

1365/13

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.

Pr. J. S. S. No



MEMBER

01.04.2015

None present for appellant. Mr. Usman Khan, Inspector (legal) alongwith Addl: A.G for respondents present. Copies of office orders dated 9.4.2014 and 23.4.2014 submitted the representative of respondents placed on record of service appeal No. 1363/2013 according to which the appellant has been reinstated in service with all back benefits.

In view of the above, the appeal stands disposed of. File be consigned to the record.

ANNOUNCED
01.04.2015


Chairman
01.04.15

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

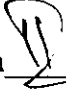
Appeal No. 1365/2013
Mr. Zahirullah

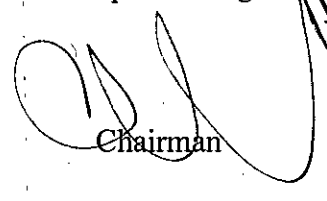
3, 16.12.2013

Appellant with counsel 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

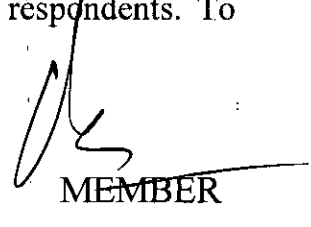
This case be put before the Final Bench  for further proceedings.


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

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1365 /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. Zakir Ullah 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 16-12-2013</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Zakir Ullah Ex-Constable No. 1398 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. Memorandum of appeal is unsigned which may be got signed.
2. Copies of charge sheet, statement of allegations and show-cause notice mentioned in the memo of appeal in respect of appellant are 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. 1330 /S.T.


Dt. 10/09 /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
Adv. Pesh

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 1365 /2013

Zakirullah.....**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	11-17
8.	Wakalat Nama		



Zakirullah
(Appellant)

Through

Date: 17/9 /2013


Sher Afgan Khattak
Advocate Supreme Court
Cell: 0302-8320150

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BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

P.W.P. Province
1383
17-9-13

Service Appeal No. 1365/2013

Zakirullah,
S/o Muhammad Jan
R/o Utmanzai, Mufti Abad, Takht Bhai Road, Distt Charsadda
Ex-Constable No.1398, Police Force, Charsadda

.....**Appellant**

VERSUS

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

① 5- Deputy Inspector General of Police Peshawar.**Respondents**

17/9/13

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:

Re-submitted to ~~day~~
and filed.

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

24/9/13

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 is Annexure "B").

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 impugned order dated 07.06.2013 is Annexure "C").
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 "D").
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.
- C. That all the enquiry proceedings were conducted illegally, no proper and legal procedure was adopted,

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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 dost 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.



Zakirullah
(Appellant)

Through



Sherafat Khattak
Advocate Supreme Court

Date: 17/9/2013

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BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2013

Zakirullah.....**Appellant**

VERSUS

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

ADDRESSES OF PARTIES

APPELLANT:

Zakirullah S/o Muhammad Jan
R/o Utmanzai, Mufti Abad, Takht Bhai Road, Distt Charsadda
Ex-Constable No.1398, 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

⑧

5 Deputy Inspector General of
Police Peshawar.

Zakirullah
(Appellant)

Through

Date: 17/9/2013

Sherafgan Khattak
Advocate Supreme Court

⑧

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

You Constable Zakirullah No.1398, 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

Sd/-
District Police Officer
Charsadda

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

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 Zakirullah No.1398, Police Line Charsadda

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 Zakirullah No.1398, 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-parte

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

Dated 15/05/2013



Sd/-
District Police Officer
Charsadda

Before the learned Deputy Inspector
General of Police, Peshawar

(11)

Departmental Appeal No. 12013

Through proper channel.

Zakirullah — VS — D.P.O. Charsadda
(Appellant) (Respondent)

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S.No.	Description of document.	Annexure	Page
1.	Departmental Appeal	—	1-5
2.	copy of FIR No. 395 dt. 26 th 2013	— "A"	6
3.	Copy of appointment order of Enquiry 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 etc.	"E"	10
7.	Copy of Final show cause notice	"F"	11
8.	copy of reply of show cause notice	"G"	12
9.	copy of impugned order dated 07-6-2013	"H"	13

Dated : 12/6/2013

Yours obediently,
Zakirullah
Ex. Police Constable
No. 1398 Police Force,
Charsadda.

ATTESTED



Before the Learned Deputy Inspector General
of Police, Peshawar

Departmental Appeal No. 12013

(10)

Through: - proper channel

Zakirullah s/o Mohammad Jan R/O Muftabadi
Tatebil Bhai Road, Teh: & Distt: Charsadda
Ex. Police Constable No. 1398 Police Force
Charsadda. --- Appellant

V/S

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 7/6/13
may kindly be set aside and Appellant
re-instated in service with all
back benefits

Respected Sir,

Brief facts of the case are:-

- 1) That the Appellant after his appointment
in Police Force at Charsadda on 1/1/2008
was serving as such, when his services
were entrusted to Ex. Law Minister
Arshad Abdullah, as Gunner and on
26-4-2013 he along with Daulat Khan
was present on duty with the said Ex. Law
Minister. It was 3:00 PM. when they
along with Ex. Law Minister were present

ATTESTED

(Signature)

in Rajjar Mchallah Fatima kehel in a public meeting in connection with the campaign of election 2013 and remained there till evening.

- 2) That during his tenure of service no complaints whatsoever, was received by his superiors from any person against him. He was performing his duty honestly and devotedly.
- 3) That on the following day i.e. 27-4-2013 the Appellant learnt about registration of case FIR No. 395 dated 26-4-2013 by Tarig Msharrit H.C., P.P. Utmanzai, Distt: Charsadda, U/S 353/506/148/149/183/189/382/201 P.P.C, P.S. Charsadda wherein he along with 20 others were charged, so he surrendered himself to the Police and later on, was released on bail. (Copy of FIR is enclosed as Annexure "A").
- 4) That on the registration of this FIR against the Appellant and others, the Respondent ordered initiation of departmental Enquiry against him & others and for this purpose appointed Enquiry officer (Copy of Appointment order regarding Enquiry officer is enclosed as Annexure "B").
- 5) That the Respondent also served the Appellant with charge sheet & statement of allegations (Copies of the same are annexed as Annexure "C" and "D").
- 6) That the Appellant replied to the charge sheet & statement of allegations (Copy of reply is annexed as Annexure "E").
- 7) That after submission of report/ findings by Enquiry officer, the Respondent served the Appellant with final Show cause Notice (Copy of the same is enclosed as Annexure "F").

- 8) That the Appellant submitted his reply to Final Show Cause Notice. (Copy of the same is enclosed as Annexure "G")
- 9) That the respondent passed the impugned order dated 07/6/2013 awarding Major Penalty to Appellant by his dismissal from service (Copy of the impugned order is annexed as Annexure "H").
- 10) That the Appellant aggrieved of the impugned order dated 07/6/2013 has preferred the instant Departmental Appeal on the following grounds inter-alia, amongst others: -

GROUNDS

- A) That the order passed by Respondent by dint of which the Appellant was dismissed from service, is harsh one, void-ab-initio, illegal, against facts and material available on record and law on the subject and against the norms of Natural Justice, hence untenable.
- B) That the Appellant was kept unheard and was not afforded an opportunity to defend his case, in respect of his innocence in cr-case, on the basis of which major penalty of dismissal from service was awarded to him, so the impugned order in these circumstances is liable to be set aside.
- C) That the Appellant has 5 1/2 years service in his credit and with a jere of Pen he was deprived of his service, without for the conduct of proper and regular Enquiry, as such the impugned order is no order in the eye of law, hence not sustainable.

ATTESTED

(4)

(15)

- D) That the Appellant has a large number of family members who are wholly solely depend upon the salary of Appellant but with his dismissal from service, they were kept under starvation, as such on the humanitarian basis the Appellant, if it was the permanent intention of Respondent to award him punishment, should have been awarded minor penalty of censure, as such the impugned order being harsh one, is liable to be set aside.
- E) That if the contents of FIR no. 395 dated 26-4-2013 are carefully perused, it will disclose that the same is the result of mala fide on the part of Complainant and others, because full particulars of 21 accused i.e. names, parentage and addresses have been given in the report, especially the accused arrested much earlier in case U/S 13 A.D. namely Farid Ahmad, has also been nominated as accused in this cr. case, which is half hour after the registration of that case, as such, the impugned order based on this cr. case, is not sustainable.
- F) That without complying with the requisite formalities as required for the conduct of proper and regular enquiry, the dismissal order has been made which is not only unlawful but also harsh one, as such is liable to be set aside.

ATTESTED



- G) That the trial in the cr-case is yet to be commenced, wherein guilt or innocence of the accused will be determined, since the appellant has been awarded the major penalty on the basis of this cr-case, it was necessary to have waited till the disposal of trial of that case, hence the impugned order is reversible.
- H) That so many other grounds do exist, which will be agitated before your honour, during personal hearing of appellant.

It is, therefore, humbly prayed that on acceptance of this departmental Appeal, the impugned order dated 07-6-2013 may kindly be set aside and the Appellant may kindly be re-instated in service with full back benefits.

Dated: 12/6/2013

12/6/2013



I, Zareisullah do hereby declare on oath that the contents of this appeal are true & correct to the best of my knowledge & belief.

Yours obediently Zareisullah
 S/O Muhammad Jan R/o Muftiabad
 Talah Bhai Road Teh. & Dis. LT.
 Charsadda Ex. Police Constable
 No. 1398 Police Force, Charsadda

ATTESTED

Deponent.
 Zareisullah

پیشوا کے نام سے

Refer to PDK Sana T...

Appellee

2 مخائب

Zakirullah Nam / Conty/Police

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام SHEIKH GAN KANTAL (SHEIKH)

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 در و سپیہ 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 با اختیار حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جانہ التوائے مقدمہ کے سبب سے دہوگا۔
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 سند ہے۔

المرقوم _____ ماہ _____ 2013

بمقام _____ واہ العب _____ کے لئے منظور ہے۔

Accept

(Signature)