

1

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 542/2014

Date of institution ... 17.04.2014

Date of judgment ... 01.01.2018

Raja Sadaqat Ex-Constable No. 4824,
District Police Haripur.

... (Appellant)

VERSUS

1. The provincial Police Officer, KPK, Peshawar.
2. The Addl: IG/Commandant Frontier Reserve Police, KPK, Peshawar.
3. The SSP, FRP Hazara Region, Abbottabad.

.... (Respondents)

**APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT,
1974 AGAINST THE ORDER DATED 17.03.2014, WHEREBY THE
DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE
ORDER DATED 10.12.2013 HAS BEEN REJECTED FOR NO
GROUNDS.**

Mr. M. Asif Yousafzai, Advocate.

.. For appellant.

Mr. Muhammad Jan, Deputy District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI
MR. AHMAD HASSAN

.. MEMBER (JUDICIAL)
.. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Counsel for the appellant. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Ihsanullah, ASI for the respondents also present. Arguments heard and record perused.

M. Asif Yousafzai
1-1-2018

2. Brief facts of the present service appeal are that the appellant was serving in Police Department as Constable. He was dismissed from service on the allegation of his absence from duty vide order dated 10.12.2013. The appellant also filed departmental appeal but the same was also rejected on 17.03.2014 hence, the present service appeal on 17.04.2014.

3. Learned counsel for the appellant contended that the appellant was serving in Police Department as Constable. It was further contended that neither the appellant was served with charge sheet nor proper inquiry was conducted. It was further contended that the dismissal of the appellant from service on the allegation of absence from duty is very harsh as the appellant was ill therefore, he was unable to attend the duty and prayed for acceptance of the present service appeal.


4. On the other hand, learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was serving in Police Department but he remained absent from duty without permission of the higher authority. It was further contended that a proper inquiry was conducted and thereafter the appellant was rightly dismissed from service and prayed for dismissal of appeal.

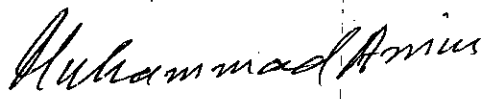
5. Perusal of the record reveals that the impugned order was passed on 10.12.2013 by the competent authority on the allegation of his absence from duty with effect from 06.10.2013. The record further reveals that the appellant was dismissed from service with effect from the date of his absence i.e 06.10.2013 therefore, the impugned order being retrospective is illegal and

McAnnin
1-11-2018

void ab-initio. Furthermore, according to the available record the appellant was directed to report in Platoon No. 100 Kohistan but he failed to report in Kohaistan and remained absent with effect from 06.10.2013 while the impugned order of dismissal of the appellant was passed by the competent authority vide order dated 10.12.2013 meaning thereby that the appellant remained absent from duty for a period of two months and four days therefore, the penalty of dismissal from service appear to be harsh. As such we partially accept the appeal and convert the penalty of dismissal from service into stoppage/withholding of two increments for a period of two years. Parties are left to bear their own costs. File be consigned to the record room.


ANNOUNCED
01.01.2018



(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

27.07.2017


Junior to counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel was not available. Adjourned. To come up for arguments on 20.10.2017 before D.B.



(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

20.10.2017

Counsel for the appellant and Mr. Ziaullah, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 01.01.2018 before D.B.


Member
(Executive)


Member
(Judicial)

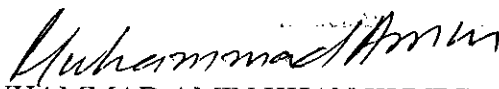
01.01.2018

Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Ihsanullah, ASI for the respondents also present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, we partially accept the appeal and convert the penalty of dismissal from service into stoppage/withholding of two increments for a period of two years. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

01.01.2018



(MUHAMMAD AMIN KHAN KUNDI)
MEMBER (JUDICIAL)


(AHMAD HASSAN)
MEMBER (EXECUTIVE)

02.08.2016

Taimur Khan junior to counsel for the appellant and Mr. Ziaullah, GP for respondent present. Junior to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on ~~8-12-16~~


Member


Member

08.12.2016

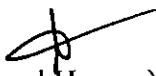
Junior to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Junior to counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on ~~13.4.17~~


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

13.04.2017


Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 27.07.2017 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

08.01.2015

Appellant in person and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for written reply and reply to application for condonation of delay on 28.04.2015.


Reader.

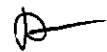
28.04.2015

Appellant in person and Mr. Mushtaq Ahmed, SI (legal) alongwith Addl: A.G for respondents present. Comments submitted. The appeal is assigned to D.B for rejoinder and final hearing for 27.10.2015.


Chairman


27.10.2015

Appellant with counsel and Addl: AG for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I. Khan. Therefore, the case is adjourned to 18/4/16 for arguments.


Member

18.04.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Rejoinder on behalf of the appellant submitted, copy of which is placed on file. To come up for arguments on 02.08.2016.


Member


Member

Appeal No. 542/2014
Rajal Sadra qat.

12.06.2014

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 original order dated 10.12.2013, he filed departmental appeal, which has been rejected on 17.03.2014, hence the present appeal on 17.04.2014. He further contended that the impugned order dated 17.03.2014, has been issued in violation of Rule-5 of the Civil Servant (Appeal) Rules 1986. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. Counsel for the appellant has also filed an application for condonation of delay. Notice of application should also be issued to the respondents for reply/argument. To come up for written reply/comments on main appeal as well as reply/arguments on application for condonation of delay on 10.09.2014.

Appellan & deposits
Process fees Security
Rs. 1800/- Bank Receipt
attached with file.

Member

12.06.2014

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

Chairman

10.9.2014

Counsel for the appellant (Mr. Taimur Ali Khan, Advocate), M/S Muhammad Yaseen, Inspector Legal and Ihsanullah, ASI (Legal) on behalf of respondents with Mr. Muhammad Adeel Butt, AAG present. Written reply and reply to application for condonation of delay have not been received, and request for further time made on behalf of the respondents. To come up for written reply and reply to application for condonation of delay, positively, on 8.1.2015.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 542/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17/04/2014	<p>The appeal of Mr. Raja Sadaqat 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;"><i>[Signature]</i> REGISTRAR</p>
2	21-4-2014	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>12-6-2014</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 542/2014

Raja Sadaqat

V/S

Police Deptt:

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-3
2.	Show cause notice	A	4
3.	Charge sheet	B	5
4.	Statement of allegations	C	6
5.	Final show cause notice	D	7
6.	Reply to final show cause notice	E	8
7.	Order dated 10.12.2013	F	9
8.	Departmental appeal	G	10-11
9.	Rejection order dated 10.3.2014	H	12
10.	Vakalat nama	-----	13

APPELLANT

THROUGH:


M.ASIF YOUSAFZAI

& 
TAIMUR ALI KHAN

(ADVOCATES, PESHAWAR)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 549/2014

Raja Sadaqat Ex- Constable No.4824,

District Police Haripur.

A. W. J. Province
No. 581
17-4-2014

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Addl: IG/Commandant Frontier Reserve Police, KPK, Peshawar.
3. The SSP, FRP Hazara Region, Abbottabad.

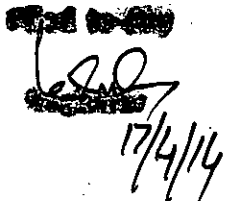
APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 17.3.2014, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 10.12.2013 HAS BEEN REJECTED FOR NO GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 17.3.2014 AND 10.12.2013 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK BENEFITS. AND ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

R. SHEWETH:

1. That the appellant joined the police force on 21.8.2009 and completed all his due training etc and has good record except the present impugned action against him.
2. That show cause notice, charge sheet and statement of allegation were served to the appellant in which allegation of absenteeism of the appellant for different intervals i.e 6.10.2013 to 13.10.2013, 14.10.2013 to 23.10.2013, 26.10.2013 to 5.11.2013 were leveled on


17/4/14

the appellant . (Copy of show cause notice, charge sheet and statement of allegation are attached as Annexure A,B & C).

3. That the final show cause notice was served to the appellant in which the appellant was asked to file reply with in 7 days. The appellant has submitted his reply to the final show cause notice (Copies of show cause notice and reply of the appellant are attached as Annexure-D&E)
4. That on 10.12.2013 the penalty of dismissal from service was imposed upon appellant under police rules 1975 with out conducting proper inquiry and giving chance of personal hearing to the appellant. (Copy of order is attached as Annexure- F)
5. That against the order dated 10.12.2013 appellant filed departmental appeal 2.1.2014 but the same was also rejected for no good ground on 10.3.2014. (Copies of departmental appeal and rejection order is attached as Annexure- G&H).
6. That now the appellant come to this august tribunal on the following grounds amongst others

GROUND:

- A) That the impugned order dated 10.12.2013 and 10.3.2014 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.
- C) That the appellant was civil servant of the Province but despite that the appellant was not treated according to E&D Rules 2011. Therefore the impugned action is not sustainable in Law.
- D) That the appellant was in Kohistan therefore the appellant was not served with charge sheet etc rather show cause notice rather it was delivered in a shop in Haripur. Thus the appellant was condemned unheard.

- E) That the inquiry officer even not recorded the statement of appellant and the inquiry was conducted at the back of appellant.
- F) That neither any proper enquiry has been conducted nor has any chance of defence been given to the appellant, Which is violation of norms of justice.
- G) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- H) That the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- I) That the appellant seeks permission to advance others 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

Raja Sadaqat

THROUGH:

M.ASIF YOUSAFZAI

&

TAIMUR ALI KHAN

(ADVOCATES, PESHAWAR)

A

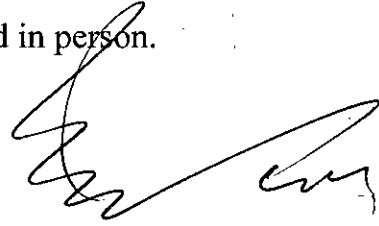
A^L

(4)

SHOW CAUSE NOTICE

Whereas you Constable Raja Sadaqat No. 4824 is absented himself from official duty with effect from 06/10/2013 to 13/10/2013, 14/10/2013 to 23/10/2013, 26/10/2013 to date without any leave/permission.

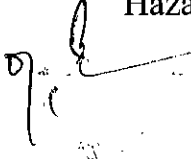
Now I Sarfraz Jadoon Senior Superintendent of Police, FRP, Hazara Region Abbottabad serve you with notice to show cause that why you should not be awarded the Major Punishment. Your reply should be reached this office within 7 days of the receipt of this notice, failing which it will be presumed that you have nothing to produce in your defence. Moreover at the same time also stated whether you want to be heard in person.



SARFRAZ JADOON PSP/QPM
Senior Superintendent of Police, FRP,
Hazara Region, Abbottabad.

No. 808 /OSI/FRP

Dated: 5/11/013



(B) B 4B (5)

CHARGE SHEET

I Sarfraz Jadoon Senior Superintendent of Police, FRP, Hazara Region, Abbottabad as competent authority, is hereby charge you Constable Raja Sadaqat No. 4824 as follow.

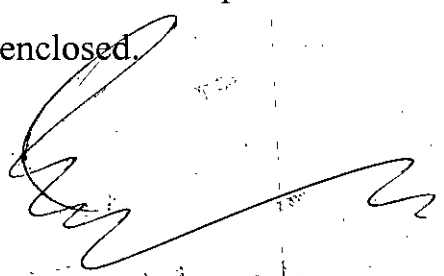
That while you absented yourself from official duty with effect from 06/10/2013 to 13/10/2013, 14/10/2013 to 23/10/2013, 26/10/2013 to 05/11/2013 and reported your arrival at Police Station Hariipur vide D.D No. 48, dated 05/11/2013 and directed to report in Platoon No. 100 Kohistan immediately but you failed to report and absented yourself again without any leave/permission. You were issue show cause notice on 05/11/2013, which you received personally on 05-11-2013 and did not bother to reply. This is against the rules of discipline force.

By the reasons of above, you appear to be guilty of misconduct under relevant disciplinary rules, and have rendered your self-labile for major punishment. You are therefore directed to submit your written defense within seven (07) days of receipt of this Charge Sheet in the enquiry Officer/Committee, as the case may be.

Your written defense, if any should reach the enquiry officer/committee within the specified period, failing which it shall be presume that you have no defense to put in and in that case ex-parte action shell follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SARFRAZ JADOON (PSP/QPM)
Senior Superintendent of Police, FRP,
Hazara Region, Abbottabad.

NO. _____

Dated _____

(6) c e (6)

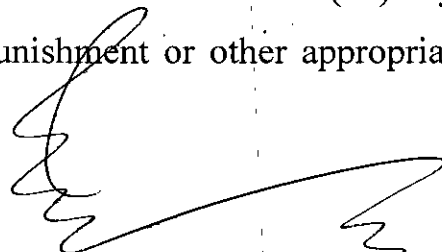
DISCIPLINARY ACTION

I Sarfraz Jadoon Senior Superintendent of Police, FRP, Hazara Region, Abbottabad as competent authority, is hereby charge you Constable Raja Sadaqat No. 4824 from certain omissions and commissions as elaborated below which render you liable to be proceeded against departmentally.

STATEMENT OF ALLEGATIONS


That while you absented yourself from official duty with effect from 06/10/2013 to 13/10/2013, 14/10/2013 to 23/10/2013, 26/10/2013 to 05/11/2013 and reported your arrival at Police Station Haripur vide D.D No. 48, dated 05/11/2013 and directed to report in Platoon No. 100 Kohistan immediately but you failed to report and absented yourself again without any leave/permission. You were issue show cause notice on 05/11/2013, which you received personally on 05-11-2013 and did not bother to reply.

Your this act amount gross misconduct. For the purpose of the scrutinizing the behavior/ the conduct of said accused Constable with reference with the above allegation, Mr. /FRP, Hazara Region, Abbottabad is appointed as enquiry officer who shall in accordance with the provision of ordinance provide reasonable opportunity of hearing to the defaulter, record his findings and make with in seven (07) days receipt of this order recommendation of the punishment or other appropriate action the defaulter official.


SARFRAZ JADOON (PSP/QPM)
Senior Superintendent of Police, FRP,
Hazara Region, Abbottabad.

No. 333-34 /FRP, dated Abbottabad the 13 | 11 /2013.

Copy of above is sent to Mr. /FRP, Hazara Region, Abbottabad for information. He directed to complete the enquiry with in 15 days positively.


SARFRAZ JADOON (PSP/QPM)
Senior Superintendent of Police, FRP,
Hazara Region, Abbottabad.

(7) D

D

(7)

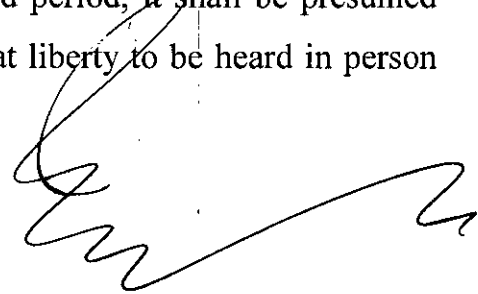
FINAL SHOW CAUSE NOTICE

I Sarfraz Jadoon Senior Superintendent of Police, FRP, Hazara Region, Abbottabad, being the competent authority under relevant rules, issue the Show Cause Notice to you Constable Raja Sadaqat No. 4824 as follows.

That you Constable Raja Sadaqat No. absented yourself from official duty with effect from 06/10/2013 to 13/10/2013, 14/10/2013 to 23/10/2013, 26/10/2013 to 05/11/2013 and reported your arrival at Police Station Haripur vide D.D No. 48, dated 05/11/2013 and directed to report in Platoon No. 100 Kohistan immediately but you failed to report and absented yourself again w. e. from 07/11/2013 to date without any leave/permission. This amounts to gross misconduct at your end.

During proper departmental enquiry certain omissions/commissions as incorporated in statement of allegation have been proved.

Keeping in view the above said allegation, you are hereby called upon to Show Cause finally within 7 days of the receipt of this Notice as to why you should not be awarded punishment under relevant rules. If your written reply is not received within the stipulated period, it shall be presumed that you have no defense to offer. You are also at liberty to be heard in person or otherwise.


SARFRAZ JADOON (PSP/QPM)
Senior Superintendent of Police, FRP,
Hazara Region, Abbottabad.

No. 861 /OSI/FRP

Dated: 28/11/13

ANSWER REQUEST AGAINST FINAL SHOW CAUSE NOTICE

Respectable Sir, it is requested that I was not able to honour the order due to the reason, that I suffered from very serious fever and was completely on bed.

Later on, I was on my way to join duty against order for Kohistan but got injured due to an accident, which caused me "ARM FRACTURE" and due to that I was hospitalized and was unable to join. Later on, when I got better, I went to Kohistan in the injured position dated 4/12/13 and was on duty till 9/12/13 in Kohistan.

On 9/12/13, I requested leave from Kohistan to come and submit my show cause reply request. My medical record is attached.

Sir, kindly consider my request and excuse me for this time. I will never do leaves in future.

Raja Sadayat,
constable NO. 4824 FRP.

ATTESTED

[Signature]

[Signature]

11-12-2013

9 OF

ORDER

Constable Raja Sadaqat No. 4824 (FRP) was enlisted in Police Department (FRP) with effect from 21/08/2009. He has served (04 years 03 Months & 19 Days) in Police Department. During this period he absented himself from duty for 88 days on (08) different occasions without any leave/permission, which was counted as leave without pay, fine Rs.1000/- and stoppage of 03 Years Annual Increments with accumulative effect and directed to report in Platoon No. 100 Kohistan immediately but he failed to report in Kohistan and absented himself again with effect from 06-10-2013 to 13-10-2013, 14-10-2013 to 23-10-2013, 26-10-2013 to 05-11-2013 and 07-11-2013 to date without any leave/permission. This act is amount gross misconduct. He was given Charge Sheet/Statement of Allegation as well as final show cause notice ^{for} from this act, but he did not bother to reply.

The attitude of constable is shows that he is not interested towards Police Service and he was also absent for 88 days' time to time and bad reputation in Police department.

Keeping in view the above facts, I Sarfraz Jadoon PSP/QPM, Senior Superintendent of Police, FRP, Hazara Region Abbottabad is a competent authority, award him major punishment i.e dismissed from service under Police Disciplinary Rules 1975 with effect from the date of his absence i.e 06/10/2013.

not in charge sheet.

SARFRAZ JADOON (PSP/QPM)
Senior Superintendent of Police, FRP,
Hazara Region, Abbottabad.

No. 898-99/OSI/FRP, Dated Abbottabad the, 10/12/2013.

Copy of above is forwarded to the following for favour of information:-

1. Addl; IGP/Commandant, FRP Khyber Pakhtunkhwa Peshawar.
2. Accountant/SRC/RI FRP Lines Abbottabad.

OB NO-178

11/12/13

ATTESTED

IGP-COMMANDANT, FRP KHYBER PAKHTUNKHWA PESAWAR.

ABBOTTABAD VIDE OB NO.178 DATED 11-12-2013, WHEREBY
APPLICANT WAS AWARDED THE MAJOR PUNISHMENT FROM
SERVICE UNDER DISIPLINARY RULES 1975 WITH EFFECT FROM
06-12-2013.

R/Sir,

10 G 69 (13)

With due respect it is submitted that I have been awarded the subject mentioned punishment by SSP FRP Hazara region Abbottabad vide OB No.178 dated 11-12-2013. (Copy of order attached as Annexure A), That the charges against the applicant are that I was posted in Platoon No.100 at Kohistan but I failed to report in Kohistan on due date and remained absent from 06-10-13 to 07-11-13 without any Leave/Permission.

That the facts are that when I left to Kohistan on 06-10-2013, I met with an accident on my way to Kohistan at Haripur and my arm was fractured. Due to fractured I also suffered from serious fever and was confined to bed after initial treatment in District Head Quarters Hospital Haripur. Copy of treatment and medical Rest Chits/certificates from medical officer of DHQ Hospital Haripur are attached at Annexure B.

That when I was bit recovered, I went to Kohistan in injured condition on 04-12-13 and was on duty till 09-12-13. There I received the final show cause notice, (Copy attached at Annexure C). Accordingly I was send to Head Quarter at Abbottabad on 09-12-2013 to submit my explanation in response to the show cause notice and the next day dated 11-12-13 when I reported to SSP FRP office Abbottabad , I was given the copy of order of my dismissal.

That I have not received any Charge Sheet and have not been given any chance of defense and was abruptly given order of Dismissal. I was not proceeded against departmentally and alleged enquiry by Inspector Khalid Khan, if any was conducted in my absence. I was not given the opportunity of personal having to explain the facts and cause of my absence by the enquiry officer or the SSP FRP before issue of impugned order of dismissal.

ATTESTED

10

(11)

That the enquiry was completely conducted one sided and I was fully deprived of my basic right of self defense which is against the cannon of law and Justice. So far my previous absence and action thereof is concerned , I have already been meet with the consequences as referred to in the of ore said punishment order.

That I am a young and trained Police Jawan and have got about 4 years and 4 months service, I belong to a poor family and except service I have no other source of income to support my large family.

In view of above facts and circumstances, it is most earnestly prayed that my case may kindly be given sympathetic consideration on humanitarian grounds and may kindly be reinstated in service.

I shall be thankful for this act of kindness and will pray for your long life and prosperity.

Yours Obediently,



Raja Sadaqat
Constable No.4824 FRP
Abbottabad

ATTESTED



P-16 ✓ 12 H (12) H

ORDER

This order shall dispose off on the appeal of Ex-Constable Raja Sadaqat No. 4824 of FRP Hazara Range against the order of SP FRP Hazara Range wherein he was dismissed from service.

Brief facts of the case are that Ex-Constable Raja Sadaqat No. 4824 of FRP Hazara Range absented himself from duty with effect from 06.10.2013 to 13.10.2013, 14.10.2013 to 23.10.2013, 26.10.2013 to 05.11.2013, and from 10.12.2013 till the date of dismissal for a total period of 58 days without any leave/permission of the competent authority. He was issued Charge Sheet/statement of allegation as well as final show cause notice for his act, but he did not bother to reply. Therefore he was dismissed from service by the SP FRP Hazara Range Abbottbad under Police Rules-1975 vide his OB No. 178 dated 11.12.2013.

However from the perusal of record and finding of Enquiry officers there are no cogent reason to interfere in the order of SP FRP Hazara Range. **Therefore his appeal is rejected.**

Y
Addl: IGP/Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

No. 1784-85 /EC dated Peshawar the

17/03/2014

Copy of above is sent for information and necessary action to the:-

1. SP FRP Hazara Range w/r to his Memo: No. 138/SRC dated 17.02.2014. His Service record and departmental enquiry file are returned.
2. Ex-Constable Raja Sadaqat S/o Raja Salabad Khan Village and Post office Pharharri Police Station Saddar District Haripur.

ATTESTED
P

VAKALAT NAMA

13

NO. _____/20

IN THE COURT OF Service Tribunal, Peshawar

Raja Sadqat

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt.

(Respondent)
(Defendant)

I/We Raja Sadqat

g. Taimur Ali Khan
adu

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

[Signature]
TAIMUR ALI KHAN
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 KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. /2014.

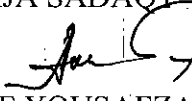
Raja Sadaqat. VS police Deptt;

APPLICATION FOR CONDONATION OF DELAY.

R.SHEWETH.

- 1- That the appellant has filed above noted appeal which is pending in preliminary hearing.
- 2- That in filing of appeal the delay of one day occurred due to miscalculation of days and the same was bonafide.
- 3- That the delay was not intentional, rather due to miscalculation of days and the same could be condoned by this august Tribunal.
- 4- That also the Supreme Court of Pakistan has held that the decision should always be made on merits rather than knocking out litigants on technicalities, including limitation. (2003 PLD (SC) 724)

Therefore it is prayed that the delay in filing appeal in this august Tribunal may please be condoned and the appeal of the appellant may be decided on merits.

APPELLANT
RAJA SADAQAT
THROUGH: 
M.ASIF YOUSAFZAI
ADVOCATE.

AFFIDAVIT.

It is affirmed that the contents of this application are true and correct.


DEPONENT.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PEASHAWAR.

Service Appeal No. 542/2014.

Raja Sadaqat.....(Appellant)

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa and
others.....(Respondents)

Subject:- COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth!

Preliminary Objections:-

- a) The appeal has not been based on facts.
- b) The appeal is not maintainable in the present form.
- c) The appeal is bad for joinder of un-necessary and non-joinder of necessary parties.
- d) The appellant is estopped by his own conduct to file the appeal.
- e) The appeal is barred by law and limitation.
- f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

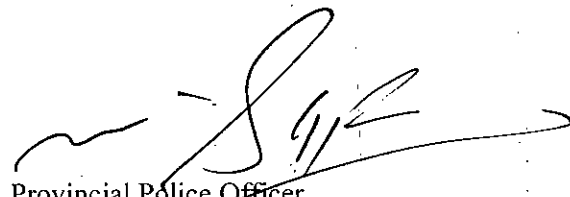
1. Correct to the extent that appellant was enlisted in Police Department as constable, however, he was habitual absentee and his service record bears bad entries. He was dismissed from service on charges of absence from duty vide impugned order.
2. Correct.
3. Correct to the extent that final show-cause-notice was issued to appellant but he did not submit reply within the prescribed period.
4. Correct to the extent that appellant was dismissed from service. Furthermore, proper enquiry was conducted and appellant avoided associating enquiry proceedings. Detail finding report of enquiry officer is enclosed as Annexure-A.
5. Incorrect, proper speaking order was passed on departmental appeal of appellant.
6. Incorrect, the appeal of appellant on ground advanced in appeal is not sustainable.

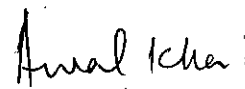
GROUND:-


- A. Incorrect, the impugned orders are just, legal and have been passed in accordance with law and rules on the subject.
- B. Incorrect, appellant was avoiding defense of the charges despite the fact, show cause and charge sheets were served upon him.

05/6
28.04.15

- C. Incorrect, appellant was Police official and Special Law in shape of Police Rules 1975 was in field, therefore appellant was correctly proceeded against under special law instead of general law.
- D. Incorrect, appellant has himself admitted in Para-2 of the facts of appeal that the show-cause-notice and charge sheet were served upon him. Furthermore, enquiry officer has explained such facts in the finding report. Copy already enclosed as Annexure-A.
- E. Incorrect, appellant was willfully avoiding defense of charges despite the fact show-cause-notice and charge sheet was served on him.
- F. Incorrect, appellant deliberately avoided defense of the charges leveled against him.
- G. Incorrect, this Para of the ground of appeal is repetition of Para 'C' of the ground of appeal.
- H. Incorrect, penalty commensurate with gravity of charge was imposed on appellant as he remained absent from duty for long period.
- I. Respondent also seek permission of the Honorable Tribunal to raise other ground during hearing of the case.
- It is therefore, prayed that the appeal of appellant may be dismissed with costs.


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


Commandant,
FRP, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)


Superintendent of Police,
FRP, Hazara Region, Abbottabad.
(Respondent No. 3)
Insp: Legal
FRP
HQR

انکوائری رپورٹ

جناب عالی!

عرض ہے کہ حسب احکم جناب SSP صاحب ایف آر پی ہزارہ ریجن اور بحوالہ چارج شیٹ، ڈسپلنری ایکشن نمبر 833-34/FRP مورخہ 13/11/2013 مجاریہ دفتر SSP صاحب ایف آر پی ہزارہ ریجن ایبٹ آباد بسلسلہ انکوائری برخلاف کنسٹیبل راجہ صداقت 4824/FRP پلاٹون نمبر 100 متعینہ کوہستان عمل میں لائی گئی۔

الزامات:-

- 1- الزام ہے کہ مورخہ 06/10/2013 تا 13/10/2013
- مورخہ 14/10/2013 تا 23/10/2013
- مورخہ 26/10/2013 تا 05/11/2013

تک بغیر اطلاع / اجازت غیر حاضر رہا ہے اور بروئے تبادلہ حکم دیا گیا کہ پلاٹون نمبر 100 متعینہ ضلع کوہستان میں رپورٹ کرے۔ ابھی تک تعمیل حکم نہیں کیا گیا۔ مورخہ 05/11/2013 کو Show Cause نوٹس وصول کروایا گیا، جس کا ابھی تک آپ نے جواب دینا گوارا نہیں کیا جو کہ محکمانہ روزہ کی خلاف ورزی ہے۔

عالی جناب!

شوکار نوٹس کی انکوائری DSP صاحب ہیڈ کوارٹر FRP نے عمل میں لائی تھی۔ جنہوں نے دوران انکوائری شوکار نوٹس کا دوران عرصہ 07 یوم جواب نہ ملنے پر کنسٹیبل مذکور کو برائے پیشگی پروانہ بھی وصول کروایا تھا تا کہ اسکو جواب کا ایک اور موقعہ دیا جائے مگر اس کے باوجود کنسٹیبل مذکور نے لاپرواہی کی انتہا کر دی، شوکار کا جواب دینا یا صاحب کے موصوف کے روبرو پیش ہونا مناسب نہیں سمجھا۔

مجاریہ چارج شیٹ / ڈسپلنری ایکشن بھی کنسٹیبل راجہ صداقت 4824 نے بذریعہ SI/PC ولی الرحمن اپنے والد کی دوکان پر بذات خود مورخہ 14/11/2013 کو وصول کیا۔ جس میں واضح طور پر تحریر ہے کہ چارج شیٹ کا تحریری جواب وصولی کے بعد سات یوم کے اندر دفتر SSP/FRP میں انکوائری آفسر کے پاس جمع کروائیں جو کہ مورخہ 21/11/2013 کو سات ایام پورے ہوتے تھے۔ لیکن اس کے باوجود مذکور کنسٹیبل نے چارج شیٹ کا جواب دینا گوارا نہیں کیا اور نہ ہی مجھ E/O سے رابطہ کرنے کی کوشش کی۔ اسکے باوجود مجھ انسپکٹر نے کنسٹیبل مذکور کے ساتھ بطور ہمدردی مورخہ 21/11/2013 کو پروانہ ایٹو کیا کہ مورخہ 26/11/2013 کو بسلسلہ انکوائری مجھ زیر دستخطی کے روبرو پیش ہو، لیکن اس کے باوجود کنسٹیبل موصوف نے دفتر بذمیں آنے کی تکلیف نہیں کی۔

بعدہ کنسٹیبل راجہ صداقت نمبر 4824 کا ریکارڈ چیک کیا گیا تو پایا گیا کہ کنسٹیبل مذکورہ مورخہ 21/08/2009 کو محکمہ پولیس میں بحیثیت کنسٹیبل بھرتی ہوا۔ اسکی نوٹس سروس 04 سال 03 ماہ 05 دن بنتی ہے۔ جس میں مذکورہ کنسٹیبل اس سے قبل 88 ایام غیر حاضری کی وجہ سے Without Pay ہوا اور ایک ہزار روپے جرمانہ، تین سال Increment Stoppage کی سزا دی گئی۔ اس کے اعمال نامہ میں سات عدد Red Entries موجود ہیں لیکن ایک بھی Good Entry موجود نہیں ہے۔ اسکے باوجود بھی کنسٹیبل مذکورہ نے سرکاری نوکری میں اپنی ذرا بھی دلچسپی ظاہر نہیں کیا اور نہ ہی اپنا رویہ تبدیل کیا۔ جس کا ثبوت درج ذیل غیر حاضریاں بروئے فیصلہ موجود ہیں۔

- 1- غیر حاضری مد نمبر 31 مورخہ 02/10/2013 تا 02/10/2013 09 گھنٹے 25 منٹ
- 2- غیر حاضری مد نمبر 33 مورخہ 06/10/2013 تا 13/10/2013 08 یوم

- 10 یوم 23/10/2013 تا 14/10/2013 مورخہ 57 غیر حاضری مد نمبر -3
 11 یوم 05/11/2013 تا 26/10/2013 مورخہ 10 غیر حاضری مد نمبر -4
 5- غیر حاضری مد نمبر 04 مورخہ 07/11/2013 تا بدستور غیر حاضر ہے۔

نوٹل 50 ایام 09 گھنٹے 25 منٹ غیر حاضری آج تک بنتی ہے۔ جبکہ کنسٹیبل مذکورہ مورخہ

07/11/2013 سے ابھی تک بدستور غیر حاضر ہے۔

ابتک کی انکوائری اریکارڈ چیکنگ، سابقہ حالات و واقعات، پلائون کمانڈرز کے مختلف غیر حاضری انٹریوں پر تحریری رپورٹوں سے پایا جاتا ہے کہ شروع دن سے کنسٹیبل مذکورہ نے سرکاری نوکری سفارشات / تعلقات کی وجہ سے کی ہے۔ اسی وجہ سے افسران بالا کے احکامات کی کبھی پروا نہیں کی۔ بدیں وجہ ابھی تک سرکاری نوکری میں دلچسپی نہیں رکھتا ہے۔ مذکورہ اہلکار نے محکمہ پولیس کے قواعد و ضوابط کی نہ صرف کبھی پروا نہیں کی بلکہ افسران بالا کے احکامات کو بھی جوتے کی نوک پر رکھا ہے۔ مذکورہ اہلکار شوکا ز اچارج شیٹ کا جواب نہ دینے سے پایا جاتا ہے کہ اسکے پاس قانونی طور پر اپنے ڈیفنس میں کہنے کے لئے کوئی جواز نہیں ہے۔

اس جیسے اہلکاروں کی وجہ سے دیگر ملازمان پر بھی برا اثر پڑتا ہے اور اس جیسے اہلکار محکمہ کے لئے بدنامی کا باعث بنتے ہیں۔ دوران انکوائری کنسٹیبل راجہ صداقت نمبر 4824 قصور وار پایا جاتا ہے، جس کے خلاف Major Punishment کی سفارش کی جاتی ہے۔

رپورٹ برائے ملاحظہ، مناسب حکم ارسال خدمت ہے۔

انسپکٹر خالد محمود
 ایف آر پی، ہزارہ ریجن ایبٹ آباد
 مورخہ: 27/11/2013

issue in
 final show cause
 notice
 28/11/13

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1512/2014

Raja Sadaqat

VS

Police Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

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

FACTS:

- 1 First portion of para 1 of the appeal is admitted correct hence no comments while the rest of para is incorrect hence denied.
- 2 Admitted correct. Hence no comments.
- 3 Admitted correct by the respondents that show cause notice was issued to the appellant but denied that reply was submitted by the appellant but the fact is that that the appellant submitted his reply to show cause notice which is attached as annexure-E with the appeal.
- 4 Admitted by the respondents that the appellant was dismissed from the service, but without conducting proper inquiry and giving chance of personal hearing to the appellant.
- 5 Incorrect. No proper speaking order was passed on the departmental appeal of the appellant.

- 6 Incorrect. The appeal of the appellant has good cause of action and the appeal of the appellant advanced in appeal is sustainable.

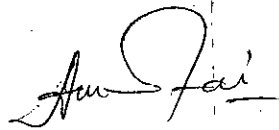
GROUND:


- A. Incorrect. The impugned orders are unjust, illegal and have not been passed in accordance with law and rules and liable to be set aside.
- B. Incorrect. The appellant did not avoid defence of charges but in fact he has not given opportunity of his defence.
- C. Incorrect. While para B of the appeal is correct.
- D. Incorrect. While para C of the appeal is correct.
- E. The appellant did not avoid defence of charges but in fact he has not given opportunity of his defence.
- F. Incorrect. No proper inquiry has been conducted against the appellant nor has any chance of defence been given to the appellant, which is the violation of norms of justice.
- G. Incorrect. While para G of the appeal is correct.
- H. Incorrect. The penalty of dismissal is very harsh and did not commensurate with the gravity of charges imposed on the appellant.
- I. Legal.

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

APPELLANT
Raja Sadaqat

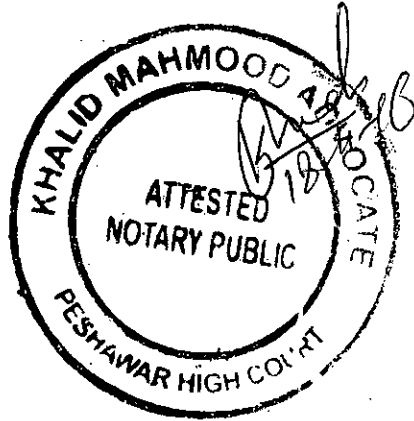
Through:


(M. ASIF YOUSAFZAI)

& 
(TAIMUR ALI KHAN)
ADVOCATES PESHAWAR.

AFFIDAVIT

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




DEPONENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 75 /ST

Dated 11/01/2018


To

The SSP,FRP Hazara Region,
Government of Khyber Pakhtunkhwa,
Abbottabad.

Subject: **JUDGEMENT/ORDER IN APPEAL NO. 542/14 MR.RAJA SADAQAT.**

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

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.