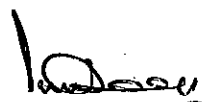



Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1366 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	24/09/2013	<p>The appeal of Mr. Asfandyar resubmitted today by Mr. Sherafgan Khattak 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	30-9-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>16-12-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

Appeal No. 1366/2013
Mr. Asfandyar

3 - 16.12.2013

Counsel for the appellant present. Preliminary arguments heard and record perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 07.06.2013, the appellant filed departmental appeal on 12.06.2013, which has not been responded within the statutory period of 90 days, hence the present appeal on 17.09.2013. 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 12.03.2014.


Member

4 - 16.12.2013

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


Chairman

12.3.2014

Counsel for the appellant and Mr. Muhammad Jan GP present. Fresh notices be issued to the respondents. To come up for written reply on 28.4.2014.


MEMBER


MEMBER

28.4.2014

Counsel for the appellant and Sr.GP with Wisal Khan, H.C for the respondents No. 2 & 3 present and requested for further time. Notice issued to respondent No.5 received back due to incomplete address, which has been completed to-day. Fresh notices be issued to respondents No. 1, 4 and 5. To come up for written reply of all the respondents. *on 24-6-14.*


MEMBER

24.6.2014.

Clerk to counsel for the appellant, Mr. Ziaullah, GP with Wisal, H.C for respondents No. 2 & 3 present requested for time. None is available on behalf of other respondents. Fresh notices be issued to them. To come up for written reply on 24.09.2014.


MEMBER

24.09.2014

Counsel for the appellant and Mr. Muhammad Jan, GP with Usman Khan, SI (Legal) for the respondents present and requested for time. To come up for written reply on 02.12.2014.


MEMBER

2.12.2014

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. The Tribunal is incomplete. To come up for the same on 18.2.2015.


READER

1366/13

18.2.2015

Clerk of counsel for the appellant and Mr. Muhammad Jan, GP with Iqbal Munir, H.C for the respondents present and requested for further time to be granted to submit written reply. To come up for written reply on 01.04.2014 without fail.

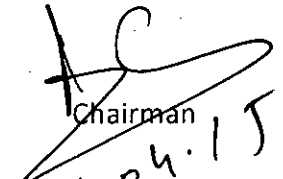
M. A. M. S. S.


MEMBER

01.04.2015

None present for appellant despite repeated calls. Mr. Usman Khan, Inspector (legal) alongwith Addl: A.G for respondents present. The Court time is about to over. Dismissed in default. File be consigned to the record.

ANNOUNCED
01.04.2015



Chairman
01.04.15

The appeal of Mr. Asfandyar Ex-Constable No. 1439 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. Copies of charge sheet, statement of allegations and show cause notice mentioned in the memo of appeal in respect of appellant is not attached with the appeal which may be placed on it.
3. The authority to whom the departmental appeal was preferred has not been arrayed a party.

No. 1328 /S.T,


Dt. 18/09 /2013


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR

Mr. Sherafghan Khattak Adv.Pesh.

24-9-13

Needful has been done,
resubmitted please.


24/9

SHERAFGHAN KHATTAK
Advocate

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 1366 /2013


Asfandyar.....**Appellant**

VERSUS

District Police Office, Charsadda & others.....**Respondents**

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service appeal		1-4
2.	Addresses of Parties		5
3.	Copy of FIR	A	6
4.	Copy of charge sheet & statement of allegation	B	7-8
5.	Copy of final show cause notice	C	9
6.	Copy of impugned order dt07.06.13	D	10
7.	Copy of departmental appeal	E	11-16
8.	Wakalat Nama		17


Asfandyar
(Appellant)

Through

Date: 17/9/2013


Sher Afgan Khattak
Advocate Supreme Court
Cell: 0302-8320150

C

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 1366 /2013

Asfandyar,
S/o Misal Khan
R/o Dargai (Manga), Distt Charsadda
Ex-Constable No.1439, Police Force, Charsadda

P.W.P. Peshawar
1382
17-9-13

.....**Appellant**

V E R S U S

1. District Police Office, Charsadda
2. ✓ Capital City Police, Peshawar
3. ✓ Superintendent of Police, HQ, Peshawar
4. Govt of Khyber Pakhtunkhwa

Through Home Secretary / Provincial Police Officer, Pesh

5. Deputy Inspector General**Respondents**
at Police Peshawar

Service appeal u/s 4 of the KPK
Service Tribunal Act, 1974 against
the order dated 07.06.2013 passed
by respondent No.1

Prayer in Appeal:

On acceptance of this appeal while setting aside the
impugned order the appellant may please be reinstated
with all back benefits.

Re-submitted to
and filed.

24/9/13.

②

Respectfully Sheweth:

1. That the appellant was appointed as Police Constable in Charsadda Police on 01.01.2008. He rendered dedicated services to the best of his superiors.
2. That the appellant was deputed as a Gunner with Barrister Arshad Abdullah, Ex-Law Minister of Khyber Pakhtunkhwa.
3. That on 26.04.2013 an FIR No.395 was lodged u/s 353, 506, 148, 149, 183, 189 PPC in Police Station, Charsadda. On the next day the appellant came to know that one Tariq Muharrir of Police Post Utmanzai has charged the appellant alongwith others in the above said FIR. (Copy of the FIR is attached as Annexure "A").
4. That on getting knowledge of his false involvement in the FIR, the appellant surrendered before the police and was released on bail in due course of law.
5. That due to registration of criminal case, the departmental authority initiated disciplinary proceedings against the appellant.
6. That Enquiry Officer was appointed and the appellant was served for statement of allegation and charge sheet with the only charge of involvement in case FIR No.395 to which detail reply was given denying the allegations. (Copy of charge sheet & statement of allegation is Annexure "B").


- 3
7. That after final show cause notice, the impugned order was passed on 07.06.2013, whereby major penalty of dismissal from service was awarded to the appellant alongwith four others. (Copy of show cause notice & impugned order dated 07.06.2013 is Annexure "C & D").
 8. That the appellant filed departmental appeal against his dismissal from service, but it has not been responded so far. (Copy of departmental appeal is Annexure "E").
 9. That the impugned order is illegal and has been passed without lawful authority and is void ab-initio, hence liable to be declared as such and the appellant is liable to be reinstated into service with all the back benefits, inter alia, on the following grounds:

GROUND S:

- A. That at the time of alleged occurrence, the appellant was on duty with the said law Minster in public meeting at Rajjar Fatima Khail, Tehsil and District, Charsadda and was relieved late night, hence was not present at the time of occurrence, if any at the place of occurrence.
- B. That the appellant was not afforded an opportunity of presenting evidence in support of his plea of absence at the time of illegal occurrence.

- (4)
- C. That all the enquiry proceedings were conducted illegally, no proper and legal procedure was adopted, hence the impugned order is not sustainable in the eyes of law.
- D. That the only basis for the impugned order is mere involvement in criminal case, which is not a ground for initiating departmental proceedings that ended in the penalty of dismissal from service, the law does not permit imposition of penalty on civil servant for mere involvement in criminal case without punishment by the proper court of law.
- E. That the impugned order is an omnibus order with one single order five civil servants have been dismissed from service, which is illegality and has resulted in miscarriage of justice.

It is, therefore, most humbly prayed that this appeal may please be allowed as prayed for in the heading.


Asfandyar
(Appellant)

Through


Sher Afgan Khattak
Advocate Supreme Court

Date: 17/9/2013

(3)

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2013

Asfandyar.....**Appellant**

V E R S U S

District Police Office, Charsadda & others.....**Respondents**

ADDRESSES OF PARTIES

APPELLANT:

Asfandyar S/o Misal Khan
R/o Dargai (Manga), Distt Charsadda
Ex-Constable No.1439, Police Force, Charsadda

RESPONDENTS:

1. District Police Office, Charsadda
2. Capital City Police, Peshawar
3. Superintendent of Police, HQ, Peshawar
4. Govt of Khyber Pakhtunkhwa
Through Home Secretary / Provincial Police Officer, Pesh


Asfandyar
(Appellant)

Through


Sherafgan Khattak
Advocate Supreme Court

Date: 17/ 9/2013

'B' 7

Better Copies

CHARGE SHEET U/S 6 (I) (A) POLICE RULES 1975

You Constable Asfandyar No.1439, posted at Police Lines Charsadda is hereby charged for committing the following omission /commissions.

“While posted as Gunner with Former Minister Law (Arshid Abdullah) was found involved incase vide FIR No.395 dated 26.04.2013 u/s 353/506/148/149/183/189 PPC PC Charsadda. Being a member is discipline force your act is highly objectionable and against the rules/regulations. This shows your inefficiency lack of interest in the performance of your official duty”

You are hereby called upon to submit your written defense against the above charges before the enquiry officer.

Your reply should reach the enquiry officer within 07-days from the date of receipt of this charge sheet, failing which ex-partee proceedings shall be initiated.

Summary of allegations is enclosed herewith

Handwritten signature and initials of the District Police Officer.

Sd/-
District Police Officer
Charsadda

No.5475-76/PA, date Charsadda the 27/04/2013

8

Better Copies

MARY/STATEMENT OF ALLEGATIONS U/S 6 (I) (A) POLICE RULES 1975

"While posted as Gunner with Former Minister Law (Arshid Abdullah) was found involved incase vide FIR No.395 dated 26.04.2013 u/s 353/506/148/149/183/189 PPC PC Charsadda. Being a member is discipline force your act is highly objectionable and against the rules/regulations. This shows your inefficiency lack of interest in the performance of your official duty" the act falls within the preview of misconduct contained u/s 2 (iii) of police rules 1975.

Sd/-
District Police Officer
Charsadda

No.5475-76/PA,

Copies forwarded to:

1. DSP Tangi (Enquiry Officer)
2. Constable Asfandyar No.1439, Police Line Charsadda

Asfandyar
1439

(a)

Better Copies

FINAL SHOW CAUSE NOTICE

Whereas the charge negligence lack of interest was referred to enquiry officer for General Police Proceedings contained u/s 5 (3) Police Rules 1975

And


Whereas the enquiry officer has submitted his findings recommending of the enquiry officer that you Constable Asfandyar No.1439, while posted as Gunner with Former Minister Law (Arshid Abdullah) was found involved in case vide FIR No.395 dated 26.04.2013 u/s 353/506/148/149/183/189 PPC PC Charsadda. Being a member is discipline force your act is highly objectionable and against the rules/regulations. This shows your inefficiency lack of interest in the performance of your official duty, thus the act amounts to gross misconduct and renders you liable for major punishment, under police Rules 1975

Therefore, I Ghulam Hussain, District Officer, Charsadda in exercise of the covers vested in me under rules 5 (3) (a) (b) of Police rules 1975, call upon you to explain as to why the proposed punishment may not be awarded to you.

Your reply should reach the undersigned within 07-days of receipt of this notice failing which disciplinary action pertaining to you dismissal from service will be taken ex-partee

You are at liberty to appear in person before the undersigned for personal hearing.

Dated 15/05/2013

ATTSD


Sd/-
District Police Officer
Charsadda

Government of
Khyber Pakhtunkhwa
Officer of the District Officer, Charsadda

ORDER

Enquiries against the following accused constables are being disposed off by this single order the charge /allegation against them _____

1. Constable Zakir No.1398
2. Constable Daulat Khan No.1233
3. Constable Asfandyar, No.1439
4. Constable Salman Kamal No.1286
5. Constable Zubair No.4017

Short facts are that the aforesaid Police/Constable were posted to Former Minister of Law & Parliamentary Affairs Arshid Abdul dated on 26.04.2013, they misused their duty ouster, assisted the Ex-Minister in the offence punishable u/s 353/506/148/149/183/189-PPC vide FIR No.395, dated 26.04.2013 PS Charsadda

The charges were referred to the enquiry office after issuing charge sheets and summary of allegations to them provided u/r 6 (i) police rules 1975, the enquiry office DSP Abdur Rashid Khan after following the codal formalities submitted his findings u/r 6 (5) of the said rule recommending all the 05 police personnel for award of major penalty to them.

Perusal of the enquiry proceedings findings of the enquiry officer reflects no irregularity of malafide or the part of enquiry officer, hence in exercise of the powers vested in me u/r 2 (ii) of the rules accept the recommendation and award major penalty to all the afore stated accused constables "dismissal from service": provided u/r 4(iv) of the said rules with immediate effect

Sd/-
District Police Officer
Charsadda

No.7288-92/PA, dated Charsadda the 07/06/2013.

Copy of information and necessary action to the:-

1. Capital City Police Officer, Peshawar
2. Superintendent of Police, HQrs; Peshawar with the request to make necessary entry in service roll of constable mentioned in serial No.05.
3. Pay Officer /OAS
4. EC/FMC

Sd/-
District Police Officer
Charsadda

ATTESTED



Before the learned Deputy Inspector
General of Police, Peshawar

(11)

Departmental Appeal no. /2013

Through: Proper Channel

Asfandiyar - vs - D.P.O. Charsadda
(Appellant) (Respondent)

INDEX

S.No.	Description of documents	Annexure	Page
1.	Departmental Appeal	-	1-5
2.	Copy of FIR No. 395 dt. 26 ⁴ / ₀₁₃	"A"	6
3.	Copy of appointment order of Injury officer	"B"	7
4.	Copy of charge sheet	"C"	8
5.	Copy of statement of allegations	"D"	9
6.	Copy of reply of charge sheet	"E"	10
7.	Copy of Final Show Cause Notice	"F"	11
8.	Copy of reply of Final Show Cause - notice	"G"	12
9.	Copy of impugned order dated 07-6-2013	"H"	13

Dated: 12-6-2013

Yours obediently,

Asfandiyar
Ex. Police Constable
No. 1439

ATTESTED



Before The learned Deputy Inspector General
of Police, Peshawar

Departmental Appeal No.

1/2013

(12)

Through: popox channel

As Family No. S/0 Misal Khan R/0 Dargai
(Manga) Teh: District Charsadda
Ex. Police constable No. 1439 Police
Force, Charsadda.

Appellant

versus

District Police officer, Charsadda Respondent

Departmental Appeal against the order
dated 07-06-2013 passed by Respondent
whereby the Appellant was dismissed from
service

PRAYER:- On acceptance of this Departmental
Appeal the impugned order dated 07-6-2013
may kindly be set aside and Appellant
may be re-instated in service with
full back benefits

Respected Sir,

Brief facts of the case are:-

- ① That the Appellant was inducted in Police
Department Charsadda as Police Constable
and allotted No. 1439 on 1-1-2008. He was
performing his duty honestly and devotedly and
to the best of his ability. During the period of
his service no one has complained against
him to his superiors.
- ② That his services were entrusted to Ex. Law
Minister Barrister Arshad Abdullah as his

ATTESTED



(2)

Gunner along with other policemen.

(13)

3) That on 26-4-2013 the other Gunners namely Tahirullah and Daulat Khan Ex. Police Constables were on duty with the said Ex. Law Minister while he and Salman Kamel Ex. Police constable were on "Shabashi" leave and present in their respective homes.


4) That on following day the appellant learnt about his false involvement in case FIR No. 395 dated 26-4-2013 v/s 353/506/148/149/183/189/382/201 PPC of P.S. Charsadda lodged at the instance of complainant Tariq Moharrir H.C. of P.S. Ulmanzari, as such he surrendered himself to the local police and was bailed out (Copy of FIR is attached as Annexure "A").

5) That Respondent due to registration of said FIR against Appellant ordered commencement of departmental Enquiry by issuing appointment order of Abdur Rasheed Khan DSP, Tangi as Enquiry officer (Copy of the said order is attached as Annexure "B").

6) That the Respondent served the Appellant with Charge sheet and statement of allegations which he replied (Copies of the said Charge sheet, statement of allegations and reply of Appellant are attached as Annexure "C", "D" and "E").

7) That the Appellant was also served with final Show cause notice which was also replied by him (copies of the same are attached as Annexure "F" and "G").

ATTESTED



- 8) That vide impugned order ultimately the Appellant was dismissed from service, having based illegal findings of Enquiry officer for award of major penalty. (copy of impugned order is attached as Annexure "H").
- 9) That being aggrieved of the dismissal order passed by Respondent has preferred the instant Departmental Appeal for setting aside the impugned order, before your honour, on the following grounds amongst others: -

GROUND

- A) That the impugned order dated 07-6-2013 is void-ab-initio, illegal, against norms of natural justice, against facts and material on record and law on the subject, hence untenable and liable to be set aside.
- B) That as the Appellant and his other colleague Salman Kamal Or. Police constable were on "Shabashi" leave on 26-6-2013 in his ~~home~~ their homes, and have been falsely involved in the above said FIR. In fact he was not present at the time and day of that occurrence. This fact is further supported by the reply of other Gunners namely Salman Kamal and others, hence on the basis of cooked up and pre-planned case, he was falsely involved, as such the impugned order on this score alone is liable to be set aside.
- C) That no proper and regular enquiry has been conducted in the matter and in cursory manner the appellant was dismissed from service which is against the norms of natural justice because the Appellant has not been given full

ATTESTED

- opportunity of hearing to defend his case, hence the impugned order is reversible.
- D). That the Respondent erred in law of the subject and while awarding harsh punishment to Appellant his length of service i.e. $12\frac{1}{2}$ years, was not taken into consideration, as such the impugned order is not sustainable.
- E). That trial in the c.s. case is yet to be commenced in the competent court of law wherein guilt or innocence of the accused will be determined and till then the enquiry proceedings should have been delayed, as such, the impugned order was made in hurry which procedure is prohibited by relevant law of the Service, hence the impugned order is liable to be set aside.
- F). That requisite formalities for the conduct of enquiry have not been complied with, which totally vitiates the whole proceedings of enquiry, hence on this score too the impugned order is not sustainable.
- G). That the Appellant has a large family members who are wholly solely dependant upon the salary of Appellant and while awarding major penalty to the Appellant this fact was not taken into consideration, as such on humanitarian basis too the impugned order is reversible.
- H). That so many other grounds do exist which will be agitated before your honour but at the time of personal hearing of Appellant with permission of your honour.

ATTESTED

It is, therefore, humbly prayed that on acceptance of this Departmental Appeal the impugned order, dated 07.3-2013 may kindly be set aside and the Appellant may be re-instated in service with full back benefits.

Dated: 12/6/2013

Yours obediently Asfandiyar s/o
Misal Khan R/o. Dargai (Manga)
Teh: Charsadda District Charsadda,
Ex. Police Constable No. 1139
Police Force, Charsadda.

12/6/13
Attested
Date:
Commissioner
Gajjis Charsadda

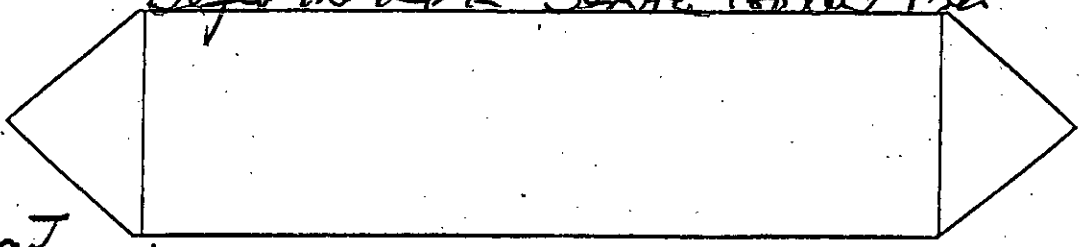
I, Asfandiyar
do hereby
and declare
oath that the
contents of this
Departmental Appeal
are true & correct
to the best of my knowledge
and belief.

Deponent
Asfandiyar
Ex. Police Constable

ATTESTED



Before The KPK Service Tribunal



Appellant
Asfandya Govt.
2 مخائب

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام SHABRAGAN KHATTAK / 1 BSHAWAR

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ذہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

المرقوم _____ Sep _____ 2013

العبد _____ واہ العبد

کے لئے منظور ہے۔ 1 BSHAWAR بمقام

Accepted

کلیا