

29.06.2022

Learned counsel for the appellant present and requested for adjournment on the ground that he has not prepared the brief in order to properly assist the court. Request accepted. To come up for preliminary arguments on 17.08.2022 before S.B.



(Fareeha Paul)
Member (E)

17.08.2022

Learned counsel for the appellant present and requested for adjournment on the ground that he has not gone through the record. Adjourned. To come up for preliminary hearing on 18.10.2022 before S.B.



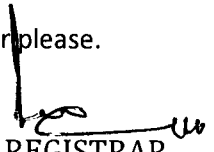



(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 792/2022 _____

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/05/2022	<p>The appeal of Mr. Muhammad Saleem resubmitted today by Mr. Saadullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	<p>23/5/22 Dtr A2162 R-37-55-22 </p>	<p>This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on <u>31-5-22</u>. Notices be issued to appellant and his counsel for the date fixed.</p> <p style="text-align: right;"> CHAIRMAN</p>
	31.05.2022	<p>Junior to counsel for the appellant present and requested for adjournment on the ground that learned senior counsel for the appellant is not available today. Adjourned. To come up for preliminary hearing on <u>27.06.2022</u> before S.B.</p> <p style="text-align: right;"> (Mian Muhammad) Member (E)</p>

The appeal of Mr. Muhammad Saleem Ex-Constable no. 4067 FRP Swat received today i.e. on 28.04.2022 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Check list is not attached with the appeal.
- 2- Appeal has not been flagged/marked with annexures marks.
- 3- Annexures of the appeal be attested.
- 4- Affidavit may be got attested by the Oath Commissioner.
- 5- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 6- Page No. 17, 20 to 24 and judgment of Supreme Court of Pakistan attached with the appeal are illegible which may be replaced by legible/better one.
- 7- Approved file cover is not used.
- 8- Wakalat nama in favour of appellatant be placed on file.
- 9- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 978 /S.T,

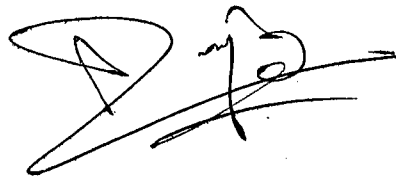
Dt. 29-4- /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

Mr,

Re-submitted after removing the objections.



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 792/2022

Muhammad Saleem

versus

Deputy Commandant & Others

I N D E X

S. No	Documents	Annex	P. No.
1.	Memo of Appeal		1-4
2.	Dismissal order dated 21-10-2008	"A"	5
3.	Representation	"B"	6
4.	Rejection order dated 23-07-2010	"C"	7
5.	Application dated 01-04-2022	"D"	8
6	Reinstatement of other constables	"E"	9-19
7	Judgments in similar cases	"F"	20-58

Through

Appellant



Saadullah Khan Marwat
Advocate.

21-A Nasir Mansion,
Shoba Bazaar, Peshawar.

Ph: 0300-5872676

0311-9266609

Dated.27-04-2022

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. _____/2022

Muhammad Saleem
S/O Mumtaz Khan,
R/O Kukkaray, Swat.
Ex-Constable No. 4067,
FRP, Swat Appellant

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 651

Dated 28/4/2022

Versus

1. Deputy Commandant FRP,
KP, Peshawar.
2. Commandant FRP, KP,
Peshawar Respondents

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST ORDER NO. 1423-26 / PA / FRP / HQRS
DATED 21-10-2008 OF R. NO. 01 WHEREBY
APPELLANT WAS REMOVED FROM SERVICE AND
PERIOD OF ABSENCE WAS TREATED AS LEAVE
WITHOUT PAY OR OFFICE ORDER NO. 5483-84/EC
DATED 23-07-2010 OF R. NO. 02 WHEREBY
REPRESENTATION OF APPELLANT WAS REJECTED
FOR NO LEGAL REASON:

Filed to-day
by
Registrar

28/4/2022

Respectfully Sheweth:

1. That appellant was enlisted in service as Constable In the year 2004 and served the department till the date of removal from service.
2. That appellant was deputed to Police Training Centre for recruit course and qualified the same.

3. That thereafter Platoon of appellant was deputed to Swat for performance of emergency duty under the control of SP, FRP Swat and was posted at Police Station Rahim Abad.
4. That at the time, Swat Valley was in clutches of the miscreants and it was well in knowledge of every one that they were ruling the area and the government machinery was totally collapsed. Employees were kidnapping, beheading and killing either through guns or bomb blasts. In such a situation employees of almost all of every department let their services, especially of the police department which was in target of the miscreants.
5. That on 12-10-2008, appellant was removed from service by R. No. 01 with immediate effect and period of absence was treated as leave without pay. This order was never served upon appellant regarding the aforesaid situation of the valley. (Copy as annex "A")
6. That appellant submitted appeal for reinstatement in service before R. No. 02 which was rejected on 23-07-2010. (Copy as annex "B")
7. That the aforesaid orders were not served upon appellant, so he submitted application / reminder before R. No. 01 for record of the subject matter but only order of removal from service and rejection of appeal was supplied to him on 01-04-2022. (Copy as annex "C" & "D")
8. That in similar circumstances and by keeping in view the aforesaid situation, orders were passed on 30.11.2010 wherein 253 constables were reinstated in services, 20 constables on 18.02.2011 and 12 on 07.02.2012 by the authorities. (Copies as annex "E")
9. That the same subject matter came up for hearing before this hon'ble Tribunal in numerous cases and after through probe, their appeals were accepted on different dates. (Copies as annex "F")

Hence this appeal, inter alia, on the following grounds:-

GROUND S:

1. That appellant was enlisted in service as Constable and served the department till the date of removal from service.

2. That at the time, the Swat Valley was in clutches of the miscreants and it is will in knowledge of every one that they were ruling the area and the government machinery was totally collapsed. Employees were kidnapping, beheading and killing either through guns or bomb blasts. In such a situation employees of almost all of every department let their services, especially of the police department.
3. That Darbar was held by the authority and hundreds and thousands employees were reinstated into their services in numerous orders due to the said situation.
4. That appellant was removed from service on the score of absence but such absence was not willful but was due to the deteriorated situation of the area.
5. That absence does not constitute any misconduct when the same is not willful and as stated earlier, hundreds and thousands similarly and equally placed employees have been reinstated into their services not only by the department but also by the hon'ble Tribunal / courts which judgments were upheld by the apex court.
6. That codal formalities enumerated in the Rules were never observed, being mandatory.

It is, therefore, most humbly prayed that on acceptance of appeal, orders dated 21-10-2008 and 23-07-2010 of the respondents be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

M. Saleem
Appellant

Through

Saadullah Khan Marwat
Saadullah Khan Marwat

Arbab Saiful Kamal
Arbab Saiful Kamal

Amjad Nawaz
Amjad Nawaz
Advocates.

Dated 27-04-2022

AFFIDAVIT

I, Muhammad Saleem S/O Mumtaz Khan, R/O Kukkaray, Swat.
Ex-Constable No. 4067, FRP, Swat (Appellant), do hereby
solemnly affirm and declare that contents of **Service Appeal** are
true and correct to the best of my knowledge and belief

M. Saleem

DEPONENT

Cell No.0342-1675746

CERTIFICATE:

As per instructions of my client, no such like Service Appeal
has earlier been filed by the appellant before this Hon'ble
Tribunal.

[Signature]
ADVOCATE

A 5

O.R.D.E.R

This office order relates for the disposal of formal departmental enquiry against Constable Muhammad Saleem, No:4067, of FRP/HQrs: Peshawar, who remained absent, from duty w. e. from 03-06-08 till-to date without any leave/permission of the competent authority.

In this connection formal departmental proceedings was initiated against him and RI/FRP/HQrs, Peshawar was nominated as Enquiry Officer. He conducted enquiry into the matter and submitted his report wherein he recommended to take Ex-parte action against him. Upon the findings of Enquiry Officer he was issued Final Show Cause Notice, which he received but failed to submit his reply in the stipulated period of (14) days.

Keeping in view the recommendation of the Enquiry Officer and other material available on record it has become crystal clear that his further retention in service is no more required in the discipline force. Therefore, in exercise of Powers vested to me under the NWFP, Removal from Service (Special Powers) Ordinance 2000: **Constable Muhammad Saleem, No.4067, of FRP/HQrs, is hereby Removed from Service with immediate effect.** The period of absence is treated as leave without pay.

Order announced.

Awal Khan

(AWAL KHAN)
Dy: Commandant,
Frontier Reserve Police,
NWFP, Peshawar.

No. 1423-26/PA/FRP/HQrs: dated Peshawar, the 21/10/2008.

Copy of the above is forwarded to:-

1. The OASI/ FRP/HQrs: Peshawar
2. The Accountant /FRP/HQrs: Peshawar.
3. The SRC/FRP/HQrs: Peshawar
4. The FMC/ FRP/HQrs: Peshawar with original Enquiry file.

FRP. HQ
O N No. 1066
22-10-2008

بخدمت جناب مائٹرنک ایف آر پی لیٹننٹ راجہ

درخواست بھرا بجای پرسروس

جناب عالی!

1۔ کہ نہ سائل 2002 میں لیویسی میں بھرتی ہوا۔ اور شرینگٹن

کھل کر کے بعد لیویسی اسٹیشن رحیم آباد سوات میں

خدمت سرانجام دے رہا تھا۔

2۔ کہ نہ اس وقت سوات ڈیپنٹ سردوں کے قلم میں تھا اور کوئی

بھی ملاح خدمت سرانجام دینے سے قاصر تھا۔

3۔ کہ نہ مذکورہ بالا وجوہات کی وجہ سے سائل نوٹورہ 12-10-08

کو سروس سے بیطرف بنا

4۔ کہ نہ اس دوران قلمی کے جیلہ عدالتوں نے جو جیسے ملازمین

کو سروس پر بھال کرنا حکم ہمارا نہیں ہے۔

5۔ کہ نہ بیطرفی سے قبل قانونی تقاضوں کو پورا نہیں کیا گیا۔

لہذا حکم مذکورہ خلاف قانون ہے۔

لہذا اسد عادی کے حکم مذکورہ کو کالعدم

قرار دیا جائے اور سائل کو سابقہ تمام مراعات ملے گی

سروس پر بھال کرنا حکم ہمارا نہیں ہے۔

سائل - M. Saleem

محمد سلیم ولد محمد نواز خان

کیمپ کاندوس سوات

سابقہ نمبر 4067 سر

C 7 (2)

ORDER.

This order shall dispose off on the appeal of Constable Muhammad Saleem No 4067 of FRP HQrs against the order of Deputy Commandant FRP NWFP wherein he was removed from service.

Brief fact of the case is that while he was absent from duty with effect from 03.06.08 till the date of removal from service without any leave/permission of the competent authority for a total period of 04 months and 10 days. He was issued charge sheet/statement of allegation and P. M. W. Peshawar was appointed as enquiry officer. After conducting enquiry by the officer submitting findings wherein the above named official was recommended for ex-parte action.

Due to his absence as well as recommendation of enquiry officer he was removed from service from the date of his absence by Commandant FRP NWFP Peshawar vide his CB No. 1046 dated 12.11.08.

However, from the perusal of record and findings of Enquiry Officer, there are no cogent reasons to interfere in the order of Deputy Commandant FRP Peshawar. Therefore his appeal is rejected.

[Signature]
Addl: Inspector General of Police/
Commandant Frontier Reserve Police
Khyber Pakhtoonkhwa Peshawar.

No. 5483-84 /EC dated Peshawar the 23 / 07 10.

Copy of above is forwarded for information and record.

1.

Ex-Constable Muhammad Saleem S/o Muntaz Uro Iskanai
Mangora District Swat.

SRC FRP HQrs: Peshawar.

① 8

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To,

Deputy Commandant,
FRP, KP, Peshawar.

Subject: REMINDER / REINSTATEMENT IN SERVICE:

Respectfully Sir,

1. That applicant was enlisted in service in the year 2004 and served the department till the date of removal from service.
2. That applicant submitted departmental appeal for reinstatement in service before Commandant FRP but so far no action was taken. (Copy Attached)
3. That details for reinstatement in service have been fully mentioned in the departmental appeal which requires kind consideration.

It is, therefore, most humbly requested that the impugned orders mentioned in my departmental appeal be set aside and I be reinstated in service with all benefits,

Yours obediently,

M. Saleem

Muhammad Saleem
S/O Mumtaz Khan
R/o Kokarai, Swat
Ex- C. No. 4067.
Police Line, Swat
Cell. No. 0342-1675746

Dated 01-04-2022

E

9

ORDER

WHEREAS as per the approval of the Provincial Police Officer, Khyber Pakhtunkhwa a Committee had been constituted vide this office No: 9871-77/E dated 16/11/2010, headed by DPO Swpt to reconsider the cases of the personnel dismissed during militancy.

AND WHEREAS the Committee has, after thorough deliberations and scrutiny of the relevant record, submitted its findings vide No: 14732/E dated 29/11/2010 wherein 253 personnel have been recommended for reinstatement in service.

NOW THEREFORE as per the approval of the Provincial Police Officer, the following personnel recommended by the Committee are hereby reinstated in service with effect from the date of their dismissal. The period during which they remained out of service after dismissal and the period of their absence will be treated as leave without pay.

S.No.	Name and No.
1.	Ex-Constable Bahader Khan No. 1322
2.	Ex-HC Miran Saif Rehman No. 582
3.	Ex-Constable Muhammad Saeed No. 1543
4.	Ex-Constable Fida Hussain No. 751
5.	Ex-Constable Zia-u-din No. 1581
6.	Ex-Constable Sami Ullah No. 103
7.	Ex-Constable Sadiq Akbar No. 310
8.	Ex-Constable Ayaz Ali No. 1402
9.	Ex-PASI Ijaz Ali No. 35 (Shaheed Son)
10.	Ex-Constable Farman Ali No. 757
11.	Ex-Constable Shafiullah No. 298
12.	Ex-Constable Sher Ali Khan No. 443
13.	Ex-Constable Sabir Hussain No. 1421
14.	Ex-Constable Sharafat Khan No. 776
15.	Ex-Constable Fazal Anwar No. 1091
16.	Ex-Constable Asmat Ali No. 1304
17.	Ex-Constable Niaz Mond No. 822
18.	Ex-Constable Abdul Wadud No. 151
19.	Ex-Constable Muhammad Shoab No. 112/RR
20.	Ex-Constable Shah Hussain No. 1257
21.	Ex-HC Abdul Wali Khan No. 378
22.	Ex-Constable Naseer Ud-din No. 1415
23.	Ex-Constable Ajmal Khan No. 1524

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24.	Ex-Constable Gul Faraz Khan No. 1512
25.	Ex-Constable Fazal Wadood No. 12311
26.	Ex-Constable Sultanat Khan No. 556
27.	Ex-Constable Bakht Nawab No. 141/RR
28.	Ex-Constable Saeed ulla'h No. 1043
29.	Ex-Constable Nasir Ali No.1074
30.	Ex-Constable Zahoor Ahmad No. 1038
31.	Ex-Constable Said Akbar No.1118
32.	Ex-Constable Muhammad Ali No.1850
33.	Ex-Constable Falak Zeb No. 887
34.	Ex-Constable Adalat Khan No. 1254
35.	Ex-Constable Malak Zeha No. 953
36.	Ex-Constable Zahoor Ahmad No. 165/RR
37.	Ex-Constable Akhtar Ali No. 49
38.	Ex-Constable Shakir Hussain No. 290
39.	Ex-Constable Akbar Ali No. 1306
40.	Ex-Constable Akber Ali No. 1520
41.	Ex-Constable Zoor Muhammad Khan No. 549
42.	Ex-Constable Muhammad Alam No 512
43.	Ex-Constable Amir Khattam No. 30
44.	Ex-Constable Naseer-Ullah Khan No. 1428
45.	Ex-Constable Muhammad Zeb Khan No. 371
46.	Ex-Constable Hayat Muhd Khan No. 143
47.	Ex-Constable Subhan Ullah No. 186/RR
48.	Ex-Constable Asad-ullah Jan No. 1226
49.	Ex-Constable Rashood Khan No. 33/RR
50.	Ex-Constable Habib-ur- Rehman No. 205/RR
51.	Ex-Constable Abdullah No. 885
52.	Ex-Constable Niaz Ali Shah No. 130/RR
53.	Ex-Constable Sher Alam Khan No. 144/RR
54.	Ex-Constable Said Mahmood Jan No. 615
55.	Ex-Constable Muhammad Shoab No. 645
56.	Ex-Constable Ajab Khan No. 172
57.	Ex-Constable Tariq No. 1534
58.	Ex-Constable Karim Ullah Khan No. 608
59.	Ex-Constable Shafi Ullah No. 1506
60.	Ex-Constable Bashir, Ahmad No. 1457
61.	Ex-Constable Izzat Mond No. 1244
62.	Ex-Constable Shehzada No. 364
63.	Ex-Constable Umar Zaib No. 1448
64.	Ex-Constable Majee Khan No. 81

65.	Ex-Constable Shamshey Khan No. 508
66.	Ex-Constable Sabz Ali Khan No. 1447
67.	Ex-Constable Baktawar Khan No. 1251
68.	Ex-Constable Bacha Wali No. 1434
69.	Ex-Constable Rasheed Ahmad No. 1791
70.	Ex-Constable Muhd Sher Ali Khan No. 463
71.	Ex-Constable Adalat Khan No. 275
72.	Ex-Constable Mian Said Parvez No. 752
73.	Ex-Constable Jahan Parvez No. 293
74.	Ex-Constable Rehmat Ali No. 927
75.	Ex-Constable Abdul Hayeed No. 206
76.	Ex-Constable Bakht Ullah No. 92
77.	Ex-Constable Shokat Ali No. 1371
78.	Ex-Constable Zikriya No. 421
79.	Ex-Constable Zahir Ahmad No. 1450
80.	Ex-Constable Said Ahmad Khan No. 917
81.	Ex-Constable Bakht Zein No. 1694
82.	Ex-Constable Riaz Muhammad No. 1467
83.	Ex-Constable Zahid Ullah No. 1394
84.	Ex-Constable Bakht Namroz No. 667
85.	Ex-Constable Mian Said Gul No. 344
86.	Ex-Constable Hidayat Ullah Khan No. 335
87.	Ex-Constable Umar Rehman No. 728
88.	Ex-Constable Gohar Ali No. 625
89.	Ex-Constable Said Azam No. 12/RI
90.	Ex-ASI Aman Khan
91.	Ex-Constable Najib Ullah No. 1481
92.	Ex-Constable Aftab Ullah No. 1514
93.	Ex-Constable Feroz Khan No. 961
94.	Ex-Constable Ubaid Ullah No. 190
95.	Ex-Constable Akbar Bach No. 852
96.	Ex-Constable Sher Alam No. 996
97.	Ex-Constable Muhammad Ayaz No. 488
98.	Ex-Constable Anwar-ul-Haq No. 572
99.	Ex-Constable Muhammad Iqbal No. 369
100.	Ex-Constable Gohar Ali No. 642
101.	Ex-Constable Rizwan Ullah No. 1454
102.	Ex-Constable Yousaf Khan No. 350
103.	Ex-Constable Farooq No. 13
104.	Ex-Constable Muhammad Shoab No. 1528
105.	Ex-Constable Ali Muhammad No. 1456

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106.	Ex-Constable Mumtaz Ali No. 62
107.	Ex-Constable Shah Wali Khan No. 1502
108.	Ex-Constable Mian Khaliq Jan No. 383
109.	Ex-Constable Luqman Ali No. 95
110.	Ex-Constable Jehan Ali No. 195
111.	Ex-Constable Musharat Khan No. 1113
112.	Ex-Constable Amir Muhammad No. 176/RR
113.	Ex-Constable Alam Khan No. 1078
114.	Ex-Constable Sher Shah No. 862
115.	Ex-Constable Arjida Ali No. 1044
116.	Ex-Constable Sher Ali Khan No. 1353
117.	Ex-Constable Iftikhar No. 564
118.	Ex-Constable Bakht Akbar No. 1288
119.	Ex-Constable Taj Muhd. No. 1111
120.	Ex-Constable Alam Badshah No. 1196
121.	Ex-Constable Liaqat Ali No. 225
122.	Ex-Constable Liaqat Ali No. 253
123.	Ex-Constable Azam Khan No. 1427
124.	Ex-Constable Habib Ullah No. 1446
125.	Ex-Constable Yar Badshah No. 933
126.	Ex-Constable Nadar Shah No. 468
127.	Ex-Constable Nazir Muhd No. 1379
128.	Ex-IC Asghar Khan No. 31
129.	Ex-Constable Ali Rasheed No. 1480
130.	Ex-Constable Fazal Rehman No. 784
131.	Ex-Constable Bakhtaj No. 1329
132.	Ex-Constable Ibrar Hussain No. 420
133.	Ex-Constable Zafar Alam No. 653
134.	Ex-Constable Muhd Rafiq No. 1633
135.	Ex-Constable Sajjad Khan No. 1518
136.	Ex-Constable Umar Khan No. 1109
137.	Ex-Constable Ahmad Ali No. 1318
138.	Ex-Constable Rehmat Ali No. 175
139.	Ex-Constable Iqbal Hussain No. 1486
140.	Ex-Constable Rehman Ullah No. 1466
141.	Ex-Constable Ayaz Ahmad No. 320
142.	Ex-Constable Sadq No. 1470
143.	Ex-Constable Shafiq-Ur-Rehman No. 851
144.	Ex-Constable Bashir Ahmad No. 1377
145.	Ex-Constable Liaqat Ali No. 1345
146.	Ex-Constable Aziz-ul-Hassan No. 1170

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147.	Ex-Constable Zakir Hussain No. 308
148.	Ex-Constable Midrarullah No. 533
149.	Ex-Constable Muzlim Khan No. 191/RR
150.	Ex-Constable Zafar Ali Khan No. 74
151.	Ex-Constable Najib Ullah Khan No. 1439
152.	Ex-Constable Rahim Khan No. 571
153.	Ex-Constable Azam Khan No. 45
154.	Ex-Constable Mian Said Bacha No. 1362
155.	Ex-Constable Hazrat Alam No. 1570
156.	Ex-Constable Irfan Ud Din No. 1549
157.	Ex-Constable Sher Hassan Khan No. 685
158.	Ex-Constable Muhd Raqj No. 131/RR
159.	Ex-Constable Mian Said Farooq No. 333
160.	Ex-Constable Muhammad Tahir No. 1703
161.	Ex-Constable Bahadur Nawab Khan No. 1635
162.	Ex-Constable Amir Khan No. 1604
163.	Ex-Constable Sami Ullah No. 1588
164.	Ex-Constable Muhammad Qasim No. 1688
165.	Ex-Constable Muhd. Arif Khan No. 1393
166.	Ex-Constable Asmat Ali No. 1723
167.	Ex-Constable Farhad Ali No. 1761
168.	Ex-Constable Mian Said Ghani No. 1689
169.	Ex-Constable Inam Ullah No. 1145
170.	Ex-Constable Umar Farooq No. 1677
171.	Ex-Constable Israr Ahmad No. 1622
172.	Ex-Constable Amal Khan No. 1569
173.	Ex-Constable Rehmat Ali No. 496
174.	Ex-Constable Zara Wali No. 134
175.	Ex-Constable Anwar Ullah No. 1666
176.	Ex-Constable Bakht Kayam No. 1800
177.	Ex-Constable Anwar Ali No. 1574
178.	Ex-Constable Aziz Ullah Khan No. 1591
179.	Ex-Constable Hazrat Bilal No. 1776
180.	Ex-Constable Farman Ali No. 217/RR
181.	Ex-Constable Muhd Alam Khan No. 1774
182.	Ex-Constable Asghar Khan No. 1720
183.	Ex-Constable Abdullah No. 1661
184.	Ex-Constable Mohammad Azim No. 971
185.	Ex-Constable Said Sarfullah No. 1600
186.	Ex-Constable Samin Khan No. 1724
187.	Ex-Constable Salman Adhar No. 1575


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188.	Ex-Constable Hayat Ali No. 1614
189.	Ex-Constable Liaqat Ali Khan No. 1414
190.	Ex-Constable Yaqub Khan No. 1601
191.	Ex-Constable Farman Ali No. 1069
192.	Ex-Constable Rehmat Zaid No. 1679
193.	Ex-Constable Fayaz Ali No. 914
194.	Ex-Constable Wali Ahmad No. 841
195.	Ex-Constable Barkat Ali Khan No. 190/RR
196.	Ex-Constable Nazir Mahmood No. 1771
197.	Ex-Constable Mohim Bacha No. 1608
198.	Ex-Constable Muhd. Kashif No. 1579
199.	Ex-Constable Nisar Ahmad No. 1565
200.	Ex-Constable Fazal Haq No. 1589
201.	Ex-Constable Ajab Khan No. 1553
202.	Ex-Constable Shahi Ali Yari Khan No. 1645
203.	Ex-Constable Hazrat Ali No. 1797
204.	Ex-Constable Zia Ullah No. 164/RR
205.	Ex-Constable Naeem Iqbal No. 1716
206.	Ex-Constable Amjid Ali No. 1624
207.	Ex-Constable Farhad Ali No. 127
208.	Ex-Constable Hazrat Usman No. 1691
209.	Ex-Constable Umar Zaman No. 160/RR
210.	Ex-Constable Zafar Ali No. 159
211.	Ex-Constable Saeed Ullah No. 1513
212.	Ex-Constable Sher Bahadar Shah No. 211/RR
213.	Ex-Constable Arif Ali Shah No. 828
214.	Ex-Constable Fazal Ali ad No. 1647
215.	Ex-Constable Abdur Rehman No. 1607
216.	Ex-Constable Muhammad Ikram No. 240
217.	Ex-Constable Inayat Ullah No. 1665
218.	Ex-Constable Sajid Ullah No. 1672
219.	Ex-Constable Karim Ullah No. 1788
220.	Ex-Constable Umar Muhammad No. 1361
221.	Ex-Constable Nawab Rehman No. 1664
222.	Ex-Constable Zai Ullah Khan No. 9/RR
223.	Ex-Constable Qayum Khan No. 1586
224.	Ex-Constable Imran Ali No. 531
225.	Ex-Constable Nasir Ali No. 1623
226.	Ex-Constable Rizaz Ali No. 1559
227.	Ex-Constable Haider Ali No. 1667
228.	Ex-Constable Badshah Muhammad No. 112/RR

15

229.	Ex-Constable Sher Zaman No. 1167
230.	Ex-Constable Muhammad Jan No. 1708
231.	Ex-Constable Mian Gul Ducha No. 1696
232.	Ex-Constable Saif Ullah No. 1769
233.	Ex-Constable Zahir Ullah No. 1644
234.	Ex-Constable Parveez Khan No. 65/RR
235.	Ex-Constable Muhammad Naeem No. 1746
236.	Ex-Constable Fazal Bacha No. 605
237.	Ex-Constable Barkat Ali No. 1312
238.	Ex-Constable Amir Zeb No. 1787
239.	Ex-Constable Kalim Ullah Jan No. 1656
240.	Ex-Constable Zai-ur-Rehman No. 1694
241.	Ex-Constable Muhammad Alam No. 1730
242.	Ex-Constable Fazal Hayat No. 1658
243.	Ex-Constable Hazrat Nawaz Khan No. 721
244.	Ex-Constable Ikram Ullah No. 1606
245.	Ex-Constable Tariq Rahim No. 1782
246.	Ex-Constable Wali Khan No. 212/RR
247.	Ex-Constable Abdull Khan No. 188/RR
248.	Ex-Constable Muhammad Parvez No. 63/RR
249.	Ex-Constable Muhammad Zahid No. 71/RR
250.	Ex-Constable Sardar Ali No. 45/RR
251.	Ex-Constable Luqman No. 95
252.	Ex-Constable Bahad Ali No. 4688/FRP
253.	Ex-Constable Sher Afzal No. 4388/FRP

Order announced.

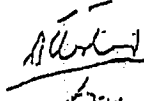

(QAZI JAMIL-UR-REHMAN)
Deputy Inspector General of Police,
Malakand Region, Saidu Sharif, Swat.
SAIF

No. 10214-16/E,

Dated 30/11/2010.

Copy for information and necessary action to the:-

1. Provincial Police Officer, Khyber Pakhtoonhwa, Peshawar.
2. District Police Officer, Swat.
3. Superintendent of Police, FRP, Swat.


by

OFFICE ORDER

Whereas as per the as per the approval of the Provincial Police Officer, FR, Pukhtunkhwa a Committee had been constituted vide this office No. 9871 dated 16-11-2010, headed by DPO Swat to reconsider the cases of the persons absented during militancy.

And whereas the Committee has after thorough deliberation scrutiny of the relevant record, submitted its findings vide No. 89 / OASI, 04-01-2012 wherein 12 personnel recommended for reinstatement service.

Now therefore as per the approval of the Provincial Police Officer, following personnel recommended by the Committee are hereby reinstate service with effect from the date of their dismissal and the period of their absence will be treated as leave without pay.

S. No.	Name and No.
1.	Ex- Constable Minhaj-ud-Din No. 139.
2.	Ex- Constable Zahoor Hussain No. 1738.
3.	Ex- Constable Ali Baz No. 501.
4.	Ex- Constable Muhammad Israr No. 118.
5.	Ex- Constable Attaullah No. 924.
6.	Ex- Constable Muhammad Ali No. 1563.
7.	Ex- Constable Fazal Hanan No. 1504.
8.	Ex- Constable Ikram No. 1189.
9.	Ex- Constable Qasir Ali Shah No. 675.
10.	Ex- Constable Bashir Ahmad No. 270.
11.	Ex- Constable Parwanat Khan No. 30.
12.	Ex- Constable Fazal Rabbi No. 579.

Order announced.

sd/-

(AKHTAR HAYAT KHAN)

Deputy Inspector General of Police

Malakand Region, Saidu Sharif, Swat

No. _____ / E,

Dated 07-02-2012

Copy for information and necessary action to the:-

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. District Police Officer, Swat.

16

OFFICE ORDER

WHEREAS as per the approval of the Provincial Police Officer, FR, Pakhtunkhwa a Committee had been constituted vide this office No:9871 dated 16/11/2010, headed by DPO Swat to reconsider the cases of the persons absented during militancy.

AND WHEREAS the Committee has, after thorough deliberation scrutiny of the relevant record, submitted its findings vide No:89/OASI, 04/01/2012 wherein 12 personnel have been recommended for reinstatement service.

NOW THEREFORE as per the approval of the Provincial Police Officer, following personnel recommended by the Committee are hereby reinstated service with effect from the date of their dismissal. The period during which remained out of service after dismissal and the period of their absence will treated as leave without pay.

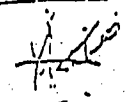
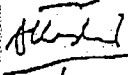

S.No	Name and No.
1.	Ex-Constable Minhaj-ud-Din No.139
2.	Ex-Constable Zahoor Hussain No.1736
3.	Ex-Constable Ali Baz No.501
4.	Ex-Constable Muhammad Israr No.118
5.	Ex-Constable Attaullah No.924
6.	Ex-Constable Muhammad Ali No.1693
7.	Ex-Constable Fazal Hameed No.1504
8.	Ex-Constable Ikram No.1189
9.	Ex-Constable Qaisar Ali Shah No.675
10.	Ex-Constable Bashir Ahmad No.270
11.	Ex-Constable Parwanat Khan No.30
12.	Ex-Constable Fazal Rabbi No.579

Order announced.

(AKHTAR HAYAT KHAN)
Deputy Inspector General of Police
Malakandi Region, Faisalabad, Swat

No. _____ /E,
Dated 07/02/2012.

- Copy for information and necessary action to the
1. Provincial Police Officer, Khayber Pakhtunkhwa, Peshawar.
 2. District Police Officer, Swat.

Attest




17

P. 11



OFFICE OF THE
INSPECTOR GENERAL OF POLICE,
KHYBER PAKHTUNKHWA
PESHAWAR.

No. SI 1656 /17, dated Peshawar the 15/3/2017

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 114-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-Constable Noor Khan No. 462. The appellant was dismissed from service by DPO, Dir Lower vide OB No. 361, dated 16.03.2009 on the charge of absence from duty for 02 months and 04 days.

Meeting of Appellate Board was held on 02.03.2017 wherein appellant was heard in person. During hearing petitioner contended that he was posted at Malakand Region as DFC. He could not bring Summon and Warrants to the area because of terrorists. Terrorists and Taliban threatened him time and again on his cell phone.

The Board examined his service record which revealed that appellant has no bad entry during his service. Moreover, he has qualified Recruit Course and A-I examination.

Keeping in view 07 years, 11 months and 12 days service at the credit of petitioner and threats from Terrorists and Taliban, the Board decided that the petitioner is hereby re-instated in service, however, the intervening period including period of absence from duty is considered as period in service but not on duty and he will not be entitled for salary of the intervening period. He will remain under special watch for one year.

This order is issued with the approval by the Competent Authority.

(Signature)
(NAJEEB-UR-REHMAN BUGVI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No. SI 1657-64/17.

Copy of the above is forwarded to the:

1. Regional Police Officer, Malakand at Swat.
2. District Police Officer, Dir Lower.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.
8. Central Registry Cell, CPQ.

*2009 dismissed
Reinstated
in 2017*

**OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.**

No.S/1656/17, dated Peshawar the 15/3/2017

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules-1975 submitted by Ex-Constable Noor Khan No. 462. The appellant was dismissed from service by DPO, Dir Lower vide OB No. 361, dated 16.03.2009 of the charge of absence from duty for 02 months and 04 days.

Meeting of Appellate Board was held on 02.03.2017 wherein appellant was heard in person. During hearing petitioner contended that he was posted at Malakand Region as DFC. He could not bring Summon and Warrants to the area because of terrorism, Terrorists and Taliban threatened him time and again on his cell phone.

The Board examined his service record which revealed that appellant has no bad entry during his service. Moreover, he was qualified Recruit Course A-1 examination.

Keeping in view 07 years, 11 months and 12 days service at the credit of petitioner and threats from Terrorists and Taliban, the Board decided that the petitioner is hereby re-instated in service, however, the Intervening period including period of absence from duty is considered as period in service but not on duty and he will not be entitled for salary of the intervening period. He will remain under special watch for one year.

This order is issued with the approval by the Competent Authority.

Sd/-
(NAJEEB-UR-REHMAN BUGVI)
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

No.S/1657-64/17,

Copy of the above is forwarded to the:

1. Regional Police Officer, Malakand at Swat.
2. District Police Officer, Dir Lower.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.
8. Central Registry Cell, CPO.

ORDER

18

Bakht

This order shall dispose of departmental appeal under rule 11 of Khyber Pakhtunkhwa Police Rules, 1975, submitted by Ex-Constable Sadiq-ur-Rehman No. 4881 of FRP Malakand Range, against the order of SP FRP Malakand Range, Swat, wherein he was removed from service.

Brief facts of the case are that Ex-Constable Sadiq-ur-Rehman No. 4881 of FRP Malakand Range was enlisted as constable on 26-07-2007. Later on during the course of duty he was absented himself from duty with effect from 20-07-2008, till the date of his removal from service.

In this regard he was issued charge sheet and statement of allegation, but neither he report/arrival for duty, nor replied to charge sheet within stipulated period. Thereafter on 08-11-2008 he was issued Urdu Parwan, but he failed to do so, therefore, the Enquiry Committee recommended him for major punishment of removal from service. Later on he was issued final show cause notice but his reply was not received within stipulated period.

In the light of recommendation of Enquiry Committee and other material available on record he was removed from service by the SP FRP Malakand Range, Swat, vide office OB No. 151, dated 14-11-2009.

After going through the available record it has pointed out that the appellant has neither participated with enquiry proceedings, nor provided opportunity of personal hearing.

The applicant has heard in person in orderly room held on 03-08-2017, during the course of hearing he contended that at those days the Swat Valley was under control of miscreants/Taliban and were kidnapping, killing the Government employees, especially of Police department. He further stated that being a member of the Force (Police Department) he was received threat from Taliban, then he along with his family members were compulsively shifted to other safe place i.e. Punjab Province. He further added that his removal from service order was not communicated to him. His plea was found plausible and satisfactory.

Keeping in view the above, vis-à-vis his unblemished service record also a trained soldier he (Ex-constable Sadiq-ur-Rehman No. 4881 of FRP Malakand Range) is hereby reinstated in service and the punishment of his removal from service is hereby modified and converted into major punishment of his removal from service is hereby modified and converted into major punishment of deduction in pay as timescale constable. The period of his absence from duty and the intervening period are considered as period in service but not on duty and he will not be entitled for salary of this absence and intervening period.

Order announced.

sd/-
Commandant

Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar

No. 5914 / EC, dated Peshawar the 09 / 08 / 2017
Copy of above is forwarded to the SP FRP Malakand
Range Swat for information and necessary action.
His service record sent herewith.

ORDER

19

Bokhara

This order shall dispose of departmental appeal under rule 11 of Khyber Pakhtunkhwa Police Rules, 1975, submitted by Ex-Constable Taj Bhadar No. 4899 of FRP Malakand Range, against the order of SP FRP Malakand Range, Swat, wherein he was removed from service.

Brief facts of the case are that Constable Taj Bhadar No. 4899 of FRP Malakand Range was enlisted as constable on 26-07-2007. He was absented himself from duty with effect from 01-04-2009, till the date of his removal from service.

In this regard he was issued charge sheet and statement of allegations, but neither he report/arrival for duty, nor replied to charge sheet within stipulated period. Thereafter on 28-04-2009 he was issued Urdo Parwan, but he failed to do so, therefore, the Enquiry Committee recommended him for major punishment of removal from service. Later on he was issued final show cause notice but his reply was not received within stipulated period.

In the light of recommendation of Enquiry Committee and other material available on record he was removed from service by the SP FRP Malakand Range, Swat, vide office OB No. 294, dated 21-02-2009.

After going through the available record it has pointed out that during the course of enquiry the applicant has neither participated with enquiry proceedings, nor provided opportunity of personal hearing.

The applicant has heard in person in orderly room held on 03-08-2017, during the course of hearing he contended that at those days the Swat Valley was under control of miscreants/Taliban and were kidnapping, killing the Government employees, especially of Police department. He further stated that being a member of the Force (Police Department) he was received threat from Taliban, then he along with his family members were compulsively shifted to other safe place i.e. Punjab Province. He further added that his removal from service order was not communicated to him. His plea was found plausible and satisfactory.

Keeping in view the above, vis-à-vis his unblemished service record also a trained soldier he (Ex-constable Taj Bhadar No. 4899 of FRP Malakand Range) is hereby reinstated in service and the punishment of his removal from service is hereby modified and converted into major punishment of his removal from service is hereby modified and converted into major punishment of deduction in pay as timescale constable. The period of his absence from duty and the intervening period are considered as period in service but not on duty and he will not be entitled for salary of this absence and intervening period.

Order announced.

sd/-
Commandant

Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar

No. 5913 / EC, dated Peshawar the 09 / 08 / 2017

Copy of above is forwarded to the SP FRP Malakand Range Swat for information and necessary action.

His service record sent herewith.

20

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 588 /2012

U. O. S. D. PESHAWAR
Date: 23/05/12
Page No. 562

Murali Ali S/o Muhammad Mashal Khan,
R/o Char Bagh, Ex-C. No. 4708, FRP,
Police Station Matta, Swat



Appellant

Versus

1. Commandant, FRP, KPK, Peshawar.
2. Superintendent of Police, FRP, Malakand Region, Swat.
3. Provincial Police Officer, KPK, Peshawar. Respondents

APPEAL AGAINST OFFICE ORDER
NO.1964-65/EC, DATED 09.04.2012 OF
R.NO.1 (APPELLATE AUTHORITY)
WHEREBY REPRESENTATION OF
APPELLANT WAS REJECTED AGAINST OR
NO.138 DATED 10.10.2008 OF R.NO.2
(ORIGNIONAL AUTHORITY) WHO
DISMISSED APPELLANT FROM SERVICE
FOR NO LEGAL REASON.

23/5/12

FILED

IN

Respect fully Sheweth,

Ch. Justice
KPK Service Tribunal
Peshawar

Lo-submitted to-day
and filed.

23/5/12

1. That on 25.07.2007, appellant was enlisted as FRP constable in Malakand Range by R.No.1.
2. That it was an admitted fact that the whole Swat valley was under the control of miscreants/Taliban. Normal life was absolutely ineffective. Miscreants/Taliban were kidnapping, killing and beheading Government employees, especially of

21

No. of
proceeding

Date of
Order or
proceedings.

Order or other proceedings with signature of Judge or Magistrate
and that of parties where necessary.



2

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT SWAT

APPEAL NO. 588/2012

(Murad Ali Vs. Commandant FRP, KPK Peshawar & 2 others.)

JUDGMENT

02.05.2016

MUHAMMAD AZIM ELIAN AFRIDI CHAIRMAN:

Appellant with counsel and Mr. Muhammad Zubair, Senior
Government Pleader alongwith Mushtaq Ahmad, Inspector (Legal)
for the respondents present.

Murad Ali son of Muhammad Mashal Khan hereinafter
referred to as the appellant has preferred the instant appeal against
order dated 09.4.2012 communicated to the appellant on 02.5.2012
vide which his departmental appeal against original order dated
10.10.2008 of removal from service was regretted.

6

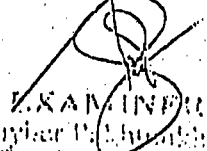
Brief facts giving rise to the present appeal are that the
appellant was appointed as Constable in FRP Malakand Range
vide appointment order dated 25.07.2007. While serving so he was
found absent from duty for a period of 3 months and 8 days and
after conducting enquiry removed from service vide order dated
10.10.2008 where-against departmental appeal of the appellant
was rejected on 09.4.2012 and hence the instant service appeal on
23.05.2012.

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

Perusal of the record would suggest that charge sheet dated 09.08.2008 was communicated to the appellant on the allegations of wilful absence, however, according to findings/report of the enquiry committee appellant had not turned up in response to notice issued to the appellant for resuming duty and facing an enquiry. It is evident from the record that enquiry procedure was not followed by the enquiry committee as the appellant was neither associated with the enquiry proceedings nor any opportunity of hearing afforded to him and, furthermore, in case of absence, publication of any notice in prescribed manners was not made in the newspapers. Furthermore the alleged period of absence was during the days of militancy and, according to the stance of the appellant, similarly placed employees were reinstated in service and that appellant was also entitled to same treatment.

Since the appellant was subjected to enquiry wherein neither prescribed procedure was followed nor appellant associated with the same as such we deem it more appropriate to set aside the impugned original order dated 10.10.2008 as well as final order dated 09.4.2012 and as consequence thereof reinstate the appellant in service, placing the respondents at liberty to departmentally proceed against the appellant afresh, if need be, and that the plea of the appellant in respect of reinstatement of similarly placed persons in service shall also be taken into account during the enquiry which shall be concluded within ~~the~~ a period of 2 month from the date of receipt of this judgment. In case the

ATTEST


L. KANINDI
Khyber Pakhtunkhwa
Services Tribunal,
Peshawar

enquiry is not conducted then the period of absence till reinstatement be treated as leave of the kind due. The appeal is disposed of accordingly. Parties are however left to bear their own costs. File be consigned to the record room.

Announced - sdt - M. Azim Khan Afzidi,
02.05.2016
Chairman
sdt - Abdul Latif,
Member

Certified true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of receipt 10-05-2016
No. of pages 1600
Copying fee 10/-
Urgent
Total 10/-
Name of the officer
Date of issue 12-05-2016
Date of receipt 12-05-2016

24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT SWAT

Service Appeal No. 957/2016

Date of Institution... 04.08.2016

Date of decision... 07.12.2017



Shoukat Ali son of Muhammad Shafiq, R/O Kokari Mingora Swat Ex-Constable
No. 4741, FRP Platoon No. 83, P.S Mingora Swat. ... (Appellant)

Versus

1. Superintendent of Police, FRP Malakand Region, Malakand and two others. ... (Respondents)

ARBAB SAIFUL KAMAL,
Advocate

For appellant.

MR. KABIRULLAH KHATTAK,
Addl. Advocate General

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL,

CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - This judgment shall also
disposed of other connected appeals No. 697/2016 Muhammad Said, No.
958/2016 Fazal Yaseen, No. 959/2016 Afzal Khan. and No. 961/2016 Umar Ali
as in all the appeals common questions of law and facts are involved.

2. Arguments of the learned counsel for the parties heard and record perused.

FACTS

3. The appellant Shaukat Ali, Umar Ali and Afzal Khan were removed
from service on 28.08.2016, the appellant Fazal Yaseen was removed from

ATTESTED

service on 02.02.2009 and the appellant Muhammad Saeed was removed from service on 21.09.2009. The appellants then filed departmental appeals belatedly which were rejected then the appellant also approached this Tribunal belatedly not within the stipulated time.

ARGUMENTS

4. The learned counsel for the appellants argued that the very orders of removal from service are void because all these orders have been given retrospective effect. That in view of judgment reported as 1985-SCMR-1178 no limitation shall run against void order.

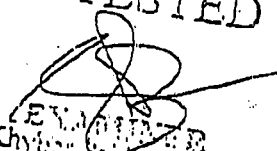
5. On the other hand the learned Addl. Advocate General argued that the departmental appeals are hopelessly time barred. That the revision within the meaning of Rule 11 -A of Khyber Pakhtunkhwa Police Rules, 1975 could not enlarge the period of limitation. That all the codal formalities were fulfilled by the department.

CONCLUSION

6. Regardless of other merits of the case it is an admitted position that all these orders have been given retrospective effect and in view of so many judgments delivered by this Tribunal on the basis of judgment reported in 1985-SCMR-1178 the retrospective order is a void order and no limitation shall run against void order.

7. Since no limitation runs against a void order, any successive appeals or revision would not curtail the rights of the appellants qua the limitation or in other

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

respect. Presuming that all other elements of due processes have been complied with, the void order cannot be sustained on this score alone.

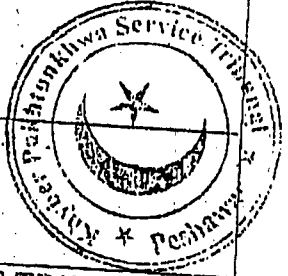
8. As a sequel to the above discussion, the present appeals are accepted and the appellants are reinstated in service. The department is however, at liberty to hold denovo proceedings in accordance with law within a period of ninety days. The intervening period shall be subject to the final outcome of the denovo proceedings. Parties are left to bear their own costs. File be consigned to the record room.

Announced self - Niaz Muhammad Khan,
07-12-2017 Chairman
Camp Court Swat

self - M. Hamid Nughal,
Member

CCAD
07/12/17
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of 13-12-17
Number of 1700
Copying Fee 8
Urgent
Total
Name of Court
Date of Copy 15-12-17
Date of Delivery of Copy 15-12-17



Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
At Camp Court Swat

Appeal No. 562/2016

Date of Institution ... 16.05.2016
 Date of Decision ... 05.07.2018

Rahim Ud Din son of Syed Rehman, Resident of Ajoo Talash,
 Tehsil Timregara, district Dir Lower.

Appellant

1. Inspector General fo Police, Khyber Pakhtunkhwa.
2. D.I.G, Malakand Region Saidu Sharif Swat.
3. D.P.O, Lower Dir.
4. D.S.P headquarter, Timergara Lower dir.

Respondents

Mr. Sajjad Ahmad Jan
 Advocate-----For Appellant

Mr. Usman Ghani
 District Attorney-----For Respondents

Mr. Subhan Sher
 Mr. Muhammad Hamid Mughal
 Chairman
 Member

05.07.2018

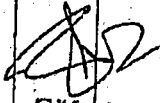
JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: Appellant

with counsel present. Mr. Usman Ghani learned District Attorney
 for the respondents present.

2. Learned counsel for the appellant stated that the appellant has
 filed the present service appeal against the order dated 20.08.2009
 whereby he was dismissed form service on the ground of absence
 from duty and against the order dated 31.10.2012 vide which the

ATTESTED


 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

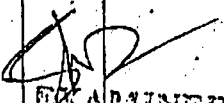
departmental appeal of the appellant was rejected; that the appellant has also challenged the order dated 13.04.2016 of the Review Board whereby departmental appeal/revision filed by the appellant was rejected. Learned counsel for the appellant argued that the appellant could not attend to his duties for a few months due to circumstances beyond his control as the mother of the appellant was severely ill. Learned counsel for the appellant argued that the appellant was met with discriminatory treatment as some of the colleagues of the appellant who were also dismissed under similar circumstance were reinstated either by the Appellate Authority or by the Review Board. Further argued that original impugned order of punishment of dismissal was also awarded to the appellant with retrospective effect hence being a retrospective punishment the original impugned order is a void order and no limitation runs against the same. Learned counsel for the appellant in support of his contention regarding discriminatory treatment submitted copies of reinstatement order of F.C Muhammad Yar No.2118, Constable Noor Khan No.462, Constable Jawad Hassan No.2111, Constable Atta Ullah No. 2240, Constable Waheed Khan No.4886 of FRP, Constable Muhammad Shahid 4890 of FRP etc.

3. As against learned District Attorney resisted the present service appeal and defended the impugned orders on the ground mentioned therein.

4. Arguments heard. File perused.

5. Admittedly the impugned punishment of dismissal from

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

service was imposed upon the appellant with retrospective effect hence the original order of dismissal from service is void and no limitation would run against the same.

6. On the other hand, the Departmental Appellate Authority simply filed/regretted the departmental appeal of the appellant on the ground of limitation, which did not exist anymore as observed in the preceding para.

7. Learned District Attorney remained unable to rebut the contention of the learned counsel for the appellant that many other colleagues of the appellant who were also dismissed from service on the ground of absence from duty were reinstated either by the Appellate Authority or by the Review Board.

8. In the stated circumstances of the case, the order dated 31.10.2012 of the Appellate Authority and the order dated 13.04.2016 of the Review Board are hereby set aside. Resultantly the departmental appeal of the appellant shall be deemed pending. Appellate Authority/respondent No.2 is directed to decide the same afresh with speaking order within a period of three (03) months of the receipt of this judgment. The present service appeal is disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.

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INER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Announced
05-07-2018

Sd/- M. Hamid Mughal,
Member
and court swat

Sd/- Subhojit Shera,
Chairman

30

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 498/2018

Date of Institution ... 10.04.2018

Date of Decision ... 24.01.2022



Rashid Ahmad S/o Sher Zada, R/o Village Kokarai, Swat, Ex-Constable No. 1834,
District Police Swat. ... (Appellant)

VERSUS

District Police Officer, Swat and others. ... (Respondents)

Arbab Saiful Kamal,
Advocate ... For Appellant

Adif Masood Ali Shah,
deputy District Attorney ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the connected Service Appeal bearing No. 571/2018 titled "Aamir Shah Versus District Police Officer, Kohat and two others", as common question of law and facts are involved therein.

02. Brief facts of the case are that the appellant while serving as constable in police department, was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 21-02-2009. Feeling aggrieved, the appellant filed departmental appeal dated 20-03-2009, which was not responded. Subsequent appeal was submitted to respondent No 2, which was rejected vide order dated 12-03-2018, hence the instant service appeal with

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

prayers that the impugned orders dated 21-02-2009 and 12-03-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the appellant was dismissed from service on the charges of absence but absence of the appellant was not willful but was due to compelling reason of terrorism; that a large number of police personnel had deserted their jobs due to threats of Taliban, who were again re-instated in service vide orders dated 30-11-2010, 15-03-2017 and 09-08-2017, but case of the appellant was not considered positively; that this Tribunal in numerous cases has already granted relief to the similarly placed employees and the appellant is also requesting for the same treatment under the principle of consistency; that absence of the appellant was not willful, which does not constitute gross misconduct and the penalty so awarded is harsh, which does not commensurate with gravity of the guilt; that the impugned order was issued with retrospective effect, which is void ab initio; that no codal formalities were fulfilled and the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated.

04. Learned Deputy District Attorney for the respondents has contended that the appellant was proceeded against on the charges of willful absence from duty, therefore proper departmental proceedings were initiated against him, which culminated into his removal from service under RSO 2000; that the appellant file departmental appeal with a considerable delay, which was rejected being barred by time; that numerous other officials were re-instated into service but every case has its own merits, whereas the appellant was awarded punishment for his own conduct; that final show cause notice was also served at his home address, but the appellant did not turn up, hence he was proceeded in absentia.

05. We have heard learned counsel for the parties and have perused the record.


ATTESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

06. Placed before us is case of a police constable, who alongwith many other police personnel had deserted their jobs in the wake of insurgency. Police department had constituted a committee for cases of desertion and keeping in view humanitarian aspect, re-instated such personnel into service in large number. Placed on record is a notification dated 30-11-2010, where 253 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Vide another order dated 07-02-2012, batch of another 12 employees had been re-instated in service. Yet another order dated 15-03-2017 would show that similarly placed employee had been re-instated upon his revision petition on the ground of length of his service and cause of terrorism. Other cases of similar nature are available on record, which would suggest that the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time. Even this tribunal has already granted relief in similar nature cases under the principle of consistency. Appellant is also one among those, who had deserted his job due to threats from terrorists. Situation at that particular time was so perturb, as how to proceed such large number of cases of desertion, for which publications were made in newspapers, hence the proceedings so conducted in such like cases were not in accordance with law. In the instant case no regular inquiry was conducted, nor any charge sheet/statement of allegation was served upon the appellant and the appellant was condemned unheard and which shows that the appellant was summarily proceeded without adhering to the method prescribed in law.

07. We are also mindful of the question of limitation, but since the impugned order was passed without proper legal process and when an adverse order is passed without fulfilling the legal formalities, such order is void and no limitation runs against void order. Still another reason exists for condonation of delay that the impugned order was issued with retrospective effect being void ab initio.

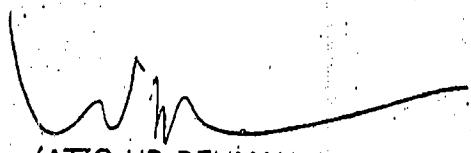
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 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

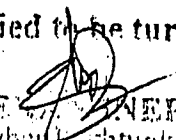
08. In view of the situation mentioned above and keeping in view the principle of consistency, we are inclined to partially accept the instant appeal as well as the connected service appeal by converting the major penalty of dismissal from service into minor penalty of stoppage of increments for two years. The intervening period is treated as leave without pay. Respondents however are at liberty to conduct de-novo inquiry as per mandate of law, if they so desire. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
24.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

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F. A. WAZIR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 20-4-22
Number of Words 16000
Copying Fee 28/-
Urgent _____
Total 18/-
Name of Copyist _____
Date of Completion of Copy 21-4-22
Date of Delivery of Copy 21-4-22

34

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 508/2018

Date of Institution ... 11.04.2018

Date of Decision ... 24.01.2022



Muhammad Ayub S/o Sher Ali Khan R/o Navay Kalay Mingora Swat, Ex-Constable.
No. 1460, PS, Imam Dhery, Swat. ... (Appellant)

VERSUS

District Police Officer, Swat and others.

... (Respondents)

Arbab Saiful Kamal,
Advocates

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

ANMAD SULTAN TAREEN
ATIQ-UR-REHMAN WAZIR

...

...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant while serving as Constable in Police Department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 21-02-2009. Feeling aggrieved, the appellant filed departmental appeal dated 20-03-2009, which was rejected vide order dated 18-09-2017. The appellant filed revision petition dated 27-09-2017, which was also rejected vide order dated 03-10-2017 communicated to appellant on 20-03-2018, hence the instant service appeal with prayers that the impugned orders dated 21-02-2009, 18-09-2017 and 03-10-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

ATTESTED.


CHAIRMAN
Khyber Pakhtunkhwa Service Tribunal
Peshawar

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the impugned order is against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that absence of the appellant was not willful, but was due to compelling reason of terrorism in the area and which does not constitute gross misconduct entailing major penalty of dismissal; that the penalty so awarded is harsh, which does not commensurate with gravity of the guilt; that the appellant has been discriminated as similarly placed employees were re-instated but case of the appellant was not considered.

03. Learned Deputy District Attorney for the respondents has contended that the appellant willfully absented himself from lawful duty and did not turn up despite repeated summons; that the appellant while posted at Imam Dheri check post Police Station Kanjo absented himself without permission of the competent authority vide daily diary No 11 dated 17-10-2008; that the appellant was issued charge sheet/statement of allegation and proper inquiry was conducted; that the appellant was summoned repeatedly but he did not turn up, hence he was proceeded ex-parte; that after fulfillment of all codal formalities, the appellant was awarded with major punishment of dismissal from service vide order dated 2-02-2009; that the appellant filed departmental appeal with delay of more than seven year, which was considered but was rejected vide order dated 11-09-2017 being barred by time.

04. We have heard learned counsel for the parties and have perused the record.

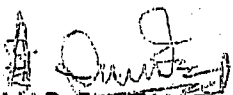
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Deputy District Attorney
Swat District Tribunal
Mushkani

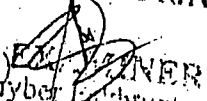
05. Placed before us is case of a police constable, who alongwith many other police personnel had deserted their jobs in the wake of insurgency in Malakand division and particularly in District Swat. Police department had constituted a committee for cases of desertion and taking humanitarian view, re-instated such


personnel into service in large number. Placed on record is a notification dated 30-11-2010, where 253 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Vide another order dated 07-02-2012, batch of another 12 employees had been re-instated in service. Yet another order dated 15-03-2017 would show that similarly placed employee had been re-instated upon his revision petition on the ground of length of his service and threats from Taliban. Other cases of similar nature are available on record, which would suggest that the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time. Even this tribunal has already granted relief in similar nature cases on the principle of consistency. Appellant is also one among those, who had deserted his job due to threats from terrorists. Coupled with this are dents in the departmental proceedings, which has not been conducted as per mandate of law, as the appellant in case of willful absence was required to be proceeded under general law i.e. Rule-9 of E& D Rules, 2011. Regular inquiry is also must before imposition of major punishment of dismissal from service, which also was not conducted.

06. In view of the situation mentioned above and keeping in view the principle of consistency, we are inclined to partially accept the instant appeal by converting the major penalty of removal from service into minor penalty of stoppage of increments for two years. The intervening period is treated as leave without pay. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
24.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

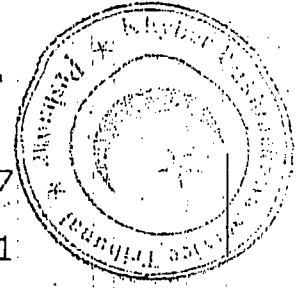

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 1420/2017

Date of Institution ... 13.12.2017

Date of Decision ... 07.12.2021



Asrnat Ullah S/O Zarwall Khan, R/O Zahid Abad Township, Bannu,
Ex-Constable No. 1381, Police Station, Township, Bannu.

... (Appellant)

VERSUS

District Police Officer, Bannu and two others.

... (Respondents)

MR. ARBAB SAIF-UL-KAMAL,
Advocate

For appellant.

MR. NOOR ZAMAN KHATTAK,
District Attorney

For respondents.

MR. AHMAD SULTAN TAREEN
MR. SALAH-UD-DIN

CHAIRMAN
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts forming the background of the instant service appeal are that the appellant while serving as Constable in Police Station Township District Bannu, was proceeded against departmentally on the allegations of his absence from duty and was dismissed from service vide order dated 30.12.2009. The departmental appeal of the appellant was disposed by the Regional Police Officer vide order dated 18.10.2017 with the remarks as seen and filed. The appellant then submitted revision petition to the Inspector General of Police Khyber Pakhtunkhwa Peshawar, which was rejected on

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Services Tribunal
Peshawar

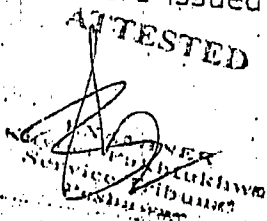
03.11.2017 and intimation was conveyed to the appellant through cell phone on 14.11.2017, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the absence of the appellant from duty was not willful rather he was unable to attend his duty due to severe illness; that the prescriptions regarding illness of the appellant were handed over to the departmental Authority, however the appellate Authority did not consider the plea of the appellant and decided the departmental appeal in a cursory manner; that no charge sheet or statement of allegations as well as final show-cause notice was issued to the appellant and whole of the proceedings were conducted at the back of the appellant without affording him any opportunity of self defense or personal hearing; that the appellant was dismissed from service vide order dated 30.12.2009 with retrospective effect from 24.10.2008, therefore, the impugned order is void ab-initio, hence no limitation would run against the same; that the charge sheet as well as statement of allegations and final show-cause notice was not at all served upon the appellant and even no publication regarding the alleged absence of the appellant was made in the newspaper; that the impugned order being wrong and illegal may be set-aside and the appellant may be reinstated into service with all back benefits. Reliance was placed on 2019 SCMR 648 and 2000 SCMR 75 as well as judgment dated 07.12.2017 passed by this Tribunal in Service Appeal No. 967/2016.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant remained absent from duty without leave or seeking permission of the competent Authority, therefore, disciplinary action was taken against him; that charge sheet as well as statement of allegations were issued to the appellant, however he did not

ATTESTED


Secretary
Service Tribunal


bother to attend the inquiry proceedings; that on completion of the inquiry, final show-cause notice was issued to the appellant, however he failed to submit the reply of the same, therefore, he has rightly been awarded the punishment of dismissal from service; that the departmental appeal of the appellant was time barred, therefore, his service appeal is not maintainable; that the inquiry proceedings were conducted by complying all legal and codal formalities, therefore, the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

6. A perusal of the record would show that disciplinary action was taken against the appellant on the allegations that he absented himself from duty with effect from 24.10.2008 without any leave or permission from the competent Authority. Charge sheet as well as statement of allegations were issued to the appellant and DSP Headquarter Bannu was appointed as inquiry officer for conducting inquiry against the appellant under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Nothing is available on the record which could show that the charge sheet, statement of allegations as well as final show-cause notice were served upon the appellant. The respondents did not comply the relevant codal formalities for serving of charge sheet, statement of allegations as well as final show-cause notice upon the appellant, therefore, the ex-parte action taken against the appellant by depriving him of self defense and personal hearing is void ab-initio and nullity in the eye of law.

7. Moreover, the appellant agitated in his departmental appeal that he has not been treated in accordance with law and that his absence was not willful, rather he was unable to attend his duty being suffering from severe illness of jaundice. The appellate Authority, however, dismissed the appeal in a cursory manner without considering the point agitated by the

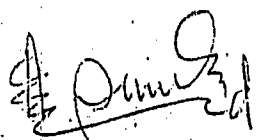
ATTESTED


ATTANINER
Secretary
Service Tribunal
Peshawar


appellant in his appeal. In these circumstances, in order to meet the ends of justice, conducting of de-novo inquiry into the matter is necessary.

8. In light of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with the directions to the respondents to conduct de-novo inquiry in accordance with relevant law/rules within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall be subject to final outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

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07.12.2021

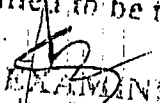


(AHMAD SULTAN TAREEN)
CHAIRMAN.



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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41



BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 571 / 2018

Aamir Shah S/O Sufi Ali Shah,
R/o Sheikhan Kohat,
Ex-Constable. No. 388,
Police Line Kohat

ICR No. 548

Dated: 12-4-2018

Appellant

VERSUS

1. District Police Officer, Kohat.
2. Regional Police Office,
Kohat Region Kohat
3. Provincial Police Officer,
KP, Peshawar.

Respondents

⊕ < = > ⊕ < = > ⊕ < = > ⊕ < = > ⊕

APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST O.B NO. 885 DATED 01-12-2011 OF R. NO.
01 WHEREBY APPELLANT WAS DISMISSED FROM
SERVICE RETROSPECTIVELY OR OFFICE ORDER NO.
2400 / EC DATED 07-03-2018 OF R. NO. 02
WHEREBY REPRESENTATION OF APPELLANT WAS
FILED OR OFFICE ORDER NO. S / 1265 DATED 03-04-
2018 OF R. NO. 03 WHEREBY REPRESENTATION OF
APPELLANT WAS FILED:

Filed the day
12/4/18

ATTESTED

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[Signature]
 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Respectfully Sheweth:

1. That appellant was enlisted in service in the year 2008 as Constable and served the department till the date of removal from service.
2. That appellant was deputed to PTC, Hangu for training in the year 2008 and qualified the same.

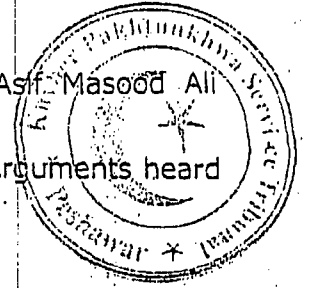
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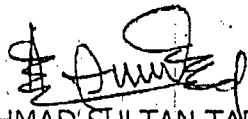
ORDER
24.01.2022

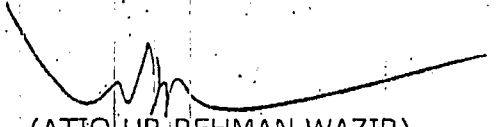
Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present. Arguments heard and record perused.




Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 498/2018 titled "Rashid Ahmad Versus District Police Officer, Swat and one another", we are inclined to partially accept the instant service appeal by converting the major penalty of dismissal from service into minor penalty of stoppage of increments for two years. The intervening period is treated as leave without pay. Respondents however are at liberty to conduct de-novo inquiry as per mandate of law, if they so desire. Parties are left to bear their own costs. File be consigned to record room.

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24.01.2022

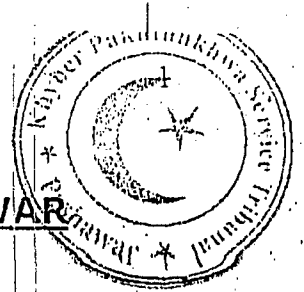

(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Date of Presentation of Application 20/4/22
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Date of Delivery of Copy 21/4/22

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

43



BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 498 / 2018

Rashid Ahmad S/O Sher Zada,
R/o Village Kokarai, Swat,
Ex-Constable. No. 1834,
District Police Swat

Khyber Pakhtunkhwa
Service Tribunal
Case No. 524
Dated 10-4-2018

Appellant

VERSUS

1. District Police Officer, Swat:
2. Regional Police Officer,
Malakand, at Saidu Sharif
Swat

Respondents

⊕<=>⊕<=>⊕<=>⊕<=>⊕

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST O.B. NO. 28, DATED 21-02-2009 OF R. NO.
01 WHEREBY APPELLANT WAS DISMISSED FROM
SERVICE FROM 29-10-2008 OR OFFICE ORDER NO.
2503/E DATED 21-03-2018 OF R. NO. 02, WHEREBY
REPRESENTATION OF APPELLANT WAS FILED:**

⊕<=>⊕<=>⊕<=>⊕<=>⊕

Filed to-day
[Signature]
Registrar

10/4/18 **Respectfully Sheweth:**

1. That appellant was enlisted in service in the year 2008 as Constable and served the department till the date of dismissal from service.
2. That appellant was deputed to PTC, Hangu for training in the year 2008 which was qualified by him.
3. That on 29-10-2008, appellant was posted at PTC Hangu, but absented from duty vide message dated 27-11-2008.

ATTESTED
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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

44

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 498/2018

Date of Institution ... 10.04.2018

Date of Decision ... 24.01.2022



Rashid Ahmad S/o Sher Zada, R/o Village Kokarai, Swat, Ex-Constable No. 1834,
District Police Swat. ... (Appellant)

VERSUS

District Police Officer, Swat and others. ... (Respondents)

Arbab Saiful Kamal,
Advocate ... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney ... For respondents

AHMAD SULTAN TAREEN ... **CHAIRMAN**
ATIQU-UR-REHMAN WAZIR ... **MEMBER (EXECUTIVE)**

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- This single judgment

shall dispose of the instant service appeal as well as the connected Service Appeal bearing No. 571/2018 titled "Aamir-Shah Versus District Police Officer, Kohat and two others", as common question of law and facts are involved therein.

02. Brief facts of the case are that the appellant while serving as constable in police department, was proceeded against on the charges of absence and was ultimately dismissed from service vide order dated 21-02-2009. Feeling aggrieved, the appellant filed departmental appeal dated 20-03-2009, which was not responded. Subsequent appeal was submitted to respondent No 2, which was rejected vide order dated 12-03-2018, hence the instant service appeal with

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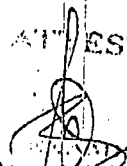
Atiq-Ur-Rehman Wazir
Member (Executive)

prayers that the impugned orders dated 21-02-2009 and 12-03-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the appellant was dismissed from service on the charges of absence but absence of the appellant was not willful but was due to compelling reason of terrorism; that a large number of police personnel had deserted their jobs due to threats of Taliban, who were again re-instated in service vide orders dated 30-11-2010, 15-03-2017 and 09-08-2017, but case of the appellant was not considered positively; that this Tribunal in numerous cases has already granted relief to the similarly placed employees and the appellant is also requesting for the same treatment under the principle of consistency; that absence of the appellant was not willful, which does not constitute gross misconduct and the penalty so awarded is harsh, which does not commensurate with gravity of the guilt; that the impugned order was issued with retrospective effect, which is void ab initio; that no codal formalities were fulfilled and the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated.

04. Learned Deputy District Attorney for the respondents has contended that the appellant was proceeded against on the charges of willful absence from duty, therefore proper departmental proceedings were initiated against him, which culminated into his removal from service under RSO 2000; that the appellant file departmental appeal with a considerable delay, which was rejected being barred by time; that numerous other officials were re-instated into service but every case has its own merits, whereas the appellant was awarded punishment for his own conduct; that final show cause notice was also served at his home address, but the appellant did not turn up, hence he was proceeded in absentia.

05. We have heard learned counsel for the parties and have perused the record.

ATTESTED

JUDICIAL OFFICER
Service Tribunal
Peshawar


06. Placed before us is case of a police constable, who alongwith many other police personnel had deserted their jobs in the wake of insurgency. Police department had constituted a committee for cases of desertion and keeping in view humanitarian aspect, re-instated such personnel into service in large number. Placed on record is a notification dated 30-11-2010, where 253 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Vide another order dated 07-02-2012, batch of another 12 employees had been re-instated in service. Yet another order dated 15-03-2017 would show that similarly placed employee had been re-instated upon his revision petition on the ground of length of his service and cause of terrorism. Other cases of similar nature are available on record, which would suggest that the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time. Even this tribunal has already granted relief in similar nature cases under the principle of consistency. Appellant is also one among those, who had deserted his job due to threats from terrorists. Situation at that particular time was so perturb, as how to proceed such large number of cases of desertion, for which publications were made in newspapers, hence the proceedings so conducted in such like cases were not in accordance with law. In the instant case no regular inquiry was conducted, nor any charge sheet/statement of allegation was served upon the appellant and the appellant was condemned unheard and which shows that the appellant was summarily proceeded without adhering to the method prescribed in law.

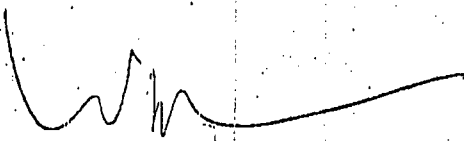
07. We are also mindful of the question of limitation, but since the impugned order was passed without proper legal process and when an adverse order is passed without fulfilling the legal formalities, such order is void and no limitation runs against void order. Still another reason exists for condonation of delay that the impugned order was issued with retrospective effect being void ab initio.

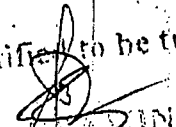
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 Service Tribunal

08. In view of the situation mentioned above and keeping in view the principle of consistency, we are inclined to partially accept the instant appeal as well as the connected service appeal by converting the major penalty of dismissal from service into minor penalty of stoppage of increments for two years. The intervening period is treated as leave without pay. Respondents however are at liberty to conduct de-novo inquiry as per mandate of law, if they so desire. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
24.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQU-UR-REHMAN WAZIR)
MEMBER (E)

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OFFICER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 20/4/22
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Total 18/-
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| 36. | Zarwar and another | ...in C.P.1918/2015 |
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| 39. | Miaz Wali and another | ...in C.P.1921/2015 |
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| 41. | Khairata Rehman and another | ...in C.P.1923/2015 |
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| 55. | Roohul Arni and another | ...in C.P.1937/2015 |
| 56. | Said Shah and another | ...in C.P.1938/2015 |
| 57. | Muhammad Imran and another | ...in C.P.1939/2015 |
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| 73. | Rakhtai and another | ...in C.P.1955/2015 |
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| 77. | Maroof and another | ...in C.P.1959/2015 |
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| 79. | Jamal Noor and another | ...in C.P.1961/2015 |
| 80. | Amira Khan and another | ...in C.P.1962/2015 |
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| 83. | Muhammad Aslam and another | ...in C.P.1965/2015 |
| 84. | Zareen and another | ...in C.P.1966/2015 |
| 85. | Abdur Rauf and another | ...in C.P.1967/2015 |
| 86. | Muhammad Sahib and another | ...in C.P.1968/2015 |

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 and Associate
 Supreme Court of Pakistan
 Islamabad

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131.	Azizullah and another	...in C.P.2013/2015
132.	Hayat Zaima and another	...in C.P.2014/2015
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134.	Imran Khan and another	...in C.P.2016/2015
135.	Abid and another	...in C.P.2017/2015
136.	Rehmat Din Jan and another	...in C.P.2018/2015
137.	Muhammad Zada and another	...in C.P.2019/2015
138.	Ariwar Zeb and another	...in C.P.2020/2015
139.	Muhammad Nazir and another	...in C.P.2021/2015
140.	Bedshah Munir and another	...in C.P.2022/2015
141.	Alamzeb and another	...in C.P.2023/2015
142.	Shoaib and another	...in C.P.2024/2015

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And Associate
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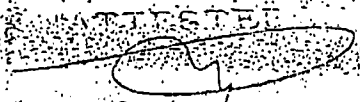
228	52(P)CS/2015	Aminullahi s/o Din Muhammad, Ex-Sepoy No.4705; Bajaur Levies r/o Manioud, Tehsil Salazarai, Bajaur Agency.	23.01.2015
229	51(P)CS/2015	Dosti Rehman s/o Bukhari, Ex-Sepoy No.3750; Bajaur Levies r/o Islam Daire, Tehsil Salazarai, Bajaur Agency.	23.01.2015
230	54(P)CS/2015	Muhammad Inam s/o Khoshnawaz, Ex-Sepoy No.4951; Bajaur Levies r/o Chargo, Tehsil Salazarai, Bajaur Agency.	23.01.2015
231	55(P)CS/2015	Said Ghani s/o Penda Gul, Ex-Sepoy No.3470; Bajaur Levies r/o Tajkhat, Tehsil Khar, Bajaur Agency.	23.01.2015
232	56(P)CS/2015	Syed Habib Jan s/o Syed Pao Jan, Ex-Sepoy No.4122; Bajaur Levies r/o Gambhal, Tehsil Salazarai, Bajaur Agency.	23.01.2015
233	57(P)CS/2015	Taj Meera s/o Khwaja Khan, Ex-Sepoy No.4631; Bajaur Levies r/o Shikhi Baba, Tehsil Khar, Bajaur Agency.	23.01.2015
234	58(P)CS/2015	Rafi-ud-Din s/o Ameer, Ex-Sepoy No.4682; Bajaur Levies r/o Sair Sir, Ghar Shomazi Haveli, Tehsil Utman Khail, Bajaur Agency.	23.01.2015
235	59(P)CS/2015	Ayub Khan s/o Lawang, Ex-Sepoy No.4682; Bajaur Levies r/o Hina Khail, Charamang, Tehsil Nawaganj, Bajaur Agency.	23.01.2015
236	60(P)CS/2015	Moghtabane Khan s/o Zagan Khan, Ex-Sepoy No.4841; Bajaur Levies r/o Dhoo, Tehsil Khar, Bajaur Agency.	23.01.2015
237	61(P)CS/2015	Zahid Hussain s/o Shahbuddin, Ex-Sepoy No.4667; Bajaur Levies r/o Salazarai, Bajaur Agency.	23.01.2015
238	62(P)CS/2015	Muhammad Ayub s/o Alim Zeb, Ex-Sepoy No.5806; Bajaur Levies r/o Khoro Ching, Tehsil Utman Khail, Bajaur Agency.	23.01.2015
239	63(P)CS/2015	Balir-ud-Din s/o Abdur Rahim, Ex-Sepoy No.5112; Bajaur Levies r/o Chayat Kaly, Tehsil Khar, Bajaur Agency.	23.01.2015
240	64(P)CS/2015	Bajaur Ahmed s/o Bilwal Jan, Ex-Sepoy No.5296; Bajaur Levies r/o Kusal Abad, Tehsil Khar, Bajaur Agency.	23.01.2015
241	65(P)CS/2015	Fazal Malik s/o Afroz, Ex-Sepoy No.5572; Bajaur Levies r/o Barang, Tehsil Mamon, Bajaur Agency.	23.01.2015
242	66(P)CS/2015	Hussain Shah s/o Farid Khan, Ex-Sepoy No.1628; Bajaur Levies r/o Galla Mar, Tehsil Barang, Bajaur Agency.	23.01.2015

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Date of Hearing: 11.05.2015
Date of Judgment: 11.05.2015

- RESPONDENTS:-
- The Secretary, SAFRON, Islamabad.
 - The Additional Chief Secretary, FATA, Civil Secretariat (FATA), Warsak Road, Peshawar.
 - The Political Agent / Commandant-Bajaur Levies, Bajaur Agency at Khar.

BEFORE: Syed Rafique Hussain Shah, and
Syed Muhammad Hamid, Members.


 Syed Rafique Hussain Shah
 Member

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15 to 29 and others

PRESENT: Mr. Misbahullah Khan and Mrs. Samreen Akhtar, Advocates for the appellants.
Mr. Iqbal Waheed, Advocate for respondent No.1.
Mr. Iqbal Durrani, Advocate for Respondents No.2, 3 & 4 with Mian Zahid Jan, Reader as departmental representative.

JUDGMENT

SYED RAFIQUE HUSSAIN SHAH, MEMBER: - Since all the titled appeals are almost identical in their characteristics, having similar facts and involving common questions of law, therefore, we intend to dispose them off jointly through this single judgment, to be recorded in the instant appeal No.16(P)CS/2014.

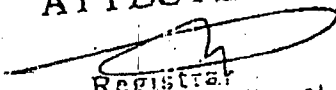
2. Briefly, the appellants started their career as Sepoy in Bajaur Levies, Bajaur Agency, Khyber Pukhtoonkhwa. The period spreading over 2007 onward was very turbulent for the said region and the whole area remained under the constant raids and attacks of the miscreants who had taken shelter in the neighbouring Afghanistan. The life of the people of the area became so unsafe that majority of them migrated to down districts for the protection of their life, property and honour. The personnel of security forces i.e. local levies, etc. also remained under threat and attacks of the militants. Suicide attacks, bomb blasts and abduction for ransom became fashion of the day. The people of the area had to face great hardships and miseries. The Levy personnel who are normally not well-equipped used to come under the attack of the militants as they were deployed on front line at different security posts spreading alongwith the boarder.

3. It is alleged that the Levy Force could not properly resist the onslaught of the militants and did not fight the miscreants with courage rather they surrendered to the miscreants after laying down their arms to display their cowardice. On this allegation quite a large number of Levy personnel were terminated from their service. So many persons were sent home through verbal orders while so many others were terminated from service without conducting proper inquiry against them.

4. In this background, the affectees firstly approached their authority for reinstatement in service, denying the allegations of cowardice

Samreen Akhtar

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Registrar
Federal Service Tribunal
Islamabad.

against them. But on failure to get relief from the authority, they knocked the door of this Tribunal where their grievances were redressed accordingly on the ground that the authority proceeded against them without following the procedure required for dismissal of civil servants. In so many cases the concerned department of government failed to get the verdict of the Federal Service Tribunal reversed. In all those cases it was laid down that a civil servant could not be imposed major penalty of dismissal from service without holding a regular inquiry. So many cases were sent back to authority for conducting de novo inquiry against the accused officials but the directions of the Tribunal were not followed in letter and spirit. The authority on the strength of its might again repeated similar orders. So, for quite some time legal battle between the poor Levy personnel and the mighty political authority continued.

5. The filed appeals were also filed in the above mentioned backdrop.

6. While assailing the authenticity, validity and legality of the impugned orders whereby the appellants were terminated / dismissed from service, the appellants submitted that the said orders were illegal because they were issued without any show cause notice to them and without conducting proper inquiry into the matter. It was further alleged by the appellants that neither the statement of allegations were issued to them nor charge sheets were served upon them and as such the dismissal orders were unlawful, arbitrary, void ab initio and ineffective against their rights. The appellants also made reference to identical cases vide which their colleagues were reinstated into service by this Tribunal. The judgments of this Tribunal dated 12.03.2013, 17.11.2010, 16.07.2010 and 15.02.2013 were cited by the appellants in support of their claim. It was also orally submitted by the appellants that in view of the judgment of the August Supreme Court of Pakistan reported as 1996:CMR:1185, they were entitled to the same benefits of the judgment, passed in favour of their colleagues.

7. The respondents vehemently contested the appeals filed by the appellants. In their para-wise comments, the respondents described the appeals as time barred and alleged that the appellants deserted and abandoned the important posts to the militants and in this way they

displayed cowardice and, thus, they were dismissed from service. The respondents, however, in their parawise comments admitted that show cause notice could not be issued to the appellants because after their desertion they disappeared and despite repeated calls they did not appear before the competent authority.

8. We have heard the learned counsel for the parties and have gone through the case file.

9. We have also perused the judgments of this Tribunal dated 01.03.2013 passed in Appeals No.184 to 190, 196, 197, 200, 201, 227 to 234, 241 to 245, 247, 256 to 267, 318, 340 to 345, 366, 367, 402 to 414, 419 to 438, 438-A, 439 to 443, 446 to 454(P)CS/2012 and judgment, dated 12.02.2015 delivered in Appeals No.197, 198, 200 to 203 & 120(P)CS/2011.

10. Mr. Misbahullah Khan and Mrs. Samreen Akhter, Advocates appeared on behalf of the appellants and addressed their arguments mainly stressing upon the point that it was settled principle of law that where nature of charges were serious and where these charges were denied by the accused officials, then holding of a regular inquiry was mandatory and without holding such inquiry no major punishment could be awarded. In this respect the learned counsel for the appellants placed reliance on 2004 SCMR 316, 2004 PLC (CS) 524, 2002 SCMR 57, 2001 SCMR 1566, 2000 SCMR 1321 & 1868, 1994 PLC (CS) 1717 and 1993 SCMR 603. It was next argued by the learned counsel for the appellants that the appellants were neither issued any show cause notice nor they were provided any opportunity of personal hearing and, as such, in this view of the matter the impugned orders lost their authenticity, legality and validity. They made reference to judgments of August Supreme Court of Pakistan reported as 2000 SCMR 1034 and 1994 SCMR 2232 in this connection. The learned counsel for the appellants further pointed out that the dismissal orders had made large number of people jobless thereby depriving them of the means of livelihood without considering their viewpoint, which was against the constitutional guarantee imposed upon the State regarding promotion of social justice. Reference in this respect was made to 1994 SCMR 2232.

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Registrar
Federal Secretariat
Islamabad

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11. Mrs. Samreen Akhter, Advocate further pleaded the case of Gulab Khan and ten others regarding their claim of pension and contended that the said appellants were quite entitled to pensionary benefits.

12. On the contrary, the learned counsel M/s Iqbal Durani and Iqbal Waheed, Advocates while appearing on behalf of the respondents gave much stress on the point that the appellants were Levy personnel and they were duty bound to resist the militants to their kill but instead they showed cowardice in the discharge of their duties, hence, they were rightly sent home by the authority because there was no place of such coward people in the Force. In view of the learned counsel for the respondents the retention of the appellants in the Levy Force was not in the interest of the Force as their presence could demoralize the other Force. The learned counsel for the respondents however, did not deny the fact that the appellants were not issued show cause notice and that no regular inquiry was held against them. According to their contention since the appellants were not available and had gone in desertion it was not possible for the authority to send them show cause notices or to hold regular inquiry against them.

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13. We deem it appropriate to mention here that in the judgment of this Tribunal in Appeals No. 197, 198, 200 to 203 & 120(P) JS/2011 dated 11.02.2015 the question of jurisdiction of this Tribunal had been settled holding that this Tribunal had not jurisdiction to entertain and adjudicate upon the appeals of such nature. So we feel it unnecessary to discuss the jurisdictional issue.

14. Admittedly, the appellants were charged for displaying cowardice, surrendering to the militants and deserting from their places of duty. These charges no doubt were very serious and of factual nature which were denied by the appellants. Hence, oral evidence was needed to be recorded to prove these allegations, onus of which was totally upon the authority (prosecution). In the instant appeals, no record of any inquiry has been produced rather it has been admitted by the respondents in their comments that no inquiry was conducted because the appellants were not available. To prove that the respondents had issued notices to the appellants in any shape, whatsoever, nothing has been brought on the file.

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Federal Service Tribunal
Islamabad

to substantiate the said version. There is no record available on the file to show that disciplinary proceedings were initiated against the appellants but they could not be completed due to non-availability of the appellants. We find no record of any inquiry on the file which was conducted prior to the imposition of the major penalty. Needless to explain that as per consistent view of the Hon'ble Supreme Court of Pakistan major penalty cannot be imposed without holding a regular inquiry. In this regard we may respectfully refer to the judgment of the Hon'ble Supreme Court of Pakistan reported as 2008 SCMR 1362 wherein it has been declared that regular inquiry should have been conducted to unveil the reality and major penalty of removal / dismissal from service should not have been imposed being too harsh, in view of the nature of allegations, which could not be substantiated without adducing any cogent and concrete evidence. It may not be out of place to mention here that the Political Agent / Commandant Bajaur Agency as well as Secretary FATA Peshawar have already reinstated a number of officials of Bajaur Levies against whom similar allegations of desertion from duty were leveled. In this respect orders of the authority dated 23-12-2008, 06-08-2009, 12-01-2010 and 20-04-2009 were referred to by the appellants whereby certain officials of Bajaur Levies were reinstated into service by the Political Agent / Commandant and Secretary FATA Peshawar. For this reason too the appellants deserved equal treatment because discriminatory treatment against them is violative of Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.

Consequently what has been discussed above we are of the considered view that the impugned orders, whether verbal or written, are not sustainable in the eyes of law as they are in violation of the dictum laid down by the Hon'ble Supreme Court of Pakistan. The impugned orders are therefore accordingly set aside and resultanty the instant appeals are accepted and the appellants are ordered to be reinstated into service from the date of the impugned orders. However, the question of back benefits shall be decided by the competent authority in accordance with the instructions contained in Serial No. 135, Vol. II of Civil Establishment Code [Estatcde, 2007 Edition], and the dictum of law as laid down in judgment of the Hon'ble Supreme Court of Pakistan reported as 2010 SCMR 11.

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16-to 29(P)CS/2014 and others

18. Parties to bear their own costs and they be informed in accordance with rule-21 of the Service Tribunals-(Procedure) Rules, 1974.

MEMBER

MEMBER

ISLAMABAD
11.05.2015

Saced

Approved for reporting.

MEMBER

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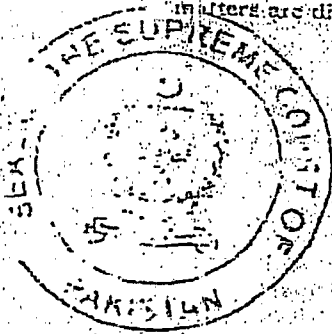
Registrar
Federal Service Tribunal
Islamabad

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CPs 1672, 1394 (a) 2015, 2130, 2132 & 2138 (a) 2015

ORDER

MIAN SAQIB NISAR, J. Having considered the submissions made by the learned counsel for the petitioners, we are of the view that before the imposition of major penalty upon the respondents qua dismissed regular inquiry should have been conducted in the matter and this is also what has been stated by the learned Tribunal. Thus, the petitioners shall after issuance of notice to the respondents hold an inquiry as per the law and proceed to take appropriate action. This, however, shall in no manner be considered to be waiving off of the objection of the petitioners regarding the jurisdiction of learned Tribunal which also have to the petitioners' case including on account of the bar contained in Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. However, after the inquiry if any adverse action is taken against the respondents, they may approach the appropriate forum available to them under the law. The back benefits of the respondents shall be dependent upon the inquiry conducted and the result thereof. The inquiry should be completed within six months from date of limitation is condoned in those cases which are barred by time. All these matters are disposed of accordingly.



Sd/- Mian Saqib Nisar, J.
 Sd/- Gulzar Ahmed, J.
 Sd/- Maqbool Bager, J.

Certified to be a True Copy
 [Signature]
 Secretary
 Supreme Court of Pakistan
 Islamabad

Islamabad, the
 20th October, 2015.
 Not Appointed For Reporting.
 Waqar Nisar, J.

Case No: 14100/15
 Date of this Judgment: 20-10-15
 No. of Pages: 17
 No. of Exhibits: 1
 Page No. of Judgment: 17
 Date of Copy: 20/10/15
 Prepared by: [Signature]
 Checked by: [Signature]

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No. _____/2022

Muhammad Saleem Versus Deputy Commandant & others

**APPLICATION FOR CONDONATION OF
DELAY, IF ANY.**

Respectfully Sheweth:

1. That the subject appeal is filed in this hon'able Tribunal.
2. That the delay was made due to insurgency in Swat Valley was in clutches of the miscreants and it was well in the knowledge of every one that they were ruling the area and the Government machinery was totally collapsed and a part from the same, the orders were not served upon.
3. That the apex Supreme Court held time and again in its judgments that vested rights shall not be killed on the score of limitation and cases be decided on merit.

It is, therefore, most humbly requested that delay, if any, be condoned in the best interest of justice.

M. Saleem

Applicant

Through

Saadullah Khan Marwat

Saadullah Khan Marwat

Advocate

Dated: 27-04-2022

AFFIDAVIT

I, Muhammad Saleem S/O Mumtaz Khan, Ex-Constable No. 4067, FRP, Swat (Appellant), do hereby solemnly affirm and declare that contents of the Application are true and correct to the best of my knowledge and belief.

M. Saleem

DEPONENT

یعدالت چھاپ سروس ٹریڈ مارک صوبہ سندھ پشاور

متجانب اہلانت

محکمہ قومی

بنام

محمد سلیم

دعویٰ اہل

باعضویت شکرہ استکہ

میں نے مذکورہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دیکھ کر کاروائی متعلقہ ان مقام پشاور کیلئے سید اہلسن خان سے ورنہ ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے یا دوسری نامہ و اقرار ثالث، واپس ہاں بتایا ہے کہ جواب دہی اور اقبال دعویٰ اور بصورتہ ڈگری کرنے اجراء اور دوسری چیک و ریزپہ اور مرضی دعویٰ اور درخواست ہر قسم کی تعلیق اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورتہ عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور پیروی کی طرف یا ڈگری کرنے کی اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورتہ ضرورت مقدمہ بند کرنے کے کل یا اجزائی کاروائی کے واسطے اور وکیل یا مشاور قانونی کو اپنے ہمراہ یا اپنی بجائے تفریح کا اختیار ہوگا اور اس پر مقدمہ بند کرنے کی وجہ سے مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا سامنے پروا نہ ہوتی ہے۔

۲۳-۵۶-۲۲ المرقوم

لہذا رکالت نامہ رکھ دیا کہ سند ہے۔

التبید التبید التبید

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دریاب نیگ انکمال
ایڈووکیٹ

سیدہ الشیخہ عثمانہ
ایڈووکیٹ

M. Saleem

محمد نواز
ایڈووکیٹ

11/2/23