

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, ABBOTTABAD.

Service Appeal No.12096/2020

Date of Institution ... 15.10.2020
Date of Decision ... 19.09.2022

Israr Ahmad S/O Sabir Islam, Ex-Constable No.1161, District Police
Mansehra R/O Mohallah Arghoshal Village Shatay Dodhyal, District
Mansehra.

... (Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and two
others.

... (Respondents)

Muhammad Aslam Tanoli,
Advocate

... For appellant.

Kabir Ullah Khattak,
Additional Advocate General

... For respondents.

Rozina Rehman

...

Member (J)

Fareeha Paul

...

Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J):The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the
prayer as copied below:

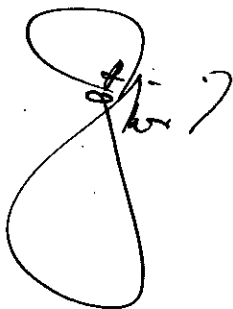
**"On acceptance of instant service appeal, the impugned
orders dated 29.06.2020 and 16.09.2020 of respondents
may graciously be set aside and appellant be reinstated in
his service from the date of dismissal with all consequential
service back benefits".**



2. Brief facts of the case are that appellant was posted at Police Station Baffa when he was telephonically informed by his mother regarding the marriage ceremony of his younger sister which was scheduled to be held on 02.03.2020. He informed the Officer Incharge of the Police Station Baffa and requested for grant of 15 days leave. He submitted written application for leave. Being an elder brother of a sister, his presence was necessary. He, therefore, requested his Incharge time and again to get his leave application sanctioned from the competent authority. He was assured. He purchased ticket for Karachi and was about to move when he was once again assured by the Incharge regarding the sanction of his application. After marriage ceremony of his sister, complete lockdown started due to COVID-19 in the country and travelling was banned. No transport facility was allowed to move from one city to another. In the given circumstances, he could not join his duty and he reported for duty on 07.06.2020. He was served with charge sheet which was replied, thereafter, he was dismissed from service on 29.06.2020. He filed departmental appeal which was rejected, hence, the present service appeal.

3. We have heard Muhammad Aslam Tanoli, Advocate learned counsel for the appellant and Kabir Ullah Khattak, Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

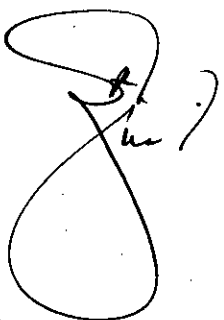
4. Muhammad Aslam Tanoli Advocate, learned counsel for the appellant argued inter alia that the impugned orders are illegal, unlawful and against the facts, hence, liable to be set aside. He



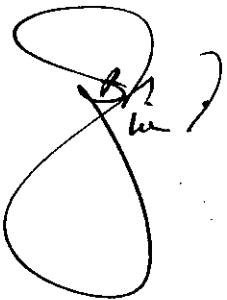
contended that the appellant was not treated in accordance with law and rules and they acted in violation of Article-4 of the Constitution of Islamic Republic of Pakistan, 1973 that no proper departmental inquiry was conducted and no show cause notice was issued. Lastly, he submitted that the appellant never absented himself willfully or deliberately from duty rather due to some compulsions on account of marriage ceremony of his younger sister at Karachi and thereafter because of the COVID-19 in the country. He, therefore, requested for acceptance of the instant service appeal.

5. Conversely, learned AAG submitted that appellant while posted at PS Battal, absented himself from duty w.e.f 27.02.2020 to 25.06.2020 without any leave or permission and that no application was submitted before any forum. He further submitted that the appellant had to follow the rules and had to take leave for the purpose instead of absenting himself from lawful duty which is professional misconduct under the rules. Lastly, he submitted that proper charge sheet with statement of allegations were served upon appellant which was replied and he was dismissed from service after proper departmental inquiry conducted in accordance with law and rules.

6. From the record, it is evident that appellant was serving as Constable in the Police Department. The allegations against appellant are in respect of his absence from duty. As per record, different applications were submitted but the same were not got approved and on the assurance of the then Incharge, he left for Karachi in order to attend the marriage ceremony of his younger sister. The record




further shows that the marriage ceremony was scheduled to be held on 02.03.2020 and in the same month vide DD No.09 dated 02.03.2020 it was reported from Police Station Battal, Mansehra that after transfer of the appellant from Police Station Baffa to Police Station Battal, he did not report his arrival at Police Station Battal. Now on one hand, the appellant himself admits his departure for Karachi in the month of March and on the other hand, he was transferred in March, 2020 from one Police Station to another. In the absence of appellant, he could not report his arrival at Police Station Battal but all these facts have not been properly mentioned in the inquiry report as to whether any such application had ever been submitted by the appellant seeking permission to leave the station for attending the marriage ceremony of his sister. Nothing is available on file which could show that the Inquiry Officer ever tried to record statement of any witness including the statement of appellant with direction to appellant to prove the marriage ceremony of his younger sister in Karachi in March, 2020. He was not asked to produce proof in shape of any train ticket to prove his travelling to Karachi. COVID-19 is not denied but the Inquiry Report is silent in respect of COVID-19 specially in the period mentioned by the appellant, wherein he stated that transport facility was not available in the entire country. The record is silent in this regard which shows that no proper inquiry was conducted and all the proceedings were done in an authoritarian manner. Appellant was not afforded an opportunity of personal hearing as is required under rules. It is, however, a well-settled legal




proposition duly supported by numerous judgments of Apex Court that for imposition of major penalty, regular inquiry is a must.

7. Keeping in view the entire record, we are left with no option but to accept this appeal partially by reinstating the appellant for the purpose of de-novo inquiry to be conducted within 60 days of the receipt of this judgment. Needless to mention here that the appellant shall be provided with proper opportunity of defense during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
19.09.2022


(Fareeha Paul)
Member (E)
Camp Court, A/Abad


(Rozina Rehman)
Member (J)
Camp Court, A/Abad

ORDER

19.09.2022

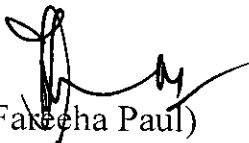
Appellant present through counsel.

Kabir Ullah Khattak, learned Additional Advocate General for respondents present. Arguments heard. Record perused.

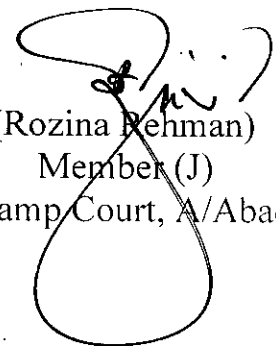
Vide our detailed judgment of today of this Tribunal placed on file, we are left with no option but to accept this appeal partially by reinstating the appellant for the purpose of de-novo inquiry to be conducted within 60 days of the receipt of judgment. Needless to mention here that the appellant shall be provided with proper opportunity of defense during the inquiry proceedings. The issue of back benefits shall be subject to the outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

19.09.2022



(Fariha Paul)
Member (E)
Camp Court, A/Abad



(Rozina Rehman)
Member (J)
Camp Court, A/Abad

16.05.2022

Counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General along with Mr. Gul Shehzad for the respondents present.

Written reply/comments on behalf of respondent No. 1 to 3 submitted which is placed on file. A copy of the same is also handed over to the appellant. To come up for rejoinder as well as arguments on 18.07.2022 before D.B at camp court Abbottabad.




Kalim Arshad Khan

Chairman
Camp Court, Abbottabad


18th July 2022

Learned counsel present. Mr. Noor Zaman, District alongwith Mr. Gul Shehzad, SI (Legal) for respondents present.

Learned counsel for the appellant sought adjournment to further prepare the case. Adjourned. To come up for arguments on 19.09.2022 before D.B at camp court Abbottabad.



(Salah Ud Din)
Member(Judicial)



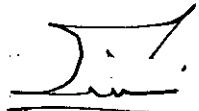
(Kalim Arshad Khan)
Chairman
Camp Court Abbottabad

23.09.2021

Mr. Mohammad Aslam Tanoli, Advocate, for the appellant present. Preliminary arguments heard.

Points raised need consideration, hence the appeal is admitted to regular hearing subject to all legal and valid objections. The appellant is directed to deposit security and process fee within 10 days, where-after notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments before the D.B on 24.12.2021 at Camp Court Abbottabad.


Appellant Deposited
Security & Process Fee


(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

24.12.2021

Learned counsel for the appellant present. Mr. Gul Shahzad, S.I (Legal) alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Respondents have failed to submit their written reply/comments even today, therefore, last opportunity is given to the respondents with the direction to submit reply/comments on the next date positively, failing which their right for submission of reply/comments shall be deemed as struck off. To come up for submission of written reply/comments on 14.03.2022 before the S.B at Camp Court Abbottabad.


(Salah-Ud-Din)
Member (J)
Camp Court Abbottabad

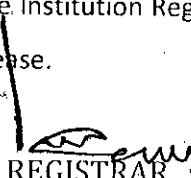

Form- A

FORM OF ORDER SHEET

Court of _____

12096

Case No.- _____ /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	15/10/2020	<p>The appeal of Mr. Israr Ahmad presented today by Mr. Muhammad Aslam Khan Tanoli 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> <p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>22-01-2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No.....

Israr Ahmed S/O Sabir Islam, Ex-Constable No. 1161, District Police Mansehra R/O Mohallah Arghoshal Village Shatay Dodhyal, District Mansehra.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

Respondents

SERVICE APPEAL

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S/No	Description of Document	Ann- exure	Page No.
1.	Memo of Appeal		01-08
2.	Copy of Daily Dairy dated <u>07-06-2020</u>	"A"	09
3.	Charge Sheet & its reply.	"B&C"	10-12
4.	Order dated <u>29-06-2020</u> of DPO	"D"	13
5.	Appeal rejection order dated <u>16-09-2020</u>	"E"	14
6.	Wakalatnama		

Appellant

Through

(Mohammad Aslam Tanoli)
Advocate High Court
at Haripur

Dated: 15-10-2020

①

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No.....12096/20

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11566

Dated 15/10/2020

Israr Ahmed S/O Sabir Islam, Ex-Constable No. 1161, District Police Mansehra R/O Mohallah Arghoshal Village Shatay Dodhyal, District Mansehra.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

Respondents

SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL ACT 1974 AGAINST ORDER DATED 29-06-2020 OF THE DISTRICT POLICE OFFICER MANSEHRA WHEREBY APPELLANT HAS BEEN DISMISSED FROM SERVICE AND ORDER DATED 16-09-2020 OF THE REGIONAL POLICE OFFICER HAZARA REGION ABBOTTABAD WHEREBY HIS DEPARTMENTAL APPEAL REJECTED.

PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL IMPUGNED ORDERS DATED 29-06-2020 AND 16-09-2020 OF RESPONDENTS MAY GRACIOUSLY BE SET ASIDE AND APPELLANT BE RE-INSTATED IN HIS SERVICE FROM THE DATE OF DISMISSAL WITH ALL CONSEQUENTIAL SERVICE BACK BENEFITS.

Respectfully sheweth,

1. That in the month of March, 2020 while appellant posted at Police Station Baffa, he was telephonically informed by his mother that the marriage ceremony of his younger sister was scheduled to take place on 02-03-2020.

Filed to-day

[Signature]
Registrar
15/10/2020

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2. That appellant well in time informed his officer Incharge of the Police Station Baffa and requested for grant of 15 days leave. Appellant submitted written application for leave intimating the date of marriage ceremony.
3. That being an elder broth of a sister, the appellant's presence was necessary over there as most of the arrangements of marriage ceremony were entrusted to him. Appellant, therefore, requested his Incharge time and again to get his leave application sanctioned from the competent authority. Though the appellant was assured by his Incharge yet he did not take any step in this connection. At the neck of time when appellant had even purchased ticket for Karachi and was about to move, he once again assured appellant that even after his leaving place of posting his leave would be got sanctioned. In these circumstances the appellant was constrained to leave for Karachi and was hopeful for sanction of his leave. The appellant never left his station deliberately and without information and cause but in great reluctance & compulsion.
4. That when marriage ceremony of his sister became to an end, there started complete lock down due to COVID-19 in the country. Shifting of people from one city to other was completely banned. Beside, there no transport was allowed to move from one city to other. Even the persons who moved from their home place to other station concealing themselves in containers were arrested and put in jail. On the other hand as a matter of health safety and observing the law of the land, it

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was not good and right to shift from Karachi to Mansehra. Due to the reason the appellant could not join duty immediately after expiry of marriage ceremony of his sister. However, no sooner the appellant found a chance then he rushed from Karachi to Mansehra and at once reported for duty on 07-06-2020 vide daily dairy No.15 dated 07-06-2020. **(Copy of daily dairy dated 07-06-2020 is attached as Anex "A")**.

5. That after reporting for duty, the appellant was served with a charge sheet dated 02-06-2020 which he replied on the same day when reported for duty i.e. 07-06-2020 explaining all facts and circumstances of the matter in detail denying the allegation being as baseless and incorrect. **(Copy of the Charge Sheet dated 02-06-2020 and its reply dated 07-06-2020 are attached as Annexure "B & C")**.
6. That thereafter the District Police Officer Mansehra without taking into consideration the stance advanced by the appellant in the shape of his reply to the charge sheet dismissed him from service without any reason and justification vide his order dated 29-06-2020. **(Copy of the order dated 29-06-2020 is attached herewith as Annexure "D")**.
7. That appellant's absence was not deliberate or intentional rather due to compulsion on account of marriage ceremony of his real younger sister and thereafter because of COVID-19 in the country. Despite appellant's repeated written as well as verbal requests

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and assurances of his Incharge his leave was not sanctioned. His case was genuine but was not granted.

8. That no proper departmental enquiry was conducted. No Show Cause Notice was issued to him. Copy of inquiry findings was not granted to the appellant. Even opportunity of personal hearing was not afforded to him and he was condemned unheard.
9. That appellant has rendered about 06 years service in the police department and he always performed his assigned duty with devotion and honesty. He has unblemished record at his credit. Appellant is well experienced police official. He is only bread earner of his family and is jobless since his dismissal from service.
10. That appellant aggrieved of order of the District Police Officer Mansehra preferred a departmental appeal before the Regional Police Officer Hazara Region Abbottabad (copy of which could not be retained by appellant) which was rejected vide order dated 16-09-2020. **(Copy order dated 16-09-2020 is attached as Annexure-"E")**, hence instant service appeal before this Honourable Service Tribunal, inter alia, on the following as well as other grounds:-

GROUND:

- a) That impugned orders dated 29-06-2020 and 16-09-2020 of respondents are illegal, unlawful against the facts and circumstances of matter hence are liable to be set aside.

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- b) That no proper departmental inquiry was conducted. No Show Cause Notice was issued. Copy of inquiry findings, if any, were not provided to the appellant. Even he was not afforded the opportunity of personal hearing and condemned unheard.
- c) That the respondents have not treated the appellant in accordance with law, departmental rules & regulations and policy on the subject and have acted in violation of Article-4 of the constitution of Islamic Republic of Pakistan 1973 and unlawfully issued the impugned orders, which are unjust, unfair hence not sustainable in the eyes of law.
- d) That the appellate authority has also failed to abide by the law and even did not take into consideration the grounds incorporated in the memo of appeal. Even the penalty with which the appellant was awarded was illegal. Thus the impugned orders of respondents are contrary to the law as laid down in the KPK Police Rules 1934, other departmental rules regulations read with section 24-A of General Clause Act 1897 read with Article 10A of Constitution of Islamic Republic of Pakistan 1973.
- e) That appellant never absented himself willfully or deliberately from his duties rather due to some compulsions on account of marriage ceremony of his real younger sister at Karachi and thereafter because of COVID-19 in the country. Appellant's genuine cause was not given any heed by respondents and he was punished for the circumstances beyond his control.

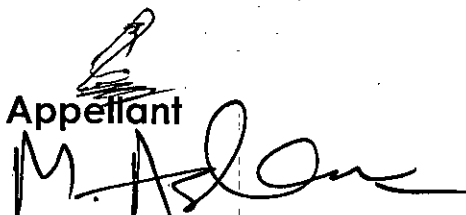
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- f) That instant appeal is well within time and this honorable Service Tribunal has got every jurisdiction to entertain and adjudicate upon the same.

PRAYER:

It is, therefore, humbly prayed that on acceptance of instant Service Appeal both the orders dated 29-06-2020 and 16-09-2020 of respondents may graciously be set aside and appellant be re-instated in service with all consequential service back benefits. Any other relief which this Honorable Service Tribunal deems fit may also be granted.

Through:

Appellant

(Mohammad Aslam Tanoli)
Advocate High Court
At Haripur

Dated 15-10-2020

VERIFICATION

It is verified that the contents of instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed thereof.

Dated 15-10-2020


Appellant

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**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Israr Ahmed S/O Sabir Islam, Ex-Constable No. 1161, District Police Mansehra R/O Mohallah Arghoshal Village, Shatay Dodhyal, District Mansehra.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

Respondents

SERVICE APPEAL

CERTIFICATE

It is certified that no such Appeal on the subject has ever been filed in this Honourable Service Tribunal or any other court prior to instant one.


APPELLANT

Dated: 15-10-2020

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**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Israr Ahmed S/O Sabir Islam, Ex-Constable No. 1161, District Police Mansehra R/O Mohallah Arghoshal Village Shatay Dodhyal, District Mansehra.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Mansehra.

Respondents

SERVICE APPEAL

AFFIDAVIT:



I, Israr Ahmed Ali S/O Sabir Islam appellant do hereby solemnly declare and affirm on oath that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Service Tribunal.

Deponent/Appellant

Dated: 15-10-2020

Identified By:

M. A. Tanoli

Mohammad Aslam Tanoli
Advocate High Court
At Haripur

Appellant

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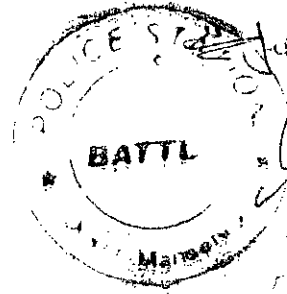
Annex - A

سوانح برائے
مذکورہ شخص

لکھنؤ میں 15 روزہ جاری 07/2006

حالیہ طور پر 07/2006 سے 08/2006 تک اس وقت تکسٹائل انڈیا لٹا افسر صاحب کو
اور ان کے 2003 سے 2004 تک کے حالات سے متعلقہ آگے اور یہاں تک کہ وہ دورانہ
بتاؤں گا۔ حالیہ طور پر اس کے بارے میں کوئی بھی معلومات نہیں مل سکی ہیں اور وہ
کی جانب سے لکھنؤ میں ہرگز ہرگز ہرگز ہرگز ہرگز ہرگز ہرگز ہرگز ہرگز ہرگز ہرگز ہرگز
میں اس کے بارے میں کوئی بھی معلومات نہیں مل سکی ہیں اور وہ

جانب سے



نقل مطابق
Mr. P. Battal
07-06-2006

Attest

عصر میں طرز

3 5 دن

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Annex B

CHARGE SHEET

I, Sadiq Hussain Baloch (PSP), District Police Officer, Mansehra as Competent Authority, hereby charge you Constable Israr No. 1168 PS Battal as follows.

Vide DD No, 09 dated 02-03-2020 Police Station Battal Mansehra it has been reported that while you were transferred from Police Station Baffa to Police Station Battal you did not report your arrival at Police Station Battal after

CB No.	From	To	Period
179 dated 17-08-2016	06-07-2016	08-07-2016	02 day
177 dated 16-08-2016	07-07-2017	04-08-2017	26 days
145 dated 17-05-2018	14-02-2018	15-02-2018	01 day
55 dated 22-02-2019	12-11-2018	14-11-2018	02 days
303 dated 03-12-2018	13-08-2018	16-08-2018	03 days
07 dated 07-04-2019	03-11-2019	04-11-2019	01 days
79 dated 06-04-2020	13-02-2020	17-02-2020	04 days

From the perusal of your service record it transpired that you are an habitual absentee. It shows that you are an indisciplined Police officer and you did not take interest in the discharge of official duty. It amounts to gross misconduct on your part.

Due to reasons stated above you appear to be guilty of misconduct under Khyber Pakhtunkhwa Police Disciplinary Rules 1975 (amended in 2014) and have rendered yourself liable to all or any of the penalties specified in the said Police Disciplinary Rules.

You are, therefore, required to submit your written defense within 07 days of the receipt of this charge sheet to the enquiry officer.

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

Intimate whether you desire to be heard in person or otherwise.

Statement of allegation is also enclosed.

Alleged



District Police Officer,
Mansehra

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DISCIPLINARY ACTION

I, Sadiq Hussain Baloch (PSP), District Police Officer Mansehra, as Competent Authority of the opinion that Constable Israr No. 1168 PS Battal has rendered himself liable to be proceeded against as he committed the following act/omissions within the meaning of Khyber Pakhtunkhawa Police Disciplinary Rules 1975 (amended in 2014).

Vide DD No. 09 dated 02-03-2020 Police Station Battal Mansehra it has been reported that while you were transferred from Police Station Baffa, to Police Station Battal you did not report your arrival at Police Station Battal after passing 05 days and absented yourself from duty with effect from 27-02-2020 to date without any leave or permission. Your previous record was checked and found that you have absented yourself on the following occasion without any leave or permission.

OB No.	From	To	Period
179 dated 17-08-2016	06-07-2016	08-07-2016	02 day
197 dated 16-08-2017	08-07-2017	04-08-2017	26 days
145 dated 17-05-2018	14-02-2018	15-02-2018	01 day
55 dated 22-02-2019	12-11-2018	14-11-2018	02 days
303 dated 03-12-2018	13-08-2018	16-08-2018	03 days
07 dated 07-04-2019	03-11-2019	04-11-2019	01 days
79 dated 06-04-2020	13-02-2020	17-02-2020	04 days

From the perusal of your service record it transpired that you are an habitual absentee. It shows that you are an indisciplined Police officer and you did not take interest in the discharge of official duty. It amounts to gross misconduct on your part. For the purpose of scrutinizing the conduct of the said accused Officer with reference to the above allegations **Addl: SP Mansehra** is deputed to conduct formal departmental enquiry against Constable Israr No. 1168 PS Battal.

The Enquiry Officer shall in accordance with the provisions of the Khyber Pakhtunkhawa Police Disciplinary Rules 1975 (amended in 2014), provide reasonable opportunity of hearing the accused, record findings and make recommendations as to punishment or other appropriate action against the accused.

The accused and a well conversant representative of the department shall in the proceedings on the date, time and place fixed by the Enquiry Officer.

District Police Officer,
Mansehra

No 72-73 /SRC dated Mansehra the 02-08-2020

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

- The Enquiry Officer for initiating proceedings against the defaulter officer under the provisions of the Khyber Pakhtunkhawa Police Disciplinary Rules 1975.
- Constable Israr No. 1168 PS City Mansehra with the direction to submit his written statement to the Enquiry Officer within 07 days of the receipt of this charge sheet/statement of allegations and also to appear before the Enquiry Officer on the date, time and place fixed for the purposes of departmental proceedings.

Reader.

For enquiry proceedings

Additional Superintendent
Police Mansehra

Alleged

District Police Officer,
Mansehra

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Annex-D

POLICE DEPARTMENT

MANSEHRA DISTRICT

ORDER

This office order will dispose off the departmental enquiry proceeding against Constable Israr Ahmed No. 1161 who was proceeded against departmentally with the allegation that while he was posted as GD Police Station Battal he has absented himself from duty with effect from 27-02-2020 to 25-06-2020 (03 months & 28 days) without any leave or permission.

The Enquiry Officer i.e. Mr. Mukhtiar Ahmed Additional Superintendent of Police, Mansehra after conducting proper departmental enquiry has submitted his report stating therein that, I being enquiry officer came to the conclusion that being member of disciplined force he was supposed to obtain proper leave or permission from his seniors, hence he is recommended for Suitable Punishment.

On 25-06-2020, the delinquent Constable Israr Ahmed No. 1161 was heard in person in orderly room but he could not satisfy the undersigned in his defense.

I, the District Police Officer, Mansehra, therefore award him major punishment of "dismissal from service" to the delinquent Constable Israr Ahmed No. 1161 under Khyber Pakhtunkhwa Police, Disciplinary Rules 1975 (amended in 2014). The total period (118 days) he spent without permission and leaves is treated as the period without duty so it does not attract any salary and other allowances.

Ordered announced.

OB 149
29-06-2020

[Handwritten signature]

District Police Officer
Mansehra

[Handwritten signature]



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Annex 'E'

OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

0992-9310021-22

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0345-9560687

NO: 23219 /PA DATED 16 / 9 /2020


ORDER

This order will dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 submitted by Ex-Constable Israr Ahmad No.1161 of District Mansehra against the punishment order i.e. *Dismissal from Service* awarded by DPO Mansehra vide OB No.149 dated 20.06.2019.

Brief facts leading to the punishment are that the appellant while posted at Police Station Battal absented himself from duty without any leave or permission with effect from 27.02.2020 to 25.06.2020 (total 03 months and 28 days).

The appellant was issued charge sheet alongwith summary of allegations and Addl: SP Mansehra was deputed to conduct departmental enquiry. The EO held the appellant responsible of misconduct and recommended for suitable punishment. The appellant was heard in person, however he failed to advance any cogent reason in his defence. Consequently, DPO Mansehra awarded him major punishment of dismissal from service.

After receiving his appeal, comments of DPO Mansehra were sought and examined/perused. The undersigned called the official in OR and heard him in person. However the appellant failed to advance any plausible justification in his defence. Moreover, service record of the appellant shows his disinterest in service. Therefore, in exercise of the powers conferred upon the undersigned under Rule 11-4 (a) of Khyber Pakhtunkhwa Police Rules, 1975 the instant appeal is hereby *filed* with immediate effect.


Qazi Jamil ur Rehman (PSP)
Regional Police Officer
Hazara Region, Abbottabad

No. 23220 /PA, dated Abbottabad the 16 / 09 /2020.
CC.

1. The District Police Officer, Mansehra for information and necessary action with reference to his office Memo No.13948/GB dated 03-08-2020, Service Roll and Fuji Missal containing enquiry file of the appellant is returned herewith for record.

SRC
For n/a

DPO, Mansehra.

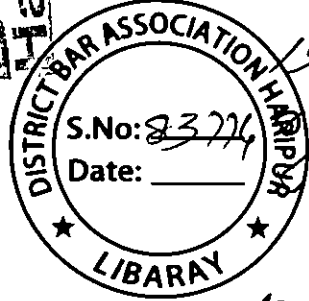




DBA.No: _____ 2021
 BC No: _____
 Name of Advocate: محمد اسلم شترک

S.No: 83774

وکالت نامہ



بعدالت: _____
 عنوان: انیسوار احمد
 منجانب: ایڈووکیٹ
 نوعیت مقدمہ: سرکاری اپیل
 بنام: _____
 باعث تحریر آئیکہ: _____

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی برائے پیشی یا تصدیق مقدمہ بمقام ایڈووکیٹ شترک کے لیے
 کو حسب ذیل شرائط پروکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا اور بروقت
 پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری
 غیر حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب
 موصوف صدر مقام چکھری کے علاوہ کسی جگہ یا چکھری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل یا پیروی کرنے کے ذمہ دار نہ
 ہوں گے اور مقدمہ چکھری کے علاوہ کسی اور جگہ سماعت ہونے پر یا بروز تعطیل یا چکھری کے اوقات کے آگے پیچھے پیش ہونے
 پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا محنتانہ کے واپس کرنے کے بھی صاحب
 موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر ذاختہ صاحب موصوف مثل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو
 عرض دعویٰ یا جواب دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی
 اختیار ہوگا اور اور کسی حکم یا ڈگری کرانے اور ہر قسم کارروپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور
 اس کے ثالثی و راضی نامہ و فیصلہ برحلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے بیرونجات از چکھری صدر
 اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از گرفتاری و اجراءے ڈگری بھی صاحب
 موصوف کو بشرط ادائیگی علیحدہ محنتانہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ
 مذکور یا اس کے کسی جزو کی کارروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے وکیل کو
 بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہر جانہ
 التوا پڑے گا وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب
 موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے
 برخلاف نہیں ہوگا۔

Accepted by

 لہذا وکالت نامہ لکھ دیا ہے کہ سند ہے۔

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔ مورخہ: 15 دن / 10 ماہ / 2020 سال

(انیسوار احمد)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 12096/2020.

Israr Ahmad s/o Sabir Islam Ex. Constable No. 1161 district Police
Mansehra r/o Mohallah Arghoshal village shatay Dodhyal District
MansehraAppellant


VERSUS

Provincial Police Officer Khyber Pakhtunkhwa Peshawar & others.
..... Respondents

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(8)


Deponent

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

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Mansehra r/o Mohallah Arghoshal village shatay Dodhyal District
MansehraAppellant

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa Peshawar & others.
..... Respondents

Reply/ Comments On Behalf Of Respondents

RESPECTFULLY SHEWETH:-

PRELIMINARY OBJECTION:-

- a) The appeal is not based on facts and appellant has got no cause of action or locus standi.
- b) That appeal is not maintainable in the present form.
- c) The appeal is bad for non-joinder of necessary and mis-joinder of unnecessary parties.
- d) The appellant is estopped by his own conduct to file the appeal.
- e) The appeal is barred by the law and limitation.
- f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1. Incorrect. That the appellant while posted at PS battal has absented himself from duty with effect from 27.02.2020 to 25.06.2020(total 3 months and 28 days) without any leave or permission.
2. Incorrect. The appellant has not submitted any application before any forum for leave.

3. Incorrect. The appellant had to follow the rules and had to take leave for the purpose instead of absenting himself from lawful duty, which is professional misconduct under the rules.
4. Incorrect. The appellant had to follow the rules, he was supposed to take leave before departure, instead to absented himself from lawful duty without permission.
5. Correct. The appellant was served with charge sheet and statement of allegation, he replied but it was found unsatisfactory.
6. Incorrect. The appellant was dismissed from service after proper departmental enquiry, conducted in accordance with law and rules, in which he was held guilty. After proper departmental enquiry, the appellant was dismissed from service vide OB No. 149 dated 29.06.2020. **(copy of dismissal order is enclosed as annexure A)**
7. Incorrect. The appellant is habitual absentee and was awarded several punishments on the ground of absence from duty.
8. Incorrect. A proper departmental enquiry was conducted in accordance with law and legal formalities were observed and he was held guilty. **(Copy of the enquiry report is enclosed as annexure B).**
9. Pertains to record. However, his service record is tainted with bed entries/punishment of worth perusal. **(List of his previous service record is annexure C)**
10. His appeal was rejected being not maintainable and the punishment awarded to appellant is based on facts and under the law/rules:-

GROUND:-


- A. Incorrect. The impugned orders are legal, in accordance with facts and rules.
- B. Incorrect. Show cause notice was issued and proper enquiry was conducted through enquiry officer.
- C. The appellant was treated in accordance with law/rules.
- D. The penalty awarded to appellant was legal and in accordance with law / rules.

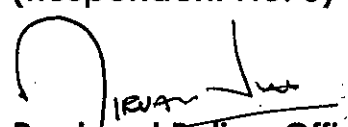
E. Incorrect. The appellant deliberately absented from official duty without leave. Detail reply is given in Paras ibid.

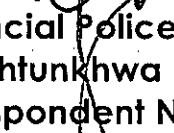
F. The instant appeal is badly time barred.

PRAYER:

In view of the above mentioned facts, the appeal in hand may kindly be dismissed, being devoid of any legal force and badly time barred.


District Police Officer
Mansehra
(Respondent No. 3)


Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 2)


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

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR

SERVICE APPEL NO. 12096/2020.

Israr Ahmad s/o Sabir Islam Ex. Constable No. 1161 district Police
Mansehra r/o Mohallah Arghoshal village shatay Dodhyal District
MansehraAppellant

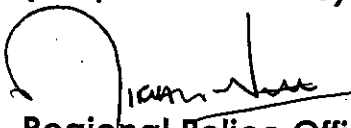
VERSUS


Provincial Police Officer Khyber Pakhtunkhwa Peshawar & others.
..... Respondents

AFFIDAVIT

We respondents do solemnly affirm and declare that the contents of the comments are true and correct to our knowledge and belief and that nothing has been concealed from this Honorable tribunal.


District Police Officer
Mansehra
(Respondent No. 3)


Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 2)


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



MANSEHRA DISTRICT

DEPARTMENT

ORDER

This office order will dispose off the departmental enquiry proceeding against Constable Israr Ahmed No. 1161 who was proceeded against departmentally with the allegation that while he was posted as GD Police Station Battal he has absented himself from duty with effect from 27-02-2020 to 25-06-2020 (03 months & 28 days) without any leave or permission.

The Enquiry Officer i.e. Mr. Mukhtiar Ahmed Additional Superintendent of Police, Mansehra after conducting proper departmental enquiry has submitted his report stating therein that, I being enquiry officer came to the conclusion that being member of disciplined force he was supposed to obtain proper leave or permission from his seniors, hence he is recommended for Suitable Punishment.

On 25-06-2020, the delinquent Constable Israr Ahmed No. 1161 was heard in person in orderly room but he could not satisfy the undersigned in his defense.

I, the District Police Officer, Mansehra, therefore award him major punishment of "dismissal from service" to the delinquent Constable Israr Ahmed No. 1161 under Khyber Pakhtunkhwa Police, Disciplinary Rules 1975 (amended in 2014). The total period (118 days) he spent without permission and leaves is treated as the period without duty so it does not attract any salary and other allowances.

Ordered announced.

District Police Officer
Mansehra

OB 149
29-06-2020

Annexur - B



DEPARTMENT

DISTRICT MANSEHRA

The Addl: Superintendent of Police,
Mansehra.

District Police Officer,
Mansehra.

No. 115 /Addl: SP, Mansehra Dated the 08/06/2020.

Subject: DEPARTMENTAL ENQUIRY.

Memorandum.

Kindly refer to your office Ends: No. 72-73/PA dt: 02-06-2020.

An enquiry under hand was entrusted to the undersigned by the competent authority for digging out the real facts, about the charges leveled against Constable Israr No. 1161 PS Battal that vide DD No. 09 dt: 02-03-2020 Police Station Battal Mansehra it has been reported that while he was transferred from Police Station Baffa to PS Battal he did not report his arrival at PS Battal after passing 05 days and absented himself from duty with effect from 27-02-2020 to date without any leave or permission. It shows that he is irresponsible / inefficient police official and are not taking interest in the discharge of his official duty. It amount to gross misconduct on his part.

In this regard enquiry against alleged Constable Israr No.1161 PS Battal was initiated in the office of undersigned. For this purpose alleged official was summoned to appear before the undersigned.


During the enquiry proceedings the alleged Constable Israr No. 1161 PS Battal submitted his written comprehensive statement in response to allegations as per charge sheet in which he stated that he submitted leave application for attending his sister marriage ceremony at Karachi, but his application was not accepted. He submitted that on 02-03-2020 he went to Karachi for the purpose of his sister marriage ceremony, meanwhile COVID-19 lock-down was started and he was still there at Karachi. He added that after some relief in lock-down he returned back to Mansehra and made his arrival in PS Battal vide D.D No.15 dated 07-06-2020 and further prayed for forgiveness.

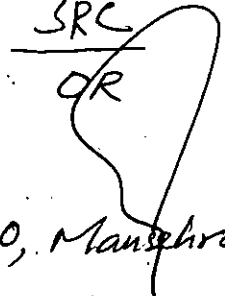
Similarly during the enquiry proceedings other relevant record was used thoroughly by the undersigned.

Annexur - B

In view of the above and after perusal of statement of alleged and his previous service record, I being enquiry officer found the official guilty as he failed to satisfy the undersigned regarding his absence. Being a member of disciplined force he was supposed to take proper leave or permission from his seniors, but he failed to do so. His absence period is approximately 03 months and 05 days which shows that he does not take interest in the discharge of official duty, hence he is recommended for **suitable punishment**. Necessary documents are enclosed herewith.

Submitted for kind perusal and further order, please.


Addl. Supdt. of Police,
Mansehra

SRC
OR

DPO, Mansehra

1.

Previous Punishment Record		
OB No. & Date	Punishment	Reason
OB No. 179 dated 17.08.2016	03 days Extra Drill	Due to absent himself from duty
OB No. 197 dated 16.08.2017	26 days leave without pay	Due to absent himself from duty
OB No. 264 dated 23.11.2017	02 days Quarter guard	Due to absent himself from duty
OB No. 252 dated 17.09.2018	1/1 day Extra Drill	Due to absent himself from duty
OB No. 145 dated 17.05.2018	01 day leave without pay	Due to absent himself from duty
OB No. 303 dated 03.12.2018	03 days leave without pay	Due to absent himself from duty
OB No. 55 dated 25.02.2019	04 days leave without pay	Due to absent himself from duty
OB No. 140 dated 13.05.2019	02 days leave without pay	Due to absent himself from duty
OB No. 259 dated 08.10.2018	01 day quarter guard	Found negligent