Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1496/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	17/10/2022	The appeal of Mr. Zahid-ur-Rehmann resubmitted today by Mr. Muhammad Furqan Yousafzai Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed. By the order of Chairman REGISTRAR

The appeal of Mr.Zahir-ur-Rehman Ex-Constable of Police Department District Kurram received today i.e. on 30.09.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Memorandum of appeal may be got signed by the appellant.
2- Copy of affidavit mentioned in para-4 of the memo of appeal (Annexure-B) is not attached with the appeal which may be placed on it.
3- Annexure-B of the appeal is illegible which may be replaced by legible/better one.

No. 2742 /S.T,

Dt. 5/10/2022

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Furqan Yousafzai Adv. Pesh.

Re-submitted After Compliance

14-10-22

further it is submitted that "A" is mentioned as affidavit in memo of Petition which is on plan paper & infact it is an affidavit regarding duty of appeliy.

17/10/22

BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

Appeal No. 1496 /2022

Zahid Ur Rehman .....**Appellant**

V E R S U S

IGP and others.....**Respondents**

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Memo of appeal	*	1-12
2.	Affidavit	*	13
3.	Application for condonation of delay along with affidavit	*	14-15
4.	Copy of the affidavit	A	16
5.	Copy of the order	B	17
6.	Copies of departmental appeal and impugned order dated 22/07/2022	C & D	18-26
7.	Wakalatnama	*	27

Appellant

Through

Muhammad Furqan Yousafzai
Advocate, Supreme Court of Pakistan

Date: 29/09/2022

&

Khalid Hameed
Advocate, High Court,
Peshawar
Cell# 0333-9266225

BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

Appeal No. 1496 /2022

Zahid Ur Rehman, Ex-Constable No. 668693, R/o Mandori Tehsil Alizai District Kurram.....**Appellant**

V E R S U S

1. Inspector General of Police, Khyber Pakhtunkhwa, Central Police Office, Peshawar.
2. Regional Police Officer, Kohat Region, Kohat.
3. District Police Officer, District Kurram.

.....**Respondents**

APPEAL UNDER SECTION 4 OF KP SERVICES TRIBUNAL ACT 1974 AGAINST THE IMPUGNED ORDER DATED 02/08/2022 WHEREBY THE RESPONDENT NO.2 DISMISSED THE DEPARTMENTAL APPEAL OF THE APPELLANT FILED AGAINST THE IMPUGNED ORDER DATED 08/04/2022 PASSED BY THE RESPONDENT NO.3 WHEREIN THE APPELLANT WAS DISMISSED FROM HIS SERVICE

Prayer in Appeal:

On acceptance of this service appeal, both the impugned orders dated 02/08/2022 and

08/04/2022 passed by the respondents No.2 and 3 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.

Respectfully Sheweth:

1. That the appellant was appointed as Sepoy Khasadar Force Kurram Agency in the year 1997.

2. That in the year 2019 when the Khasadar Force was absorbed in the Police Department, the appellant also absorbed in Police Department and become the member of Police Force of KPK as Constable.

3. That the appellant was deputed as Security Guard with the then MNA namely Munir Khan Orakzai and remained at the same position till his martyrdom in the year 2020.

4. That subsequently, the appellant was deputed as security guard with Dr. Abdul Qadeer Khan who is brother of the martyred MNA Munir Khan Orakzai, in this regard Dr. Abdul Qadeer Khan has sworn an Affidavit in shape of request to

respondent No.2 that appellant be reinstated in police service because he was deployed for his security and performed duty with Dr. Abdul Qadeer Khan. **(Copy of the affidavit is attached as Annexure-A)**

5. That on 04/05/2022, when the appellant went to the police office Kurram for enquiring about his salary and other financial issues, office of the DPO Kurram informed the appellant that he has been dismissed from service by the respondent No.3, the appellant caught by surprise when he heard about his dismissal because he was already performing his services as security guard with Dr. Abdul Qadeer Khan.

6. That on the same day i.e. 04/05/2022, the appellant collected copy of the impugned dismissal order dated 08/04/2022 and upon perusal it was found that the appellant was dismissed from service on account absence from duty. **(Copy of the order is attached as Annexure-B).**

7. That the appellant aggrieved from the impugned dismissed order dated 08/04/2022, filed departmental appeal before the respondent No.2 which was also dismissed vide impugned order

dated 02/08/2022 and upheld the impugned order of the respondent No.3. It is worthy to mention here that one the statutory period of the appeal was completed, the appellant visited the office of respondent No.3 to known about his departmental appeal wherein it was reveal to him that his appeal has been disposed of but the copy was not provided to him and few days back one of the relative of the appellant send him the copy of impugned order via whatsapp and till date the officials did not informed the appellant about the impugned orders. **(Copies of departmental appeal and impugned order dated 02/08/2022 are attached as Annexure-C & D respectively)**

8. That feeling aggrieved from the above mentioned orders dated 02/08/2022 and 04/05/2022 of the respondents, the appellant approached this Hon'ble Tribunal inter alia on the following grounds:

GROUNDS:

A. That the impugned order of the dismissal from service of the appellant is not in accordance with

law, facts, evidence on record, rules and principles of justice, hence liable to be set aside.

B. That it is a well established principle of law and justice, that whenever a charge is to be framed against an accused or defaulter, it shall be specific so that to enable the defaulter to prepare his defence properly. However, in the case of the appellant it will indicate that the charge is vague and ambiguous because the worthy competent authority has not mentioned that from which date to which date the appellant allegedly remained absent. Hence the basic and fundamental right of preparing defence by the appellant was infringed and in this scenario the impugned order has become legally defective and no punishment can be awarded on such a vague and ambiguous charge against the appellant.

C. That as per policy, in case of absence there shall be proper inquiry before passing an order and the appellant belongs to District Kurram and no notice has been received by the appellant from the respondents nor the statement of any of the inhabitant/relative of the appellant has been recorded nor the alleged inquiry officer visited the village and home of the appellant nor recorded the statement of Malik/Elders of the

locality, on this score alone the impugned orders are liable to be set aside.

D. That the alleged enquiry against the appellant was conducted unilaterally, one sidedly and at the back of the appellant which in the eyes of law has got no legal value and hence the impugned enquiry and the impugned orders are not sustainable in the eyes of law. Thus no punishment can be awarded on such a one sided enquiry.

E. That under Art. 10-A of the constitution of Pakistan, transparent, impartial and independent enquiry/ trial against accused/ defaulter has been declared as his fundamental and inalienable right but here, in the instant enquiry fundamental right of the appellant has not been adhered. Thus enquiry and the impugned orders are violation of the fundamental right of the appellant. Hence, the impugned orders are not operative on the rights of the appellant.

F. That the impugner orders have though mentioned framing charge sheet and the statement of allegation against the appellant but has forgotten to mention about his service on the appellant. If charge sheet and statement of

allegations were framed against the appellant, then they should have been served upon the appellant. However, nothing has been said about their service upon the appellant in the impugned order. Under the law/rules service of the charge sheet and statement of allegations upon the defaulter are mandatory. Without their service upon a defaulter, enquiry cannot proceed against him. If a defaulter is not physically present before the authority then, it is required that they should be sent at the home address of the defaulter but it appears that the established/ prescribed procedure was not followed. It appears that the worthy competent authority was bent upon to punish the appellant at any cost, hence, the prescribed procedure and as well as legal/codal formalities were not followed in letter and spirit which has rendered the impugned orders as legally defective orders which has got no impact on the service rights of the appellant and thus he is presumed to be on duty since his dismissal from service.

G. That in case if appellant was not traceable then ex-parte proceedings were to be initiated against the delinquent official but in the impugned order it does not appear that ex-parte proceedings against the appellant were directed at any stage

of the enquiry. Hence the enquiry and the impugned orders suffer from material legal irregularity.

H. That although in the impugned order, it has been mentioned by the worthy competent authority that in the news paper "Aaj Subah" dt:23-1-2022 proclamation regarding absence of the appellant was published, the above procedure adopted by the competent authority is not in accordance with the prescribed procedure. Ordinarily, when it is established that presence of the defaulter official cannot be procured then at the beginning of the enquiry, ex-parte proceedings are directed and absence of the defaulter is published in the that two national dailies but in the case of appellant one can surprisingly observe that, no order regarding initiation of ex-parte , enquiry against the appellant was issued. Secondly the proclamation of absence of the appellant was not published in the two national dailies like Mashriq Jang etc. but published in only one daily local newspaper namely Aaj Subah, whose circulation cannot be confirmed, hence this cannot be said as a satisfactory proclamation. Thirdly, the enquiry proceeding against the appellant came to an end on 21/01/2022 while the alleged proclamation in a local newspaper was published on 23/02/2022 i.e. after conclusion of the

instant enquiry against the appellant while according to the well established procedure, it should have been published at the commencement of the enquiry instead of conclusion of enquiry. Hence, the above realities have established beyond any reasonable doubt that in absence of the order for commencement of ex-parte proceedings against the appellant, nor publishing of the alleged absence in the two national daily newspapers and publishing the alleged absence of the appellant in a local newspaper after conclusion of enquiry have made the impugned order as legally not sustainable and deserve to be brushed aside.

I." That it appears from the impugned order that no efforts were made to enquire whereabouts of the appellant from his residence located in Kurram Headquarter or from the residence of the martyred MNA with whom he was attached as security guard and Dr. Abdul Qadeer with whom he was performing duty as security guard and the time of inquiry / order. If, due enquiry would have been made it would ascertain by the concerned officers of the department that the appellant was physically present on duty and performing as security guard with the Dr. Qadeer Khan.

J. That during the alleged enquiry if the enquiry officer has recorded evidence of any witness, such an evidence has got no legal value because the appellant was not provided opportunity to cross examine such witness. Hence no punishment whatsoever can be awarded on such one sided and unilateral evidence.

K. That more or less 24/25 years service of the appellant was ended with one stroke of pen without any lawful justification.

L. That under the law maximum punishment like dismissal from service is to be awarded after following al legal and codal formalities in letter and spirit. Moreover, respondents will not treat the matter as an ordinary one and while awarding such a maximum / harsh punishment he should give serious and repeated considerations but from the impugned orders, it appears that legal and codal formalities were not followed in letter and spirit and no serious consideration was paid while depriving the appellant from his only source of income.

M. That the appellant is absolutely innocent. The appellant remained present on duty with the brother of the martyred Munir Khan Orakzai MNA. The appellant after approval by the

respondents was performing security duty with Dr. Abdul Qadeer Khan.

N. That inspite of having sources and resources, the respondents did not touch this aspect nor any enquiry was conducted at this angle in order to ascertain, where about of the appellant and performing his duty with Dr. Abdul Qadir Khan. By conducting one sided inquiry the appellant was prejudiced and thus in the shape of the impugned orders miscarriage of justice occasioned to the appellant.

O. That the appellant is a law abiding person and he has always kept his departmental interests above his personal interests. Appellant being member of the law enforcing agency cannot imagine to remain absent without leave or permission.

P. That the charge of remaining absent from duty is totally baseless, misleading and without any foundations. Hence upon such a flimsy, vague and baseless charge no punishment to the appellant is justified.

Q. That the appellant supports a large family. Except the present service, the appellant has got no other source of income. If the impugned order is upheld, the appellant will be deprived of his

only source of income and his family will land in starvation. Resultantly the appellant may face irreparable loss.

R. That any other grounds will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

It is, therefore, most humbly prayed that on acceptance of this service appeal, both the impugned orders dated 02/08/2022 and 08/04/2022 passed by the respondents No.2 and 3 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.

OR

Any other relief may deemed fit in the circumstances of the law may also be granted in favour of the appellant against respondent.

Appellant

Through

Muhammad Furqan Yousafzai
Advocate, Supreme Court of Pakistan

Date: 29/09/2022

&

Khalid Hameed
Advocate, High Court, Peshawar

13

BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

Appeal No._____/2022

Zahid Ur Rehman .....**Appellant**

V E R S U S

IGP and others.....**Respondents**

AFFIDAVIT

I, **Zahid Ur Rehman, Ex-Constable No. 668693, R/o Mandori Tehsil Alizai District Kurram**, do herby solemnly affirm and declare on oath that the contents of accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

D E P O N E N T

Identified by:

Muhammad Furqan Yousafzai
Advocate, Supreme Court of
Pakistan.

ATTESTED
Gul Faraz Khan
Commissioner
Advocate High Court Peshawar

15

BEFORE THE COURT OF WORTHY CHAIRMAN
SERVICES TRIBUNAL, PESHAWAR

CM No. _____/2022
IN
Appeal No._____/2022

Zahid Ur Rehman .....**Appellant**

V E R S U S

IGP and others.....**Respondents**

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the above Service Appeal has been filed by the petitioner and no date of hearing has yet been fixed.

2. That due to no knowledge of impugned order nor the impugned order has been sent to the petitioner nor served on the petitioner and was kept secret after completion of statutory period of appeal, the petitioner visited the office of respondent No.3 where it was revealed to the petitioner that his departmental appeal has been dispose of and impugned order passed by the respondent No.3 was sent to the petitioner few days back through whatsapp by his relative.

3. That delay in filing the titled service appeal is neither willful nor deliberate but due to reason mentioned above.

It is, therefore, most humbly prayed that on acceptance of this application, the delay, if any, in filing the above titled service appeal may kindly be condoned in the interest of justice.

Petitioner

Through

Muhammad Furqan Yousafzai
Advocate, Supreme Court of Pakistan

Date: 29/09/2022

&

Khalid Hameed
Advocate, High Court, Peshawar

AFFIDAVIT

I, **Zahid Ur Rehman, Ex-Constable No. 668693, R/o Mandori Tehsil Alizai District Kurram**, do herby solemnly affirm and declare on oath that the contents of accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

DEPONENT

ATTESTED
Gul Daraz Khan
Court Peshawar

Annex "A" 16

To

The Regional Police Officer.
Kohat. Khyber Pakhtunkhwa.

Subject: Request for Re-instatement of Sepoy (Constable) Zahid-ur-Rehman P.N. 668093

Respected Sir,

Reference to the Subject above, it is stated that Zahid-ur-Rehman s/o Mir Hassan Jan was deployed for my security and he performed his duty honestly. Now I came to know that DPO office Kurram has dismissed him from service. Therefor you are Requested to intervene and Re-instate him. In past my family was targeted by a suicide bomber & we suffered huge loss.

Yours Sincerely,

Dr Abdul Qadir
S/o Haji Munir
Khan Orakzai
Ex-MNA
Kurram.
30/5/2022
Mob# 03009003366

ATTESTED
to be true copy
Advocate

17
Anx "B"

OFFICE OF THE
DISTRICT POLICE OFFICER
KURRAM, KHYBER PAKHTUNKHWA
Tel/Fax: 0926-311354*Email:policekurram1@gmail.com

ORDER

This order is passed on the Charge Sheet against Constable Zahid Rehman No. 00560 93 under the Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014).

Brief of the fact is that constable Zahid Rehman has been charged willingly absent till the date without prior permission of the competent authority which is tantamount to misconduct and inefficiency.

That consequent upon the completion of inquiry conducted against constable Zahid Rehman by the inquiry officer for which constable Zahid Rehman was given opportunity vide charge Sheet No. 3209/PA dated Parachinar the 04.10.2021 and No. 3208/PA dated Parachinar the 04.10.2021, but did not appear before the inquiry officer.

Upon the findings and recommendations of the inquiry officer vide No. 12/DSP Inv:/Kurram dated 21.01.2022, the material on record and other connected evidence including defense the inquiry officer concluded that constable Zahid Rehman has to defend himself. Hence, the inquiry officer recommended major punishment for the delinquent Police personnel.

Further, notice regarding absence has already been published in daily Aaj Subah news paper dated 23rd January 2022.

Final show cause issued to the office of the undersigned vide No. 401/PA dated Parachinar the 23.02.2022 but did not reply and also not appeared before the undersigned for defense.

In view of the above I, Arbab Shafiullah Jan District Police Officer Kurram in exercise of the powers conferred upon me, hereby award him a major punishment of "Dismissal from Service" under the Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014) with immediate effect.

District Police Officer
Kurram

OB. No. 119
Dated 08.04.2022

Copy forwarded to the:
1. Regional Police Officer Kohat Region Kohat.
2. District Account officer Kurram.
3. All DSPs/SHOs in Kurram.
4. Pay Officer Kurram.
5. SRC Kurram Police.
6. RI Kurram Police to collect equipments.
7. OASI Kurram Police.
8. Concerned.

District Police Officer
Kurram

ATTESTED
to be true copy
Advocate

BETTER COPY OF THE PAGE NO. 17

OFFICE OF THE
DISTRICT POLICE OFFICER
KURRAM, KHYBER PAKHTUNKHWA
Tel/Fax: 0926-311354, Email: policekurram1@gmail.com

ORDER

This order is passed on the Charge Sheet against Constable Zahid Rehman under the Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014).

Brief of the fact that constable Zahid Rehman has been charged withgnly absent till the date without prior permission of the competent authority which is tantamount to misconduct and inefficiency.

That consequent upon the completion of inquiry conducted against constable Muhammad Attiq by the inquiry officer for which constable Muhammad Attiq was given opportunity vide charge sheet No. 3201/PA dated Parachinar the 04/10/2021 and No. 3200/PA dated Parachinar the 04/10/2021, but did not appear before the inquiry officer.

Upon the findings and recommendations of the inquiry officer vide No. 12/DSP Inv;/Kurram dated 21/01/2021, the material on record and other connected evidence including defense the inquiry officer concluded that constable Zahid Rehman has to defend himself. Hence, the inquiry Officer recommended major punishment for the delinquent police personal.

Further, notice regarding Absence has already been published in daily Aaj Subah news paper dated 23rd January 2022.

Final show cause issued to the office of the undersigned vide No. 401/DPO/PA dated Parachinar the 23/02/2022 but did not reply and also not appeared before the undersigned for defense.

In view of the above I, Arbab Shafiullah Jan District Police Officer Kurram in exercise of the powers conferred upon me, hereby award him a major punishment of "Dismissal from Service" under the Khyber Pakhtunkhwa, Police Rules, 1975 (Amendment 2014) with immediate effect.

OB No. 119
Dated 08/04/2022

District Police Officer
Kurram

Copy forwarded to the:

1. Regional Police Officer Kohat Regional Kohat,
2. District Account Officer Kurram.
3. All DSPs/SHOs in Kurram
4. Pay Officer Kurram
5. SRC Kurram Police.
6. RI Kurram Police to collect equipments.
7. OASI Kurram Police
8. Concerned.

District Police Officer
Kurram

THE HONOURABLE DEPUTY INSPECTOR GENERAL OF POLICE
KOHAT REGION KOHAT

Annex "C"

APPEAL UNDER RULE 11 OF THE POLICE RULES 1975 (AMENDED 2014) AGAINST ORDER OF THE WORTHY DISTRICT POLICE OFFICER KURRAM DATED 08-5-2022 RECEIVED ON 04-5-2022 VIDE WHICH THE APPELLANT WAS DISMISSED FROM SERVICE WITHOUT ANY LAWFUL JUSTIFICATION.

Respected Sir,

With great respect and veneration, the appellant may graciously be allowed to submit the following for your kind and sympathetic consideration;

Facts of the Case:

1. That the appellant was enrolled as Sepoy Khasadar Force Kurram Agency in the year 1997.
2. That the appellant since his induction / enrolment in the Kurram Agency Khasadar Force discharge his official function with great efficiency and dedication.
3. That the Worthy Officers of the Khasadar Force reposed trust in the appellant and they used to assign risky and sensitive tasks which the appellant successfully fulfilled in accordance with their satisfaction.
4. That in the year 2019 when the Khasadar Force was absorbed in the Police Department, the appellant also became member of the esteem Police Deptt.

ATTESTED
to be true copy
Advocate

5. That in the Police Deptt: too the appellant continued his meritorious services and earned support of his worthy senior officers.
6. That when the Khasadar Force was merged in the Police Deptt: most of the orders were made verbally because it was new arrangement and the period was transitory in nature.
7. That the appellant was deputed as Security Guard with the then MNA namely Munir Khan Orakzai and remained at the same position till his martyrdom in the year 2020.
8. That subsequently, the appellant was deputed as security guard with Dr. Abdul Qadeer Khan who is brother of the martyred MNA Munir Khan Orakzai.
9. That on 04-5-2022, when the appellant went to the police office Kurram for enquiring about his salary and other financial issues, office of the DPO Kurram informed that the appellant was dismissed from service by the Worthy DPO Kurram.
10. That the appellant caught by surprise when he heard the he was because he learned the news because he was already performing his services as security guard with Dr. Abdul Qadeer Khan. In this respect he may be contacted and due verification can be made about contention of the appellant. (his recommendations is enclosed as annexure-A)
11. That on the same day i.e. 04-5-2022, the appellant collected copy of the impugned dismissal order and upon perusal it was found that the appellant was dismissed from service on account absence from duty. (Copy of the order is enclosed as Annexure-B).
12. That the appellant was further caught by Shock when he came to know that he has been dismissed from service on the ground of absence from duty because the appellant has not remain absent from duty even for a single day and was physically present round the clock with Dr. Qadeer Khan as security guard.

ATTESTED
to be true copy
Advocate

13. That on the order of dismissal from service the appellant has strong legal and factual reservations which are submitted in the following lines for your kind and sympathetic consideration:-

Grounds of Appeal:

A. That the impugned order of the dismissal from service of the appellant is not in accordance with law, facts, evidence on record, rules and principles of justice, hence it is liable to be set aside.

B. That it is a well established principle of law and justice, that whenever a charge is to be framed against an accused or defaulter, it shall be specific so that to enable the defaulter to prepare his defence properly. However, in the case of the appellant it will indicate that the charge is vague and ambiguous because the worthy competent authority has not mentioned that from which date to which date the appellant allegedly remained absent. Hence the basic and fundamental right of preparing defence by the appellant was infringed and in this scenario the impugned order has become legally defective and no punishment can be awarded on such a vague and ambiguous charge against the appellant.

C. That the alleged enquiry against the appellant was conducted unilaterally, one sidedly and at the back of the appellant which in the eyes of law has got no legal value and hence the impugned enquiry and the impugned order are not sustainable in the eyes of law. Thus no punishment can be awarded on such a one sided enquiry.

D. That under Art. 10-A of the constitution of Pakistan, transparent, impartial and independent enquiry/ trial against accused/ defaulter has been declared as his fundamental and inalienable right but here, in the instant enquiry fundamental right of the appellant has not been adhered. Thus enquiry and the impugned order are violation of

the fundamental right of the appellant. Hence, the impugned order is not operative on the rights of the appellant.

E. That the impugner order has though mentioned framing charge sheet and the statement of allegation against the appellant but has forgotten to mention about their service on the appellant. If charge sheet and statement of allegations were framed against the appellant, then they should have been served upon the appellant. However, nothing has been said about their service upon the appellant in the impugned order.

Under the law/rules service of the charge sheet and statement of allegations upon the defaulter are mandatory. Without their service upon a defaulter, enquiry cannot proceed against him. If a defaulter is not physically present before the authority then, it is required that they should be sent at the home address of the defaulter but it appears that the established/prescribed procedure was not followed. It appears that the worthy competent authority was bent upon to punish the appellant at any cost, hence, the prescribed procedure and as well as legal/codal formalities were not followed in letter and spirit which has rendered the impugned order as legally defective order which has got no impact on the service rights of the appellant and thus he is presumed to be on duty since his dismissal from service. (In support of copies of the judgment of Service Tribunal KPK are enclosed as Annexure-C & D)

F. That in case if appellant was not traceable then ex-parte proceedings were to be initiated against the delinquent official but in the impugned order it does not appear that ex-parte proceedings against the appellant were directed at any stage of the enquiry. Hence the enquiry and the impugned order suffer from material legal irregularity.

ATTESTED
to be true copy
Advocate

G. That although in the impugned order, it has been mentioned by the worthy competent authority that in the news paper "Aaj Subah" dt:23-1-2022 proclamation regarding absence of the appellant was published.

Sir, very respectfully, the above procedure adopted by the w/competent authority is not in accordance with the prescribed procedure.

Ordinarily, when it is established that presence of the defaulter official cannot be procured then at the beginning of the enquiry, ex-parte proceedings are directed and absence of the defaulter is published in the that two national dailies but in the case of appellant one can surprisingly observe that, no order regarding initiation of ex-parte enquiry against the appellant was issued. Secondly the proclamation of absence of the appellant was not published in the two national dailies like Mashriq Jang etc. but published in only one daily local newspaper namely Aaj Subah, whose circulation cannot be confirmed, hence this cannot be said as a satisfactory proclamation. Thirdly, the enquiry proceeding against the appellant came to an end on 21-01-2022 while the alleged proclamation in a local newspaper was published on 23-2-2022 i.e. after conclusion of the instant enquiry against the appellant while according to the well established procedure, it should have been published at the commencement of the enquiry instead of conclusion of enquiry.

Hence, the above realities have established beyond any reasonable doubt that in absence of the order for commencement of ex-parte proceedings against the appellant, nor publishing of the alleged absence in the two national daily newspapers and publishing the alleged absence of the appellant in a local newspaper after conclusion of enquiry have made the impugned order as legally not sustainable and deserve to be brushed aside.

ATTESTED
to be true copy
Advocate

H. That it appears from the impugned order that no efforts were made to enquire whereabouts of the appellant from his residence located in Kurram Headquarter or from the residence of the martyred MNA with whom he was attached as security guard and Dr. Abdul Qadeer with whom he was performing duty as security guard and the time of inquiry / order. If, due enquiry would have been made it would ascertain by the concerned officers of the deptt: that the appellant was physically present on duty and performing as security guard with the Dr. Qadeer Khan.

I. That during the alleged enquiry if the enquiry officer has recorded evidence of any witness, such an evidence has got no legal value because the appellant was not provided opportunity to cross examine such witness. Hence no punishment whatsoever can be awarded on such one sided and unilateral evidence.

J. That more or less 24 years service of the appellant was ended with one stroke of pen without any lawful justification.

K. That under the law maximum punishment like dismissal from service is to be awarded after following al legal and codal formalities in letter and spirit. Moreover, competent authority will not treat the matter as an ordinary one and while awarding such a maximum / harsh punishment he should give serious and repeated considerations but from the impugned order, it appears that legal and codal formalities were not followed in letter and spirit and no serious consideration was paid while depriving the appellant from his only source of income.

L. That the appellant is absolutely innocent. The appellant remained present on duty with the brother of the martyred Munir Khan Orakzai MNA. The appellant after approval by the competent authority was performing security duty with Dr. Abdul Qadeer Khan and in this regard his request is already submitted as annexure-A.

M. That inspite of having sources and resources, the relevant quarters did not touch this aspect nor any enquiry was conducted at this angle in order to ascertain, where about of the appellant and performing his duty with Dr. Abdul Qadir Khan. By conducting one sided inquiry the appellant was prejudiced and thus in the shape of the impugned order miscarriage of justice occasioned to the appellant.

N. That the appellant is a law abiding person and he has always kept his departmental interests above his personal interests. Appellant being member of the law enforcing agency cannot imagine to remain absent without leave or permission.

O. That the appellant during his 24 years service has always remained present on his service and whenever needed he applied for leave from the competent authority.

P. That the charge of remaining absent from duty is totally baseless, misleading and without any foundations. Hence upon such a flimsy, vague and baseless charge no punishment to the appellant is justified.

Q. That the appellant supports a large family. Except the present service, the appellant has got no other source of income.

If the impugned order is upheld, the appellant will be deprived of his only source of income and his family will land in starvation. Resultantly the appellant may face irreparable loss.

R. That the impugned order requires that it may be revisited and legal and factual defects may be removed by applying judicial mind.

S. That if deemed proper the appellant may kindly be heard in person.

ATTESTED
to be true copy
Advocate

A

Prayer:

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It is, therefore, humbly prayed that the order of dismissal of the appellant contains a number inconsistencies, contradictions, the charge is flimsy, vague and uncertain, the order is not based on evidence, the appellant has been denied his legal defence, due process of law was not followed while the enquiry is one sided and unilateral being conducted without association of the appellant, therefore, the impugned order being not sustainable in the eyes of law may pleased be set aside in the larger interest of law and justice and the appellant may kindly be reinstated in service with all back benefits. The appellant and his family will pray for your long life and prosperity.

Thanking you in anticipation.

Yours Obediently,

Dated:31-05-2022.

Zahid ur Rehman (Appellant)
Ex-constable No.668693
Resident of Mandori Tehsil Alizai
District Kurram..
Cell No. 0302-0077000.

ATTESTED
to be true copy
Advocate

26
Anex "D"

POLICE DEPTT: **KOHAT REGION**

ORDER.

This order will dispose of a departmental appeal, moved by the Ex-Constable Zahid-ur-Rehman of district Kurram against the punishment order, passed by DPO Kurram vide OB No. 119, dated 08.04.2022 whereby he was awarded major punishment of dismissal from service on the allegations of willful absence from lawful duties for a long time of 06 months without any leave or prior permission from his seniors.

He preferred appeal to the undersigned, upon which comments were obtained from DPO Kurram and his service record was perused. He was also heard in person in Orderly Room held in this office on 02.08.2022. During hearing the appellant did not give any plausible reason in his defense.

I have gone through the available record which indicates that the allegations leveled against the appellant are proved beyond any shadow of doubt and the same has been established by the enquiry officer in his findings. The appellant remained absent for a long time of 06 months for which publication was issued in leading newspaper to resume his duty but he did not bother to do so and till the date of dismissal his whereabouts were not known. Therefore, in exercise of the powers conferred upon the undersigned, his appeal being devoid of merits is hereby rejected.

Order Announced
02.08.2022

(TAHIR AYUB KHAN) PSP
Region Police Officer,
Kohat Region.

No. 11603 /EC, dated Kohat the 05.08.2022.

Copy to District Police Officer, Kurram for information and necessary action w/r to his office Letter No. 888/SRC, dated 17.07.2022. His Service Record is returned herewith.

SRC
18/8/2022.

(TAHIR AYUB KHAN) PSP
Region Police Officer,
Kohat Region.
3/8/22.

ATTESTED
to be true copy
Advocate

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قیمت 50 پ

130031

ایڈوکیٹ:

بارکونسل/ایسوسی ایشن نمبر: BC-09-1391

رابطہ نمبر: 0333-9166885

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

PESHAWAR BAR ASSOCIATION PBA

بعدالت جناب: چیئرمین سروس ٹریبونل پشاور

منجانب: Appellant	دعویٰ:
زاہد خان	علت نمبر:
بنام	مورخہ
آئی جی پی وغیرہ	جرم:
	تھانہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آن مقام پشاور کیلئے محمد فرقان یوسفزئی ASC ایڈووکیٹ ہائیکورٹ پشاور کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظرثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں۔ لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے

زاہد خان

المرقوم: 22-9-23

Accepted

Muhammad Furqan Yousafzai
Advocate Supreme Court of Pakistan
Cell # 0333-9166885

العبد — گواہ شد — العبد

مقام پشاور کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔