

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<p style="text-align: right;">D Painda</p>	08.01.2018	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;">Appeal No. 1313/2013</p> <p style="text-align: center;">Date of Institution ... 09.09.2013 Date of Decision ... 08.01.2018</p> <p style="text-align: center;">Khwaja Wali Ex Constable No.1859 of District Police Bannu, S/O Muhammad Rabbani R/O Nizal Bazar Bannu.</p> <p style="text-align: center;">Versus</p> <p style="text-align: center;">1. Regional Police Officer, Bannu Region Bannu. 2. District Police Officer, Bannu. 3. Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD HAMID MUGHAL, MEMBER: -</u></p> <p>Appellant, learned counsel for the appellant and Mr. Riaz Painda Kheil, learned Assistant Advocate General on behalf of the 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 and made impugned the order</p>

dated 28.05.2013 whereby he was dismissed from service on the ground of absence from duty. The appellant has also challenged the order dated 03.07.2013 whereby the departmental appeal of the appellant was rejected.

3. Learned counsel for the appellant argued that the appellant remained absent for the reasons beyond his control, as his father died and his mother and wife were seriously ill. Further argued that the respondent department on one hand regularized the absence period of the appellant as leave without pay and on the other hand, vide the same order dated 28.05.2013 also awarded major penalty of dismissal from service for remaining absent. Hence due to regularization of the absence period, awarding of the punishment of dismissal from service on the same ground of absence is illegal.

4. As against that learned AAG while opposing the present appeal argued that the appellant remained absent from duty without prior application and permission and was dismissed from service after the fulfillment of legal requirements.

5. Argument heard. File perused.

6. It is not disputed that vide the original impugned

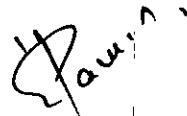
↓
Dawn

order dated 28.05.2013 the competent authority has regularized the absence period of the appellant as leave without pay and also dismissed the appellant from service on the same ground of absence from duty. This Tribunal has held in a number of judgments that once the authority has treated the absence period as leave without pay, then the awarding of punishment of dismissal from service on the same ground of absence is not tenable in the eyes of law. Reliance in this regard is also placed on judgment of the august Supreme Court of Pakistan reported in (2006 SCMR 434).

7. Consequently the present appeal is accepted, the impugned orders are set aside and the appellant is reinstated in service. 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.



(AHMAD HASSAN)
MEMBER



(MUHAMMAD HAMID MUGHAL)
MEMBER

ANNOUNCED
08.01.2018

08.01.2018

Learned counsel for the appellant present. Mr. Riaz Painda Kheil, learned Assistant Advocate General for the respondents present. Vide our separate judgment of this Tribunal of today placed on file the present appeal is accepted, the impugned orders are set aside and the appellant is reinstated in service. 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.



(Ahmad Hassan)
MEMBER



(Muhammad Hamid Mughal)
MEMBER


ANNOUNCED

08.01.2018

17.05.2017


Mr. Maaz Madni, Advocate submitted Wakalatnama on behalf of the appellant and requested for adjournment. Mr. Asghar Ali. Head Constable alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Adjourned. To come up for arguments on 22.08.2017 before D.B.


(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

22/8/2017

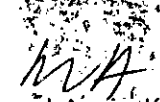
Clerk of counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Asghar Khan, HC for the respondents present. Clerk of counsel for the appellant requested for adjournment as his counsel is not available due to strike of the bar. To come up for arguments on 6/11/2017 before DB.


(GUL ZEB KHAN)
MEMBER

06.11.2017

Appellant in person present. Mr. Usman Ghani, District Attorney for the respondents also present. Appellant requested for adjournment on the ground that his counsel is not in attendance today. Adjourned. To come up for arguments on 08.01.2018 before D.B.

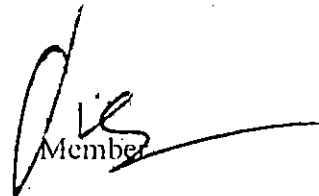

(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

13.6.2016

Counsel for the appellant and Mr. Asghar Ali, HC alongwith Assistant AG for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 3.10.2016.


Member


Member

03.10.2016

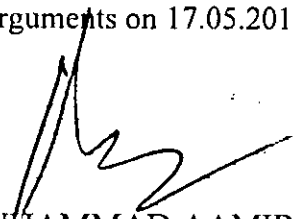
Since 3rd October, 2016 has been declared as public holiday on account of 1st Muharram therefore, case is adjourned for 11-1-17.


Reader

11.01.2017

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP alongwith Mr. Muhammad Farooq, Inspector for the respondents present. Clerk to counsel for the appellant seeks adjournment. Request accepted. To come up for arguments on 17.05.2017.


(AHMAD HASSAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

18.11.2015

Clerk to counsel for the appellant and Mr. Abdul Saboor, Head Constable alongwith Assistant AG for respondents present. Learned counsel for the appellant is stated busy before the Hon'ble Peshawar High Court. To come up for arguments on 16-2-2016.


MEMBER


MEMBER

16.02.2016

Appellant with counsel and Mr. Mir Faraz, Inspector (Legal) alongwith Mr. Muhammad Jan, GP for respondents present. Arguments could not be heard due to learned Member (Executive) is on official tour to Abbotabad. Therefore, the case is adjourned to 21.04.2016.


MEMBER

21.04.2016

Appellant in person and Mr. Kabirullah Khan Khattak, Assistant AG for respondents present. Appellant requested for adjournment as his counsel is not available today before the Court. To come up for arguments on 13-6-16.


MEMBER


MEMBER

25.4.2014

Appellant in person and Mr. Mir Faraz Khan, Inspector Legal with AAG for the respondents present. Written reply/para-wise comments received on behalf of the respondents, copy whereof is handed over to the appellant for rejoinder on 25.7.2014.

~~Member~~

~~Chairman~~

Member

25.07.2014

Counsel for the appellant and Mr. Mir Faraz Khan, Inspector (legal) on behalf of respondents with AAG present. Rejoinder/replication received on behalf of the appellant, copy whereof is handed over to the learned AAG for arguments on 13.01.2015.

Chairman

13.01.2015

Appellant with counsel and Mr. Mir Faraz Khan, Inspector (legal) for respondents alongwith Addl: A.G present. Learned counsel for appellant is busy before the august Peshawar High Court. Request for adjournment allowed. To come up for final hearing/arguments on 30.6.2015.

Chairman

30.06.2015

Appellant with counsel and Mr. Mir Faraz Khan, Inspector (Legal) alongwith Assitt: AG for the respondents present. Arguments could not be heard due to paucity of time. To come up for arguments on 18.11.2015.

Member

Member

Appeal No. 1313/2012
Mr. Hameedullah

3. 22.11.2013

Appellant deposited
security & process fee
Rs 180/- bank
receipt is attached
with file

Counsel for the appellant. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. The original order has been issued under wrong law. Moreover, there left no cause of action for initiating disciplinary action when leave without pay granted to the appellant. The impugned appellate order by the RPO, Bannu has been passed in violation of rule-5 of the Civil Servant appeal rule 1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply on 29.01.2014.


Member

4. 22.11.2013

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


Chairman

29.1.2014



Appellant with counsel and Mr. Mir Faraz Khan, Inspector (legal) for respondents with AAG present. Written reply has not been received. To come up for written reply/comments on 25.4.2014.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1313 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	09/09/2013	<p>The appeal of Mr. Khwaja Wali presented today by Mr. Fazal Shah Mohmand 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	11-9-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on 22-11-2013.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 1313/2013

Khwaja Wali Ex ConstableAppellant

V E R S U S

Regional Police Officer and Others.....Respondents

I N D E X

S No	Description of Documents	Annexure	Pages
1	Service appeal with affidavit		1-5
2.	Copy of the application with affidavit		6-7
3.	Copy of death Certificate	A	8
4	Copies of Medical Chits	B	9-10
5	Copy of Show Cause and reply.	C & D	11-12
6.	Copy of Charge Sheet and reply	E & F	13-15
7.	Copy of the order dated 28-05-2013	G	16
8.	Copy of departmental appeal and order dated 03-07-2013	H and I	17-18
9.	Wakalat Nama		19

Kh awaja wali

Appellant

Dated:-05-09-2013

Through



Fazal Shah Mohmand
ADVOCATE PESHAWAR

OFFICE:-

Cantonment Plaza Flat 3/B
Khyber Bazar Peshawar
Cell # 0301 8804841

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No 1313/2013

Khwaja Wali Ex Constable No 1859 of District Police Bannu, S/O
Muhammad Rabbani R/O Nizal Bazar Bannu.....Appellant

VERSUS

1. Regional Police Officer, Bannu Region Bannu.
2. District Police Officer, Bannu.
3. Provincial Police Officer, Khyber Pukhtoon khwa Peshawar
.....Respondents

P.W.F. Bannu
1325
09-09-13

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE ORDER DATED 03-07-2013 OF
RESPONDENT NO 1 WHEREBY DEPARTMENTAL APPEAL
OF THE APPELLANT AGAINST THE ORDER DATED 28-05-
2013 OF RESPONDENT NO 1 WHEREBY THE APPELLANT
WAS AWARDED THE PUNISHMENT OF DISMISSAL FROM
SERVICE AND THE PERIOD OF ABSENCE WAS TREATED
AS LEAVE WITH OUT PAY AND PAY WAS RELEASED,
HAS BEEN FILED.**

PRAYER:-

On acceptance of this appeal the impugned orders dated 03-07-2013 of Respondent No 1 and order dated 28-05-2013 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

Respectfully Submitted:-

1. That the appellant joined Police Department as Constable in the year 2007 and since then performed his duties with honesty and full devotion and to the entire satisfaction of his superior officers.

2. That the appellant remained posted to various police Stations including PS Domail, Ghoriwala, Jani Khel etc with no complaint of any sort against him.
3. That the father of the appellant died on 08-12-2012, due to which the appellant was in serious trouble as he is the oldest son and thus had to look after his ailing mother. (Copy of death Certificate is enclosed as Annexure A).
4. That in the circumstances, on 18-12-2012, the appellant while posted to PS Cantt. Bannu, received a call from his home regarding the serious illness of his wife, upon which he informed the SHO who allowed him leave and accordingly the appellant proceeded home and took his wife to the Doctor who advised him medicines along with other tests. (Copies of medical chits are enclosed as Annexure B).
5. That on 06-02-2013, the appellant was issued Show Cause, on the allegations of absence from duty w.e.f. 18-12-2012 to date which was replied in detail explaining the true circumstances. (Copy of Show Cause and reply are enclosed as Annexure C and D).
6. That the appellant was issued Charge Sheet and Statement of allegations on 19-03-2013, which was also replied. (Copy of Charge Sheet and reply are enclosed as Annexure E and F).
7. That finally the appellant was awarded the punishment of dismissal from service and the absence period was treated as leave without pay by respondent No 2 vide order dated 28-05-2013. (Copy of the order is enclosed as Annexure G).
8. That the appellant preferred departmental appeal before respondent No 1 on 05-06-2013 which was filed vide order dated 03-07-2013, however the appellant was issued copy of the same on 23-08-2013. (Copy of departmental appeal, and order are enclosed as Annexure H & I).
9. That the impugned orders dated 03-07-2013 of respondent No 1 and order dated 28-05-2013 of respondent No 2 are against

the law, facts and principles of justice on grounds inter alia as follows:-

GROUND:-

- A. That the impugned orders are illegal and void being passed in utter violation of law and rules on the subject.
- B. That the appellant has not been treated in accordance with law and mandatory provisions of law have been violated by the respondents and the respondents have violated all norms of justice.
- C. That the appellant was punished under a law which is not applicable and punishing some one under a misconception of law vitiates the entire proceedings and the order is such void too.
- D. That no proper inquiry has been conducted in the matter to find out the true facts and circumstances and prove the allegations leveled against the appellant.
- E. That the absence from duty was neither willful nor deliberate, rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- F. That even otherwise the period of absence has been condoned by treating the same as leave without pay and thus regularized, so the appellant could not be punished on this aground again.
- G. That the requirements of law have not been fulfilled by the respondents which are mandatory in case of absence of a civil servant.
- H. That the appellant did nothing amounting to misconduct under the law.
- I. That the appellant has about 6 years of service with unblemished service record.

J. That the appellant seeks the permission of this honorable Tribunal for further/additional grounds at the time of arguments.

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

Dated:- 05-09-2013

Through

Khawaja
Appellant

ceah
**Fazal Shah Mohmand
Advocate Peshawar**

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2013

Khwaja Wali Ex ConstableAppellant

VERSUS

Regional Police Officer and Others.....Respondents

A F F I D A V I T

I, Khwaja Wali Ex Constable No 1859 of District Police Bannu, S/O Muhammad Rabbani R/O Nizal Bazar Bannu, do hereby solemnly affirm and declare on oath that the contents of this Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Khwaja wali

DEPONENT

Identified by

Fazal Shah Mohmand

**Fazal Shah Mohmand
Advocate Peshawar**



BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2013

Khwaja Wali Ex ConstableAppellant

V E R S U S

Regional Police Officer and Others.....Respondents

APPLICATION FOR THE CONDONATION OF DELAY IF ANY.

Respectfully Submitted:-

1. That the above titled appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may kindly be considered as integral part of this application.
3. That the appellant received the copy of final order on 23-08-2013, and the instant appeal is as such within time, further more, the impugned orders are illegal and void abinitio and the time factor becomes irrelevant in such cases.
4. That the period of absence ha been regularized and as such he can not be punished on this ground again.

It is therefore prayed that on acceptance of this application, the delay in filing of the accompanying appeal, if any may kindly be condoned.

Dated:-05-09-2013

Khawaja
Appellant Initials

Through



**Fazal Shah Mohmand
Advocate Peshawar**

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No _____/2013

Khwaja Wali Ex ConstableAppellant

V E R S U S

Regional Police Officer and Others.....Respondents

A F F I D A V I T

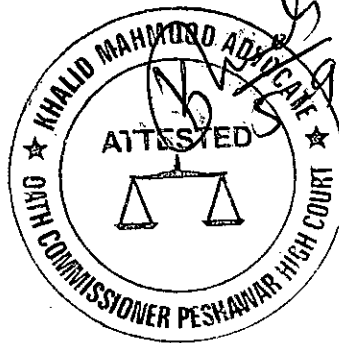
I, Khwaja Wali Ex Constable No 1859 of District Police Bannu, S/O Muhammad Rabbani R/O Nizal Bazar Bannu, do hereby solemnly affirm and declare on oath that the contents of this Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Khwaja wali
DEPONENT

Identified by

Fazal Shah

**Fazal Shah Mohmand
Advocate Peshawar**





حکومت خیبر پختونخوا پاکستان

THE GOVT OF KHYBER PAKHTUNKHWA PAKISTAN

وفات سرٹیفکیٹ

DEATH CERTIFICATE

CRMS No: D111010-13-0032
NATURE OF DEATH: NORMAL

FORM No: P01757931

درخواست دہندہ کا نام: خواجہ علی
درخواست دہندہ کا شناختی کارڈ نمبر: 1110118980343
پتہ: گاؤں بوزہ خیل، تحصیل بٹنوں، ضلع بٹنوں
مستوفی کا رشتہ: والد

مستوفی کا نام	والد کا نام	تاریخ پیدائش	جنس	مذہب	جائے وفات/تاریخ	تاریخ دفن	وجہ موت	مدت علاج
محمد ربانی خان	سید علی	1-1-1955	مرد	اسلام	بوزہ خیل	8-12-2012	طبعی	
شناختی کارڈ نمبر	شناختی کارڈ نمبر							
1110114736421								

APPLICANT NAME: KHOWAJA ALI

APPLICANT CNIC: 1110118980343

RELATION WITH DECEASED: Father

ADDRESS: VILLAGE: BOZA KHEL,

TEHSIL: BANNU, DISTRICT: BANNU

DECEASED NAME/ CNIC	FATHER NAME/ CNIC	DATE OF BIRTH	SEX	RELIGION	PLACE/DATE OF DEATH	DATE OF BURIAL	REASON OF DEATH	SICKNESS PERIOD
MUHAMMAD RABANI 1110114736421	SYED ALI	1-1-1955	MALE	ISLAM	BOZA KHEL 8-12-2012	8-12-2012	NATURAL	

BLOOD RELATION: PERSON CAUSING DISPOSAL OF BODY

NAME: KHOWAJA ALI

CNIC: 1110118480343

GRAVEYARD NAME: BOZA KHEL

ENTRY DATE: 27-2-2013

ISSUE DATE: 28-2-2013

ADDITIONAL INFORMATION:

M. Nazim
سیکرٹری یونین کونسل

تسلیم دہندہ خیل (10) ضلع بٹنوں

Union Council
Charni

Attested

Handwritten signature and initials

نام: خواجہ علی
شناختی کارڈ نمبر: 1110118480343
تاریخ اندراج: 27-2-2013
تاریخ اجراء: 28-2-2013
شناختی معلومات

IMAN MEDICAL & SURGICAL CENTER BANNU

(28)

B/9

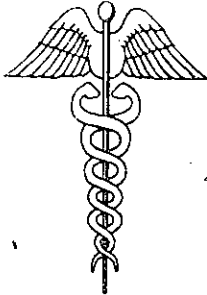
Dr. Romana Wazir

M.B.B.S, Abbot Abad

R.M.P, Abbot Abad

Ultrasound Specialist

Women & Children Teaching
Hospital Bannu



ڈاکٹر رومانہ وزیر

ایم۔ بی۔ بی۔ ایس۔ ایبٹ آباد

آر۔ ایم۔ پی۔ ایبٹ آباد

ماہر امراض زچہ و بچہ

الٹراساؤنڈ سپیشلسٹ

Pt. Name M/O Khwaja wali Ref by _____ Date 12/12/12

Cap Zylafloxim 1000
ایک دورانیہ

Tbl Panstan 1000
ایک دورانیہ

Tbl Methygin 1000
ایک دورانیہ

Tbl Folic Acid 5mg
ایک دورانیہ

Cap Tranxamin 500mg
ایک دورانیہ

Syp Singobion 100ml
ایک دورانیہ

Attested
[Signature]
Adv

Not Valid For Court

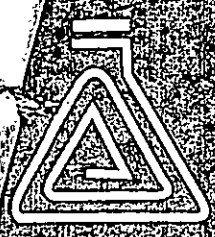
بالقابل گیت نمبر 2
ڈسٹرکٹ ہیڈ کوارٹر ہسپتال بنوں

کلینک: ایمان میڈیکل اینڈ سرجیکل سنٹر

Mob: 03009068575

29

10



Iman Medical Lab

Khan Zaid Khan 170@gmail.com



ایمان میڈیکل لیب

ایمان ایک ہیر 2 سڑک ہیکو اسپتال بہاول

Zahid Sadiq Khan

PMF Peshwar
0314-9292717

PATIENT NAME: W/O Khawaji wali AGE & SEX: _____

REF. BY: DR. _____ Lab.No _____ DATE: 18/12/18

HEMATOLOGY

TEST	RESULT	NORMAL	TEST	RESULT	NORMAL
Hb %	G/dl	Male 14-18 Female 12-16	RBCs	M/cmm	40 - 60
TLC	/CMM	4000-10000	Platelets	/Cmm	150-400x1000
DLC			Rectics	%	
Poly	%	Adult 40-70 Child 20-50	Bt	min	2 - 9
Lympho	%	Adult 20-40 Child 20-50	CT	min	2 - 7
Mon	%	Upto 07	P.Name		
Eosino	%	Adult 1 - 4 Child 2 - 5	Blood Group		
Baso	%	Adult 0-0.5 Child 0-1.5	Rh.Type		
Other	%		Donors Name		
NRBCs	/100WBC		Donors Group		
ESR	m/1st HR	Male 3 - 5 Female 4 - 7	Crossmatching		
MP			Hbs Ag	Non Reactive	
			Anti HCV	Non Reactive	

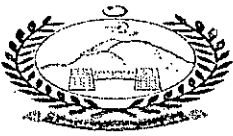
REMARKS _____

Attested

Zahid
Zahid Nawaz Khan
P.M.F Nims Lahore
0336 9734004

Carl





OFFICE of THE
DISTRICT POLICE OFFICER, BANNU.

Ph: No. 0928 - 9270038

Fax # 0928 - 9270045

No. 367

Dated: 6/02/2013.

SHOW CAUSE NOTICE.


WHEREAS, in the light of the facts, I am satisfied that no formal enquiry as contemplated by under disciplinary rules 1975 is necessary and therefore, I am of the opinion that the allegations/Misconduct call for any one of the minor/major punishment including dismissal from service as under rules 4(a) (b) of the aforesaid rules.

Now therefore, I WAQAR AHMAD, District Police Officer, Bannu under disciplinary rules 1975 on the following grounds of action, being competent authority, call upon you, FC Khwaja Wali No.1859 with this Show Cause notice to submit reply within (7) days of the receipt of this notice, as to why the proposed punishment should not be awarded to you and also to state at the same time, whether you desire to be heard in person.

GROUND OF ACTION.

- That you while posted to PS Cantt, Bannu willfully absented yourself from govt duty w.e.f 18-12-2012 to date without any leave or permission from the competent authority.
- That you have ceased to become a good Police Officer.
- All the above speaks of your negligence and lack of supervision in the performance of official. Hence you have made liable yourself to be proceeded departmentally under disciplinary rule 1975.

In case your reply is not received within the stipulated period, it shall be presumed that you have nothing to say in your defense and ex-parte decision shall be taken against you.


District Police Officer,
Bannu.
01-02-2013

Received

Khawaja

07-02-2013

Attested


Solo

(22)

11

12/12

۱۳ - شہزادہ زونیس نے 36 دنوں میں 6.2.13

تیار کیا گیا تھا۔ 1859ء میں شہزادہ زونیس نے

۱۲/۱۸ سے بدھصول گزارا۔

انہی مہینوں میں شہزادہ زونیس نے

۱۲/۱۸ سے بدھصول گزارا۔

زونیس نے کافی عرصہ میں بیمار تھی۔ بیماری نے اس کی حالت کو

بہتر نہیں کیا۔ زونیس کی حالت دیکھ کر زونیس نے

۱۲/۱۸ سے بدھصول گزارا۔ 3 ماہ تک بیمار رہی۔

۱۲/۱۸ سے بدھصول گزارا۔ 3 ماہ تک بیمار رہی۔

۱۲/۱۸ سے بدھصول گزارا۔ 3 ماہ تک بیمار رہی۔

۱۲/۱۸ سے بدھصول گزارا۔ 3 ماہ تک بیمار رہی۔

۱۲/۱۸ سے بدھصول گزارا۔ 3 ماہ تک بیمار رہی۔

۱۲/۱۸ سے بدھصول گزارا۔ 3 ماہ تک بیمار رہی۔

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SUMMARY OF ALLEGATIONS.

16 E
13

You, FC Khwaja Wali No.1859 while posted to PS Cantt, Bannu was found to indulge in misconduct under the following allegations:

- That you while posted to PS Cantt, Bannu deliberately absented yourself from govt duty w.e.f 18-12-2012 to 06-03-2013 without any leave or permission from the competent authority.
- That you are habitual absentee, incorrigible police official and unwilling worker. Hence you have ceased to become a good police officer by committing the above commission/omissions.

DSP/ Tahis Shah of Bannu District is appointed to hold departmental proceedings and submit his findings to the undersigned after observing legal formalities.

[Signature]
District Police Officer,
Bannu.
19/03/2013

No-411 / SRU

20/3/13

Attest.
[Signature] Ad.

CHARGE SHEET.


WHEREAS I am satisfied that a formal enquiry as contemplated in the NWFP, Police Rules, 1975 is necessary and expedient.

AND WHEREAS, I am of the view that the allegations if established would call for a major penalty as defined in Rules 4(b) of the aforesaid Rule.

NOW, THEREFORE, as required in 6-1 (a) of the aforesaid Rule I, GUL WALI KHAN District Police Office, Bannu, as competent authority, hereby charge you **FC Khwaja Wali No.1859** for the allegations, attached with this charge sheet.

AND I direct you further under rules 6-1 (b) of the aforesaid Rules to put in written defense within 7 days of the Receipt of this Charge sheet as to whether major OR Minor punishment as defined in Rules 4-1(a)-(b) should not be awarded to you. Also state at the same time whether you desire to be heard in person.

In case, your reply is not received within the prescribed period without sufficient reason, it would be presumed that you have nothing to say in your defence and the undersigned would be at liberty to take ex-parte action straight away against you.


District Police Officer,
Bannu.
19/03/2013

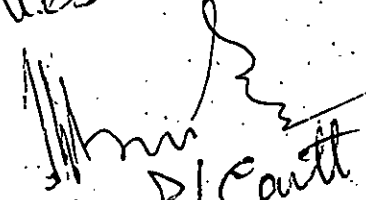
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دعا

15

بیان اذان کہیں خواجہ ولی 1859 مقصد عقائد کہیں
مدریہ وقت پولیس ولفا بیان کیا کہ عمر ادبی بیان ہے جو پیش
اذن جراث مشیٹا کے ساتھ رہے کہ ہوں
اس میں کسی قسم کی کمی، بیشی نہیں کرنا چاہیہا
بیان ذکر ہو گیا ہے تاکہ سند رہے

Khawaja
wali
03369608743

Attested

DSP/Cantt

Attested

D.S.P.

ORDER:

Constable Khwaja Wali No.1859 s/o Muhammad Rabbani Khan r/o Basya Khel PS Basya Khel enlisted in this District Police on 09-06-2007. During the service he remained absented/awarded punishment with the following details.

That he was deliberately absented himself from govt duty w.e.f 09-10-08 to 21-12-08, from 09-01-09 to 28-01-09 and from 11-02-09 to the date of dismissal. He was awarded major punishment of Dismissal from Service and absence period was treated as leave without pay vide this office OB No.725 dated 16-05-2009. He filed an appeal to the Range Chief, Bannu and the then Range Chief Mr. Muhammad Masood Khan Afridi accepted his appeal. He was re-instated into service and his Dismissal order converted into Major Punishment of Reduction to time scale constable for a period of 02 years and absence period treated as leave without pay. He was posted to PS Jani Khel for a period of 03 months.

He was absented himself from govt duty w.e.f 13-04-10 to 21-04-10 and his absence period converted into kind leave vide this office OB No.641 dated 26-05-2010.

That he was absented himself from govt duty w.e.f 28-12-10 to 08-02-11 and from 24-02-11 to 13-06-11. He was awarded minor punishment of Forfeiture of one year approved service permanently and treated his absence for 02 months converted into leave of kind due and the remaining absence was treated as unauthorized leave without pay vide this office OB No. 1211 dated 22-10-2011.

He was absented himself from govt duty w.e.f 13-11-10 to 03-12-10 and his absence period treated as leave without pay vide this office OB No.1222 dated 25-10-2011.

His service record was perused and it was found that he has served for about 05 years, 11 months and 20 days in the District Police. All the above transpire that he is habitual absentee, malinger, incorrigible and has ceased to become a good police officers even in the initial stage of service.

Now, he while posted to Police Lines, Bannu absented himself from govt duty w.e.f 16-07-2012 to 18-12-2012, from 18-12-2012 to 06-03-2013 PS Cantt and from 22-03-2013 to 10-05-2013 PS Cantt without any leave or permission from the competent authority.

The Enquiry papers were entrusted to SDPO/Cantt for enquiry and report, who (Enquiry Officer) submitted his findings and recommended for the award of major punishment.

Being a burden on the shoulder of Police Force, the undersigned has got no other option except to expel him from the force. Keeping in view the recommendation of Enquiry Officer, Now, therefore I, **ABDUL GHAFUOR KHAN AFRIDI** District Police Officer, Bannu being a competent authority in exercise of the powers vested in me under Police rules 1975, Constable Khwaja Wali No.1859 is hereby dismissed from service and absence period treated as leave without pay. Pay is also released.

~~Order announced~~

OB No. 646
Dated 28/05/2013.

No. 6568-74 dated: 28/05/2013.


District Police Officer,
Bannu.

1. Khwaja Wali No.1859 s/o Muhammad Rabbani R/O Basya Khel PS Basya Khel, Bannu.
2. SHO PS Cantt for necessary action.
3. SHO PS Basya Khel for necessary action.
4. Pay Officer, SRC, RI.Lines and OASI for necessary action.

9/16

Alto
Early
Ad

H/17
اپیل

بجسور جناب والا شان ریجنل پولیس آفسر صاحب بنوں ریجن بنوں۔

استدعا:-

بجال فرمائے سائل بعیدہ کانیشیل جو جناب D.P.O صاحب بنوں نے سائل کو ثورم

5B نمبر 13-5-626/28 ملازمت سے 1975ء پولیس رولز کے تحت ڈسمس کیا ہے۔ اور سائل کو اپنی دفاع کا کوئی موقع نہیں دیا ہے۔

جناب عالی!

مؤدبانہ اپیل کرتا ہوں۔ کہ

سائل کو جناب D.P.O صاحب بنوں نے 1975ء پولیس رولز کے تحت ملازمت سے بدین وجہ ڈسمس کیا۔ کہ دوران تعیناتی تھانہ کینٹن سائل کا والد فوت ہوا۔ سائل نے مرگ سٹیفکیٹ بھی پیش کی۔ چونکہ سائل والدین کا بڑا بیٹا ہے۔ تمام ذمہ داریاں سائل کے کندھوں پر ہے۔ تجیز و تکفین سے فراغت ملنے کے بعد دوبارہ تھانہ چھاؤنی میں خاضری کی رپورٹ پیش کی۔ حالیہ الیکشن ڈیوٹیاں دی ہے۔ لیکن

S.R.C صاحب نے سائل کے خلاف غلط رپورٹ پیش کی۔ جن کی بیجا پر سائل کی مستقبل کو تارک کیا گیا۔

اگرچہ ماضی میں سائل سے چند مجبور یوں کی بناء کچھ غلطیاں سرزد ہوئی ہیں۔

لیکن آفسران بالانے انہیں دوبارہ ہمدردانہ اور رحم دلانہ سلوک کر کے ملازمت سائل بجال رکھا۔ برخاستگی کا حکم انتہائی میں صادر کیا۔ سائل کو پیش نہیں کیا گیا۔ لہذا آنحضور سے مؤدبانہ التجاء کرتا ہوں۔ کہ سائل کو دوبارہ ملازمت کو بجال کیا جائے۔ سائل وعدہ کرتا ہوں کہ آئندہ کیلئے اس قسم کی غلطی سے گریز کرونگا۔

ماتحت پروی ہوگی۔

الغرض

سائل Ex کانیشیل خواجہ ولی 1859 ساکن بوزہ خیل سورانی بنوں۔

No 1335/EC

DT 05/6/03

copy. No. DPO/Bannu

for Corrections to P. Record

along with dept. copy

File for further action

For R.P.O.

Bannu

☆☆☆☆☆☆☆☆☆☆

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POLICE DEPARTMENT.

BANNU REGION.

9/18

ORDER

My this order will dispose off the appeal in respect of Ex: Constable Khwaja Wali No. 1859 of Operation Staff, Bannu against the order of Major Punishment of dismissal from service by DPO/Bannu vide OB No: 626 dated 28.5.2013 for committing of the following omissions:-

- That he, while posted to Police Lines, Bannu absented himself from govt: duty w.e. from 16.7.2012 to 18.12.2012, from 18.12.2012 to 6.3.2013 and from 22.3.2013 to 10.5.2013 with out any leave or permission of the competent authority.

The said Ex: Constable was proceeded against departmentally and SDPO/Cantt was appointed as Enquiry Officer, who conducted proper enquiry and submitted his findings, the delinquent Police Constable was recommended for Major punishment.

After conducting proper departmental proceedings, the said Police Official was awarded Major punishment of dismissal from service under Police Rules, 1975.

The appellant appeared in orderly room on 2.7.2013 and personally heard. Relevant record/enquiry proceedings also perused. During personal hearing, the delinquent Police Constable did not convince the undersigned about his innocence. Therefore, I Azad Khan, Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me under Police Rules, 1975 can not interfere in the order passed by DPO/Bannu vide OB: No. 626 dated 28.5.2013, being one, in consonance with law and hereby file the subject appeal of Ex: Police Official Khwaja Wali No. 1859..

(Azad Khan) TST, PSP
Regional Police Officer,
Bannu Region, Bannu.

No. 1534 /EC, dated Bannu the 03 / 07 / 2013.

Copy to:-

1. The District Police Officer, Bannu or Information w/r to his office Memo: No. 7156 dated 11.6.2013. His S: Roll and departmental proceedings are sent herewith for record.
2. Ex: Constable, Khwaja Wali No. 1859 for Information.

Handwritten notes:
Khwaja Wali
23-8-13

Attested

Handwritten signature

Adv

(Azad Khan) TST, PSP
Regional Police Officer,
Bannu Region, Bannu

3/7/13

FORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL PESHAWAR
Appeal No. 1313/2013.

Khwaja Wali Ex-Constable No. 1859 of District Police Bannu, s/o
Mohammad Rabbani r/o Nizam Bazzar Bannu.

(Appellant)

VERSUS

- (1) Regional Police Officer, Bannu Region, Bannu
- (2) District Police Officer, Bannu
- (3) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar

(Respondents)

PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

- 1) That the appeal of appellant is badly time-barred.
- 2) That the order of respondent No.1 is very much legal.
- 3) That the appeal is not maintainable in its present form.
- 4) That the appellant has concealed the actual facts from the Honourable Tribunal.
- 5) That the appeal is bad in law due to non-joinder of necessary parties.
- 6) That the appellant has approached the Honourable Tribunal with unclean hands.
- 7) That the appellant has got no cause of action and locus standi to file the instant appeal.
- 8) That the appellant has been estopped by his own conduct.

OBJECTIONS ON FACTS

- (1) Correct to the extent that the appellant was enlisted as Constable on 9.6.2007 but his performance during official duty was unsatisfactory and remained absent from duty on many occasions with out any sanctioned leave. List of absence and punishment enclosed as annexure "A"
- (2) Incorrect. He is habitual absentee and a lot of reports have been entered in daily Diary by the superior/ supervising officer.
- (3) Incorrect. The appellant has not informed his supervising officer nor sanctioned leave from the competent authority. He has left the important duty without any prior sanction which amounts to grave miss-conduct.
- (4) Incorrect: He has not obtained leave from the SHO PS Cantt. The plea of appellant is frivolous and concocted.
- (5) Correct. Pertains to record.
- (6) Correct. Pertains to record.
- (7) Correct. Pertains to record.
- (8) Correct to the extant that the departmental appeal of appellant was filed by RPO Bannu on 03/07/2013 after hearing the appellant in Orderly Room held on 02/07/2013 and the same was communicated to the appellant. Photo copy of application enclosed as annexure "B".


- (9) Incorrect. The orders passed by the respondents are based on facts, justice and in accordance with law/rules.


OBJECTIONS ON GROUNDS.


- a) Incorrect. The respondents have passed orders in accordance with facts on the record, rules and providing opportunities of hearing to appellant.
- b) Incorrect. All the opportunities of defense and hearing were afforded to appellant during inquiry process. No injustice have been done with the appellant.
- c) Incorrect. The impugned order is in accordance with existing law.
- d) Incorrect. Enquiry officer was appointed who has recorded statements of material witnesses. The inquiry officer fulfilled all the ~~total~~ formalities. Photo copy of inquiry finding report enclosed as annexure "C".
- e) Incorrect. The appellant has deliberately absented from official duty without sanctioned leave on many occasions as evident from enclosure A. He is habitual absentee.
- f) Incorrect. Appellant was treated in accordance with law.
- g) Incorrect. All the legal and code formalities were fulfilled.
- h) Incorrect. The appellant has willfully absented from official duty for long period without any sanctioned leave from competent authority which amount to grave miss-conduct on the part of appellant.
- i) Incorrect. As stated in preceding paras, the appellant had remained absent from official duty and received minor punishments within a short service of 5/6 years
- j) Respondents may also be allowed to add further/additional grounds at the time of hearing of case.

Prayer:

In view of the above explained circumstances, it is humbly prayed that the appeal of appellant is not maintainable, may kindly be dismissed with costs.


Regional Police Officer,
Bannu Region, Bannu.
(Respondent No. I)


Provincial Police Officer,
Khyber Pakhtunkhwa, Pehawar
(Respondent No. III)


District Police Officer, Bannu.
(Respondent No. II)

FORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL PESHAWAR
Appeal No. 1313/2013.

Khwaja Wali Ex-Constable No. 1859 of District Police Bannu, s/o
Mohammad Rabbani r/o Nizam Bazzar Bannu.

(Appellant)

VERSUS

- (1) Regional Police Officer, Bannu Region, Bannu
 - (2) District Police Officer, Bannu
 - (3) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
- (Respondents)

COUNTER AFFIDAVIT

We, the respondents (Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar, Regional Police Officer, Bannu Region, Bannu and District Police Officer, Bannu) do hereby solemnly affirm and declare that the contents of the attached para wise comments are true and correct to the best of our knowledge and belief and nothing has been withheld or concealed from this Honorable Tribunal.


DEPONENT

Regional Police Officer,
Bannu Region, Bannu.
(Respondent No.I)


DEPONENT

Provincial Police Officer,
K.P.K, Peshawar
(Respondent No.III)


DEPONENT

District Police Officer, Bannu.
(Respondent No.II)

BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL PESHAWAR
Appeal No. 1313/2013.

Khwaja Wali Ex-Constable No. 1859 of District Police Bannu, s/o
Mohammad Rabbani r/o Nizam Bazzar Bannu.

(Appellant)

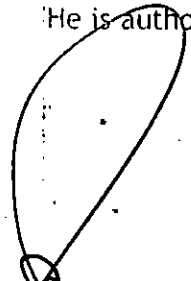
VERSUS


- (1) Regional Police Officer, Bannu Region, Bannu
- (2) District Police Officer, Bannu
- (3) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar (Respondents)

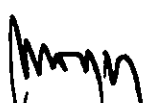
AUTHORITY LETTER.

Mr. Mir Faraz Khan Inspector Legal Branch Bannu is hereby authorized to appear before The Honourable Service Tribunal Khyber Pakhtun Khwa Peshawar on behalf of the undersigned in the above cited case.

He is authorized to submit and sign all documents pertaining to the instant appeal.


Regional Police Officer,
Bannu Region, Bannu.
(Respondent No.I)


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.III)

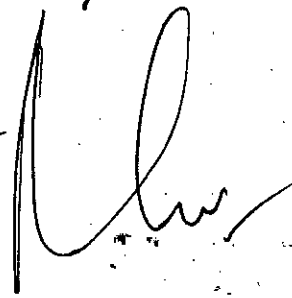

District Police Officer, Bannu.
(Respondent No.II)

Annexure "A"

فہرست سابقہ سزایا بیاں ازاں کا نشیبل خواجہ والی نمبر 1859

نمبر شمار	مدد روز نامچہ	غیر حاضر عرصہ	حکم آفسران بالا
01	مد 14 روز نامچہ 27.05.2010	منٹ گھنٹے دن 30 15 07	7 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 803/5.7.010
02	مد 11 روز نامچہ 04.06.2010	منٹ گھنٹے دن 00 07 07	8 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 733/17.6.010
03	مد 57 روز نامچہ 06.11.2010	منٹ گھنٹے دن 20 16 03	3 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 163/12.2.011
04	مد 59 روز نامچہ 13.11.2010	منٹ گھنٹے دن 05 20 10	10 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 1449/4.1.011
05	مد 56 روز نامچہ 03.12.2010	منٹ گھنٹے دن 40 14 09	9 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 33/13.1.011
06	مد 31 روز نامچہ 16.12.2010	منٹ گھنٹے دن 55 00 05	4 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 09/8.1.011
07	مد 12 روز نامچہ 21.05.2010	منٹ گھنٹے دن 05 04 08	8 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 701/10.6.2010
08	مد 35 روز نامچہ 01.02.2011	منٹ گھنٹے دن 15 13 07	7 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 1591/26.12.011
09	مد 15 روز نامچہ 30.01.2012	منٹ گھنٹے دن 30 19 08	8 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 190/21.2.012
10	مد 48 روز نامچہ 09.05.2012	منٹ گھنٹے دن 05 03 03	3 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 594/13.6.012
11	مد 06 روز نامچہ 19.06.2012	منٹ گھنٹے دن 05 03 01	1 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 692/11.7.012
12	مورخہ 16.12.2012 تا 18.12.2012	منٹ گھنٹے دن 00 00 02	2 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 83/21.1.013

Prepared from record & attested



عنوان: - فیہ بھی نقل کا، 7 سہدک / عاقل ہونگا رہے جو۔ - اسے اسلئے لکھا گیا

لہذا آج - گزشتہ کی نقل ہے کہ سائنس حکم فیہ میں 9/6/2007ء کی
اپنی رپورٹ کا آغاز کیا۔ تقریباً جو سائنس کے سائنس ایسے نہ اسلئے خوش
اسلئے ہی سہی م دینے رہے، ہینڈ ناگ سر و حومات کی بنا پر
سائنس کو حکم ہے اسلئے ان بابت سے فہمستار دیا

اسلئے - سر ہائی رٹنا کر سائنس کو لکھو وہ دستاویزات
کی نقل فراہم کرنے کے ادکامات جہاں رہتا ہے

SRL
For further see
process as per subject
procedure

عین گزشتہ

الغالی

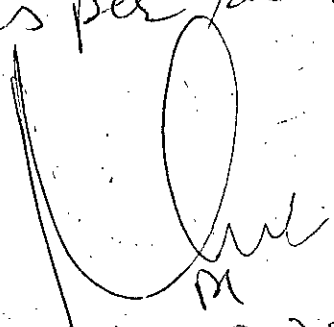
30/8/13

سائنس کونسل خواجہ ولی خان، 1859 ڈسٹرکٹ پریس بیلڈ عدوہ سرکاری

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The documents in question are not
secret document but public documents
under the law. copies may be
given to applicant as per rules.

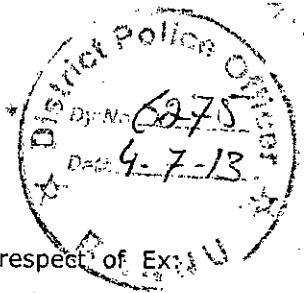

M

30-08-2013

POLICE DEPARTMENT.

BANNU REGION.

ORDER



My this order will dispose off the appeal in respect of Ex: Constable Khwaja Wali No. 1859 of Operation Staff, Bannu against the order of Major Punishment of dismissal from service by DPO/Bannu vide OB No. 626 dated 28.5.2013 for committing of the following omissions:-

- That he, while posted to Police Lines, Bannu absented himself from govt: duty w.e. from 16.7.2012 to 18.7.2012, from 18.12.2012 to 6.3.2013 and from 22.3.2013 to 10.5.2013 with out any leave or permission of the competent authority.

The said Ex: Constable was proceeded against departmentally and SDPO/Cantt was appointed as Enquiry Officer, who conducted proper enquiry and submitted his findings, the delinquent Police Constable was recommended for Major punishment.

After conducting proper departmental proceedings, the said Police Official was awarded Major punishment of dismissal from service under Police Rules, 1975.

The appellant appeared in orderly room on 2.7.2013 and personally heard. Relevant record/enquiry proceedings also perused. During personal hearing, the delinquent Police Constable did not convince the undersigned about his innocence. Therefore, I Azad Khan, Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me under Police Rules, 1975 can not interfere in the order passed by DPO/Bannu vide OB: No. 626 dated 28.5.2013, being one, in consonance with law and hereby file the subject appeal of Ex: Police Official Khwaja Wali No. 1859..

(Azad Khan) TST, PSP
Regional Police Officer,
Bannu Region, Bannu.

No. 1534 /EC, dated Bannu the 03/07/2013.

Copy to:-

1. The District Police Officer, Bannu or information w/r to his office Memo: No. 7156 dated 11.6.2013. His S: Roll and departmental proceedings are sent herewith for record.
2. Ex: Constable, Khwaja Wali No. 1859 for information.

SRC
With departmental enquiry for further n/action

gm
DPO/Bannu
4/7/2013

Attested to be true copy

[Signature]

(Azad Khan) TST, PSP
Regional Police Officer,
Bannu Region, Bannu

4/3/7/13

Annexure

No. 160/DSP/Cantt

Dated 25/04/2013

FINDING REPORT.

Constable Khwaja Wali No. 1859 while Posted to PS Cantt was found absent as following.

- That he while posted to Police Line, Bannu willfully absented himself from Govt: duty w.e.f 16-7-2012 to 18-12-2012 for a period of five months and two day's. His reply to the show cause notice is worth perusal.
- That he while posted to PS Cantt Bannu deliberately absented himself from Govt: duty w.e.f 18/12/2013 to 06-03-2013 without any leave or permission from the competent authority.
- That he is habitual of absentee, incorrigible Police official and unwilling worker, hence he has ceased to become a good Police Officer by committing the above commission/ omissions.

Resultantly he was charge sheeted based upon statement of allegation and the undersigned was appointed as enquiry officer vide DPO office Letter No.411/SRC dated 20-03-2013 copy of charge sheet was served upon the defaulter officer accordingly who replied within stipulated period. In the reply the defaulter officer has categorically denied the allegations stated that his wife was ill since long. On 18-12-2012 he received information that his wife is very serious, when he reached his House, in fact he found her very serious. He got her to Iman Medical Center near DHQ Hospital Bannu. Here Lady Doctor after her checkup CT.Skin, ultra sound and other digital X-Ray, the Doctor prescribed Medicine for her. Due to the above reason he was absent (Photo Copy of the treatment attached).

STATEMENT OF JAMSHID ALI MASI CANTT.

He stated in his statement that constable Khwaja Wali No.1859 was absented vide DD No. 26 dated 18-12-2012 and made his arrival report vide DD No. 17 dated 06-03-2013 which is correct on the PS record.

STATEMENT OF RAHAT ULLAH MHC POLIE LINE, BANNU

He stated in his statement that constable Khwaja Wali No.1859 was absented vide DD No.60 dated 16-7-2012 and made his arrival report vide DD No. 21 dated 18-12-2012 which is correct on the PS record.

CONCLUSION.

From the perusal of the Enquiry file and available record the undersigned reached to the conclusion that the Defaulter Constable has presented Medical Documents of Private Hospital for his wife illness. He has to got permission from competent authority for treatment of his wife, and applied for leave but he has not done so, which comes under the ambit of indiscipline.

He is also found habitual of absentee, hence he is recommended for Major punishment.

Attested to be true copy

[Signature]

E.O. SDPO Cantt Circle

Bannu

BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL PESHAWAR
Appeal No. 1313/2013.

Khwaja Wali Ex-Constable No. 1859 of District Police Bannu, s/o
Muhammad Rabbani r/o Nizam Bazzar Bannu.

(Appellant)

VERSUS

- (1) Regional Police Officer, Bannu Region, Bannu
- (2) District Police Officer, Bannu
- (3) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar (Respondents)

PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

- 1) That the appeal of appellant is badly time-barred.
- 2) That the order of respondent No.1 is very much legal.
- 3) That the appeal is not maintainable in its present form.
- 4) That the appellant has concealed the actual facts from the Honourable Tribunal.
- 5) That the appeal is bad in law due to non-joinder of necessary parties.
- 6) That the appellant has approached the Honourable Tribunal with unclean hands.
- 7) That the appellant has got no cause of action and locus standi to file the instant appeal.
- 8) That the appellant has been estopped by his own conduct.

OBJECTIONS ON FACTS

- (1) Correct to the extent that the appellant was enlisted as Constable on 9.6.2007 but his performance during official duty was unsatisfactory and remained absent from duty on many occasions with out any sanctioned leave. List of absence and punishment enclosed as annexure "A"
- (2) Incorrect. He is habitual absentee and a lot of reports have been entered in daily Diary by the superior/ supervising officer.
- (3) Incorrect. The appellant has not informed his supervising officer nor sanctioned leave from the competent authority. He has left the important duty without any prior sanction which amounts to grave miss-conduct.
- (4) Incorrect: He has not obtained leave from the SHO PS Cantt. The plea of appellant is frivolous and concocted.
- (5) Correct. Pertains to record.
- (6) Correct. Pertains to record.
- (7) Correct. Pertains to record.
- (8) Correct to the extent that the departmental appeal of appellant was filed by RPO Bannu on 03/07/2013 after hearing the appellant in Orderly Room held on 02/07/2013 and the same was communicated to the appellant. Photo copy of application enclosed as annexure "B".


- (9) Incorrect. The orders passed by the respondents are based on facts, justice and in accordance with law/rules.

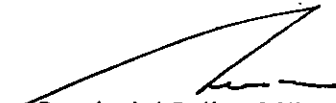
OBJECTIONS ON GROUNDS.


- a) Incorrect. The respondents have passed orders in accordance with facts on the record, rules and providing opportunities of hearing to appellant.
- b) Incorrect. All the opportunities of defense and hearing were afforded to appellant during inquiry process. No injustice have been done with the appellant.
- c) Incorrect. The impugned order is in accordance with existing law.
- d) Incorrect. Enquiry officer was appointed who has recorded statements of material witnesses. The inquiry officer fulfilled all the Codal formalities. Photo copy of inquiry finding report enclosed as annexure "C".
- e) Incorrect. The appellant has deliberately absented from official duty without sanctioned leave on many occasions as evident from enclosure A. He is habitual absentee.
- f) Incorrect. Appellant was treated in accordance with law.
- g) Incorrect. All the legal and codal formalities were fulfilled.
- h) Incorrect. The appellant has willfully absented from official duty for long period without any sanctioned leave from competent authority which amount to grave miss-conduct on the part of appellant.
- i) Incorrect. As stated in preceding paras, the appellant had remained absent from official duty and received minor punishments within a short service of 5/6 years.
- j) Respondents may also be allowed to add further/additional grounds at the time of hearing of case.

Prayer:

In view of the above explained circumstances, it is humbly prayed that the appeal of appellant is not maintainable, may kindly be dismissed with costs.


Regional Police Officer,
Bannu Region, Bannu.
(Respondent No. I)


Provincial Police Officer,
Khyber Pakhtunkhwa, Pehawar.
(Respondent No. III)


District Police Officer, Bannu.
(Respondent No. II)

BEFORE THE KHYBER PAKHTUN KHWA SERVICE TRIBUNAL PESHAWAR
Appeal No. 1313/2013.

Khwaja Wali Ex-Constable No. 1859 of District Police Bannu, s/o
Mohammad Rabbani r/o Nizam Bazzar Bannu.

(Appellant).

VERSUS

- (1) Regional Police Officer, Bannu Region, Bannu
 - (2) District Police Officer, Bannu
 - (3) Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
- (Respondents)

COUNTER AFFIDAVIT

We, the respondents (Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar, Regional Police Officer, Bannu Region, Bannu and District Police Officer, Bannu) do hereby solemnly affirm and declare that the contents of the attached para wise comments are true and correct to the best of our knowledge and belief and nothing has been withheld or concealed from this Honorable Tribunal.


DEPONENT

Regional Police Officer,
Bannu Region, Bannu.
(Respondent No. I)


DEPONENT

Provincial Police Officer,
K.P.K, Peshawar
(Respondent No. III)


DEPONENT

District Police Officer, Bannu.
(Respondent No. II)

and the same was communicated to the appellant.
Photo copy of application enclosed as annexure "8".

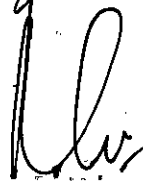
Annexure "A"

فہرست سابقہ سزایا بیباں ازاں کا نشیبل خواجہ والی نمبر 1859

نمبر شمار	مدد روز نامچہ	غیر حاضر عرصہ	حکم آفران بالا
01	مد 14 روز نامچہ 27.05.2010	منٹ گھنٹے دن 30 15 07	7 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 803/5.7.010
02	مد 11 روز نامچہ 04.06.2010	منٹ گھنٹے دن 00 07 07	8 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 733/17.6.010
03	مد 57 روز نامچہ 06.11.2010	منٹ گھنٹے دن 20 16 03	3 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 163/12.2.011
04	مد 59 روز نامچہ 13.11.2010	منٹ گھنٹے دن 05 20 10	10 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 1449/4.1.011
05	مد 56 روز نامچہ 03.12.2010	منٹ گھنٹے دن 40 14 09	9 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 33/13.1.011
06	مد 31 روز نامچہ 16.12.2010	منٹ گھنٹے دن 55 00 05	4 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 09/8.1.011
07	مد 12 روز نامچہ 21.05.2010	منٹ گھنٹے دن 05 04 08	8 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 701/10.6.2010
08	مد 35 روز نامچہ 01.02.2011	منٹ گھنٹے دن 15 13 07	7 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 1591/26.12.011
09	مد 15 روز نامچہ 30.01.2012	منٹ گھنٹے دن 30 19 08	8 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 190/21.2.012
10	مد 48 روز نامچہ 09.05.2012	منٹ گھنٹے دن 05 03 03	3 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 594/13.6.012
11	مد 06 روز نامچہ 19.06.2012	منٹ گھنٹے دن 05 03 01	1 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 692/11.7.012
12	مورخہ 16.12.2012 تا 18.12.2012	منٹ گھنٹے دن 00 00 02	2 یوم بلا تنخواہ بحوالہ آرڈر بک نمبر 83/21.1.013

Prepared from record

Attested



ضامی

عنوان: فراہمی نقل یا رجسٹر / فائلنگ کارڈ ہوا۔ اس میں سرکاری

لکھ آ۔ گرائس کی اصل ہے کہ سائنس حکم لکھ میں 9/6/2007ء کو
اپنی سرس کا آغاز کیا۔ گزریا جو سائنس کے لئے فراہم ہوئی
اسلوی سے سرایم دے رہے ہیں۔ ہینڈ ناگ سرورس کی بنا پر
سائنس کو حکم ہے ان کے بارے میں طاقت رکھنا

اسکا۔ سرکاری ریکارڈ سائنس کو مذکورہ دستاویزات
کی نقل فراہم کرنے کے اذکار کے لئے

SRL
For further
process as per
procedure

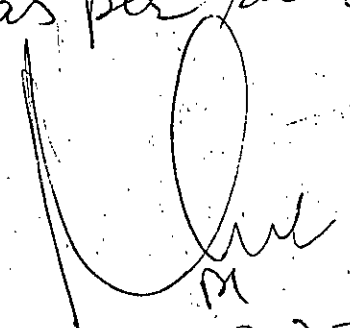
عین گزریا

الغالب

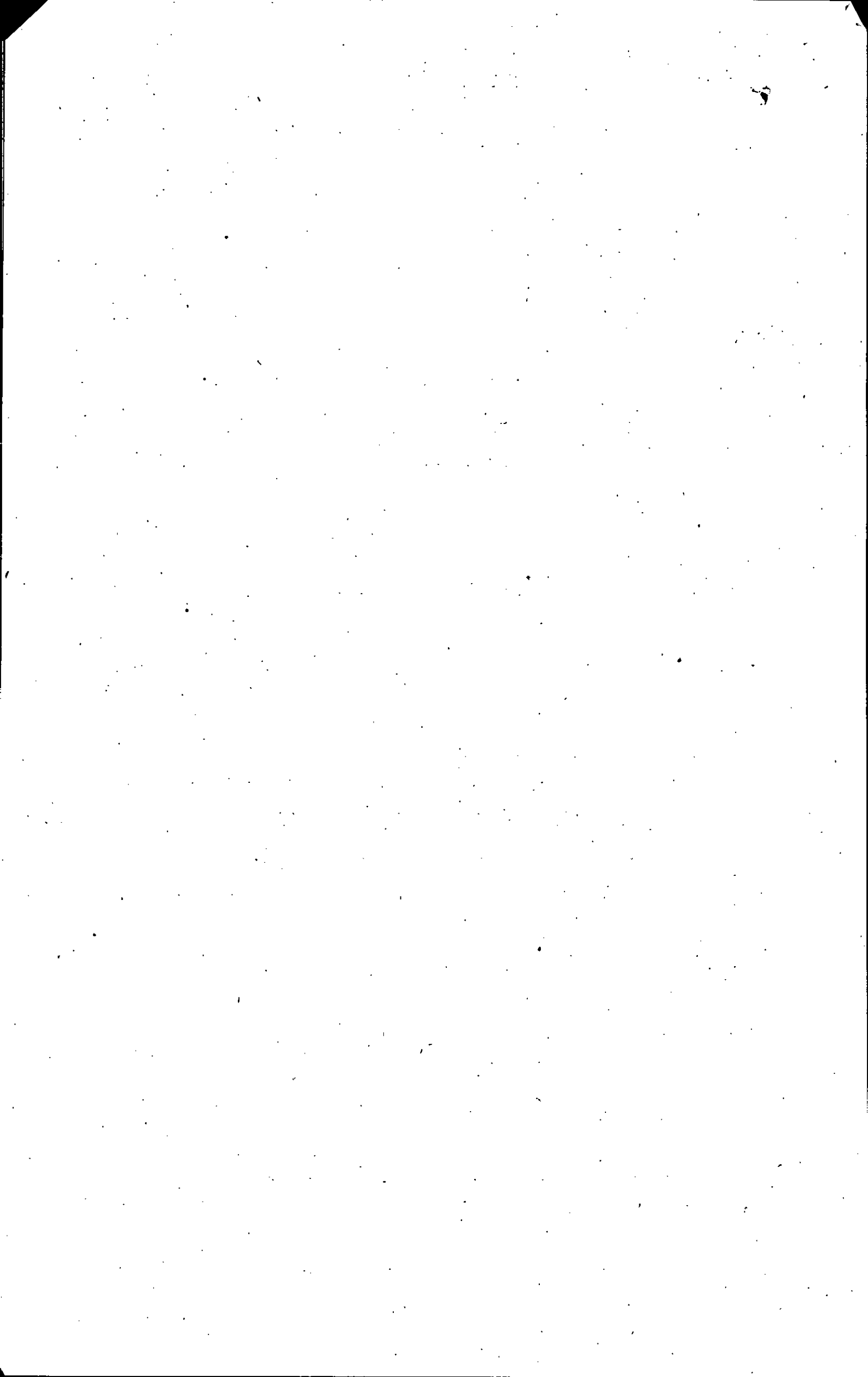
30/8/13

سائنس کنسلٹنٹ خواجہ دی خان، 1859 ڈسٹرکٹ پریس میٹروپولیٹن
Jhawatta wall

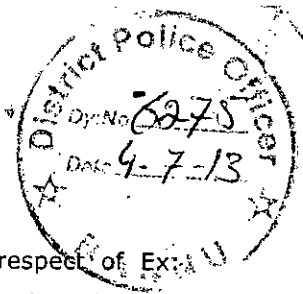
SW.
The documents in question are not
secret document but public documents
under the law. copies may be
given to applicant as per rules.


M

30-08-2013



Annexure - "B"



POLICE DEPARTMENT.

BANNU REGION.

ORDER

My this order will dispose off the appeal in respect of Ex: Constable Khwaja Wali No. 1859 of Operation Staff, Bannu against the order of Major Punishment of dismissal from service by DPO/Bannu vide OB No. 626 dated 28.5.2013 for committing of the following omissions:-

- That he, while posted to Police Lines, Bannu absented himself from govt. duty w.e. from 16.7.2012 to 18.12.2012, from 18.12.2012 to 6.3.2013 and from 22.3.2013 to 10.5.2013 with out any leave or permission of the competent authority.

The said Ex: Constable was proceeded against departmentally and SDPO/Cantt was appointed as Enquiry Officer, who conducted proper enquiry and submitted his findings, the delinquent Police Constable was recommended for Major punishment.

After conducting proper departmental proceedings, the said Police Official was awarded Major punishment of dismissal from service under Police Rules, 1975.

The appellant appeared in orderly room on 2.7.2013 and personally heard. Relevant record/enquiry proceedings also perused. During personal hearing, the delinquent Police Constable did not convince the undersigned about his innocence. Therefore, I **Azad Khan, Regional Police Officer, Bannu Region, Bannu** in exercise of the powers vested in me under Police Rules, 1975 can not interfere in the order passed by DPO/Bannu vide OB: No. 626 dated 28.5.2013, being one, in consonance with law and hereby file the subject appeal of Ex: Police Official Khwaja Wali No. 1859..

(Azad Khan) TST, PSP
Regional Police Officer,
Bannu Region, Bannu.

No. 1534 /EC, dated Bannu the 03/07/2013.

Copy to:-

1. The District Police Officer, Bannu or information w/r to his office Memo: No. 7156 dated 11.6.2013. His S: Roll and departmental proceedings are sent herewith for record.
2. Ex: Constable, Khwaja Wali No. 1859 for information.

SRC
With departmental enquiry for further n/action

gm
DPO/Bannu
4/7/2013

(Azad Khan) TST, PSP
Regional Police Officer,
Bannu Region, Bannu
4/3/13

Attested to be true copy

[Signature]

Annexure "C"

No. 160/DSP/Cantt

Dated 25/04/2013

FINDING REPORT:

Constable Khwaja Wali No. 1859 while Posted to PS Cantt was found absent as following.

- That he while posted to Police Line, Bannu willfully absented himself from Govt: duty w.e.f 16-7-2012 to 18-12-2012 for a period of five months and two day's. His reply to the show cause notice is worth perusal.
- That he while posted to PS Cantt Bannu deliberately absented himself from Govt: duty w.e.f 18/12/2013 to 06-03-2013 without any leave or permission from the competent authority.
- That he is habitual of absentee, incorrigible Police official and unwilling worker, hence he has ceased to become a good Police Officer by committing the above commission/ omissions.

Resultantly he was charge sheeted based upon statement of allegation and the undersigned was appointed as enquiry officer vide DPO office Letter No.411/SRC dated 20-03-2013 copy of charge sheet was served upon the defaulter officer accordingly who replied within stipulated period. In the reply the defaulter officer has categorically denied the allegations stated that his wife was ill since long. On 18-12-2012 he received information that his wife is very serious, when he reached his House, in fact he found her very serious. He got her to Iman Medical Center near DHQ Hospital Bannu. Here Lady Doctor after her checkup CT.Skin, ultra sound and other digital X-Ray, the Doctor prescribed Medicine for her. Due to the above reason he was absent (Photo Copy of the treatment attached).

STATEMENT OF JAMSHID ALI MASI CANTI.

He stated in his statement that constable Khwaja Wali No.1859 was absented vide DD No. 26 dated 18-12-2012 and made his arrival report vide DD No. 17 dated 06-03-2013 which is correct on the PS record.

STATEMENT OF RAHAT ULLAH MHC POLIE LINE, BANNU

He stated in his statement that constable Khwaja Wali No.1859 was absented vide DD No.60 dated 16-7-2012 and made his arrival report vide DD No. 21 dated 18-12-2012 which is correct on the PS record.

CONCLUSION.

From the perusal of the Enquiry file and available record the undersigned reached to the conclusion that the Defaulter Constable has presented Medical Documents of Private Hospital for his wife illness. He has to got permission from competent authority for treatment of his wife, and applied for leave but he has not done so, which comes under the ambit of indiscipline.

He is also found habitual of absentee, hence he is recommended for Major punishment.

Attested to be
true copy


E.O. SDPO Cantt Circle

Bannu

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service appeal NO.1313/2013

Khawaja wali VERSUS RPO and others

REPLICATION ON BEHALF OF THE APPELLANT

REPLY TO PRELIMINARY OBJECTION

Instant appeal is well within time, the order of respondent NO.1 is illegal and void, the instant appeal is maintainable in its present form and the appellant has concealed nothing from this Hon'ble tribunal.

Necessary parte have been imp leaded, the appellant has got availed cause of action, the appellant is not estopped by has own conduct to bring the present appeal and he has approach this Hon'ble tribunal.

REPLY TO FACTS/GROUNDS

Comments of the respondents are incorrect hence denied. The comments of the respondents are full of contradiction, rather amounts to admission. Respondent have failed to deny the version of the appellant. The order of respondent is illegal and void being the result of misapplication of law couple with procedural and factual bents. Mandatory provisions of law have been violated by the respondent and the appellant has not been treated according to law and rules on the subject. No proper inquiry has been

conducted and the appellant has been condemned unheard beside the order is defective.

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


Appellant

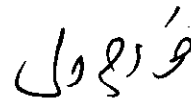
Through


FAZAL SHAH MOHMAND

Advocate, Peshawar

AFFIDAVIT

I, khawaja wali Ex. Constable No. 1859 (the appellant) do hereby solemnly affirm and declare on oath that the contents of this replication are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



DEPONENT



POLICE DEPARTMENT.

BANNU REGION.

9/18

ORDER

My this order will dispose off the appeal in respect of Ex: Constable Khwaja Wali No. 1859 of Operation Staff, Bannu against the order of Major Punishment of dismissal from service by DPO/Bannu vide OB No. 626 dated 28.5.2013 for committing of the following omissions:-

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The appellant appeared in orderly room on 2.7.2013 and personally heard. Relevant record/enquiry proceedings also perused. During personal hearing, the delinquent Police Constable did not convince the undersigned about his innocence. Therefore, I Azad Khan, Regional Police Officer, Bannu Region, Bannu in exercise of the powers vested in me under Police Rules, 1975 can not interfere in the order passed by DPO/Bannu vide OB: No. 626 dated 28.5.2013, being one, in consonance with law and hereby file the subject appeal of Ex: Police Official Khwaja Wali No. 1859..

(Azad Khan) TST, PSP
Regional Police Officer,
Bannu Region, Bannu.

No. 1534 /EC, dated Bannu the 03 / 07 / 2013.

Copy to:-

1. The District Police Officer, Bannu or information w/r to his office Memo: No. 7156 dated 11.6.2013. His S: Roll and departmental proceedings are sent herewith for record.
2. Ex: Constable, Khwaja Wali No. 1859 for information.

Mr. J. J. J.
Khwaja Wali
23-8-13

(Azad Khan) TST, PSP
Regional Police Officer,
Bannu Region, Bannu

3/7/13

0336 9608743

0345 3275612

(1)

خواجہ گاہ کی تاریخ 1859ء سے لے کر آج تک کے تمام بارشیں
دولہ محمد علی خان صاحب کو لکھ کر

پہلے
گورنمنٹ - ڈوہیل - محمد علی خان - جان جنرل ٹیڈ - لائن

آفری - ٹیڈ خان سے میرزا قاسم و اللہ علیہ السلام سے
گورنمنٹ - ڈوہیل - محمد علی خان - جان جنرل ٹیڈ - لائن

صوفی
۲۵۴۱

گورنمنٹ - ڈوہیل - محمد علی خان - جان جنرل ٹیڈ - لائن
گورنمنٹ - ڈوہیل - محمد علی خان - جان جنرل ٹیڈ - لائن
گورنمنٹ - ڈوہیل - محمد علی خان - جان جنرل ٹیڈ - لائن

بسم الله الرحمن الرحيم
الحمد لله رب العالمين والصلوة والسلام على سيدنا محمد وآله الطيبين الطاهرين
الذين هم خلائفنا في الأرضين والسموات

السلامة والصلوة والسلام على سيدنا محمد وآله الطيبين الطاهرين
الذين هم خلائفنا في الأرضين والسموات

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الذين هم خلائفنا في الأرضين والسموات

POWER OF ATTORNEY

Is the Court of _____

_____ } For
_____ } Plaintiff
_____ } Appellant
_____ } Petitioner
_____ } Complainant

VERSUS

_____ } Defendant
_____ } Respondent
_____ } Accused
_____ }

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____
Fixed for _____

I/W, the undersigned, do hereby nominate and appoint

IJAZ ANWAR ADVOCATE, SUPREME COURT OF PAKISTAN

_____ my true and lawful attorney, for me in my same and on my behalf to appear at _____ to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Companies or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employ any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____
the _____ day to _____ the year _____
Executant/Executants _____
Accepted subject to the terms regarding fee _____

Ijaz Anwar

Advocate High Courts & Supreme Court of Pakistan

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0333-9107225

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 227 /ST

Dated 30 /01/2018

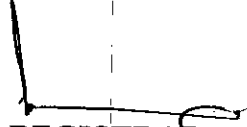
To

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

Subject: **JUDGEMENT/ORDER IN APPEAL NO. 1313/2013 MR. KHWAJA
WALI.**

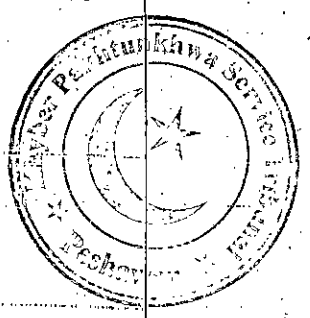
I am directed to forward herewith a certified copy of Judgment/Order dated 08/01/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


**REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.**

Olc

Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
2	3



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1313/2013

Date of Institution ... 09.09.2013
Date of Decision ... 08.01.2018

Khwaja Wali Ex Constable No.1859 of District Police
Bannu, S/O Muhammad Rabhani R/O Nizal Bazar
Bannu.

Versus

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

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER:

Appellant, learned counsel for the appellant and Mr. Riaz Pinda Kheil, learned Assistant Advocate General on behalf of the respondents present.

2. The appellant has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the respondents and made impugned the order

ATTESTED

(Handwritten Signature)
Member,
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

08.01.2018

dated 28.05.2013 whereby he was dismissed from service on the ground of absence from duty. The appellant has also challenged the order dated 03.07.2013 whereby the departmental appeal of the appellant was rejected.

3. Learned counsel for the appellant argued that the appellant remained absent for the reasons beyond his control, as his father died and his mother and wife were seriously ill. Further argued that the respondent department on one hand regularized the absence period of the appellant as leave without pay and on the other hand, vide the same order dated 28.05.2013 also awarded major penalty of dismissal from service for remaining absent. Hence due to regularization of the absence period, awarding of the punishment of dismissal from service on the same ground of absence is illegal.

4. As against that learned AAG while opposing the present appeal argued that the appellant remained absent from duty without prior application and permission and was dismissed from service after the fulfillment of legal requirements.

5. Argument heard. File perused.

6. It is not disputed that vide the original impugned

ATTESTED


Secretary,
Peshawar

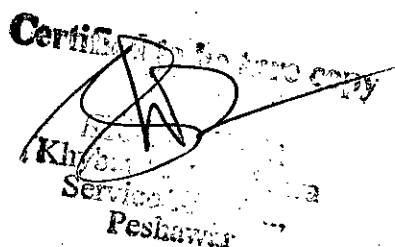
order dated 28.05.2013 the competent authority has regularized the absence period of the appellant as leave without pay and also dismissed the appellant from service on the same ground of absence from duty. This Tribunal has held in a number of judgments that once the authority has treated the absence period as leave without pay, then the awarding of punishment of dismissal from service on the same ground of absence is not tenable in the eyes of law. Reliance in this regard is also placed on judgment of the august Supreme Court of Pakistan reported in (2006 SCMR 434).

7. Consequently the present appeal is accepted, the impugned orders are set aside and the appellant is reinstated in service. 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.


(MUHAMMAD HAMID MUGHAL)
MEMBER


(AHMAD HASSAN)
MEMBER

ANNOUNCED
08.01.2018


Certified to be a true copy
Kh
Services
Peshawar

VAKALATNAMA

**IN THE COURT OF KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

OF 2017

Khawaja Wali

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Regional Police Officer Sothers

(RESPONDENT)
(DEFENDANT)

I/We Khawaja Wali

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. 17 / 05 / 2017

Khawaja Wali
CLIENT

Noor Mohammad Khattak
ACCEPTED
NOOR MOHAMMAD KHATTAK

SYED IMDAD HUSSAIN SHAH
&
Muhammad Maaaz Madni
ADVOCATES

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Phone: 091-2211391
Mobile No.0345-9383141