

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	23.01.2017	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR</u></p> <p align="center">Appeal No. 1347/2013</p> <p align="center">Shariat Khan Versus the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.</p> <p align="center"><u>JUDGMENT</u></p> <p><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-</u></p> <p>Counsel for the appellant and Mr. Muhammad Jan, Government Pleader alongwith Farmanullah, S.I (Legal) for respondents present.</p> <p>2. Shariat Khan Ex-H.C No. 291, District Police Karak hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 13.05.2013 vide which order dated 28.6.2012 was cancelled and where-against his departmental representation dated 30.05.2013 was not responded and hence the instant service appeal on 17.09.2013.</p> <p>3. Learned counsel for the appellant has argued that the appellant proceeded on LPR which was lateron cancelled vide order dated 28.06.2012 and that on the basis of the said order appellant performed his duties as Head Constable. That vide order dated 13.05.2013 the said cancellation order of LPR dated 28.6.2012 was cancelled and salary for the period of four months and 26 days was</p>

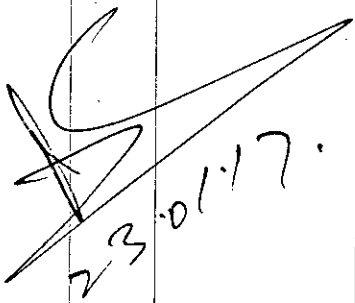
23.01.17

ordered to be recovered from the G.P Fund or Commutation/Gratuity of the appellant which order was impugned in the departmental representation followed by the instant service appeal. That the impugned order is against facts and law as neither any notice was served on the appellant nor the same could be annulled more particularly when the appellant has performed duties after cancellation of the said leave. That similarly placed employees were also granted LPR which was lateron cancelled but no such recovery was ordered against them. In support of his stance learned counsel for the appellant relies on case law reported as 2003-SCMR-410 wherein it was observed by the august Supreme Court of Pakistan that such an order could not be withdrawn or rescinded once it had taken legal effect and created certain rights in favour of any individual.

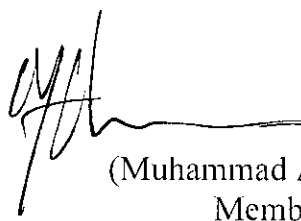
4. Learned Government Pleader has argued that the impugned order is in accordance with law and that the appellant is liable to return the salary as LPR once sanctioned cannot be lateron cancelled. Placing reliance on case law reported as 2012-SCMR-745 (Supreme Court of Pakistan).

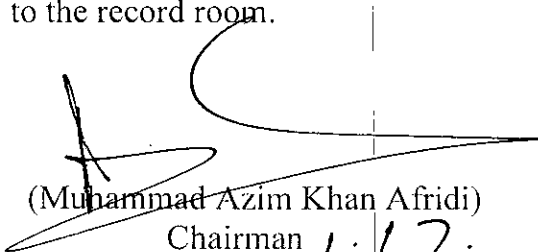
5. We have heard arguments of learned counsel for the parties and perused the record.

6. Admitted position before us is that the competent authority has cancelled the remaining LPR of the appellant. The said authority has also passed such order in favour of other officials including one Ghulam Fareed who was allowed to serve as constable vide order

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dated 29.09.2010. Similarly one Ahmad Janan was also reinstated in service by cancelling his LPR and allowed to resume duty with immediate effect vide order dated 22.08.2009. Since the order was cancelled by the competent authority and in pursuance thereto appellant had performed duty and for the ^{2.}purpose of duty he has received salary as such the impugned order dated 13.05.2013 is against facts and law and liable to be set aside. In case of Inspector General of Police Punjab reported as 2012-SCMR-745 the authority has not allowed the request of the civil servant regarding withdrawal of order of voluntary retirement while in the case in hand the competent authority accepted the application. As such the case of the appellant is distinguishable from the case referred to above and, additionally, the rule laid down by the august Supreme Court of Pakistan in case of Director General Ordinance Services General Headquarters, Rawalpindi reported on 2003-SCMR-410 is squarely applicable to the case in hand. As such we accept the present appeal and as a consequence thereof set aside the impugned orders and direct that the said salary should not be recovered from the emoluments of the appellant. Parties are left to bear their own costs. File be consigned to the record room.


 (Muhammad Aamir Nazir)
 Member

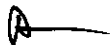

 (Muhammad Azim Khan Afridi)
 Chairman

23.01.17.

ANNOUNCED
 23.01.2017

02.03.2016

Counsel for the appellant and Mr. Habibullah, ASI alongwith Mr. Muhammad Jan, GP for respondents present. Representative of the respondent submitted an application for setting aside ex-parte proceedings against the respondents copy handed over to the counsel for the appellant. To come up for reply/arguments on application on 09.06.2016.



Member



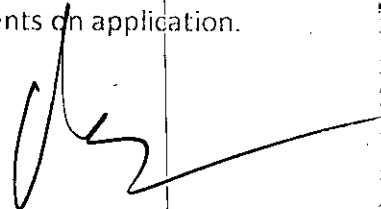
Member

09.06.2016

Clerk to counsel for the appellant and Addl: AG for respondents present. Due to strike of the Bar learned counsel for the appellant is not in attendance today before the court, therefore, case is adjourned to 20.09.2016 for reply/arguments on application.



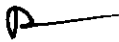
MEMBER



MEMBER

20.09.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. Adjournment granted. To come up for arguments on 23.01.2017.



Member



Member

24.02.2015

Appellant with counsel and Addl: A.G for respondents present. Learned Addl: A.G requested for further time. Last opportunity is extended to 27.05.2015 on which date the written reply shall be positively submitted by the respondents.


Chairman

27.05.2015

Appellant with counsel and Addl: A.G for official respondents present. None of the representatives of the respondents present. Written statement has not been submitted despite repeated opportunities including last opportunity. No further adjournments are granted for submission of written statement. The appeal is assigned to D.B for final hearing for 10.11.2015.


Chairman

10.11.2015

Appellant in person and Mr. Habibullah, ASI alongwith Mr. Muhammad Jan, GP for respondents present. Appellant requested for adjournment. To come up for arguments on

2-3-2016.


Member


Member

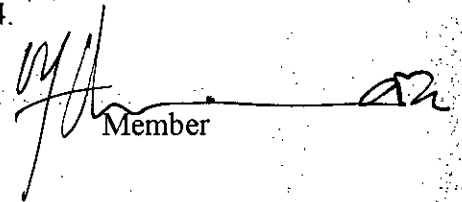
~~Appellant in person and Mr. Habibullah, ASI alongwith Mr. Muhammad Jan, GP for respondents present. Arguments could not be heard due to shortage of time. Therefore, the case is adjourned to 02.06.2016 for arguments.~~

~~Member~~

~~Member~~

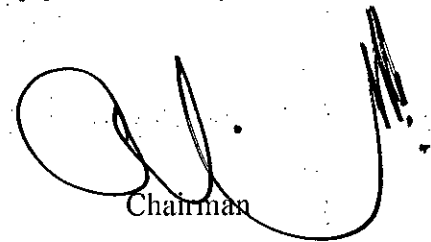
2.4.2014

Appellant in person present. Respondents are absent despite their service through registered post/concerned official. However, AAG is present on behalf of the respondents and requested for time in order to contact the respondents for written reply/comments on 2.7.2014.


Member

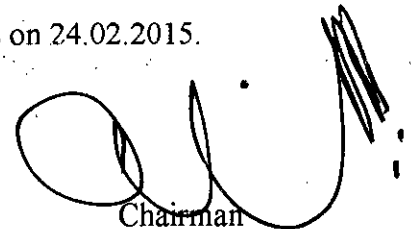
02.7.2014

Counsel for the appellant and Mr. Mushtaq Ahmad, AIG (Legal) on behalf of respondent No. 1 with Mr. Usman Ghani, Sr. GP for the respondents present. Written reply has not been received, and request for further time made on behalf of the respondents. Another chance is given for written reply/comments, positively, on 30.10.2014.


Chairman


30.10.2014

Appellant with counsel and Mr. Muhammad Adeel Butt, AAG for the respondents present. Neither representative of the respondents is present nor written reply has been received on behalf of the respondents despite another chance given for the purpose on the previous date. A last chance is given for written reply/comments on 24.02.2015.


Chairman

3.
09.12.2013

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 10.01.2014.



Member

4.
10.01.2014

Appellant with counsel present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the order dated 13.05.2013, the appellant filed departmental appeal on 30.05.2013, 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 02.04.2014.

Appellant Deposited
Security & Process Fee
Rs. 180/- Bank
Receipt is Attached with File.




Member

5.
10.01.2014

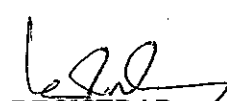

This case be put before the Final Bench T for further proceedings.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1347 /2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17/09/2013	<p>The appeal of Mr. Shariat Khan presented today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	23-9-2013.	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>9-12-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1347 /2013.

Shariat Khan.

VS

Police Deptt:

INDEX.

S.NO	DOCUMENTS	ANNEXURE	PAGE
1-	Memo of appeal.	---	1 - 3
2-	Copy of application.	A	4
3-	Forwarding letter	B	5
4-	Recall order.	C	6
5-	DIG letter.	D	7
6-	Cancellation order.	E	8
7-	Appeal.	F	9 - 10
8-	Recall order of Ghulam Farid.	G	11
9-	Recall order of Ahmad janan	H	12 - 13
10-	Vakalat nama	---	14.

APPELLANT

SHARIAT KHAN

THROUGH:

M. Asif Yousafzai
M.ASIF YOUSAFZAI

ADVOCATE.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1347 /2013.

Shariat Khan.

VS

Police Deptt:

INDEX.

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10-	Vakalat nama	---	14.

APPELLANT

SHARIAT KHAN

THROUGH: 

M.ASIF YOUSAFZAI

ADVOCATE.

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1347 /2013.

Shariat Khan, Ex- H.C NO.291,

Distt: Police, karak.....Appellant.

K.P.K. Province
1380
17-9-13

VERSUS

- 1- The provincial Police Officer, KPK Peshawar.
- 2- The D.I.G Kohat Region, Kohat.
- 3- The Distt: Police Officer, Karak..... Respondents.

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 AGAINST THE ORDER DATED. 13.5.2013 WHEREBY THE ORDERS DATED. 28.6.2012 HAS BEEN CANCELLED IN AN ARBITRARY MANNER AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN 90 DAYS.

17/9/13

PRAYER: *That on acceptance of this appeal the order dated. 13.5.2013 may be set-aside and the appellant may be restored to his original post with all back and consequential benefits by treating the appellant at par with those who have similarly kept in service. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of appellant.*

2

R.SHEWETH.

- 1- That the appellant joined the Police Force in the year 1981 and in the year Feb -2012, the appellant submitted an application for LPR due to serious illness of his Mother.
- 2- That as the appellant's problem was solved earlier, therefore, he applied for cancellation of remaining period of LPR and also requested for resumption of duty. The said application was duly forwarded to the competent authority (DPO) and the competent authority passed an order on 28.6.2012 whereby the appellant was allowed to rejoin the duty. Copies of application, forwarding letter and order are attached as Annexure – A,B&C.
- 3- That the appellant also submitted an application for promotion after rejoining of duty, but in response, the respondent NO.2 directed the respondent No.3 to cancel the order dated. 28.6.2012, vide order letter dated. 30.4.2013. Copy of the letter is attached as Annexure – D.
- 4- That resultantly the respondent no.3 passed an order dated. 13.5.2013 whereby, the appellant was retired from service w.e.from 2.8.2012 and the period w.e.from 2.2.2012 to 28.6.2012 which was declared as earned leave was cancelled and also ordered recovery of pay of 4 months and 26 days. Copy of the order is attached as Annexure – E.
- 5- That the appellant filed an appeal against the above mentioned order on 30.5.2013 and waited for 90 days but no reply has been received by him till the expiry of statutory period. Copy of appeal is attached as Annexure – F.
- 6- That now the appellant come s to this august Tribunal on the following grounds amongst the others.



GROUND:

- A- That the order dated. 13.5.2013 and not taking action on appeal of appellant within 90 days is against the norms of

justice, material on record, therefore, not tenable and liable to be set-aside.

- B- That the appellant was condemned unheard because no chance of hearing was given while cancelling the order dated. 28.6.2012 after about a year.
- C- That the appellant was not only called and allowed to rejoin duty but also his period w.e.from 2.2.2012 to 28.6.2012 was declared as earned leave, therefore valuable rights were accrued in favour of appellant which could not be taken away simply in an arbitrary manner under the principles of Locus Poenitentiae.
- D- That the order of rejoining the duty and treating the period as earned leave was passed by the competent authority and the same could not be cancelled on the directions of higher officers and that too without any notice or personal hearing.
- E- That the appellant has been discriminated, because previously many police officials were similarly called back and they are still in service. For the Tribunal's satisfaction copies of few orders are attached as Annexure – G&H.
- F- That the appellant was not treated according to law and rules and was treated in an arbitrary manner and also condemned unheard.
- G- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

APPELLANT 
 SHARIAT KHAN
 THROUGH: 
 M.ASIF YOUSAFZAI
 ADVOCATE.

حصہ عالی

A
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”لنڈن میں صدر سائنس کا ماہر سیت پیاری

تھی جس کے لیے نے کا hpro6 لیا گیا

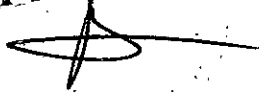
جو کہ اس وقت باہر سے لیا گیا۔ یہ وہ چیز ہے

میرے hpr کے انہیں کہتے ہیں ہندوستان سے

نیزہ دھانگور دیکھا

hpr کے لیے 291 سال
T.C.

ATTESTED



His
Do the needful

27/6/12

B
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Reference attached:

Respected Sir,

It is submitted that Head Constable Shariat Khan No. 291 of this district Police who had been granted six months L.P.R with effect from 12.02.2012 to 01.08.2012, has applied for cancellation of remaining L.P.R. on account of domestic problems now is being solved.

His service particulars are as under.

Date of birth : 08.03.1962
Date of enlistment : 05.03.1981
Education : 10th
Date of promotion as HC : 06.11.1999
Courses :
1. Recruit course
2. Weapon course
3. Advance traffic course
4. Section commander course
5. Platoon commander course
6. Lower school course
7. Intermediate class course

ENTRIES:-

<u>Good</u>	<u>Bad</u>
	<u>Maj: Minor Others</u>
11	- 11 16

It is submitted that 03 vacancies are available in the district Police in the rank of Head Constables.

Submitted please.

Worthy DPO

1/2
District Police Officer
Karachi

Head Clerk 26/2/12

ATTESTED



ORDER

C
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Head Constable Shariat Khan No. 291 of this District Police, who had been granted Six months LPR w-e-from 02.02.2012 to 01.08.2012 vide O.B No. 70 dated 27.01.2012, has applied for cancellation of remaining LPR and re-joining service.

Keeping in view his long service as trained Officer, prevailing Law & Order situation in the Province and availability of vacancy in the rank of Head Constable, the request of Shariat Khan Head Constable is accepted. Therefore, his remaining period of LPR is hereby cancelled and recalled to resume his duty with immediate effect.

O.B No. 191
Dated 28/6 /2012


District Police Officer, Karak


ATTESTED


Phone No: 9260112.

Fax No: 9260114.

D
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From: - The Dy: Inspector General of Police,
Kohat Region, Kohat.

✓ To: - The District Police Officer Karak.

No. 3171 /EC Dated Kohat the 30/04 /2013.

Subject: - APPLICATION.


MEMORANDUM.

Please refer to your office Memo: No. 3441/EC, dated 22.03.2013 and Memo: No. 5392/EC, dated 20.04.2013.

The application of HC Shariat Khan No. 297 of your District regarding promotion is returned herewith with the remarks that according to Govt: Rule vide relevant para essential service maintenance act and Govt: instruction, LPR/retirement, can not be modified/change. Therefore, rule must be followed strictly as well as procedure.


The case be regularized and the cancellation order of LPR be cancelled accordingly.

In future such practice be stopped by all concerned.

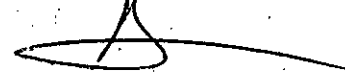

Dy: Inspector General of Police,
Kohat-Region, Kohat.

No. 1 /EC

Copy to District Police Officer, Kohat and Hangu for information and similar action. ~~Plax~~


Dy: Inspector General of Police,
Kohat Region, Kohat.

ATTESTED



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ORDER

In pursuance of Dy: Inspector General of Police, Kohat Region Kohat Memo: No.3171/EC, dated 30.04.2013, the cancellation order of LPR vide this Office O.B No.691 dated 28.06.2012 in respect of Head Constable Shariat Khan No.291 is hereby cancelled and upheld the order of LPR vide O.B No.70 dated 27.01.2012.

According to O.B No. 70 dated 27.01.2012, the above named Head Constable is stand retired on pension w-e from 02.08.2012. The period of L.P.R w-e from 02.02.2012 to 28.06.2012 which was treated as earned leave/kind leave vide O.B No.1156 dated 12.11.2012 is also cancelled and the salary for the above mentioned period i.e four (04) Months and twenty six (26) days may be recovered from his GP fund or commutation/gratuity.

OB No. 371
Dated. 13/05 /2013

Miqul
District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

No. 6245-46 /EC, dated Karak the 13/5 /2013.

Copy of above to:-

1. The Dy: Inspector General of Police, Kohat Region Kohat for favour of information w/r to his Office Memo: No.3171/EC, dated 30.04.2013
2. Pay Officer/ Pension Clerk for further necessary action.

Attested
Inspector legai
Karak

Miqul
District Police Officer, Karak

ATTESTED

(Signature)

To: The Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar

F
= (9)

Subject: REPRESENTATION

Respected Sir,

With due respect and humble submission appellant submits the representation for the cancellation of Deputy Inspector General of Police Kohat Region Kohat order No. 3171/EC dated 30.04.2013 and order of District Police Officer Karak bearing OB No. 371 dated 13.05.2013 vide which appellant was forcibly retired from service with out any reasons. The representation is based on the following facts and grounds.

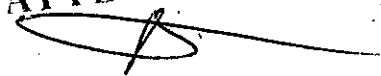
FACTS

1. That appellant was serving district Karak Police in capacity of head constable.
2. That appellant applied for grant of LPR and accordingly District Police officer Karak granted LPR to appellant vide OB No. 70 dated 27.01.2012.
3. That later on District Police Officer Karak cancelled the LPR grants order of appellant vides order bearing OB No. 691 dated 28.06.2012.
4. That on cancellation of LPR appellant rejoined duty.
5. That appellant made prayer through proper channel before Deputy Inspector General of Police, Kohat Region Kohat for promotion to the rank of ASI and worthy DIG Kohat instead of accepting prayer of appellant for promotion, issued directions vide impugned order No. 3171/EC dated 30.04.2013 to District Police Officer Karak to cancel the LPR cancellation order bearing OB No. 691 dated 28.06.2012..
6. That District Police Officer Karak cancelled the order bearing OB No. 691 dated 28.06.2012 vide impugned order bearing OB No. 371 dated 13.05.2013 and appellant was considered on LPR with effect from 27.01.2012. Hence this present representation on the following grounds.

GROUNDS

- a) That the LPR grant order of appellant was cancelled by competent authority and appellant joined service and performed duties for the long period of about ten (10) months. The impugned order having retrospection effective was wrongly passed.
- b) That LPR was a kind of leave and authority was competent to cancel LPR.

ATTESTED



16

- c) That the LPR of numerous Police officers was cancelled by competent authorities. Therefore, the impugned orders were passed in violation of prevailing precedents.
 - d) That appellant has performed duties, therefore, the duty period was wrongly considered as LPR period.
 - e) That the impugned orders were passed against the interest of appellant. Appellant was forcibly ousted from service with out committing any wrong, misconduct and negligence in duty.
 - f) That no show-cause notice was issued to appellant before passing the impugned order. Appellant was completely condemned unheard.
- It is therefore, requested that the impugned order may be set aside and appellant may be allowed to continue his service and orders.

D. no. - 5448
dt. 30.5.13


(SHARIAT KHAN)

Ex-Head Constable No. 291
Post office Azim Killa District Bannu

ATTESTED



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①

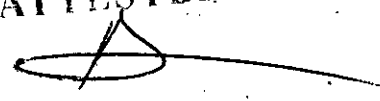
ORDER

In pursuance of the order of Provincial Police Officer, KPK, Peshawar vide Endst: No.21437-38/E-II, dated 17.09.2010 regarding cancellation of LPR in respect of HC Ghulam Farid No.285 of this district Police w.e.from 15.07.2009 to 14.07.2010 and re-instated in service w.e.from 15.07.2010. The period he remained out of service is treated as leave of the kind due. Moreover, at present there is no vacancy in the rank of C-II Head Constables in the district to adjust him. Therefore, he is reverted to the substantive rank of Constable and when a vacancy available in the district, he will be attributed back to the rank of C-II Head Constable. He is allotted constabulary No.456.

O.B. No. 1012

Dated 24-09-2010


District Police Officer, Karak

ATTESTED


ORDER

H
12

Offg: ASI Ahmad Janan appeared before the undersigned with the request that his remaining LPR may please be cancelled and the applicant may be re-instated in service.

From the perusal of his service record he has eleven good entries with out any bad.

Keeping in view the prevailing law & order situation in the Province, a trained and good relations with public, the services of Offg: ASI Ahmad Janan now on 365 days LPR is required by this district Police in the best interest of public. His remaining portion of LPR is therefore cancelled and he is recalled to assume duty with immediate effect.

O.B. No. 888
Dated 22/8 2009.

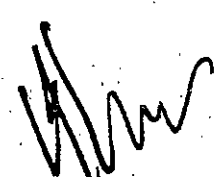


District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER KARAK

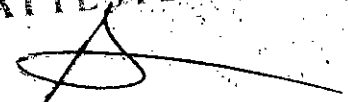
No. 11670 IEC, dated Karak the 22/8 2009.

Copy of above is submitted to the Dy: Inspector General of Police, Kohat Region, Kohat for favour of information please.



District Police Officer, Karak

ATTESTED



Reference attached

Respected Sir,

It is submitted that as per your kind directions regarding cancellation of LPR in respect of Offg: ASI Ahamd Janan of this district Police placed at F/"A".

In this connection It is submitted that according to the service record, his bio-data are as under. -

1. That his date of birth is 01.02.1965.
2. That he was enlisted as constable w.e.f. 20.08.1983 with educational qualification is FA.
3. That he passed Lower School Course and promoted as Head Constable w.e.f. 11.12.2001.
4. That he passed Intermediate School Course and promoted as Offg: ASI w.e.f. 07.04.2008.
5. That after completion of his twenty five (25) years qualifying service, he was granted 365 days LPR in connection with some domestic problem / requirement w.e.f. 01.09.2008 and he will stand retired on pension w.e.f. 01.09.2009 vice order copy placed at F/"B".
6. That now the above named Offg: ASI has applied for cancellation of his LPR with the reason that his domestic problem / requirement have been solved. Therefore, he has requested for cancellation of his-LPR with the following grounds:
 - (a). That he is physically fit and his aged is less than 45 years.
 - (b). That during the whole period of service any minor / major punishment has been awarded, while eleven commendation certificates is awarded to him.
 - (c). That some others Police Officers have been re-joined the Police force after cancellation of LPR due to proper order issued by competent authority, which is re-produced below for your kind perusal, please.
 - (I). HC Mir Nawaz of Kohat District order copy attached at F/"C".
 - (II). Constable Safdar Nawaz No: 827 of Abbottabad District order copy attached at F/"D".

Submitted please.

W/ DPO

ATTESTED

[Signature]

[Handwritten notes and stamps]
3
1859
HE/PS
12/15/08

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal Peshawar

Shariat Khan (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Dept. (Respondent)
(Defendant)

I/We Shariat Khan (Appellant)

Do hereby appoint and constitute **M. Asif Yousafzai, 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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

[Signature]
(CLIENT)

ACCEPTED

[Signature]
M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL KP, PESHAWAR

Misc Application No _____ of 2015

In Re:

Service Appeal No 1347/2013

Shariat Khan.....Appellant

VERSUS

P.P.O KP and others.....Respondent

G.W.P Province
Service Tribunal
Diary No. 165
Dated 2-3-16

APPLICATION FOR SETTING ASIDE OF EX-PARTE
ORDER DATED 27th MAY, 2015 IN ABOVE TITLED
SERVICE APPEAL PASSED BY THIS HONOURABLE
TRIBUNAL AGAINST THE RESPONDENT / DEPTT

Respectfully Sheweth:-

The Petitioner humbly submits as under:-


- 1) That the above noted appeal was pending adjudication before this Honourable Tribunal.
- 2) That it is pertinent to mention here that seat of Inspector Legal was vacant in the Respondent/Department, therefore, the Respondent/Department was unable to appear before this Honourable Tribunal.
- 3) That now the Inspector Legal of the Respondent/Department has joined his duty and pursue the case properly.

Put up to the court
with appeal.

10/11/16
D. S. Khan

4) That there is no legal bar in allowing the instant application.

It is, therefore, most respectfully prayed that on acceptance of this Application, the ex-parte order dated 27th May, 2015 may kindly be set aside.


Respondent / Department

(1), (2), (3).

BEFORE THE KHYBER PAKHUTNKHWA SERVICE TRIBUNAL KP, PESHAWAR

Appeal No. 1347/2013 Titled

Shariat Khan Ex- Head Constable No. 291 of District Police
Karak..... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkwa, Peshawar.
2. The Regional Police Officer Kohat Region Kohat..
3. The District Police Officer, Karak.... (Respondents)

**PARA-WISE COMMENTS/REPLY TO APPEAL ON BEHALF OF RESPONDENTS
NO. 1 TO 3**

Respectfully Shiewith,

Para-wise comments/Reply to appeal on behalf of
Respondents No. 1 to 3 are submitted as below,

Preliminary objections

1. The appellant has got no cause of action to file the present appeal.
2. The appellant has not come to this Tribunal with clean hands.
3. The appeal is not maintainable in its present form.
4. The appeal is time barred.
5. The appeal is bad for mis-joinder and non-joinder of necessary parties.


Facts


1. Pertains to record.
2. incorrect, the order dated 28.06.2012 vide O.B No. 691 already enclosed as Annexure "C" by the appellant was in violation of Rule 9-5 of Pension Rules hence cancelled by the Respondent No.3 vide O.B No. 371 dated 13.05.2013 in compliance of direction issued by the respondent No.2 vide his office letter No. 3171 dated 30.04.2013 already enclosed as Annexure "D" and "E" by the appellant. Copy of Rule9-5 of Pension Rules enclosed as Annexure "A".
3. Correct, already explained vide Para 2 above.
4. Correct, already explained in Para 2 above..
5. Pertains to record.
6. No Comments.

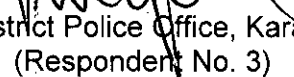
GROUNDS

- a. The Order dated 13.5.2013 vide O.B No. 371 was passed by the Respondent No. 3 in compliance of clear direction of Respondent No. 2 vide his office letter No. 3171/EC dated 30.04.2013, to ensure compliance of Pension Rules contained in Chapter IX of Financial Rules and instructions already enclosed as Annexure "A".
- b. Incorrect as per Para "a".
- c. Incorrect, already explained in ground "a".
- d. Incorrect, need no comments.
- e. That no discrimination was exercised by the Respondents to the appellant and Order dated 13.05.2013 was passed strictly in accordance with Pension Rules. It is further added that wrong practices could not be made a precedent.
- f. That proper order of cancellation of LPR Cancellation order was passed by the Respondent No.3 in compliance of Pension Rules and no irregularity was done in the case of appellant.
- g. That the respondents may also take some Additional grounds during arguments with the permission of August Service Tribunal.

In the light of above facts and circumstances, it is submitted that Service Appeal filed by the appellant may be dismissed being not maintainable and based on flimsy grounds.


Provincial Police Officer,
(Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)


Dy: Inspector General of Police,
Kohat Region Kohat.
(Respondent No.2)


District Police Office, Karak
(Respondent No. 3)

BEFORE THE KHYBER PAKHUTNKHWA SERVICE TRIBUNAL KP, PESHAWAR

Appeal No. 1347/2013 Titled

Shariat Khan Ex- Head Constable No. 291 of District Police
Karak..... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkwa, Peshawar.
2. The Regional Police Officer Kohat Region Kohat..
3. The District Police Officer, Karak....(Respondents))

Subject: **AUTHORITY LETTER**

We, the respondents' No. 1 to 3 to hereby nominate Mr. Ghulam Hussain Inspector Legal District Karak to represent us before the Service Tribunal Khyber Pakhtunkhwa, Peshawar in the above cited service appeal. He is also authorized to submit comments / reply on our behalf before the Service Tribunal Khyber Pakhtunkhwa, Peshawar and to assist Govt: pleader/ Additional Govt: Pleader attached to August Tribunal till the decision of appeal.



Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)



Dy: Inspector General of Police,
Kohat Region Kohat.
(Respondent No.2)



District Police Officer, Karak
(Respondent No.3)

BEFORE THE KHYBER PAKHUTNKHWA SERVICE TRIBUNAL KP, PESHAWAR

Appeal No. 1347/2013 Titled

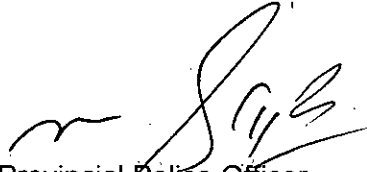
Shariat Khan Ex- Head Constable No. 291 of District Police
Karak..... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkwa, Peshawar.
2. The Regional Police Officer Kohat Region Kohat..
5. The District Police Officer, Karak....(Respondents)

Subject: **AFFIDAVIT**

We, the respondents' No. 1 to 3 to hereby affirm and declare on oath that the contents of reply/comments to the above titled service appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the August Tribunal.



Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)



Dy: Inspector General of Police,
Kohat Region Kohat.
(Respondent No.2)



District Police Officer, Karak
(Respondent No.3)

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 218- /ST

Dated 25 / 1 / 2017

To


The D.P.O,
Government of Khyber Pakhtunkhwa,
Karak.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 23.01.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.