service was issued ^{after} codal formalities hence validly passed and the departmental appeal there against was also rightly rejected.

5. Arguments heard. File perused.

6. It is not disputed that the appellant remained absent from duty without leave/permission. Perusal of the record would also show that the impugned order of dismissal from service was passed after observing the codal formalities. However keeping in view the grounds raised by the appellant before the departmental authorities as to his absence from duty, the punishment awarded to the appellant appears to be harsh one. Consequently the present appeal

Lawyer

is partially accepted and the impugned original and appellate orders of dismissal of the appellant from service are modified and converted into withholding of two annual increments for a period of two years and consequently the appellant is reinstated. Absence period and the intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room after its completion.


(AHMAD HASSAN)
MEMBER

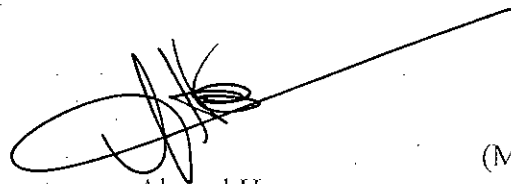

(MUHAMMAD HAMID MUGHAL)
MEMBER

ANNOUNCED
18.10.2017

18.10.2017

Learned Counsel for the appellant and learned deputy District Attorney for the respondents present.

Vide detailed judgment of today this Tribunal placed on file, the present appeal is partially accepted and the impugned original and appellate orders of dismissal of the appellant from service are modified and converted into withholding of two annual increments for a period of two years and consequently the appellant is reinstated. Absence period and the intervening period shall be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room after its completion.



Ahmad Hassan
Member(E)



(Muhammad Hamid Mughal)
Member (J)

10.03.2017


Counsel for appellant and Mr. Ziaullah, Government Pleader for respondents present. Learned counsel for appellant submitted rejoinder which is placed on file. To come up for arguments on 23.06.2017 before D.B.



(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

23.06.2017


Counsel for the appellant present. Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 11.09.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

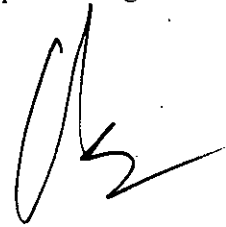
11.09.2017

Counsel for the appellant and Asstt. AG for the respondents present. The Learned Chairman is on leave; therefore, arguments could not be heard. To come up for arguments on 18.10.2017 before the D.B.


(Gul Zeb Khan)
Member (Executive)

09.05.2016

Appellant in person and Mr. Muhammad Jan GP for respondents present. Appellant requested for adjournment due to General Strike of the Bar. To come up for arguments on 03.08.2016.




Member

03.08.2016

Appellant in person and Mr. Aziz Shah, Reader alongwith Mr. Ziaullah, GP for respondents present. Appellant requested for adjournment. Request accepted. To come up for arguments on

24.11.16



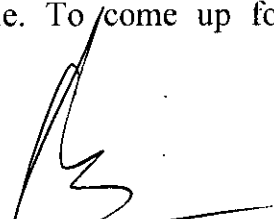
Member




Member

24.11.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant submitted Wakalat Nama which is placed on file. To come up for rejoinder and final hearing on 10.3.2017.



(MUHAMMAD AMIR NAZIR)
MEMBER



(ABDUL LATIF)
MEMBER

22.4.2015

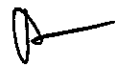
Appellant with counsel and Mr. Ziaullah, GP with Iqbal Munir, H.C for the respondents present. Counsel for the appellant does not want to file rejoinder. Therefore, case to come up for arguments on 29.10.2015.


MEMBER


MEMBER

29.10.2015


Appellant in person and Mr. Muhammad Jan, GP for respondents present. Appellant requested for adjournment. To come up for arguments on 1-2-16.


Member


Member

01.02.2016


Counsel for the appellant and Mr. Muhammad Raziq, Head Constable alongwith Addl: A.G for respondents present. The learned Member (Executive) is on official tour to Swat, therefore, Bench is incomplete. To come up for arguments on 9.5.2016.


Member

1388/13

07-08-2014

Counsel for the appellant and Mr. Muhammad Jan, GP with Wisal H.C for the respondents present. The learned Member is on leave, therefore, case to come up for the same on 29.09.2014.


READER

29-09-2014

Counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Wisal H.C for the respondents present and requested for further time. To come up for written reply on 07.1.2015.


MEMBER

16-12-2014

Clerk to counsel for the appellant and Mr. Ziaullah, GP with Wisal H.C for the respondents present. The Tribunal is incomplete. To come up for the same on 17.2.2015.


READER

17-2-2015

Appellant with counsel and Mr. Muhammad Jan, GP with Iqbal Munir H.C for the respondents present. Written reply submitted, copy whereof is handed over to counsel for the appellant. To come up for rejoinder on 22.4.2015.


MEMBER

Appeal No. 1388/2013
Mr. Dawood Khan.

13.12.2013

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 30.01.2014.

Member

30.01.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The appellant filed the instant appeal against the impugned order dated 22.08.2013 on 17.09.2013. He further contended that the impugned order has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules-1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 24.04.2014.

Member

30.01.2014

This case be put before the Final Bench 11 for further proceedings.

Chairman

24.4.2014

Counsel for the appellant and Mr. Muhammad Jan, GP present. Fresh notices be issued to the respondents. To come up for written reply on 7.8.2014.

MEMBER



MEMBER

Appellant's counsel
Mr. Dawood Khan
attached with file

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1388/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	07/10/2013	<p>The appeal of Mr. Dawood Khan re-submitted today by Mr. Hamid Ussain Yousafzai 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	21-10-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>13-12-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Dawood Khan Constable No. 1811/2411 received today i.e. on 17.09.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Appeal may be got signed by the appellant. ✓
2. Index of the appeal may be prepared. ✓
3. Heading of appeal is incomplete which may be completed ✓
4. Law under which appeal is filed is not mentioned. ✓
5. Annexures of the appeal may be annexed serial wise as mentioned in the memo of appeal. ✓
6. Address of respondent No.4 is incomplete which may be completed according to ✓
Khyber Pakhtunkhwa Service Tribunal rules 1974.
7. Annexures of the appeal may be attested. ✓
8. Seven more copies/sets of the appeal alongwith annexures i.e. complete in all respect may also be submitted with the appeal.

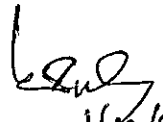
No. 1327 /S.T.

Dt. 18/09 /2013


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR

Mr. Hamad Hassan Yousafzai Adv. Pesh.

Time for resubmission of instant appeal is extended upto 10th Oct, 2013 after removing observation of this office.


1/10/2013

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Appeal no. 1388/13
Constable Dawood Khan

Versus

Inspector General Police

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[Signature]
Appellant

Through

[Signature]
Hamad Hassan Yousafzai
Advocate High Court

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Constable Dawood Khan No.1811/2411
Son of Muhammad Raheem
Resident of Anees Abad No.1, Yousafabad Dalazak Road,
Tehsil and District Peshawar

Appeal no. 1388/13

~~SECRET~~
~~SECRET~~
No. 1388
17-9-13

Versus

1. Inspector General Police,
Government of Khyber Pukhtoonkhawa, Peshawar.
2. Superintendent of Police,
Head Quarter, Khyber Pukhtoonkhawa, Peshawar.
3. Deputy Superintendent of Police,
Head Quarter, Khyber Pukhtoonkhawa, Peshawar.
4. Capital Police Officer, Peshawar,
Central Police Office, Peshawar, Near Civil Secretariat,
Government of Khyber Pukhtoonkhawa, Peshawar.
5. Government of Khyber Pukhtoonkhawa, through Secretary,
Home Department, Peshawar.

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT 1974 AGAINST THE DISMISSAL OF APPELLANT

Respectfully Sheweth

The appellant humbly submits as under.

1. That the appellant jointed the services of Police Department and was assigned belt No. 2693 and was lastly posted in Police Line Peshawar.
2. That the appellant is the head of family whereas his father has died some months ago, due to the reasons the mother of appellant health become deteriorated day-by day and she became very weak.
3. That on 18-02-2012 the mother of the appellant met a bathroom accident and was seriously injured; fractured her one leg. The appellant tried her best and remained busy for her treatment day and night.

17/9/13

re-submitted to
and filed.

7/10/13

4. That it is pertinent to mention here that there is no other responsible person to look after the appellant's mother health. He being faithful son devoted his entire time for her recovery. Nevertheless the mother of appellant constantly complaining pain therefore she was referred to Orthopedic Surgeon. Where it was opinion that the leg bone has not been properly treated therefore once again bone was re-settled through fresh surgery. It took months for her recovery.

5. That another unfortunate episode is that during the process the appellant wife developed pregnancy but due to the serious illness of the appellant's mother he could not give full attention to the treatment of his wife which subsequently gave birth to an abnormal baby therefore, the appellant was constrain to make treatment of his abnormal son who subsequently died.

6. That the appellant was issued show cause notice No.466/PA,Sp/HRrs dated 10-10-2012 and was charge sheeted for the nonappearance from duty w.e.f 18-02-2012 to 06-04-2012 (01 month & 20 days) with the allegation that he has not taken any permission for his leave.

7. That the appellant submitted reply to the charge sheet and explained in detail his stance and un-avoidable circumstances. After the inquiry the respondent No.2 through office order OB NO.4399 dated 14-12-2012 No.4811-15/PA/SP dated 14-12-2012 dismissed the appellant from services under Police Disciplinary Rules 1975. It has also been ordered that the absence be treated as leave without pay.

8. That the appellant preferred department appeal against his termination which remained under consideration and lastly he has been conveyed through office order No.1103-08/PA dated 22-08-2013 that his Departmental Appeal has been dismissed.



9. That feeling aggrieved from the Office Order OB NO.4399 dated 14-12-2012 No.4811-15/PA/SP dated 14-12-2012 and No.1103-08/PA dated 22-08-2013. The appellants preferred this appeal inter-alia on the following grounds.

1. Firstly the order of termination Office Order OB NO.4399 dated 14-12-2012 No.4811-15/PA/SP dated 14-12-2012 read with rejection of Departmental Appeal through office order No.1103-08/PA dated 22-08-2013 is illegal, against the fact and law applicable to the matter.
2. Secondly the appellant has been punished for the absence from duty which was beyond his control. The mother of the appellant was seriously ill and the circumstances which forced the appellant has been ignored by the Authorities.
3. Thirdly the appellant is the elder of his family and was forced by the circumstances abstain from the duty whereas the perusal of the charge leveled against the appellant will reveal that the competent authority has not leveled only one allegation of absence from the duties. The previous appellant record is un-blemished and he remained loyal to his duties.
4. Fourthly there is no allegation that appellant has not performed his duties nor that he had refused to discharge his duties.
5. Fifthly it is established that the competent authority has imposed two punishments **Firstly** the period of absence has been termed as a leave without pay and **Secondly** the appellant services has been terminated whereas two punishments can not be imposed at the same time.
6. Sixthly both the orders are perfunctory in that the submission made by the appellant during the inquiry proceedings have not been neither considered nor commented upon while submitting inquiry report.
7. Seventhly the inquiry officer has not taken into consideration the law and order situation prevailing in the country and specifically in KPK, Province. The appellant has perform his duties where and when required.

- 8. Eighthly the appellant remained loyal to the state and has never refused to perform his duties. The circumstances faced by the appellant should have considered by the respondents.
- 9. Ninthly the appellant has been discriminated and the punishment of dismissal of from service is very harsh and not sustainable.


It is therefore humbly prayed that on acceptance of this appeal the Office Order OB NO.4399 dated 14-12-2012 No.4811-15/PA/SP dated 14-12-2012 read with rejection of Departmental Appeal No.1103-08/PA dated 22-08-2013 may be set aside and the appellant be reinstated at his post with all back benefits.

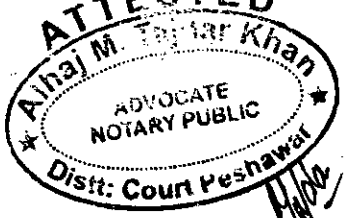
Any other appropriate not specifically mentioned may also be granted in favour of appellant.


 Appellant
 Through 
Hamad Hassan Yousafzai
Advocate High Court

AFFIDAVIT

I Constable Dawood Khan Son of Muhammad Raheem Resident of Anees Abad No.1, Hussain Town, Yousafabad Dalazak Road, Peshawar do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct. Nothing contain false therein

Deponent


ATTESTED

 Alhaj M. Tariq Khan
 ADVOCATE
 NOTARY PUBLIC
 Distt: Court Peshawar
 17/12/2013

REFERENCE ATTACHED.

Handwritten notes: 466, 1555-08, 3/10/2012, 9, 12, 5

Subject: **DEPARTMENTAL ENQUIRY AGAINST CONSTABLE DAWOOD NO. 2693.**

MEMO: -

Please refer to your office No. 466/E.PA, dated 14.09.2012, on the subject noted above. (Enclosed in original.)

In this connection it is submitted that the accused constable has been absent w.e.f. 18.02.2012 and made his arrival on 01.04.2012 (He remained absent for 01 month & 20 days). In this connection the subject enquiry has been initiated, but soon after his arrival on next day i.e. on 07.04.2012 he again absented himself and is still absent. In this connection statement of MASI/Police Lines has been recorded and attached at mark -A.

In view of the foregoing circumstances, it revealed that the accused constable deliberately absented himself and despite of several information he avoided to report at his place of duty. The enquiry in hand is returned and re-commended for issuance of final show cause notice at his home address.

Submitted please

DY: SUPERINTENDENT OF POLICE
Headquarters Peshawar.

NO. 1622/S
Dated 28.09.2012.
Encl: (08) Papers.

Handwritten note: issue final show cause notice

Stamp: Super Capital Peshawar
Handwritten: 24/10/12

Stamp: ATTACHED

FINAL SHOW CAUSE NOTICE

6

I Superintendent of Police, Headquarters, Capital City Police, Peshawar as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve you Constable Dawood No.2693 of Capital City Police, Peshawar as follows.

1 (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing.

(ii) On going through the findings and recommendation of the enquiry Officer, the material on record and other connected papers produced before the E.O.

I am satisfied that you have committed the following acts/omissions specified in Police Disciplinary Rules 1975 of the said Ordinance.

"That you Constable Dawood No.2693 while posted at Police Lines, Peshawar was absent from 18.02.2012 to 06.04.2012 (01-month & 20-days) and again absent from 07.04.2012 till date without taking permission or leave. This act amounts to gross misconduct on your part and against the discipline of the force"

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Disciplinary Rules 1975 for absence willfully performing duty away from place of posting.

3. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

4. If no reply to this notice is received within 7 days of its delivery, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parate action be taken against you.

5. The copy of the finding of the enquiry officer is enclosed.

[Signature]
SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 466 /PA, SP/HQrs: dated Peshawar the 10/10/2012.

Copy to official concerned

ATTACHED
[Signature]

[Signature]
21/11/12

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Dawood Khan No.1811/2411 City Police Peshawar with the following irregularities.

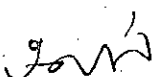
"That you Constable Dawood Khan No.1811/2411 while posted at Police Lines, Peshawar were absent from duty w.e.f. 18.02.2012 to 06.04.2012 (01 month & 20-days) without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

ATTENDED


جناب عالی!

حوالہ مشمولہ فائنل شوکار نوٹس معروض خدمت ہوں۔
 کہ قبل ازیں میں دوران ادوائی اپنا مفصل بیان دی ہے
 جس میں کسی قسم کی تحریف کرنے کی ضرورت نہیں ہے۔ البتہ
 غیر حاضر کے حوالہ سے یہ وضاحت کرنا چاہتا ہوں۔ کہ مورخہ
 $18 \frac{2}{12}$ کو میری صہیب الہ و والدہ خانہ خود میں گر کر جس
 عینت میں موت چوٹ پیدا ہوئی جو کہ بالکل میل ہوئے
 کے قابل نہ رہی۔ درد کے مارے مسلسل آہ دیکھا کرتی رہی۔
 حال کی یہ نازک صورت حال دیکھ کر میرا حوصلہ پست
 ہو کر ناقابل برداشت پریشانی نے گھیر کر رکھا۔ لہذا
 والد ام کو ہسپتال لیبارٹری جسکی وہاں x-Ray زائر
 بہت جلد کہ والد صاحبہ کی ٹائٹ جوہ جگم میں ٹوٹ ہوئی ہے۔
 اور سر میں بھی ٹریسے کئی زخمی واقع ہوئی ہے۔ لہذا والدہ
 کی علاج جاری رکھوں تو LRH میں کافی عرصہ تک
 داخل ہسپتال کتا جائز جو کہ بعداً "KTH" کو Refer
 کرنا اور وہاں بھی کافی عرصہ تک داخل ہسپتال رہنا۔

جناب عالی! میری غیر حاضری قصداً لکھنا نہیں تھی بلکہ صہیب الہ
 والدہ کی عارضاتی بیماری کے علاج و معالجہ اور کفالت و نگرانی کی وجہ
 سے سہروز ہوئی ہے۔ میں غریب شخص ہوں۔ علاج صرف آپ سے
 کرتی ڈرنیگ معاش نہیں ہے۔ مال کی علاج بہرہ سے بھی مانی
 معروض ہوایوں۔ اسلئے رہ مالہ مجموعی کے پیش نظر عرصہ
 غیر حاضر کو "Leave of kind due" میں شمار کرنے کا شکریہ ادا
 آئندہ تیسرے محتاط رہو گا۔

ATTESTED

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ORDER

This office order relates to the disposal of formal departmental enquiry against Constable Dawood No.2693 of Capital City Police Peshawar on the allegations that he while posted at Police Lines, Peshawar absented himself from lawful duty w.e.f 18.02.2012 to 06.04.2012 & from 07.04.2012 to 19.11.2012 (09-months & 02-days) till date without taking permission or leave.

In this regard, he was issued charge sheet and summary of allegations vide No.466/PA/SP/H.Qrs, dated 30.05.2012. DSP/HQrs Peshawar was appointed as Enquiry Officer. He conducted the enquiry proceedings and submitted his report that the defaulter Constable deliberately absented himself and despite of repeated parwanas, he avoided to report at his place of duty. The E.O further recommended that final show cause notice may be issued at his home address vides Enquiry Report No.1622/S dated 28.09.2012.

Upon the finding of E.Os, he was issued final show cause notice and delivered to him on home address through local Police Station AMJS to which he received by himself. He was called & heard in person but his explanation found unsatisfactory and also failed to submit his written reply of the notice as yet.

In view of the above and other metarial available on record, the undersigned came to conclusion that the alleged official found guilty of the charges. Therefore, he is hereby dismissed from service under Police Disciplinary Rules-1975 with immediate effect. Hence, the period he remained absent from 18.02.2012 to 06.04.2012 & from 07.04.2012 till date is treated without pay.

[Signature]
**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

OB. NO. 4399 / Dated 14/12/2012

No. 4811-15 /PA/SP/dated Peshawar the 14/12/2012

Copy of above is forwarded for information & n/action to:

- ✓ Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office/OASI/CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

*Dawood
Khan
17/12/12*

ATTACHED
[Signature]

466 (9)
12

9

Encl
(2)

[Handwritten marks]

بخدمت جناب سی سی پی پشاور

جناب عالی! سائل / کنشیل داؤد خان نمبر 2693 حسب ذیل عرض رساں ہے۔

۱۔ یہ کہ سائل گھر کا واحد کمانے والا ہے۔ گھر کا سربراہ ہونے کی ناطے گھر کی کفالت کی تمام ذمہ داری سائل کے ذمہ ہے۔ سائل کے والد صاحب کچھ عرصہ قبل وفات پا چکے ہیں، جس کی شدت غم سے سائل کی والدہ بھی بیمار رہنے لگی ہے۔

۲۔ یہ کہ مورخہ 18/2/2012 کو سائل کی والدہ غسل خانے میں پھسلنے کی وجہ سے گر پڑی، جسکی وجہ سے انہیں شدید چھوٹیں آئی اور ان کی ایک پاؤں ٹوٹ گئی، جس کیلئے من سائل نے کافی علاج کروایا، لیکن بعد میں ایک دفعہ پھر تکلیف زیادہ ہونے کی وجہ سے جب ڈاکٹر صاحب سے رجوع کیا تو معائنہ کرنے سے پتہ چلا کہ ہڈی جوڑ صحیح نہیں لگا، جس کی وجہ سے ہڈی کو دوبارہ توڑنا پڑا اور تاحال سائل کی والدہ اس تکلیف میں مبتلا ہے۔

۳۔ یہ کہ گھر کا سربراہ ہونے کی ناطے تمام ذمہ داریاں سائل کے کندھوں پر تھی تو میں ڈیوٹی کی طرف توجہ نہ دے سکا۔

۴۔ یہ کہ سائل عرصہ چار سال سے شادی شدہ ہے اور اسی دوران سائل کی بیوی بھی حمل سے تھی اور اپنی ماں کی بیماری کی وجہ سے اپنی بیوی کا صحیح طریقے سے خیال نہ رکھ سکا، جسکی وجہ سے سائل کا بیٹا پیدا آتش سے ہی بیمار (Abnormal) تھا۔ کافی علاج کروانے کے بعد بھی سائل کی بھی زندگی نہ بچا سکا۔

۵۔ یہ کہ جب جناب نے ماہ محرم میں ڈیوٹی کے لئے کال دی تو سائل اپنی تمام مجبوریاں پست پست رکھ کر حاضر ہوا، تا کہ سائل ماہ محرم کی سیشل ڈیوٹی سرانجام دے سکوں اور کسی اتفاقی حادثے سے نمٹ سکوں۔ (نقل مدحاضری لف ہے)

5909/PA
19.12.12

HC
19.12.12
[Handwritten signature and stamp]

ATTACHED

۶۔ یہ کہ اس دوران فائل شوکا ز نوٹس چھٹی نمبر 466/PA, SP/HQrs, Peshawar

محررہ 10/10/2012 سپرنٹنڈنٹ پولیس ہیڈ کوارٹر پشاور کے دفتر سے جاری ہوا، جسکی بابت

میں SP/HQrs پیش ہوا اور وضاحت پیش کی، لیکن نہ ہی انہوں نے سائل کی درخواست لی

اور نہ ہی سائل کی مجبوریوں کی تلافی کی۔ (شوکا ز نوٹس لف ہے)

۷۔ یہ کہ مجاز اتھارٹی نے انصاف کے اصولوں کے برعکس بذریعہ چھٹی نمبر 466/PA,

SP/HQrs, Peshawar محررہ 10/10/2012 سائل کی نوکری ختم کی۔ (چھٹی

محررہ لف ہے)

۸۔ یہ کہ سائل کی غیر حاضری قصداً عمداً نہ تھی، بلکہ بوجہ اوپر بیان کیے وجوہات ہیں، چونکہ سائل ایک

غریب گھرانے سے تعلق رکھتا ہے۔ سائل کی اور کوئی ذریعہ معاش نہیں ہے۔ سائل تین بندوں

کفالت کرتا ہے جس میں سائل کی بیمار والدہ، بیوی اور سائل کا چھوٹا بھائی شامل ہے۔ سائل

پہلے ہی سے بہت مقروض ہو چکا ہے۔

لہذا آپ صاحبان سے عاجزانہ گزارش ہے کہ سائل کو نوکری پر بحالی کے احکامات

صادر فرمایا جائے۔ آئندہ کے لئے سائل محتاط رہے گا اور کسی قسم کا شکایت کا موقع نہیں دے گا۔

المرقوم: 19/12/2012

العارضی

سائل: داؤد خان ولد محمد رحیم (بلٹ نمبر 2693) پشاور

ATTESTED
[Signature]

ORDER

(12)

This order will dispose off departmental appeal of ex-constable **Dawood Khan No. 2693** who was awarded the major punishment of dismissal from service vide OB No. 4399 dated 14.12.2012 under PR 1975 by SP/HQRs: Peshawar on the charge of deliberate absence from lawful duty w.e.f. 18.2.2012 to 6.4.2012 and from 7.4.2012 19.11.2012 (G.Total 9 months) from Police Lines Peshawar.

Proper departmental proceedings were initiated against him and DSP/HQ was appointed as the E.O. The appellant failed to appear before the E.O. He also failed to submit his reply to the FSCN. As such the competent authority awarded him above major punishment.

The relevant record was also perused. The allegations levelled against him stand proved. The undersigned seems no plausible reason to interfere in the order passed by SP/HQRs: Peshawar, hence his appeal for re-instatement in service is rejected/filed.

**CAPITAL CITY POLICE OFFICER,
PESHAWAR.**

No. 1103-08 /PA dated Peshawar the 22 / 03 / 2013

Copies for information and n/a to the:-

- 1/ SP/HQRs: Peshawar
- 2/ PO/ OASI
- 3/ CRC along with S.Roll make necessary entry
- 4/ ✓ FMC along with complete FM.
- 5/ Official concerned

ATTESTED

15

از دفتر خزانه

کد 47 از تاریخ 19/11/12

مبلغ

سر 47 صندوق دولتی (تعداد) 19/11/12

دفعه 2693 غیر تسکین 19/11/12

در تاریخ 18/12/12

سر علی اصغر

[Signature]

18/12/12

ATTESTED
[Signature]

15

Out-Patient Department

Case No: 4434390812

Room: 85

Date: 17-AUG-12 09:15:16

Name: LAL PARI

OPD: ORTHOPAEDICS

فرو ایئر لیسٹ سروس کیلئے 137 پروکال کریں۔

Lab. COLSOFT-D

Lab. MUTEY 27

Lab. ALFA GOOD

Handwritten signature

ATTENTION

14

...ing Hospital

Peshawar

Emergency Department

011-999-Fax-91-31-2210322

Accident R

Phone No-82-8

REC ORATION FORM

LAL FARI

M. SAHIM

3621260812

13-AUG-12

04:10:17

PESHAWAR

C.P. Pulse Temp Respiration

Curr

Investigation

X-Ray

ECG

Other

Treatment

Refer to Unit/Admitted

ATC
[Signature]

Doctor on Duty.....

.....Dr's Signature.....

15



حاجی شاہد خان آرٹھوپڈیک سنٹر



چھٹی بروز اتوار

0259 رجسٹرڈ نمبر

D.E.H.M.S

MD-بھنگا

صبح 8 بجے سے شام 4 بجے تک

جوڑوں کا درد، پٹھوں کا درد، کمر درد، رگوں کا درد



Mob: 0301-8883438

معدے کی تکلیف، عرق النساء، بدن درد

Name _____ Race _____ Sex _____ Age 51 Date 20/12/2012

Clinical Record

13 p. 130
80

12

mmmmmm

Amnuta This

Rms

Tes - Beridox

بیدوکی لوزن

Joumuit R

Amnuta

Tes - Chemical

بیدوکی لوزن

ms ms

R

ms R

AS L MC

ms

کلینک پیمپرو شمشورہ روڈ نزد خالہ دین ولید سکول الف شاہ مارکیٹ باغیچہ شاہ

ATTENDED

M. A. Khalig

B.B.S, D.O.T, M.A.C.S

تعطیل بروز
ہفتہ و اتوار

G U L P L A Z A

Near Charsadda Bus Stand
Charsadda Road, Peshawar.
Mobile 0333, 9107820

15

Date: 28/9/12

Bib

T/F. It's done. 21/12
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- An - xy - It's done. 21/12
App. Met.

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An. 9/12. Nakhla was

0/12/12 - 0/12/12 - 0/12/12

0/12/12 - 0/12/12 - 0/12/12
Nakhla. 0/12/12

PTB
0/12/12

revised
~~stas~~

نوٹ: نمبر حاصل کرنے کیلئے صرف اتوار کے دن اوپر دیئے ہوئے نمبر پر رابطہ کریں۔

Khyber Teaching Hospital, Peshawar

OUT - PATIENTS DEPARTMENT

RS-101



18

No 2912

118

S.No: 10432

Patient ID: 10530501112
 Name: M/O DAUD
 Gender: FEMALE 50 YEARS
 Referred To: ORTHOPAEDIC
 Date: 12-NOV-12
 Address: PESHAWAR
 Time: 10:29:50
 Rate: 10

△ Closed # (CA) 0187a

Bsd of T/E - 03

~~Anoid Full width - Treated conservatively
 for obvious deformity of (CA)
 Adv: 2-ways (CA) T/E tentile~~

3

Exb. Chwark
 O + 1

men wife & 2 kids

Exb - Singh
 O 1-1

JK

attached photo

BEFORE THE SERVICE TRIBUNAL PESHAWAR

In the matter of:

DAWOOD KHAN

Versus

INSPECTOR GENERAL POLICE

POWER OF ATTORNEY

I/We **DAWOOD KHAN [APPELLANT]**

plaintiff/petitioner/applicant/defendant/respondent appoint, constitute and authorize ***Hamad Hassan Yousafzai Advocate High Court, Consultants and Legal Advisors*** in the above mentioned writ petition to do all or the following acts, deeds and things:-

1. To appear, act and plead for me/us in the above mentioned case in the Court /Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign and verify and file or withdraw all proceeding, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case or any other documents as may be deemed necessary or advisable by them for the conduct, prosecution or defense of the said case at all its stages.
3. To receive payment of and issue receipts for all the moneys that may be or become due and payable to us during the course of the proceeding.

And hereby agree: -

- (a) That the advocates shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fees remains unpaid.

In witness whereof I/We have signed this Wakalatnama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us on this day of 11 September 2013

Signature of Executants

Accepted by





***Hamad Hassan Yousafzai
Advocate High Court***

Office: Room No.2 Muhammad Alam Orakzai Plaza, Near Abaseen Flour Mills, Adjacent Attock Petroluem, Dalazak Road, Peshawar City\

Office: Shop No.47-A, In front of Bar Complex, New Judicial Complex, District Courts, Peshawar.

Cell:0333-9372982

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.1388/2013.

Ex-Constable Dawood Khan No. 1811/2411 r/o Anees Abad No. 1, Yousafabad Dalazak Road, Tehsil & District Peshawar**Appellant.**

VERSUS.

1. Government of Khyber Pakhtunkhwa, through Secretary Home Department, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Capital City Police Officer, Peshawar.
4. Superintendent of Police, HQ:rs Police Line, Peshawar.
5. Deputy Superintendent of Police, HQ:rs Police Line, Peshawar.....**Respondents.**

REPLY ON BEHALF OF RESPONDENTS NO. 1 TO 5.

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. That the appellant got no locus standi and cause of action to file the instant appeal.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appeal is not maintainable in its present form.

FACTS:-

- 1- Para No. 1 pertains to record, hence needs no comments.
- 2- Para No. 2 subject to proof. Hence needs no comments.
- 3- Para No. 3 subject to proof. Hence needs no comments.
- 4- Para No. 4 subject to proof. Hence needs no comments.
- 5- Para No. 5 subject to proof. Hence needs no comments.
- 6- Para No. 6 is incorrect. The real fact of the Para is that the appellant was charge sheeted on the charge of his wilful absence with effect from 18.02.2012 to 06.04.2012 (1 month 20 days) without prior permission. During the course of enquiry he was called by the enquiry officer through written Parwanas which were received by him personally. (Copy annexed as "A") but he did not attend the office of enquiry officer and also failed to submit his reply of the charge sheet. It is worth mentioned that subsequently the appellant was absented again from his lawful duty with effect from 07.04.2012 to 19.11.2012 (7 months 12 days). Daily dairy repots of twicely absence period are annexed as "B". and written parwana as "C"

- 7- Para No. 7 is incorrect. During departmental proceeding, the appellant failed to submit his reply of the charge sheet moreover, soon after his arrival report on 06.04.2012 he was again absented from duty with effect from 07.04.2012 upon which the enquiry officer found him guilty in the enquiry, and returned the enquiry to the competent authority with the recommendation for issuance of final show cause notice. The competent authority issued final show cause notice to appellant to which he did not reply. Similarly, the appellant was called and heard in person but his explanation was found unsatisfactory, hence the competent authority passed the punishment order of dismissal from service vide OB No 4399 dated 14.12.2012. (enquiry report, and punishment order are annexed as "D and E")
- 8- Para No. 8 is correct to extent that departmental appeal was filed by appellant but was rejected on the ground that he could not produced plausible reply and allegations leveled against him were stand proved.
- 9- Para No. 9 is incorrect. That OB No 4399 dated 14.12.2012, No 4811-15/PA/SP dated 14.12.2012 passed by the competent authority and rejection order of departmental appeal vide No 1103-9/PA dated 22.08.2013 passed by the appellate authority are in accordance with the law and liable to be upheld.

GROUND:-

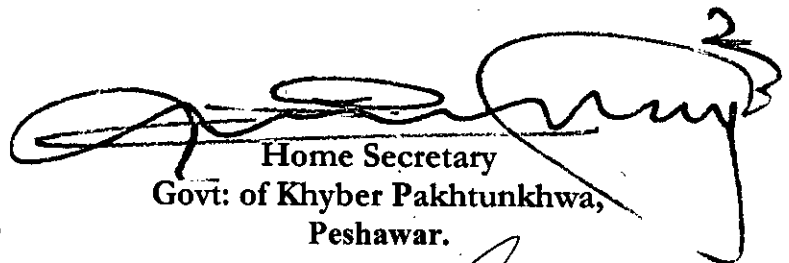
1. Incorrect. The punishment order is in-accordance with law/rules.
2. Incorrect. The appellant deliberately absented himself from his lawful duty without taking prior permission/leave.
3. Incorrect. The appellant was habitual absentee who remained absent from 18.02.2012 to 06.04.2014 and again from 07.04.2012 till 19.11.2012 (total 9 months and 02 days).
4. Incorrect. Para already replied as above.
5. Incorrect. The punishment was awarded by the competent authority as per the law/rules.
6. Incorrect and denied. A fair and impartial enquiry was conducted by the enquiry officer who found the appellant guilty in the enquiry upon which final show cause notice was issued to him, but failed to submit his reply and also failed to satisfy the competent authority during personal hearing, hence resulted of his dismissal from service.
7. Incorrect. The appellant was not interested in performing his lawful duties. He deliberately absented himself from duty without taking prior permission/leave.
8. Incorrect. The mentioned circumstances raised by the appellant regarding the diseases of his mother were occurred so he was required to brought such

information in the kind notice of his superior officers but on contrary, he was busy in enjoyment of his long absence period.

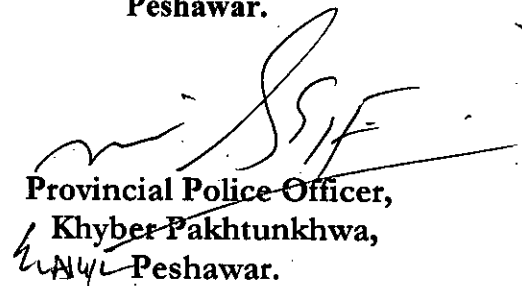
9. Incorrect. The punishment order of dismissal passed by the competent authority is legal and in accordance with the law and no discrimination or injustice has been done to appellant.

PRAYERS:-

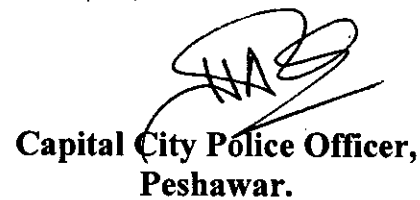
It is therefore most humbly prayed that in light of above stated facts/submissions, the appeal of the appellant may be set aside/ dismissed being devoid of merit and baseless.



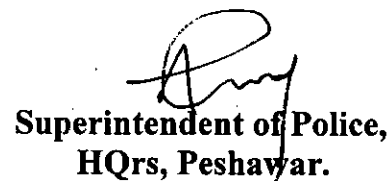
Home Secretary
Govt: of Khyber Pakhtunkhwa,
Peshawar.



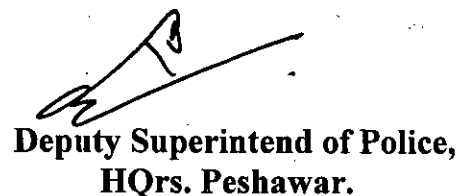
Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.



Capital City Police Officer,
Peshawar.



Superintendent of Police,
HQrs, Peshawar.



Deputy Superintend of Police,
HQrs. Peshawar.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.1388/2013.

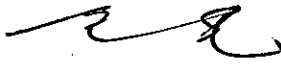
Ex-Constable Dawood Khan No. 1811/2411 r/o Anees Abad No. 1, Yousafabad Dalazak Road, Tehsil & District PeshawarAppellant.

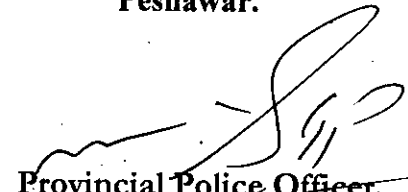
VERSUS.

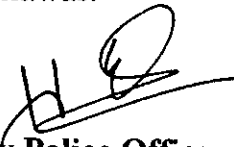
1. Government of Khyber Pakhtunkhwa, through Secretary Home Department, Peshawar.
2. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
3. Capital City Police Officer, Peshawar.
4. Superintendent of Police, HQ:rs Police Line, Peshawar.
5. Deputy Superintendent of Police, HQ:rs Police Line, Peshawar.....Respondents.

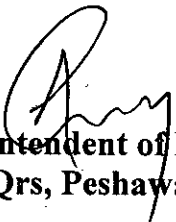
AFFIDAVIT

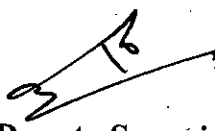
We respondents No 1 to 5 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


Home Secretary
Govt: of Khyber Pakhtunkhwa,
Peshawar.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs, Peshawar.


Deputy Superintendent of Police,
HQrs. Peshawar.

از دفتر ارز راس

لکھنؤ 47 روزیا 31 19/11/12

صدر 47 حاقری، لالہ خان آباد وقت 16:05 بجے 19/11/12 استورٹ کسٹل

داؤد 2693 غیر حاضر شدہ A17 سے حاضر آ رہا جسکی حاقری

07/04/2012

درج روزیا 31

نسر علیا ایس ایس سی

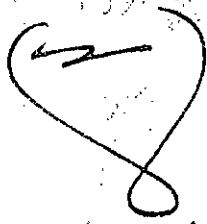
[Signature]

18/12/2012

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193

R. 4 1/2



Resommenda per
depr. proceedings

Dir.

Forwarded
M. 11/18
06/14/18

1-20
6/14/18

6/14/18

6/14/18

Copy of ...

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No. 466/E/PA
16-9-12

DEPARTMENTAL ENQUIRY REPORT.

Please refer to your office No.466/E/PA/HQr, dated 30.05.2012 against Constable Dawood Khan No.1811/2411, presently serving at Police Line, Peshawar. This enquiry has been initiated on the basis of the following allegations;

That Constable Dawood Khan No.1811/2411, while posted at Police Line Peshawar, absented from duty w.e.f 18-02-2012 to 01-04-2012 (01 month & 20 days) without taking permission or leave. This mounts to gross misconduct on his part and is against the discipline of the force.

On the receipt of enquiry papers, the accused constable was summoned through Line Officer Police Lines Peshawar and it was stated that the said constable is still absent w.e.f. 07-04-2012 vide DD No.17, dated 07-04-2012. Further more, he was informed through the Local Police through a written "Parwana" who noted the same and promised that he will show up, but he did not appear before the undersigned to receive even the charge sheet. He was contacted through his cell phone #.0346-9003312 but no reply several time.

The subject enquiry received to this office on 30.05.2012 and lying pending in this office for the arrival of accused constable, but there is no hope of his arrival, as the constable has received "Parwana" and did not reply back yet. It clearly indicates that he is no more interest to continue service.

From the foregoing circumstances it revealed that the accused constable deliberately absented himself and despite several informations he avoided to report at his duty place. The enquiry in hand is returned and recommended for final show cause notice.

Submitted please

Handwritten signature of the Superintendent of Police.

BY: SUPERINTENDENT OF POLICE
Headquarters Peshawar.

NO. 1622/S
Dated 12.09.2012.
Encl:(7)Papers.

E.O

Returned in original with the remarks that no statements of M. Khattak/M.M were recorded while delinquent has already reported arrival on 6.6.2012. Therefore, proper enquiry shall be conducted & report.

Superintendent of Police
Headquarters Peshawar
21/9/12

ORDER

466
12

This office order relates to the disposal of formal departmental enquiry against Constable Dawood No.2693 of Capital City Police Peshawar on the allegations that he while posted at Police Lines, Peshawar absented himself from lawful duty w.e.f 18.02.2012 to 06.04.2012 & from 07.04.2012 to 19.11.2012 (09-months & 02-days) till date without taking permission or leave.

In this regard, he was issued charge sheet and summary of allegations vide No.466/PA/SP/H.Qrs, dated 30.05.2012. DSP/HQrs Peshawar was appointed as Enquiry Officer. He conducted the enquiry proceedings and submitted his report that the defaulter Constable deliberately absented himself and despite of repeated parwanas, he avoided to report at his place of duty. The E.O further recommended that final show cause notice may be issued at his home address vides Enquiry Report No.1622/S dated 28.09.2012.

Upon the finding of E.Os, he was issued final show cause notice and delivered to him on home address through local Police Station AMJS to which he received by himself. He was called & heard in person but his explanation found unsatisfactory and also failed to submit his written reply of the notice as yet.

In view of the above and other metarial available on record, the undersigned came to conclusion that the alleged official found guilty of the charges. Therefore, he is hereby dismissed from service under Police Disciplinary Rules-1975 with immediate effect. Hence, the period he remained absent from 18.02.2012 to 06.04.2012 & from 07.04.2012 till date is treated without pay.

Capital C
Police Line
06.04.20
with
SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

OB. NO. 4399 / Dated 14/12/2012

No. 4811-15 /PA/SP/dated Peshawar the 14/12/2012

Copy of above is forwarded for information & n/action to:

- ✓ Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office/OASI/CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

(21)

Dawood
Khalil
17/12/12

2012

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1811/2013

Dawood Jan

VS

Police Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Admitted correct by the respondents as the service record is present with the respondent department.
2. No comments. Endorsed by the department that para 2 of the appeal is correct.
3. No comments. Endorsed by the department that para 3 of the appeal is correct.
4. No comments. Endorsed by the department that para 4 of the appeal is correct.
5. No comments. Endorsed by the department that para 5 of the appeal is correct.
6. Incorrect. Hence denied.
7. Incorrect. Hence denied.
8. Incorrect. The departmental appeal of the appellant has rejected for no food ground.

9. Incorrect. The impugned order dated 14.12.02012 and 22.8.2013 are against the law and rules therefore liable to be set-aside.

GROUNDS:

1. Incorrect. The dismissal order dated 14.12.02012 and rejection order dated 22.8.2013 is illegal, against the fact and law, therefore not tenable and liable to be set-aside.
2. Incorrect. While para 2 of the appeal is correct.
3. Incorrect. The appellant was not habitual absentee but he was compelled to remain absent from his duty due to engage in the treatment of his mother.
4. Incorrect. As already explained above.
5. Incorrect. The absent period has already treated as leave without pay therefore there remain no ground to penalize the appellant on the ground of absence.
6. Incorrect. No chance of defence was provided by the inquiry officer to the appellant which is against the norms of justice and fair play.
7. Incorrect. The appellant was not deliberately absent himself from the duty, but he was compelled to remain absent from his duty due to engage in the treatment of his mother.
8. Incorrect. While para 8 of the appeal is correct.
9. Incorrect. The punishment order of the appellant is against the law and rules, therefore not tenable and liable to be set aside.

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

Ali Khan
APPELLANT

Through:

Taimur Ali Kahn

(TAIMUR ALI KAHN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

Ali Khan
DEPONENT

ATTESTED

~~Oath Commissioner
Zafoor Khan Advocate
Distt: Court Peshawar~~

10 MAR 2017

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

No. 2410 /ST Dated 2 / 11 / 2017

To

The Superintendent of Police, Headquarters,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 1388/2013, MR. DAWOOD KHAN.

I am directed to forward herewith a certified copy of Judgement dated 18.10.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

011
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Due to mistake in
decision date, letter
was not sent.

Shahid Khan

Shahid

2-11-2017