

20.07.2022

Nemo for appellant.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Notice be issued to appellant and his counsel for 26.09.2022 for arguments before D.B.



(Fareeha Paul)
Member(E)



(Rozina Rehman)
Member (J)

*Noted by
Nasir Afzal
12/8/2022*

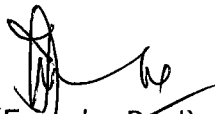
26.09.2022

Nemo for appellant.

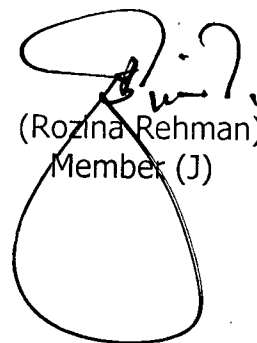
Muhammad Riaz Paindakheil learned Assistant Advocate General for respondents present.

Case was called time and again but neither the appellant nor his counsel turned up till rising of the Bench. Consequently, instant service appeal is hereby dismissed in default for none-prosecution. Parties are left to bear their own costs. File be consigned to the record room.

Announced.
26.09.2022



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

25.10.2021

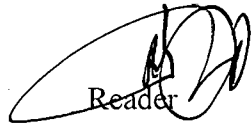
Counsel for the appellant present. Mr. Kabirullah Khattak,
Additional Advocate General for respondents present.

Arguments could not be heard due to learned judicial member
(Salah-ud-Din) is on leave. Adjourned. To come up for arguments
before the D.B on 23.02.2022.


(MIAN MUHAMMAD)
MEMBER (E)

23.02.2022

Due to retirement of the Worthy Chairman, the
Tribunal is defunct, therefore, case is adjourned to
20.05.2022 for the same as before.


Reader

20.05.2022

Appellant alongwith his counsel present.

Mr. Kabir Ullah Khattak learned Additional Advocate
General for the respondents present.

Learned counsel for the appellant requested for
adjournment on the ground that she has not prepared the brief
of the case. Adjourned. To come up for arguments on
20.07.2022 before the D.B.


(Rozina Rehman)
Member (J)


(Salah-Ud-Din)
Member (J)

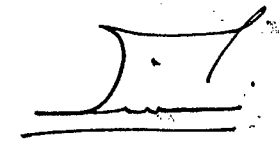
09.06.2021

Miss. Naila Jan, Advocate, for the appellant present. Mr. Azeem Ullah, H.C alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Former referred to order dated 16.09.2020 and stated that this matter was partially heard by a learned Bench of this Tribunal comprising Honourable Members (Rozina Rehman and Atiq-ur-Rehman Wazir). She, therefore, requests for posting of the matter before the same Bench.

The request of learned counsel does not seem to be unreasonable; therefore, the proceedings are adjourned to 17.06.2021 for the purpose.


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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)


17.06.2021

Counsel for the appellant present.

Mr. Adeel Butt, learned Additional Advocate General for respondents present.

Lawyers are on general strike, therefore, case is adjourned. To come up for arguments on 25.10.2021 for before the D.B.


(Rozina Rehman)
Member(J)



Chairman

28.01.2021

Counsel for the appellant and Muhammad Rashid, DDA alongwith Muhammad Farooq, Inspector (Legal) for the respondents present.

Former referred to order dated 16.09.2020 and stated that this matter was partially heard by a learned Bench of this Tribunal comprising Honourable Members (Rozina Rehman and Atiq-ur-Rehman Wazir). She, therefore, requests for posting of the matter before the same Bench.

The request of learned counsel does not seem to be ~~not~~ unreasonable; therefore, the proceedings are adjourned to 10.03.2021 for the purpose.


(Atiq-ur-Rehman Wazir)
Member(E)



Chairman


10.03.2021

Counsel for appellant present.

Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Former made a request for adjournment; granted. To come up for arguments on 9/6 /2021 before D.B.


(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

26.10.2020

Appellant present in person.

Mr. Kabir Ullah Khattak learned Additional Advocate General present.

Due to general strike, case is adjourned to 13.11.2020 for arguments before D.B.

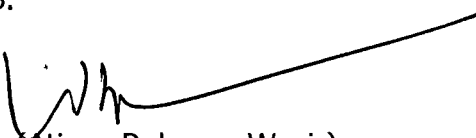

(Atiqur Rehman Wazir)
Member(E)


(Rozina Rehman)
Member (J)

13.11.2020

Junior to counsel for the appellant and Zara Tajwar, DDA for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 28.01.2021 for hearing before the D.B.


(Atiqur Rahman Wazir)
Member


Chairman


15.09.2020

Appellant with counsel present.

Mr. Muhammad Jan learned Deputy District Attorney for respondents present.

Partial arguments heard. To come up for remaining arguments on ~~16~~ 16.09.2020 before D.B.

(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

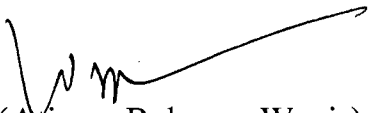
16.09.2020


Appellant with counsel present.

Mr. Muhammad Jan learned Deputy District Attorney for respondents present.

Arguments in respect of limitation heard but point of limitation requires further brief and in this regard, learned counsel for appellant requested for adjournment in order to produce case laws.

Both the parties are directed to assist the Tribunal on the point of limitation, on 01.10.2020 before D.B.



(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

01.10.2020

Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present.

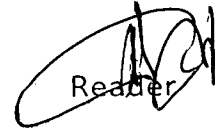
Learned Member (Judicial) is on leave, therefore, the matter is adjourned to 26.10.2020 for hearing in the light of order dated 16.09.2020.


(Atiq-ur-Rehman Wazir)
Member (Executive)

7.5.2020

Due to COVID19, the case is adjourned to

16/7/2020 for the same as before.


Reader

16.07.2020

Due to COVID-19, the case is adjourned to 20.07.2020
for the same.

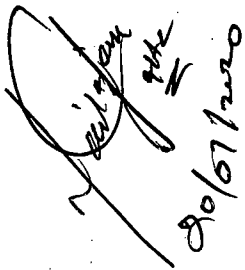

Reader

20.07.2020

Nemo for the appellant. Mr. Muhammad Jan, DDA
alongwith Yaqub Khan, H.C for the respondents present.

On the last occasion the matter was adjourned through
reader note. Notices for the next date, therefore, shall be issued
to appellant/learned counsel.

Adjourned to 15.09.2020 for arguments before the D.B.


20/07/2020


(Attiq-ur-Rehman)
Member


Chairman

20.01.2020

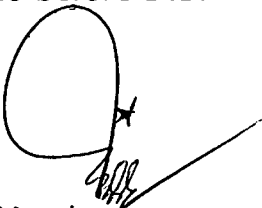
Due to general strike on the call of the Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Adjourned to 09.03.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

09.03.2020

None for the appellant present. Addl: AG for respondents present. Notices be issued to the appellant and his counsel. Adjourned. To come up for arguments on 07.05.2020 before D.B.


Member


Member

478/19

17.07.2019

Appellant in person and Mr. Muhammad Riaz Khan
Paindakhel, Asstt. AG for the respondents present.

Learned Asstt. AG requests for time to procure
written reply of the respondents. To come up for written
reply/comments on 05.09.2019 before S.B.

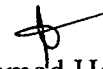
Chairman



05.09.2019

Appellant in person present. Mr. Usman Ghani, District
Attorney alongwith Mr. Farooq Khan, Inspector for respondents
present. Written reply on behalf of the respondents submitted
which is placed on file. To come up for rejoinder and arguments
on ~~21.11~~.2019 before D.B.

(Ahmad Hassan)
Member



21.11.2019

Learned counsel for the appellant present. Mr. Zia Ullah
learned Deputy District Attorney alongwith Mr. Farooq Inspector
for the respondents present. Learned counsel for the appellant
seeks adjournment.. Adjourned. To come up for rejoinder and
arguments on 20.01.2020 before D.B.

(Hussain Shah)
Member



(M. Amin Khan Kundi)
Member



17.05.2019

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ex-Constable) has filed the present service appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 28.09.2018 whereby he was awarded major punishment of dismissal from service.

Argued inter-alia that the punishment order is against the law; that the original impugned order was communicated to the appellant with some delay and that the departmental appeal dated 15.11.2018 filed by the appellant against the original impugned order was not responded.

In view of the above submissions, the present service appeal is admitted for regular hearing subject to all the legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 17.07.2019 before S.B.

Appellant Deposited
Security & Process Fee
17/5/19

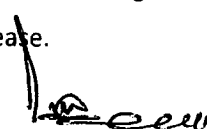



Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 478/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/04/2019	<p>The appeal of Mr. Muhammad Yaseen resubmitted today by Naila Jan 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 - 9/4/19.</p>
2-	10/04/19.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>17/05/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Muhammad Yaseen son of Gul Pazir Khan r/o P.O and village Kot Adil District Bannu received today i.e. on 28.03.2019 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Address of respondent no. 2 is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 2- In the memo of appeal places have been left blank which may be filled up.
- 3- Annexures-A and E of the appeal are illegible which may be replaced by legible/better one.

No. 609 /S.T,

Dt. 29-3- /2019

Naila Jan Adv. Peshawar.

*Remained all are
objections
resubmitted
by Naila Jan
9/4/2019*

29/3/19
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Dated: 28/03/2019

Peshawar.

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A. 478 /2019

Muhammad Yaseen

VERSUS

Provincial police Officer and others

INDEX

S#	Description of Documents	Annex	Pages
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3.	Condonation of Delay		7-8
4.	Addresses of Parties.		9
5.	Copy of Tribunal Judgment	"A"	10-13
6.	Copy of the charge sheet, statement of allegation, medical prescription and verification.	"B, C & D"	14-21
7.	Copy of impugned order and departmental appeal.	"E & F"	22-23
8.	Wakalatnam		24

Appellant

Through

Naila Jan

&

Huma Khan

Advocates, High Court
Peshawar.

Dated: 28/03/2019

D

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A _____/2019

Muhammad Yaseen S/O Gul Pazir Khan R/o
P.O and Village Kot Adil, District Bannu,
Khyber Pakhtunkhwa.

-----(*Appellant*)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa
Peshawar.
2. Deputy Inspector General of Police, Khyber
Pakhtunkhwa. *Peshawar*
3. Regional Police officer Bannu Region Bannu
4. District Police officer Bannu.

-----(*Respondents*).

**APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL
ACT, 1974 AGAINST THE ORDER DATED
28/09/2018 BY WHICH THE APPELLANT WAS
DISMISSED FROM SERVICE AND THE
INTERVENING PERIOD WAS TREATED AS
LEAVE WITHOUT PAY.**

PRAYERS:-

**ON ACCEPTANCE OF THE INSTANT APPEAL
THE IMPUGNED ORDER DATED 28/09/2018,**

adk

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MAY KINDLY BE SET ASIDE AND THE
APPELLANT MAY KINDLY BE REINSTATED
INTO SERVICE WITH ALL BACK BENEFITS.

Respectfully Sheweth,

The appellant submits as under:-

1. That the appellant was enlisted as constable in the police department and served the department with great zeal zeast, enthusiasm and to the entire satisfaction of the department.
2. That while performing duties all of a sudden the appellant become ill due to which the appellant could not perform his duties consequently the appellant was departmently proceeded and despite providing medical prescription the appellant was dismissed from service vide order dated 10/08/2016.
3. That the appellant after availing departmental remedies approached this Hon'ble tribunal by filling service appeal No.1249/2016 which was accepted vide judgment dated 20/02/2018 and the department in implementation of the

After

judgment, reinstated, the appellant. (Copy of the Tribunal Judgment is annexed as annexure "A")

4. That a denovo proceeding was initiated by issuing a charge sheet along with statement of allegations which was replied by the appellant during the proceedings medical prescription were provided to the inquiry officer which was duly verified by the MS.D.H.Q Teaching Hospital Bannu; However without providing any opportunity of proper defense or personal hearing the appellant was again dismissed vide impugned order dated 28/09/2013 without issuing final show cause notice nor did the inquiry report was provided to the appellant. (Copy of the charge sheet statement of allegation, medical prescription and verification are annexed as annexure B,C & D respectively)
5. That the impugned order dated 28/09/2018 was communicated to the appellant on _____ against which the appellant filed departmental appeal on 05/11/2018 and after the statutory period the same was not responded hence the appellant

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filling this service appeal on the following grounds. (Copy of impugned order and departmental appeal are annexed as annexure "E & F")

GROUND:-

- A. That the impugned order is against the law rules principal of Natural justice hence void ab-initio.
- B. That absence period was regularized by treating as leave without pay thereafter there remain no absence.
- C. That the judgment of this Hon'ble Tribunal was violated because the appellant was again condemn unheard.
- D. That even no final show cause notice was issued to the appellant which is also violation of law rules and judgment of this Hon'ble Tribunal.
- E. That article 10-A of the constitution of Islamic Republic of Pakistan 1973 has been violated by not providing opportunity of fair trial to the appellant.

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F. That the appellant seek permission to adduce other grounds during Arguments.

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

Any other relief not specifically asked for may also graciously be extended in favour of the appellant in the circumstances of the case.

Appellant

Through

Naila Jan

&

Huma Khan

Advocates, High Court
Peshawar.

Dated: 28/03/2019

NOTE:-

No such like appeal for the same appellant, upon the same subject matter has earlier been filed by me, prior to the instant one, before this Hon'ble Tribunal.

Huma Khan
Advocate

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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A _____/2019

Muhammad Yaseen

VERSUS

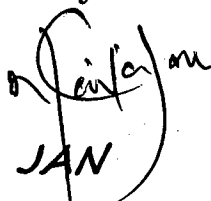
Provincial Police Officer and others

AFFIDAVIT

I, Muhammad Yaseen S/O Gul Pazir Khan R/o P.O and Village Kot Adil, District Bannu, Khyber Pakhtunkhwa, do hereby solemnly affirm and declare that all the contents of the **accompanied appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Tribunal.

DEPONENT

Identified By;



NAILA JAN

Advocate High Court
Peshawar.

**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A _____/2019

Muhammad Yaseen

VERSUS

Provincial police Officer and others

APPLICATION FOR CONDONATION OF DELAY

RESPECTFULLY SHEWETH:-

Application submits as under.

1. That the above mentioned appeal is filing before this Hon'ble Court in which no date is fixed for hearing so far.
2. That after filing the departmental appeal the appellant was assured time and again that the departmental appeal will be decided soon therefore the appellant was under the impression that the same will be accepted that why a few days delay accrue and filling this appeal which is condonable in the entrust of justice on the following grounds.

GROUND:

- A. That the impugned order is void order so no limitation runs again void order.

B. That rights of the appellant is attached with the instant appeal.

C. That there are number of precedents of Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities.

It is therefore requested that the limitation period (if any) may kindly be condone in the interest of justice.

Appellant

Through

Naila Jan

&

Huma Khan

Advocates, High Court
Peshawar.

Dated: 28/03/2019

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**BEFORE THE HONBLE KHYBER PAKHTUNKHWA
SERVICES TRIBUNAL PESHAWAR**

S.A _____/2019

Muhammad Yaseen

VERSUS

Provincial police Officer and others

ADDRESSES OF PARTIES

APPELLANT.

Muhammad Yaseen S/O Gul Pazir Khan R/o
P.O and Village Kot Adil, District Bannu,
Khyber Pakhtunkhwa.

RESPONDENTS

1. Provincial Police Officer, Khyber Pakhtunkhwa
Peshawar.
2. Deputy Inspector General of Police, Khyber
Pakhtunkhwa. *Peshawar.*
3. Regional Police officer Bannu Region Bannu
4. District Police officer Bannu.

Through *Appellant*
Naila Jan
&
Huma Khan
Advocates, High Court

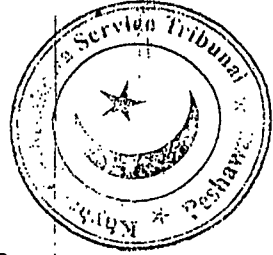
10

Amicus 'A'

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1249/2016

Date of institution ... 19.12.2016
Date of judgment ... 20.06.2018



Muhammad Yaseen S/o Gul Pazir Khan
R/o P.O & Village Kot Adil, District Bannu, Khyber Pakhtunkhwa.
... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. Regional Police Officer Bannu Range, Bannu.
 3. District Police Officer, Bannu.
 4. Deputy Inspector General of Police, Bannu.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 10.08.2016 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE AND DEPARTMENTAL APPEAL DATED 14.09.2016 FILLED HAS NOT BEEN RESPONDED WITH STATUTORY PERIOD.

Miss. Roed Khan, Advocate. .. For appellant.
Mr. Muhammad Jan, Deputy District Attorney .. For respondents.

M. J. Amin
20.6.2018

MR. MUHAMMAD AMIN KHAN KUNDI .. MEMBER (JUDICIAL)
MR. AHMAD HASSAN .. MEMBER (EXECUTIVE)

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: Appellant
alongwith his counsel present. Mr. Muhammad Jan, Deputy District Attorney
alongwith Mr. Muhammad Farooq, Inspector (legal) for the respondents also
present. Arguments heard and record perused.

ATTESTED

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[Handwritten signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

2. Brief facts of the case as per present appeal is that the appellant was serving in Police Department as Constable, and during service he was dismissed from service vide order dated 10.08.2016 by the competent authority on the allegation of absence from duty. The appellant filed departmental appeal on 14.09.2016 which was not decided within statutory period hence, the present service appeal on 19.12.2016.

3. Learned counsel for the appellant contended that the appellant was serving in Police Department as Constable. It was further contended that during service the appellant became ill. It was further contended that due to illness it was beyond the control of the appellant to attend the duty and in support of his illness, the appellant annexed the medical prescriptions with the ground of the appeal. It was further contended that the impugned order of dismissal from service of the appellant was passed by the competent authority on 10.08.2016 and the appellant came to know about the impugned dismissal order on 14.09.2016 therefore, the filed departmental appeal on the same day. It was further contended that when the departmental appeal was not decided within the statutory period of ninety days than he filed service appeal within time. It was further contended that neither the appellant was personally served for reply of the charge sheet/statement of allegation nor the appellant was issued any final show-cause notice and the whole proceedings of inquiry was initiated in the absence of the appellant ex-parte therefore, the appellant was condemned unheard. It was further contended that the appellant was also dismissed from service retrospectively i.e from the date of absence therefore, the impugned order is also void and liable to be set-aside and prayed for acceptance of appeal.

M. A. H. Khan
20.6.2018

[Handwritten Signature]

ATTESTED

[Handwritten Signature]
EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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4. On the other hand learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was absence from duty without any permission of the higher authority. It was further contended that the inquiry proceedings were conducted in accordance with law and the inquiry officer after recording the statement of witnesses reached the conclusion that the charge against the appellant stand proved therefore, the competent authority has rightly dismissed the appellant from service on the basis of inquiry report and prayed for dismissal of appeal.

5. Perusal of the record reveals that the appellant was dismissed from service vide order dated 10.08.2016 retrospectively i.e from the date of absence, meaning thereby that the impugned order is void and in this respect reliance is also made on 1985 SCMR page 1178. The record further reveals that the appellant has claimed in service appeal as well as in departmental appeal that he became serious ill and due to illness it was beyond his control to attend the duty. The record further reveals that the appellant has also annexed the medical prescriptions of his illness with the ground of appeal. The record also reveals that the impugned order was passed on 10.08.2016, the appellant also alleged in para-5 of the appeal that he came to know about the impugned order on 14.09.2016 and he filed departmental appeal on the same day which was not decided hence, the present service appeal within time on 19.12.2016 therefore, the present appeal is within time. The record further reveals that the inquiry/departmental proceeding was initiated ex-parte by the department in the absence of appellant and no opportunity of reply to charge sheet, statement of allegation and cross examination was provided to the appellant, meaning

*MC App: 111
20.6-2016*

ATTESSED

[Signature]
 Director
 Public Health & Family Welfare
 Government of Karnataka

[Signature]

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thereby that the appellant was condemned unheard. The record also reveals that the respondent-department has also not issued any show-cause notice to the appellant nor copy of the same is available on the record, therefore, the inquiry proceedings was not conducted by the respondent-department in accordance with rule and law. As such the impugned order is illegal and liable to be set-aside, therefore, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service. However, the respondent-department is at liberty to conduct de-novo inquiry within the period of ninety days in accordance with prescribed rule and law. The issue of back benefits will be subject to the outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.06.2018

(AHMAD HASSAN)
MEMBER

Muhammad Amin
(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Certified to be true copy
F. O. MEMBER
Khy. J. & S. Tribunal
Sarwar Miran, Feshwar

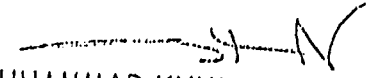
Date of Presentation of Application	03-07-18
Number of Sheets	1600
Copying Fee	10.00
Urgent	2.00
Total	12.00
Name of Officer	<i>[Signature]</i>
Date of Completion	03-07-18
Date of Delivery of Copy	03-07-18

14
B
CHARGE SHEET

I, MUHAMMAD KHURRAM RASHID, District Police Officer, Bannu, as competent authority, hereby charge you Constable Yaseen Khan No. 2055 for the purpose of denovo departmental enquiry proceedings as follows:-

- That you Constable Yaseen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28/08-2015 without any permission from the competent authority and were still absented.
- Such act on your part is against service discipline and amounts to gross misconduct/negligence in duty.

1. By reason of the above you appear to be guilty of misconduct under the Police Rules 19, 5 (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014) and have rendered yourself liable to all or any of the penalties specified in the said rules.
2. You are therefore, directed to submit your defense within 07 days of the receipt of this Charge Sheet to the Enquiry officer.
3. Your written defense, if any, should reach to 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 be taken against you.
4. You are directed to intimate whether you desire to be heard in person.
5. A statement of allegation is enclosed.


(MUHAMMAD KHURRAM RASHID) DSP
District Police officer,
Bannu.

charge sheet recieved

1-16

0332-5485577

-7-018

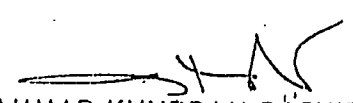


SUMMARY OF ALLEGATIONS:

I, MUHAMMAD KHURRAM RASHID District Police Officer, Bannu as competent authority, to initiate denovo departmental proceedings against Constable Yasceen Khan No. 2055, who has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014).

SUMMARY OF ALLEGATIONS:

- That Constable Yasceen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28-08-2015 without any permission from the competent authority and was still absented.
 - Such act on his part is against service discipline and amounts to gross misconduct/ negligence in duty.
1. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations DSP Carl Murad is appointed as Enquiry Officer.
 2. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within the targeted days after the receipt of this order.
 3. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(MUHAMMAD KHURRAM RASHID)PSP
District Police officer,
Bannu.

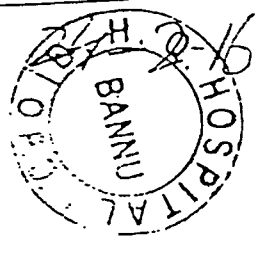
No. 301-302 ISRC dt-10-7-2018
Copies to :-

1. The Enquiry Officer
2. The Accused Officer/Official.



16

113243



Autops

Sciatica (L)

2 Tabs Muscoril
12/1

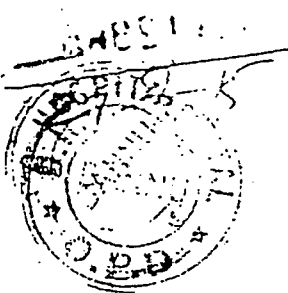
2 Tabs Bexin
12/1/11

31 Tabs Neuromet
12/1/11
Advised rest for
04 months

1 + 1 + 1
(3) Drapored

(4) Morax

17



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△ Sadatuqa

1) CIGAS Numbered from 125

2) Cap Celbox 200

3) MS Meeting card 2071

Advised rest for 05 months

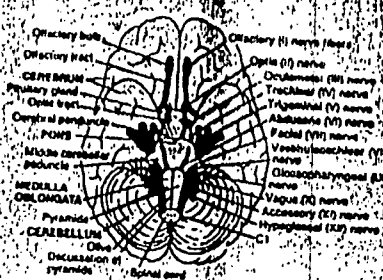
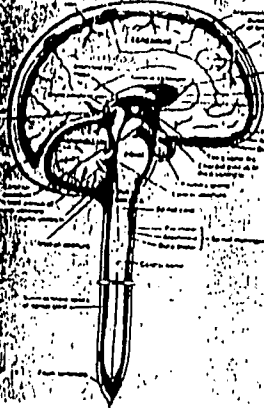
③ Approved

PATIENT'S HISTORY

ABRAR DIAGNOSTIC CENTRE

Abrar Diagnostic Centre, 312-E, Charing Cross, Peshawar Road, Rawalpindi
Tel: 5470205, 5473543, 5167016 Fax: 051-8317450 Mob: 0331-5261588
E-mail: mri_ct@hotmail.com, abramri@hotmail.com, Web: www.abramri.com

108



Patient Name M. Jabeen

Date of Birth 30yr Sex M Weight _____

Short History Bacloache 7 month Rt leg pain

Presenting Symptoms Bacloache

Purpose & MRI for further evaluation

Date 12-11-15 Referring Dr. Maj Gen Mohamri Lt Lt/Spine
Naseem Khan

H/O
 NO ~~HTN~~ HTN/DM/TB
 NO H/O of Surgery
 NO H/O of trauma

Handwritten signature/initials

NO MRI or CT scan done

Signature

Professor Dr. Khaleeq uz Zaman
 DVA(Iqbalia) MBBS (Pesh), LRCP (Lond), MRCS (Eng), DCPS (HPE)
 FRCS (Glas), FRCS (Ed), FRCS Neurosurgery (Ed), FCPS (Neurosurgery)
 Consultant Neurosurgeon

(9)

Head, Dept of Neurosurgery
 Qaid-e-Azam Postgraduate Medical College
 Pakistan Institute of Medical Sciences, Islamabad.
 Phone : 051-9260195, 9261265, Ext: 2266, 2445

All Medical Centre
 F-8 Markaz, Islamabad
 Ph : 051-2253313-15, 8090200
 Res: 051-9261166, Fax: 051-2256237

9.11.2015

39 ^{السن}

% ^{پوشاک}
 RT ^{15/12}

MRE 4/5
 Low
 Cori R

- ① ^{کف}
- ② ^{سندھ}
1+1+1
- ③ ^{ڈراپ}
2+2
- ④ ^{مونا}
1+1+1
- ⑤ ^{نرسو}
1+1+1

Handwritten signature

تعطیل: ہفتہ، اتوار

ABRAR DIAGNOSTIC CENTRE

SH. BAKHTIAR AHMAD
B.B.S., F.C.P.S. PGDHM, F.M.A.S)
Managing Director

Radiologist
Dr. Abid Ali Qureshi
F.C.P.S
Head of Radiology Dept.
The CH & ICH, Lahore

Reg. No. : 7136
Patient Name : Muhammad Yaseen
Patient Age : 30 Years / Male
Patient R. Date : 12.11.2015

MRI LUMBO-SACRAL SPINE

Discussion: T1W and T2W sequences were performed in sagittal and axial planes through Lumbo-sacral spine.

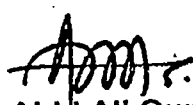
Straightening of lumbar curvature is seen indicative of muscular spasm. Marrow signals are normal. Lower dorsal cord and conus appear normal. All visualized inter-vertebral discs are well hydrated and show normal reversal of MR signal on T1W/T2W images.

At L4-L5, diffuse central and right postero-lateral disc bulge is seen compressing upon right sided neural tissue.

Rest of visualized inter-vertebral discs show no neural compromise. No evidence of spondylodiscitis or mass lesion. Paraspinal soft tissues are unremarkable.

IMPRESSION:

- Right postero-lateral disc bulge at L4-L5 compressing upon right sided neural tissue.


Dr. Abid Ali Qureshi
F.C.P.S.
Head of Radiology Dept.



Thank you for your referral. This is a computer-generated report and is based on image interpretation only. It cannot be considered as medico-legal tender or used in the court of law.

312-E, Charing Cross, Peshawar Road, Rawalpindi.
Tel: 5470205, 5473543, 5167015, Fax: 051-8317450, Mob: 0331-5261588
E-mail: mri_ct@hotmail.com, abramri@gmail.com, Web: www.abramri.com

21

Amir D

MEDICAL SUPERINTENDENT DHQ;TEACHING HOSPITAL BANNU.

No 256/C /DHQ;BU; DATED BANNU 19 /07/2018

TO

The Dy: Superintendent Police Officer
Cannt Circle Bannu.

Subject: - MEDICAL TREATMENT VERIFICATION.

Memo :-

Reference Your letter NO 256/C dated 19/07/2018.

It is stated that the Medical rest in respect of Yaseen khan NO 2055 duly verified from the Hospital record and concerned Doctor.

Medical Superintendent
DHQ: Teaching Hospital Bannu.

257
31/7/18

Medical Superintendent
DHQ: Teaching Hospital Bannu.

[Signature]

Better Copy No.22

Order:-

This order of the undersigned will dispose of the de-novo departmental proceeding. Initiated against accrued constable Mohammad Yasin No.2055 in the light of Khyber Pakhtunkhwa service tribunal Peshawar judgment dated 20/06/2018 under General proceeding of police rule 1975. As amended vide Khyber Pakhtunkhwa gazette Notification No.27 of August 2014 for committing the following commission/Commissions.

That constable Yaseen Khan No.2055 while posted to police lines, Bannu left the station on duty on dated 28/08/2018 without any permission from the competent authority and was absente.

Charge Sheet and Statement of allegation were issued to him. Sp, inv: Bannu was appointed as Enquiry officer to Scrutinize the conduct of the accused official. The enquiry officer submitted finding report and reported that the allegations leveled against the accused Constable Mohammad Yasin No. 2055 have been proved, placed on file.

In the light of de-novo departmental enquiry proceedings, the accused officer is found guilty of the charges leveled against him as he badly failed to prove his innocence. Hence, I Yasir Afridi, District Police Officer, Bannu in exercise of the power vested in me under police rule 1975 (as amended vide Khyber Pakhtunkhwa gazette notification No.27the of August, 2014), hereby awarded major punishment of "dismissal from service" with immediate effect. Absence period treated as leave without pay.

OB No. 849

Dated: 26/09/2018

**(Yasir Afridi) PSP
District Police Officer Bannu.**

No12717.21/SRC dated Bannu, the 28/09/2018.

Copy of above is submitted for favour of information to the deputy inspector general of police, enquiry and inspections, Khyber Pakhtunkhwa, Peshawar w/r to his office memo: No. 1141/E&I, dated 31/08/2018.

1. Reader, pay office, SRC. OASI for compliance.
2. Fauji Misal Clerk alongwith enquiry file for placing it in the Fauji Missal of the concerned official.

**(Yasir Afridi) PSP
District Police Officer Bannu.**



ORDER:

This order of the undersigned will dispose of the de-novo departmental proceeding, initiated against accused Constable Mohammad Yasin No. 2055 in the light of Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 20.06.2018 under general proceeding of police rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No. 27th of August 2014) for committing the following commission/omissions:-

- That Constable Yasin Khan No. 2055 while posted to police lines, Bannu left the station on duty on dated 28-03-2015 without any permission from the competent authority and was not absent.

Charge sheet and statement of allegation were issued to him. SP, Inv: Bannu was appointed as Enquiry Officer to scrutinize the conduct of the accused official. The Enquiry Officer submitted finding report and reported that the allegations leveled against the accused Constable Mohammad Yasin No. 2055 have been proved, placed on file.

In the light of de-novo departmental enquiry proceedings, the accused officer is found guilty of the charges leveled against him as he badly failed to prove his innocence. Hence, I, Yasir Afridi, District Police Officer, Bannu in exercise of the power vested in me under Police Rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No. 27th of August 2014), hereby awarded major punishment of "Dismissal from Service" with immediate effect. Absence period treated as leave without pay.

OB No. 849
Dated: 26.09 /2018.

(YASIR AFRIDI) PSP
District Police Officer
Bannu.

No. 12217.21 /SRC dated Bannu, the 28/9 /2018.

Copy of above is submitted for favor of information to the Deputy Inspector General of Police, Enquiry & Inspections, Khyber Pakhtunkhwa, Peshawar w/r to his office Memo: No. 1144/ETI, dated 31.08.2018.

1. Reader, Pay officer, SRC, OASI for compliance.
2. Fauji Misal Clerk along with enquiry file for placing it in the Fauji Misal of the concerned official.

(YASIR AFRIDI) PSP
District Police Officer
Bannu.

بکھنور جناب والا شان ریجنل پولیس آفیسر صاحب بہادر بنوں ریجن بنوں

اپیل: استدعا یہ کہ سائل کو جناب DPO صاحب بنوں نے بحوالہ OB نمبر 849 مورخہ 26-09-18 Denove انکوآری کے تحت فائل شوکا زائشو کیے بغیر ملازمت سے ڈسمس کیا ہے۔ اور جناب SP انوسٹی گیشن بنوں کے ایک فرضی اور غلط فائل رپورٹ کو حقیقت تسلیم کرتے ہوئے سائل کو نہ تو دفاع موقع دیا۔ اور نہ ہی آخری فائل شوکا زائش ایشو کیا۔ حالانکہ میری انکوآری ابتداء میں مراد علی خان DSP کینٹ صاحب کو مارک ہوئی تھی۔ جس نے DHQ ہسپتال بنوں سے میری بیماری کے ڈاکٹری کاغذات کی ویریفیکیشن رپورٹ بھی حاصل کی۔ اس ویریفیکیشن کی فوٹو کاپی صداقت کے لیے لف ہمراہ ہے۔ میرے ساتھ ظلم ہوا ہے علاج معالجہ میرا قانونی حق بنتا ہے لہذا بحالی ملازمت بعہدہ کانشیبل کی اپیل کرتا ہوں۔

جناب عالی! کم ترین آجناب کے حضور عاجزانہ اپیل کرتا ہے۔

1۔ کہ سائل بوجہ بیماری زیر علاج ڈیوٹی سے غیر حاضر تصور ہوا اور ملازمت سے ڈسمس کیا گیا حالانکہ چاہیے تھا کہ میری بیماری کے بارے DHQ ہسپتال بنوں سے ویریفیکیشن کرتے لیکن ایسا نہ ہوا۔ بندہ نے RPO صاحب کو اپیل کی مگر وہ بھی مسترد ہوئی۔ تو سائل مجبوراً سروس ٹریبونل کے دروازے پر پہنچا سروس ٹریبونل نے مورخہ 20-06-18 سائل کو ملازمت پر بحال کرتے ہوئے DENOVE انکوآری کے احکامات صادر کیے۔

2۔ جناب DPO صاحب بنوں نے سائل کو چارج شیڈ جاری کیا۔ جس کا معقول جواب پیش کیا۔ اور انکوآری کے لئے مراد علی خان DSP کینٹ مقرر ہوا۔ جنہوں نے میری بیماری بارے کاغذات کی DHQ ہسپتال بنوں سے ویریفیکیشن حاصل کی۔ جس کی فوٹو کاپی لف ہمراہ کی جاتی ہے۔ لیکن نامعلوم وجوہات کی بناء پر میری انکوآری جناب SP انوسٹی گیشن کو مارک ہوئی۔ جنہوں نے ایک فرضی اور غیر منصفانہ رپورٹ تیار کر کے جناب DPO صاحب بنوں نے مجھے دوبارہ ڈس مس کیا۔ اور مجھے کوئی فائل شوکا زائشو نہ کیا نہ ہی پیشی کا موقع دیا۔

علیجاہ! میرے ساتھ ظلم ہوا۔ علاج معالجہ میرا قانونی حق بنتا ہے، دیدہ دانستہ ڈیوٹی سے غیر حاضر نہیں ہوا ہوں۔ لہذا عاجزانہ خواستگار ہوں کہ سائل کو بعہدہ کانشیبل بحال کرنے کا حکم صادر فرمایا جاوے۔ ماتحت پروری ہوگی۔

مورخہ: 26/09/18

سائل Ex کانشیبل محمد یاسین نمبر 2055 پولیس لائن بنوں

حال ولدیت گل پذیر خان سکنہ کوٹ عادل

رابطہ نمبر: 0332-5485577

Amir Khan

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR
Appeal No. 478/2019.

Muhammad Yaseen S/o Gul Pazir Khan
R/o P.O and Village Kot Adil,
District Bannu, Khyber Pakhtunkhwa

(APPELLANT)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Bannu Region, Bannu
4. District Police Officer, Bannu

(RESPONDENTS)

INDEX

S.No.	Description of Documents	Annexure	Page
1	Para-wise Reply		1-2
2	Affidavit		3
3	Authority Letter		4
4	Copy of judgment	"A"	5-8

Respondents


Through

Addl: Advocate General /Government Pleader
Service Tribunal K.P.K Peshawar

Muhammad Yaseen S/o Gul Pazir Khan
R/o P.O and Village Kot Adil,
District Bannu, Khyber Pakhtunkhwa.

(APPELLANT)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Bannu Region, Bannu
4. District Police Officer, Bannu

(RESPONDENTS)

PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

- 1) That the appeal of the appellant is badly time-barred.
- 2) That the appeal is not maintainable in its present form.
- 3) That the appellant has concealed the actual facts from this Honorable Tribunal.
- 4) That the appeal is bad in law due to mis-joinder and non-joinder of necessary parties.
- 5) That the appellant has approached the Honourable Tribunal with unclean hands.
- 6) That the appellant has got no cause of action and locus-standi to file the instant appeal.
- 7) That the appellant has been estopped by his own conduct.

OBJECTIONS ON FACTS

- (1) Pertains to record. Hence, needs no comments.
- (2) Incorrect. The appellant did not adopt proper procedure required according to land laws for medical treatment/medical leave. He did not bother to inform his immediate senior officer and was deliberately absented himself from Govt. duty without any leave or prior permission. Therefore, the appellant was proceeded departmentally.
- (3) Correct to the extent that the appellant filed appeal before the Honourable Service Tribunal which was partially accepted on 20.06.2018, with the directions to the Respondent Department to reinstate the appellant into service and conduct de novo inquiry within a period of 90 days in accordance with prescribed rules and law. (Copy of judgment is annexed as annexure-A).
- (4) Correct to the extent that de novo proceeding was initiated against the defaulter constable as per the direction of Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar. Charge sheet along with statement of allegations were issued to the delinquent police official but the appellant was badly failed to substitute his innocence about his long span (more than 11 months) during which he has not communicated to his senior officers about his illness. After proper

departmental proceedings against the appellant, the allegations leveled against the defaulting officer has been proved beyond any shadow of doubt. On the recommendations of the inquiry officer, major punishment from dismissal from service was awarded according to prescribed rules/laws.

(5) Pertains to record. Hence, needs no comments.

The respondent department also submit their reply on the following grounds

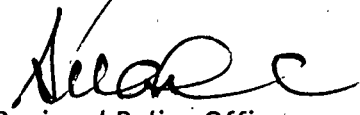
OBJECTIONS ON GROUNDS.

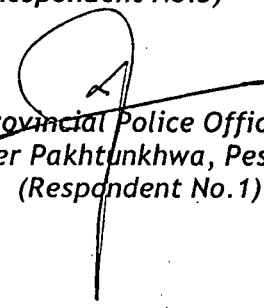
- A. Incorrect. The order issued by Respondent No.4 is speaking order was issued according to law/rules.
- B. Incorrect. The appellant was awarded major punishment of dismissal from service on account his deliberate absence from Government duty.
- C. Incorrect. The appellant was provided all legal opportunities i.e. self defense etc. but he badly failed to rebut the allegations leveled against him. The Respondent Department implemented the judgment of this Honourable Court as it is.
- D. Incorrect. The Respondent Department provided all opportunities of self defense but he badly failed to substantiate his innocence.
- E. Incorrect. The Respondent Department did not violate any kind of fundamental rights granted by the Constitution of Islamic Republic of Pakistan 1973. The Respondent Department provided all opportunities of self defense to the appellant.
- F. That the respondents may be allowed to advance any other grounds & material as evidence in the time of arguments.

Prayer:

In view of the above scenario, it is humbly prayed that the appeal of appellant is not maintainable in the eye of law, may kindly be dismissed with costs.

24 ✓
District Police Officer,
Bannu,
(Respondent No.4)


Regional Police Officer,
Bannu Region, Bannu
(Respondent No.3)


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

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR
Appeal No. 478/2019.

Muhammad Yaseen S/o Gul Pazir Khan
R/o P.O and Village Kot Adil,
District Bannu, Khyber Pakhtunkhwa

(APPELLANT)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Bannu Region, Bannu
4. District Police Officer, Bannu

(RESPONDENTS)

AUTHORITY LETTER.

Mr. Muhammad Farooq Khan, Inspector Legal Bannu is hereby authorized to appear before The Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar on behalf of the undersigned in the above cited case.

He is authorized to submit and sign all documents pertaining to the instant appeal.

20
District Police Officer,
Bannu.
(Respondent No.4)

Regional Police Officer,
Bannu Region, Bannu
(Respondent No.3)

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

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR
Appeal No. 478/2019.

Muhammad Yaseen S/o Gul Pazir Khan
R/o P.O and Village Kot Adil,
District Bannu, Khyber Pakhtunkhwa

(APPELLANT)

VERSUS

1. Provincial Police Officer; Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Bannu Region, Bannu
4. District Police Officer, Bannu

(RESPONDENTS)

AFFIDAVIT

I, **Muhammad Farooq Khan**, Inspector Legal representative for Respondent Nos. 1, 2, 3 & 4, do hereby solemnly affirm and declare that the contents of the accompanying comments submitted by me are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.



DEPONENT
11101-1483421-1

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1249/2016

Date of institution ... 19.12.2016
Date of judgment ... 20.06.2018



Muhammad Yaseen S/o Gul Pazir Khan
R/o P.O & Village Kot Adil, District Bannu, Khyber Pakhtunkhwa.
... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. Regional Police Officer Bannu Range, Bannu.
 3. District Police Officer, Bannu.
 4. Deputy Inspector General of Police, Bannu.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL
ACT, 1974 AGAINST THE ORDER DATED 10.08.2016
WHEREBY THE APPELLANT WAS DISMISSED FROM
SERVICE AND DEPARTMENTAL APPEAL DATED 14.09.2016
FILLED HAS NOT BEEN RESPONDED WITH STATUTORY
PERIOD.

Miss. Roed Khan, Advocate.
Mr. Muhammad Jan, Deputy District Attorney

.. For appellant.
.. For respondents.


MR. MUHAMMAD AMIN KHAN KUNDI
MR. AHMAD HASSAN

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

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: Appellant
alongwith his counsel present. Mr. Muhammad Jan, Deputy District Attorney
alongwith Mr. Muhammad Farooq, Inspector (legal) for the respondents also
present. Arguments heard and record perused.

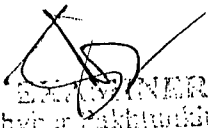
ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

2. Brief facts of the case as per present appeal is that the appellant was serving in Police Department as Constable and during service he was dismissed from service vide order dated 10.08.2016 by the competent authority on the allegation of absence from duty. The appellant filed departmental appeal on 14.09.2016 which was not decided within statutory period hence, the present service appeal on 19.12.2016.

3. Learned counsel for the appellant contended that the appellant was serving in Police Department as Constable. It was further contended that during service the appellant became ill. It was further contended that due to illness it was beyond the control of the appellant to attend the duty and in support of his illness, the appellant annexed the medical prescriptions with the ground of the appeal. It was further contended that the impugned order of dismissal from service of the appellant was passed by the competent authority on 10.08.2016 and the appellant came to know about the impugned dismissal order on 14.09.2016 therefore, the filed departmental appeal on the same day. It was further contended that when the departmental appeal was not decided within the statutory period of ninety days than he filed service appeal within time. It was further contended that neither the appellant was personally served for reply of the charge sheet/statement of allegation nor the appellant was issued any final show-cause notice and the whole proceedings of inquiry was initiated in the absence of the appellant ex-parte therefore, the appellant was condemned unheard. It was further contended that the appellant was also dismissed from service retrospectively i.e from the date of absence therefore, the impugned order is also void and liable to be set-aside and prayed for acceptance of appeal.

ATTESTED


 DEPUTY CLERK
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

4. On the other hand learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was absence from duty without any permission of the higher authority. It was further contended that the inquiry proceedings were conducted in accordance with law and the inquiry officer after recording the statement of witnesses reached the conclusion that the charge against the appellant stand proved therefore, the competent authority has rightly dismissed the appellant from service on the basis of inquiry report and prayed for dismissal of appeal.

10.10.18

5. Perusal of the record reveals that the appellant was dismissed from service vide order dated 10.08.2016 retrospectively i.e from the date of absence, meaning thereby that the impugned order is void and in this respect reliance is also made on 1985 SCMR page 1178. The record further reveals that the appellant has claimed in service appeal as well as in departmental appeal that he became serious ill and due to illness it was beyond his control to attend the duty. The record further reveals that the appellant has also annexed the medical prescriptions of his illness with the ground of appeal. The record also reveals that the impugned order was passed on 10.08.2016, the appellant also alleged in para-5 of the appeal that he came to know about the impugned order on 14.09.2016 and he filed departmental appeal on the same day which was not decided hence, the present service appeal within time on 19.12.2016 therefore, the present appeal is within time. The record further reveals that the inquiry/departmental proceeding was initiated ex-parte by the department in the absence of appellant and no opportunity of reply to charge sheet, statement of allegation and cross examination was provided to the appellant, meaning

ATTESTED

[Handwritten Signature]
 Peshawar

thereby that the appellant was condemned unheard. The record also reveals that the respondent-department has also not issued any show-cause notice to the appellant nor copy of the same is available on the record, therefore, the inquiry proceedings was not conducted by the respondent-department in accordance with rule and law. As such the impugned order is illegal and liable to be set-aside, therefore, we partially accept the appeal, set-aside the impugned order and reinstate the appellant into service. However, the respondent-department is at liberty to conduct de-novo inquiry within the period of ninety days in accordance with prescribed rule and law. The issue of back benefits will be subject to the outcome of the de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.06.2018

Ed/- M. Anwar Khan Kundi
Member

Ed/- Ahmad Hassan
Member

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 22-6-18
 Number of Words 1600
 Copying Fee 10-
 Urgent -
 Total 10-
 Name of Applicant [Signature]
 Date of Copying 10-7-18
 Date of Delivery 10-7-18



Office of the Deputy Inspector General of Police
Enquiry & Inspections
Khyber Pakhtunkhwa, Peshawar.

02nd reminder

No. 1189 /E&I, dated Peshawar the 17 /09/2018

To: The District Police Officer,
Bannu

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC MUHAMMAD YASEEN NO. 2055

7869
25-9-18

Memo:

Please refer to this office letter No. 1010/E&I dated 02.08.2018 and reminder No. 1144/E&I dated 31.08.2018, on the subject cited above.

2. Reply into the subject matter is still awaited from your office, which may please be sent to this office, for the perusal of Worthy IGP.

For Deputy Inspector General of Police
Enquiry & Inspection
Khyber Pakhtunkhwa
Peshawar

SRC
For inspection &
compliance.

2. ✓
District Police Officer
BANNU
24/09/18

(2)

ORDER:

This order of the undersigned will dispose of the de-novo departmental proceeding, initiated against accused Constable Mohammad Yasin No. 2055 in the light of Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 20.06.2018 under general proceeding of police rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014) for committing the following commissions/omissions:-

- That Constable Yaseen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28-08-2015 without any permission from the competent authority and was still absented.

Charge sheet and statement of allegation were issued to him. SP, Inv: Bannu was appointed as Enquiry Officer to scrutinize the conduct of the accused official. The Enquiry Officer submitted finding report and reported that the allegations leveled against the accused Constable Mohammad Yasin No. 2055 have been proved, placed on file.

In the light of de-novo departmental enquiry proceedings, the accused officer is found guilty of the charges leveled against him as he badly failed to prove his innocence. Hence, I, Yasir Afridi, District Police Officer, Bannu in exercise of the power vested in me under Police Rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014), hereby awarded major punishment of "Dismissal from Service" with immediate effect. Absence period treated as leave without pay.

OB No. 849
Dated: 26.09 /2018.

1

(YASIR AFRIDI) PSP
District Police Officer
Bannu.

No. 12717-21 /SRC dated Bannu, the 28/9 /2018.

Copy of above is submitted for favor of information to the Deputy Inspector General of Police, Enquiry & Inspections, Khyber Pakhtunkhwa, Peshawar w/r to his office Memo: No. 1144/E&I, dated 31.08.2018.

1. Reader, Pay officer, SRC, OASI for compliance.
2. Fauji Misal Clerk along with enquiry file for placing it in the Fauji Missal of the concerned official.

2 ✓

(YASIR AFRIDI) PSP
District Police Officer
Bannu.

09/04/18



Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.



No. /E&I, dated Peshawar the 02 /08/2018

To: The District Police Officer,
Bannu.

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC MUHAMMAD YASEEN NO. 2055

Memo:

6651
16-8-18

Please refer to your office letter No. 9711 dated 27.07.2018, on the subject cited above.

2. Denovo departmental enquiry against Ex-FC Muhammad Yaseen No. 2055 may be conducted through Mr. Abdul Khai, SP/Investigation Bannu and final outcome be communicated to this office, on or before 20.08.2018, before issuance of formal order, for the perusal of Worthy IGP.

(DR. MUHAMMAD ABID KHAN), psp.
Deputy Inspector General of Police
Enquiry & Inspection
Internal Accountability
Khyber Pakhtunkhwa,
Peshawar

No: 1011-12 /E&I,
Copy of above is forwarded for information to:-
1. The Regional Police Officer, Bannu.
2. Mr. Abdul Khai, SP/Investigation Bannu.

No. 2055-FC dt 07/18 /-18
DPO I.P. Bannu
SP/Inv. Bannu

(DR. MUHAMMAD ABID KHAN), psp.
Deputy Inspector General of Police
Enquiry & Inspection
Internal Accountability
Khyber Pakhtunkhwa,
Peshawar

For enquiry & report.

R.P.O. Bannu
7/8

SP INV
For Enquiry and report

District Officer
16/8/18



6

OFFICE OF THE
SUPERINTENDENT OF POLICE,
INVESTIGATION, BANNU.

Phone No: 0928-9270178.

No. _____

Dated: ____/08/2018.

Subject: - **FINDINGS: DE-NOVO DEPARTMENTAL ENQUIRY**

Reference: The DIG Enquiry & Inspection Office Memo: No. 1010-12/E&I, dated 02.08.2018 and RPO Bannu office Endstt: No. 2095/EC, dated 07.08.2018.

Accused:- Ex-Constable Mohammad Yasin No. 2055 of District Police Bannu.

Allegations:- Constable Mohammad Yasin No.2055 of District Police Bannu was dismissed by the District Police officer Bannu vide OB No. 605, dated 10.08.2016 on the following allegations:-

1. That he, while posted to Police Line Bannu, left his station of duty on 28.08.2015 without any prior permission of the competent authority and is still absent.

Accordingly the said delinquent police constable Mohammad Yasin No. 2055 was proceeded against departmentally under KPK Police Rules 1975. He was charge sheeted based upon the summary of allegations mentioned above vide No. 500-501 dated 06.11.2015 and the then DSP HQRs Bannu was appointed as enquiry officer.

The enquiry officer conducted proper departmental enquiry proceedings and after thorough probe, submitted his findings wherein the said delinquent police constable was found guilty of the misconduct, hence he was dismissed from service by the DPO Bannu vide OB No. 605, dated 10.08.2016 as mentioned above.

In compliance with the judgment dated 20.06.2018 of Service Tribunal KPK Peshawar, the said constable was re-instated in-to service conditionally and purely for the purpose of DE-novo departmental enquiry proceedings and the undersigned was appointed as inquiry officer for initiating De-novo enquiry against the delinquent Police constable.

Proper enquiry proceedings were carried out. statements of the following Police officials were recorded.

1. Accused Constable
2. MHC Police Line Bannu
3. OHC Police Office Bannu
4. Pay Clerk of DPO Office Bannu
5. DFC of Police Station Saddar.

7

QUESTIONS/ANSWERS BETWEEN THE EO AND ACCUSED EX CONSTABLE.

Reply No. 01:- I was appointed as constable on 15.07.2009.

Reply No. 02:- I became ill on 28 august 2015.

Reply No. 03:- I was posted in police line Bannu General Duty.

Reply No. 04:- No I never inform my immediate incharge i.e MHC Asghar Khan

Reply No. 05:- No I Never informed regarding my illness.

Reply No. 06:- No I Never went to Police Hospital

Reply No. 07:- No I Never carried out any operation

Reply No. 08:- I was suffering from severe back pain.

Reply No. 09:- Yes.

Reply No. 10:- I had gone DHQ Hospital but I never informed any one in police line regarding my illness and bad rest.

Reply No. 11:- I was absent for eleven Months from Govt: Duty.

Reply No. 12:- No, during this course I never informed Moharrar Line or anybody else.

Reply No. 13:- No I never inform Police Line by myself or through somebody else.

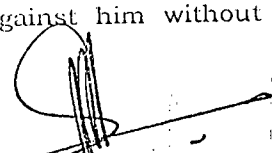
Reply No. 14:- During my service I have twicely absented from Govt: duty
1. 01 Month.
2. 10/15 days.

Reply No. 15:- No I had not informed Moharrar Line or Police Line staff through my cell or PTCL number.

Moreover a opportunity of cross question/examination was given but he did not avail

CONCLUSION.

- 1) He failed to give any cogent reason about his long span more than eleven months, during which he had not informed his senior officer about his illness.
- 2) After provisionally re-instatement to his service he was required to have immediatly submission of medial documents the plea he has taken despite of the effect that he attended the hospital.
- 3) The defective official during the course of question answer has admitted the misconduct on his part.
- 4) According to Police Rules (Chapter 8 Para 4) Leave on Medical grounds can be extended up to three Months, but the delinquent official remained absent for eleven (11) months without obtaining permission or extension of leave. He could not produce Medical documents i.e admission and discharge slips in support of his plea reasons for his absence.
- 5) In the light of above discussion, attached document, question and answer the allegations leveled against constable Muhamamd Yasin No. 2055 mentioned in the charge sheet have been proved against him without any shadow of doubt, please.


(ABDULHAYEE KHAN)
Superintendent of Police,
Investigation, Bannu.
Enquiry Officer.

(9) چارج شیٹ - DPO صاحب بنوں

CHARGE SHEET

صاحب بنوں کی CHARGE SHEET مندرجہ کنٹینر حملہ کنندگان
صاحب ذیل ہے -

1) یہ کہ صاحب نے کہیں بنا قانون کی خلاف ورزی نہیں کی ہے۔
اور اپنی ڈیوٹی میں فیاضیت اور ایمانداری کی بنا پر اس پر انجام دیا گیا ہے۔

2) یہ کہ 2016ء سے صاحب اپنے بے گناہی ثابت کرنے کی
کوشش کی ہے لیکن جانچ سٹیٹ میں جو الزامات صاحب
کے اوپر لگائے گئے ہیں وہ اس وقت، فورسافٹ اور من گھڑت
اور اس پر ظہر قانون بن چکا۔ صاحب کا ریکارڈ مفاد
شکاف ہے۔ اور صاحب نے کہیں اپنی ڈیوٹی سے کوتاہی، نفرت
نہ کی ہے۔

3) یہ کہ سرورس ٹریڈنگ کے فیصلے سے یہ بات ماہر ٹیکسٹائل
چکا کہ صاحب کا قدف ریکارڈ پر کسی قسم کا کوئی عبور
نہ ہے۔ یہ میں یہ جو مجھ سے اس سرورس ٹریڈنگ اور جانچ سٹیٹ
میں مزید کارروائی قابل دقت ہے۔ اور قابل اعتراض ہے۔

4) یہ کہ صاحب نے اپنے سرورس ٹریڈنگ کے بارے میں اور جانچ سٹیٹ کا قدف
کس قسم کا کوئی کیبلنگ نہیں ہے۔

مستند وار طلب

1) یہ کہ صرف 2015ء اور 2016ء کے سالوں میں اور جو یہ صاحب
میں؟ صاحب کے زرخ سے DHA ہسپتال میں کیا ہوا ہے۔ اور
ڈی آئی کے بیٹری میں کی سنجی سے تائید کی۔ واضح ہے کہ
سٹیٹ میں قانونی کے زرخ سے جا رہا تھا کہ صاحب نے اجازت
کہ اپنی میاں کے بارے میں سٹیٹ میں کوئی تبدیلی نہ ہو۔ اور
سٹیٹ میں ان کے اجازت سے DHA ہسپتال میں کیا گیا تھا لیکن سٹیٹ

SP Inv: Bannu

I, MUHAMMAD
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Bannu left
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1. By r
Police Ru
No. 27th
penalt:

2. rec
?

سوال - جب آپ یہاں آئے تھے کس سبب سے
اور ان کے بعد پولیس آئی تھی کون سی سبب سے
پارلیمنٹ کے بارے میں زبان پائرسری اطلاع دی تھی

⑨ 2. - DHQ بنوں گیا تھا اور پولیس آئی تھی
کو بھی سبب کے بارے میں اطلاع نہیں دی

سوال - آپ کتنا عرصہ غیر حاضر رہے ؟

⑩ 2. - گیارہ چھینے -

سوال - ان گیارہ چھینوں میں آپ نے کئی ذریعہ سے
پولیس آئی تھی، مگر آئی تھی کون سی سبب سے
بارے میں اطلاع دی - ؟

⑪ 2. - نہیں دی -

سوال - کیوں -

⑫ 2. - مگر درد کیوجہ سے نہیں آتا تھا -

سوال - راکٹ، ٹینکوں کی بھی ذریعہ سے نہیں آتا تھا

⑬ 2. - کوئی ساکو آئے والا نہیں تھا اور خود کیا دو چھوٹے گولی
تھا میں جو آگ اور آگ میں پڑھتے ہیں - باقی رشتہ دار ہیں جو
آگ رہتے ہیں -

سوال - کیا رشتہ دار آگلی بیماری سے آگے آئے تھے ؟

2. - جی ہاں آگے تھے -
سوال - پھر آپ نے انکو پولیس آئی اطلاع کیلئے کیوں نہ لکھا

سوال: آگے کس تاریخ کو بیمار ہوئے۔؟

① 28 - اگست 2015

مردان

سوال - جس دن آپ بیمار ہوئے آپ کی پوسٹنڈ ٹھکانا کئی؟

② 2 - پولیس اسٹیشن میں جبریل ڈپوٹی -

سوال: کیا آپ نے اپنی بیماری کی اطلاع اپنے انچارج کو دی؟

③ 2 - لاٹن صدر امپوزٹن H.C. میں نے اپنی بیماری کی اطلاع نہیں دی تھی۔

سوال - کیا صدر لاٹن کے پاس آپ آئے تھے اور اپنی بیماری کی اطلاع دی تھی؟

④ 2 - نہیں -

سوال - کیا آپ پولیس سٹیشن عدالت کے لئے آئے تھے؟

⑤ 2 - نہیں آیا تھا۔

سوال - کیا آپ نے کھانسی کا آپریشن کرایا؟

⑥ 2 - نہیں کرایا۔

سوال - ڈاکٹروں کو کیا تکلیف تھی؟

⑦ 2 - کمر میں درد -

سوال - آپ کو دل کو تھکے تھے؟

⑧ 2 - جی ہاں

SP Inv: Bannu

(13)

بیان اذان و فوج نماز $\frac{2008}{LHC}$ نمائندہ صدر حال $city$

برداشت بیان کیا کہ بنام کبیل ٹیبل ٹیڈر بین ڈیوسو ولیم نے
سندھ کوٹ مائل کی بابت پروانہ طلبی / اطلاع نامی دفتر

صبا DSP/HQ صاحب بنوں سے موصول ہوا تھا جو
شہرہ نمائندہ صدر نے بھرا و تعین من DFC/LHC کو
کارڈ کے حین کی تعین کبیل ٹیڈر بین خان سے بڑا فود
کر کے واپس حوالہ عسکر کیا گیا ہے . یہی صبا
بیان ہے . جو درست ہے .

Allsted

SP Inv: Banna

Niaz
Raza
LHC/city

13/08/2018

XXX

کراس کا حوج دیا گیا لیکن کراس
نہیں کیا -



13-8-18

معرضا ہوں کہ کینسل مقررین خان 2055 کی خواہ
ملاحظہ کیے سے نہ ہے جسے بدلے pay کٹاؤ و بد خان

13/8/18

جواب رہیائے جو اپنے نے دیا تھا

عارف خان 1373

pay کٹاؤ pay تراخ ہوں

XXX

کراس کا موقع دیا گیا نہیں

کوئی کراس نہیں کیا -

Attested
[Signature]
SP. BY: BANMA

13-8-18

(15)

جناب عالی!

کنسٹیبل محمد یسین نمبر 2049/2055 ولد گل پذیر خان سکنہ کوٹ عادل تھانہ صدر ضلع ہذا ریگولر پولیس میں مورخہ 15.07.2009 کا بھرتی شدہ ہے۔ بدوران سروس مختلف اوقات میں ٹوٹل 63 مرتبہ غیر حاضر رہ چکا ہے۔ جن کی ٹوٹل عرصہ غیر حاضری 247 یوم بنتی ہے۔ جن پر مذکورہ کو آفسران بالانے بلا تخواہ، ایکسٹرا ڈرل، عارضی بندش انکریمنٹ، کوارٹر گارڈ اور ڈسمسل کی سزا دی گئی ہے۔ اب مذکورہ کنسٹیبل بحوالہ آرڈر انڈورسٹمنٹ نمبر 8903-08/EC مورخہ 10.07.18 جاریہ RPO صاحب بنوں ریجن بنوں دوبارہ سروس پر آزمائشی طور پر بحال ہو کر بحوالہ OB نمبر 656 مورخہ 16.07.18 جاریہ جناب DPO صاحب کنسٹیبلری نمبر 2049 الاٹ کیا گیا ہے۔

رپورٹ عرض ہے۔

(Null)
A-OHC
13-8-18

Attested
SP Inv. Bannu.

XXX
کراس کا صحت دیا گیا
لیکن کوئی کراس نہیں کیا
نمبر
13-8-18

(16)

بیان ازان کلبیس شیخ ابوبکر DFC
274

مدیر وی بی بیان سے جو میں نے دیا ہے

Shaf.

کلبیس شیخ ابوبکر DFC
274
کا نمبر

: XXX

کراس کا حوجہ دیا ہے
لیکن کوئی کراس نہیں کیا

Attested

SP Inv: Bannu

my
13-8-18

بیان از من و صفر خان 236 پولیس، من حال ۱۵۵ من نے دریافت

بیان کیا کہ پولیس نے 2055 بجوئے مقدمہ 57 دروازہ
28/15 کو غیر حاضر معاف۔ جنکی بندش تمہارا در صورت میں

دفتر پولیس ارسال کیا گیا میں میری بیان کے جواب درست ہے

MAAC
13-8-2018

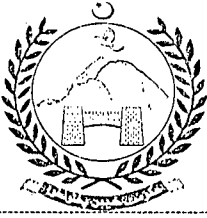
XXX

کمراس کا حوجہ دیا گیا لیکن
کوئی کمراس نہیں کیا

MAAC
SP Inv. Barina

MAAC
13-8-18

(21)



OFFICE OF THE
SUPERINTENDENT OF POLICE
INVESTIGATION BANNU.

Phone No: 0928-9270178.

Fax No: 0928-9270141.

No. 4178 /Inv:

Dated: 15/08/2018.

To: The Medical Superintendent,
DHQ; Hospital Bannu.

Subject: - VERIFICATION OF MEDICAL DOCUMENTS

Memo: -

It is submitted that a departmental enquiry against constable Muhammad Yasin No. 2055 is under process with the undersigned. During the enquiry proceedings, the accused official produced the attached medical documents about his treatment.

It is therefore requested that the medical documents may please be verified and report sent to this office to finalize the departmental enquiry against the accused official please.

(ABDULHAYEE KHAN)
Superintendent of Police,
Investigation, Bannu.

1- Ms سے اس لہر کا چرہ۔
سیکریٹرینگ کا حکم بنا میں۔
2- حیدر علی دہلوی کے دو دستوں میں
وہ دستا حکم بنا میں۔
3- پولیس رولر سے حیدر علی دہلوی کے
Code کر میں۔

(22)

DICAL SUPERINTENDENT DHQ;TEACHING HOSPITAL BANNU.

3219-1/DHQ; BU; DATED BANNU 31/07/2018

The Dy: Superintendent Police Officer
Cannt Circle Bannu.

bject: - MEDICAL TREATMENT VERIFICATION.

emo :-

Reference Your letter NO 256/C dated 19/07/2018 .

It is stated that the Medical rest in respect of Yaseen khan NO 2055 duly
verified from the Hospital record and concerned Doctor .

Medical Superintendent
DHQ: Teaching Hospital Bannu.

31/7/18
Medical Superintendent
D.H.Q Teaching Hospital
Bannu

2. سرد نہیں آئے تو خوردیش آئی کئی

سوال - لکھ کر کتنی دفعہ غیر طاری ہوئے ہو؟

2. دو دفعہ -

سوال کتنا سرد ہے -

14. 2. ایک چیز اور دوسری دفعہ 15/1 دن -

15. سوال - تم آج کے بذریعہ جوابوں یا P.T.C. اپنی بیماری کا علاج

خوردہ ہو یا کئی دیگر نسخے وغیرہ پورے ہو گئے

سن کر دست لکھنا

2. - جی نہیں جینے نہیں دلا گیا

سوال - آج کے جوابوں استعمال آئے ہیں؟

2. - جی ہاں 0332-5485577 دو سال سے یہ ہے

0302 88 79658 یہ 2011 سے استعمال کر رہا ہوں

سن کر دست لکھنا

13-08-18

Attest

[Signature]

SP Inv: Bannu.



24

OFFICE OF THE
DISTRICT POLICE OFFICER,
BANNU.

Ph: No. 0928 - 9270038

Fax # 0928 - 9270045

To: - The Deputy Inspector General of Police,
Enquiry & Inspection,
Khyber Pakhtunkhwa, Peshawar.

No:- 9711 /Dated Bannu, the 27 / 07 /2018.

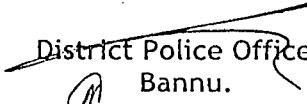
Subject: - SERVICE APPEAL NO.1249/2016. TITLED MUHAMMAD
YASEEN No.2055 S/O GUL PAZIR KHAN V/S INSPECTOR
GENERAL OF POLICE KHYBER PAKHTUNKHWA.

Memo:-

Kindly refer to CPO Peshawar Memo No. 2148/Legal,
dated 18.07.2018 on the subject cited above.

In this connection, the original enquiry file containing
pages (17) alongwith judgment of the Honorable Service Tribunal and re-
instatement order of Constable Muhammad Yaseen No.2055 is submitted to
your good office for the purpose of Denovo departmental enquiry
proceedings, please.

No. 9712 dated: / /2018.


District Police Officer,
Bannu.

Copy of above is submitted to the SP Court & Litigation, for
Inspector General of Police Khyber Pakhtunkhwa CPO, Peshawar.


District Police Officer,
Bannu

OTC

34

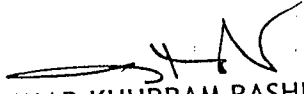
SUMMARY OF ALLEGATIONS:

I, MUHAMMAD KHURRAM RASHID District Police Officer, Bannu as competent authority, to initiate denovo departmental proceedings against Constable Yaseen Khan No. 2055, who has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014).

SUMMARY OF ALLEGATIONS:

- That Constable Yaseen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28-08-2015 without any permission from the competent authority and was still absented.
- Such act on his part is against service discipline and amounts to gross misconduct/ negligence in duty.

1. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations DSP Cantt Murad is appointed as Enquiry Officer.
2. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within the targeted days after the receipt of this order.
3. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(MUHAMMAD KHURRAM RASHID)PSP
District Police officer,
Bannu.

No. 301-302 ISRC dt-10-7-2018
Copies to :-

1. The Enquiry Officer
2. The Accused Officer/Official.

32

CHARGE SHEET:

I, MUHAMMAD KHURRAM RASHID, District Police Officer, Bannu, as competent authority, hereby charge you Constable Yaseen Khan No. 2055 for the purpose of denovo departmental enquiry proceedings as follows:-

- That you Constable Yaseen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28-08-2015 without any permission from the competent authority and were still absented.
- Such act on your part is against service discipline and amounts to gross misconduct/ negligence in duty.

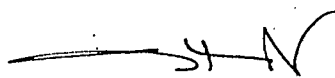
1. By reason of the above you appear to be guilty of misconduct under the Police Rules 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014) and have rendered yourself liable to all or any of the penalties specified in the said rules.

2. You are therefore, directed to submit your defense within 07 days of the receipt of this Charge Sheet to the enquiry officer.

3. Your written defense, if any, should reach to 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 be taken against you.

4. You are directed to intimate whether you desire to be heard in person.

5. A statement of allegation is enclosed.


(MUHAMMAD KHURRAM RASHID)PSP
District Police officer,
Bannu.

SUMMARY OF ALLEGATIONS:

(12)

I, MUHAMMAD KHURRAM RASHID District Police Officer, Bannu as competent authority, to initiate denovo departmental proceedings against Constable Yaseen Khan No. 2055, who has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014).

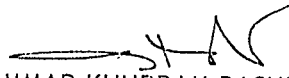
SUMMARY OF ALLEGATIONS:

- That Constable Yaseen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28-08-2015 without any permission from the competent authority and was still absented.
- Such act on his part is against service discipline and amounts to gross misconduct/ negligence in duty.

1. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations DSP Cacht Murad is appointed as Enquiry Officer.

2. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within the targeted days after the receipt of this order.

3. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(MUHAMMAD KHURRAM RASHID)PSP
District Police officer,
Bannu.

No. 301-202 ISRC dt-10-7-2018
Copies to :-

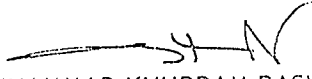
1. The Enquiry Officer
2. The Accused Officer/Official.

(11)

CHARGE SHEET:

I, MUHAMMAD KHURRAM RASHID, District Police Officer, Bannu, as competent authority, hereby charge you Constable Yaseen Khan No. 2055 for the purpose of denovo departmental enquiry proceedings as follows:-

- That you Constable Yaseen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28-08-2015 without any permission from the competent authority and were still absented.
 - Such act on your part is against service discipline and amounts to gross misconduct/ negligence in duty.
1. By reason of the above you appear to be guilty of misconduct under the Police Rules 1974 (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014) and have rendered yourself liable to all or any of the penalties specified in the said rules.
 2. You are therefore, directed to submit your defense within 07 days of the receipt of this Charge Sheet to the enquiry officer.
 3. Your written defense, if any, should reach to 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 be taken against you.
 4. You are directed to intimate whether you desire to be heard in person.
 5. A statement of allegation is enclosed.


(MUHAMMAD KHURRAM RASHID) DSP
District Police officer,
Bannu.

charge sheet recieved

محمد
28-8-15

0332-5485577

-7-018

nd



Phone: 091-9211947

Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

939
9-8-18

No. 1010 /E&I, dated Peshawar the 07 /08/2018

To: The District Police Officer,
Bannu.

Subject: DENOVE DEPARTMENTAL ENQUIRY AGAINST
EX-FC MUHAMMAD YASEEN NO. 2055

Memo:

6396
7-8-18

Please refer to your office letter No. 9711 dated 27.07.2018, on the subject cited above.

2. Denovo departmental enquiry against Ex-FC Muhammad Yaseen No. 2055 may be conducted through Mr. Abdul Khai, SP/Investigation Bannu and final outcome be communicated to this office, on or before 20.08.2018, before issuance of formal order, for the perusal of Worthy IGP.

Handwritten notes:
To do the needful.
SRE
steno: 5
=

Signature
(DR. MUHAMMAD ABID KHAN), PSP
Deputy Inspector General of Police
Enquiry & Inspection
Internal Accountability
Khyber Pakhtunkhwa,
Peshawar

SP/Inv: Bannu

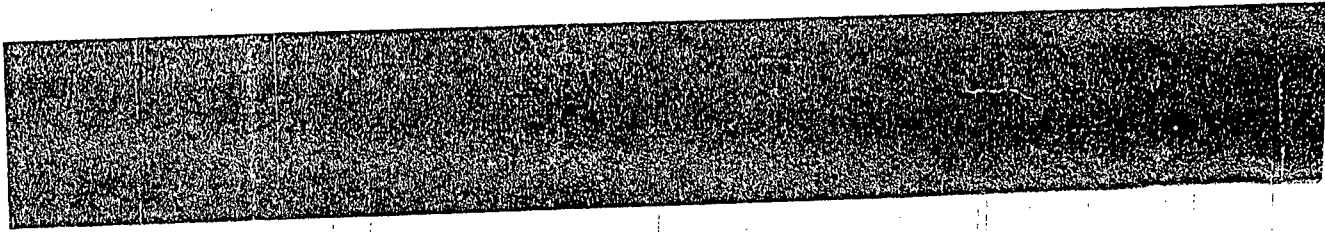
E&I,
Copy of above is forwarded for information to:-

1. The Regional Police Officer, Bannu.
2. Mr. Abdul Khai, SP/Investigation Bannu.

Handwritten notes:
SRE
For further
action.

(DR. MUHAMMAD ABID KHAN), PSP
Deputy Inspector General of Police
Enquiry & Inspection
Internal Accountability
Khyber Pakhtunkhwa,
Peshawar

District Police Officer
BANNU
06/08/18

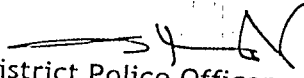


ORDER:

(27)

In compliance with the order of Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 20.06.2018 in the Service Appeal No.1249/2016 received from Khyber Pakhtunkhwa Service Tribunal, Peshawar, Ex-Constable Mohammad Yaseen No. 2055, is hereby provisionally re-instated into service purely for the purpose of Denovo departmental Enquiry proceedings with immediate effect. The issue of his back benefits shall be subject to the final outcome of the denovo enquiry.

OB No. 642
Dated: 10-07 /2018.


District Police Officer,
Bannu.

No. 8903-08 /EC dated Bannu, the 10-7/2018.

Copy for information to:

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. Reader, Pay officer, SRC, OASI Line Officer Bannu, for information and necessary action.


District Police Officer,
Bannu.

25



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. 2148 Legal dated Peshawar, the 18/7 /2018.

To: - The District Police Officer,
Bannu.

Subject:- SERVICE APPEAL NO. 1249/2016. TITLED MUHAMMAD YASEEN
SO GUL PAZIR KHAN V/S INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA.

Memo:- Please refer to your office memo No. 9029 dated 12.07.2018, on the subject noted above.

Competent authority has directed that the judgment may be implemented and original enquiry file along with judgment of the Service Tribunal may be submitted before the Deputy Inspector General of Police E&I CPO, Peshawar for de-novo enquiry proceedings.

[Signature]
SP Court & Litigation,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

No. 2149 Legal

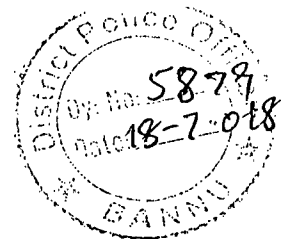
Copy of the above is forwarded for information to the Deputy Inspector General of Police, E & I Khyber Pakhtunkhwa CPO, Peshawar.

[Signature]
Legal/SRC

For magisterial
compliance.

[Signature]
SP Court & Litigation,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

District Police Officer
BANNU
18/07/18





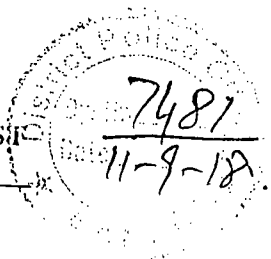
Office of the Deputy Inspector General of Police
Enquiry & Inspections
Khyber Pakhtunkhwa, Peshawar.

01st reminder

No. 1144 /E&I, dated Peshawar the 31 /08/2018

To: The District Police Officer,
Bannu

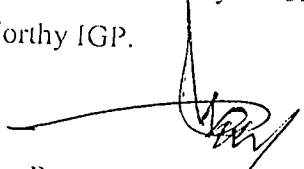
Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC MUHAMMAD YASEEN NO. 2055



Memo:

Please refer to this office letter No. 1010/E&I dated 02.08.2018, on the subject cited above.

2. Reply into the subject matter is still awaited from your office, which may please be sent to this office, for the perusal of Worthy IGP.


For Deputy Inspector General of Police
Enquiry & Inspection
Khyber Pakhtunkhwa
Peshawar

SRC
For compliance
report.


District Police Officer
BANNU

11/09/18

09/04/18

Amir Khan

بمخضور جناب والا شہان ریجنل پولیس آفیسر صاحب بہادر بنوں کے ہوں



اپیل: استدعا یہ کہ سائل کو جناب DPO صاحب بنوں نے بحوالہ OB نمبر 849 مورخہ 26-09-18 انکوٹری کے تحت فائل شوکا زایشو کیے بغیر ملازمت سے ڈس مس کیا ہے۔ اور جناب SP انوسٹی گیشن بنوں کے ایک فرضی اور غلط فائل رپورٹ کو مصیبت تسلیم کرتے ہوئے سائل کو نہ تو دفاع موقع دیا۔ اور نہ ہی آخری فائل شوکا ز نوٹس ایٹو کیا۔ حالانکہ میری انکوٹری اجزاء میں مراد علی خان DSP کینٹ صاحب کو مارک ہوئی تھی۔ جس نے DHQ ہسپتال بنوں سے میری بیماری کے ڈاکٹری کاغذات کی ویری فیکیشن رپورٹ بھی حاصل کی۔ اس ویری فیکیشن کی فوٹو کاپی صداقت کے لیے لف ہمراہ ہے۔ میرے ساتھ ظلم ہوا ہے علاج معالجہ میرا قانونی حق بنتا ہے لہذا بحالی ملازمت بعہدہ کانسٹیبل کی اپیل کرتا ہوں۔

جناب عالی! کم ترین آنجناب کے حضور عاجزانہ اپیل کرتا ہے۔

1- کہ سائل بوجہ بیماری زیر علاج ڈیوٹی سے غیر حاضر تصور ہوا اور ملازمت سے ڈس مس کیا گیا حالانکہ چاہیے تھا کہ میری بیماری کے بارے DHQ ہسپتال بنوں سے ویری فیکیشن کرتے لیکن ایسا نہ ہوا۔ بندہ نے RPO صاحب کو اپیل کی مگر وہ بھی مسترد ہوئی۔ تو سائل مجبوراً ٹریبونل کے دروازے پر پہنچا سروس ٹریبونل نے مورخہ 20-06-18 سائل کو ملازمت پر بحال کرتے ہوئے DENOVE انکوٹری کے احکامات صادر کیے۔

2- جناب DPO صاحب بنوں نے سائل کو چارج شیٹ جاری کیا۔ جس کا معقول جواب پیش کیا۔ اور انکوٹری کے لئے مراد علی خان DSP کینٹ مقرر ہوا۔ جنہوں نے میری بیماری بارے کاغذات کی DHQ ہسپتال بنوں سے ویری فیکیشن حاصل کی۔ جس کی فوٹو کاپی لف ہمراہ کی جاتی ہے۔ لیکن نامعلوم وجوہات کی بناء پر میری انکوٹری جناب SP انوسٹی گیشن کو مارک ہوئی۔ جنہوں نے ایک فرضی اور غیر منصفانہ رپورٹ تیار کر کے جناب DPO صاحب بنوں نے مجھے دوبارہ ڈس مس کیا۔ اور مجھے کوئی فائل شوکا زایشو نہ کیا نہ ہی پیشی کا موقع دیا۔

علیچاہ! میرے ساتھ ظلم ہوا۔ علاج معالجہ میرا قانونی حق بنتا ہے، دیدہ دانستہ ڈیوٹی سے غیر حاضر نہیں ہوا ہوں۔

لہذا عاجزانہ خواستگار ہوں کہ سائل کو بعہدہ کانسٹیبل بحال کرنے کا حکم صادر فرمایا جاوے۔

ماتحت پروری ہوگی۔

مورخہ: 05/11/18

سائل EX کانسٹیبل محمد یاسین نمبر 2055 پولیس ٹائن بنوں

حال ولدیت گل پذیر خان سکندر کورٹ ہاؤس

رابطہ نمبر: 0332-5485577

(Handwritten signature)

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

Appeal No. 1118 of 2019,

Mr. Muhammad Hussain Appellant/Petitioner

Versus

Police, Peshawar Respondent

Respondent No. 8

Notice to:

Dep. Inspector General of Police
Khyber Pakhtunkhwa

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 17/10/19 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. dated

Given under my hand and the seal of this Court, at Peshawar this 17/10/19

Day of Monday 2019.

13/10

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR
Appeal No. 478/2019.

Muhammad Yaseen S/o Gul Pazir Khan
R/o P.O and Village Kot Adil,
District Bannu, Khyber Pakhtunkhwa

(APPELLANT)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Bannu Region, Bannu
4. District Police Officer, Bannu

(RESPONDENTS)

INDEX

S.No.	Description of Documents	Annexure	Page
1	Para-wise Reply		1-2
2	Affidavit		3
3	Authority Letter		4
4	Copy of judgment	"A"	5-8

Respondents



Through

Add: Advocate General / Government Pleader
Service Tribunal K.P.K Peshawar

10

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR
Appeal No. 478/2019.

Muhammad Yaseen S/o Gul Pazir Khan
R/o P.O and Village Kot Adil,
District Bannu, Khyber Pakhtunkhwa

(APPELLANT)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Bannu Region, Bannu
4. District Police Officer, Bannu

(RESPONDENTS)

PARA WISE COMMENTS ON BEHALF OF THE RESPONDENTS

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

- 1) That the appeal of the appellant is badly time-barred. /
- 2) That the appeal is not maintainable in its present form.
- 3) That the appellant has concealed the actual facts from this Honorable Tribunal.
- 4) That the appeal is bad in law due to mis-joinder and non-joinder of necessary parties.
- 5) That the appellant has approached the Honourable Tribunal with unclean hands.
- 6) That the appellant has got no cause of action and locus-standi to file the instant appeal.
- 7) That the appellant has been estopped by his own conduct.

OBJECTIONS ON FACTS

- (1) Pertains to record. Hence, needs no comments.
- (2) Incorrect. The appellant did not adopt proper procedure required according to land laws for medical treatment/medical leave. He did not bother to inform his immediate senior officer and was deliberately absented himself from Govt: duty without any leave or prior permission. Therefore, the appellant was proceeded departmentally.
- (3) Correct to the extent that the appellant filed appeal before the Honourable Service Tribunal which was partially accepted on 20.06.2018, with the directions to the Respondent Department to reinstate the appellant into service and conduct de novo inquiry within a period of 90 days in accordance with prescribed rules and law. (Copy of judgment is annexed as annexure-A).
- (4) Correct to the extent that de novo proceeding was initiated against the defaulter constable as per the direction of Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar. Charge sheet along with statement of allegations were issued to the delinquent police official but the appellant was badly failed to substitute his innocence about his long span (more than 11 months) during which he has not communicated to his senior officers about his illness. After proper

departmental proceedings against the appellant, the allegations leveled against the defaulting officer has been proved beyond any shadow of doubt. On the recommendations of the inquiry officer, major punishment from dismissal from service was awarded according to prescribed rules/laws.

(5) Pertains to record. Hence, needs no comments.

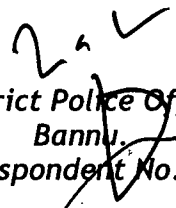
The respondent department also submit their reply on the following grounds


OBJECTIONS ON GROUNDS.

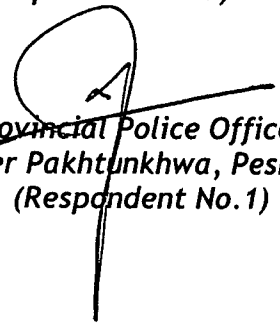
- A. Incorrect. The order issued by Respondent No.4 is speaking order was issued according to law/rules.
- B. Incorrect. The appellant was awarded major punishment of dismissal from service on account his deliberate absence from Government duty.
- C. Incorrect. The appellant was provided all legal opportunities i.e. self defense etc. but he badly failed to rebut the allegations leveled against him. The Respondent Department implemented the judgment of this Honourable Court as it is.
- D. Incorrect. The Respondent Department provided all opportunities of self defense but he badly failed to substantiate his innocence.
- E. Incorrect. The Respondent Department did not violate any kind of fundamental rights granted by the Constitution of Islamic Republic of Pakistan 1973. The Respondent Department provided all opportunities of self defense to the appellant.
- F. That the respondents may be allowed to advance any other grounds & material as evidence in the time of arguments.

Prayer:

In view of the above scenario, it is humbly prayed that the appeal of appellant is not maintainable in the eye of law, may kindly be dismissed with costs.


District Police Officer,
Bannu.
(Respondent No.4)


Regional Police Officer,
Bannu Region, Bannu
(Respondent No.3)


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

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR
Appeal No. 478/2019.

Muhammad Yaseen S/o Gul Pazir Khan
R/o P.O and Village Kot Adil,
District Bannu, Khyber Pakhtunkhwa

(APPELLANT)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Bannu Region, Bannu
4. District Police Officer, Bannu

(RESPONDENTS)

AUTHORITY LETTER.

Mr. Muhammad Farooq Khan, Inspector Legal Bannu is hereby authorized to appear before The Honourable Service Tribunal Khyber Pakhtunkhwa Peshawar on behalf of the undersigned in the above cited case.

He is authorized to submit and sign all documents pertaining to the instant appeal.

20
District Police Officer,
Bannu.
(Respondent No.4)

Regional Police Officer,
Bannu Region, Bannu
(Respondent No.3)

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

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR
Appeal No. 478/2019.

Muhammad Yaseen S/o Gul Pazir Khan
R/o P.O and Village Kot Adil,
District Bannu, Khyber Pakhtunkhwa

(APPELLANT)

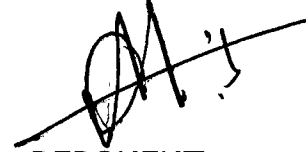
VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
3. Regional Police Officer, Bannu Region, Bannu
4. District Police Officer, Bannu

(RESPONDENTS)

AFFIDAVIT

I, **Muhammad Farooq Khan**, Inspector Legal representative for Respondent Nos. 1, 2, 3 & 4, do hereby solemnly affirm and declare that the contents of the accompanying comments submitted by me are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Tribunal.

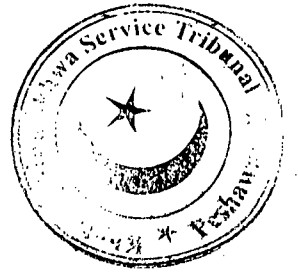


DEPONENT
11101-1483421-1

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1249/2016

Date of institution ... 19.12.2016
Date of judgment ... 20.06.2018



Muhammad Yaseen S/o Gul Pazir Khan
R/o P.O & Village Kot Adil, District Bannu, Khyber Pakhtunkhwa.
... (Appellant)

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
 2. Regional Police Officer Bannu Range, Bannu.
 3. District Police Officer, Bannu.
 4. Deputy Inspector General of Police, Bannu.
- ... (Respondents)

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL
ACT, 1974 AGAINST THE ORDER DATED 10.08.2016
WHEREBY THE APPELLANT WAS DISMISSED FROM
SERVICE AND DEPARTMENTAL APPEAL DATED 14.09.2016
FILLED HAS NOT BEEN RESPONDED WITH STATUTORY
PERIOD.

Miss. Roed Khan, Advocate.
Mr. Muhammad Jan, Deputy District Attorney

.. For appellant.
.. For respondents.


22 MR. MUHAMMAD AMIN KHAN KUNDI
MR. AIMAD HASSAN

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

JUDGMENT

MUHAMMAD AMIN KHAN KUNDI, MEMBER: Appellant
alongwith his counsel present. Mr. Muhammad Jan, Deputy District Attorney
alongwith Mr. Muhammad Farooq, Inspector (legal) for the respondents also
present. Arguments heard and record perused.

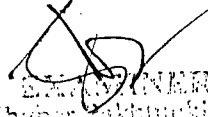
ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

2. Brief facts of the case as per present appeal is that the appellant was serving in Police Department as Constable and during service he was dismissed from service vide order dated 10.08.2016 by the competent authority on the allegation of absence from duty. The appellant filed departmental appeal on 14.09.2016 which was not decided within statutory period hence, the present service appeal on 19.12.2016.

3. Learned counsel for the appellant contended that the appellant was serving in Police Department as Constable. It was further contended that during service the appellant became ill. It was further contended that due to illness it was beyond the control of the appellant to attend the duty and in support of his illness, the appellant annexed the medical prescriptions with the ground of the appeal. It was further contended that the impugned order of dismissal from service of the appellant was passed by the competent authority on 10.08.2016 and the appellant came to know about the impugned dismissal order on 14.09.2016 therefore, the filed departmental appeal on the same day. It was further contended that when the departmental appeal was not decided within the statutory period of ninety days than he filed service appeal within time. It was further contended that neither the appellant was personally served for reply of the charge sheet/statement of allegation nor the appellant was issued any final show-cause notice and the whole proceedings of inquiry was initiated in the absence of the appellant ex-parte therefore, the appellant was condemned unheard. It was further contended that the appellant was also dismissed from service retrospectively i.e from the date of absence therefore, the impugned order is also void and liable to be set-aside and prayed for acceptance of appeal.

ATTESTED


 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

4. On the other hand learned Deputy District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was absence from duty without any permission of the higher authority. It was further contended that the inquiry proceedings were conducted in accordance with law and the inquiry officer after recording the statement of witnesses reached the conclusion that the charge against the appellant stand proved therefore, the competent authority has rightly dismissed the appellant from service on the basis of inquiry report and prayed for dismissal of appeal.

5. Perusal of the record reveals that the appellant was dismissed from service vide order dated 10.08.2016 retrospectively i.e from the date of absence, meaning thereby that the impugned order is void and in this respect reliance is also made on 1985 SCMR page 1178. The record further reveals that the appellant has claimed in service appeal as well as in departmental appeal that he became serious ill and due to illness it was beyond his control to attend the duty. The record further reveals that the appellant has also annexed the medical prescriptions of his illness with the ground of appeal. The record also reveals that the impugned order was passed on 10.08.2016, the appellant also alleged in para-5 of the appeal that he came to know about the impugned order on 14.09.2016 and he filed departmental appeal on the same day which was not decided hence, the present service appeal within time on 19.12.2016 therefore, the present appeal is within time. The record further reveals that the inquiry/departmental proceeding was initiated ex-parte by the department in the absence of appellant and no opportunity of reply to charge sheet, statement of allegation and cross examination was provided to the appellant, meaning

ATTESTED

[Signature]
 Peshawar



Office of the Deputy Inspector General of Police
Enquiry & Inspections
Khyber Pakhtunkhwa, Peshawar.

02nd reminder

No. 1189 /E&I, dated Peshawar the 17 /09/2018

To: The District Police Officer,
Bannu

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC MUHAMMAD YASEEN NO. 2055

7869
25-9-18

Memo:

Please refer to this office letter No. 1010/E&I dated 02.08.2018 and reminder No. 1144/E&I dated 31.08.2018, on the subject cited above.

2. Reply into the subject matter is still awaited from your office, which may please be sent to this office, for the perusal of Worthy IGP.

For Deputy Inspector General of Police
Enquiry & Inspection
Khyber Pakhtunkhwa
Peshawar

SRC
For completion &
compliance.

2. ✓

District Police Officer
BANNU

24/09/18

②

ORDER:

This order of the undersigned will dispose of the de-novo departmental proceeding, initiated against accused Constable Mohammad Yasin No. 2055 in the light of Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 20.06.2018 under general proceeding of police rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014) for committing the following commissions/omissions:-

- That Constable Yaseen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28-08-2015 without any permission from the competent authority and was still absented.

Charge sheet and statement of allegation were issued to him. SP, Inv: Bannu was appointed as Enquiry Officer to scrutinize the conduct of the accused official. The Enquiry Officer submitted finding report and reported that the allegations leveled against the accused Constable Mohammad Yasin No. 2055 have been proved, placed on file.

In the light of de-novo departmental enquiry proceedings, the accused officer is found guilty of the charges leveled against him as he badly failed to prove his innocence. Hence, I, Yasir Afridi, District Police Officer, Bannu in exercise of the power vested in me under Police Rule 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification No.27th of August 2014), hereby awarded major punishment of "Dismissal from Service" with immediate effect. Absence period treated as leave without pay.

OB No. 849
Dated: 26.09 /2018.

↑
(YASIR AFRIDI) PSP
District Police Officer
Bannu.

No. 12717-21 /SRC dated Bannu, the 28 / 9 /2018.

Copy of above is submitted for favor of information to the Deputy Inspector General of Police, Enquiry & Inspections, Khyber Pakhtunkhwa, Peshawar w/r to his office Memo: No. 1144/E&I, dated 31.08.2018.

1. Reader, Pay officer, SRC, OASI for compliance.
2. Fauji Misal Clerk along with enquiry file for placing it in the Fauji Misal of the concerned official.

2 ✓
(YASIR AFRIDI) PSP
District Police Officer
Bannu.

09/04/110



Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.



No. /E&I, dated Peshawar the 09 /08/2018

To: The District Police Officer,
Bannu.

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC MUHAMMAD YASEEN NO. 2055

Memo:

6651
16-8-18

Please refer to your office letter No. 9711 dated 27.07.2018, on the subject cited above.

2. Denovo departmental enquiry against Ex-FC Muhammad Yaseen No. 2055 may be conducted through Mr. Abdul Khai, SP/Investigation Bannu and final outcome be communicated to this office, on or before 20.08.2018, before issuance of formal order, for the perusal of Worthy IGP.

(DR. MUHAMMAD ABID KHAN), PSP.
Deputy Inspector General of Police
Enquiry & Inspection
Internal Accountability
Khyber Pakhtunkhwa,
Peshawar

No: 1011-12 /E&I.
Copy of above is forwarded for information to:-
1. The Regional Police Officer, Bannu.
2. Mr. Abdul Khai, SP/Investigation Bannu.

No. 2055-FC H 07/18 /-18
DPO Bannu
SP/INV. Bannu

For enquiry & report.

RPO Bannu

7/8

(DR. MUHAMMAD ABID KHAN), PSP
Deputy Inspector General of Police
Enquiry & Inspection
Internal Accountability
Khyber Pakhtunkhwa,
Peshawar

SP INV
For Enquiry and report

District Officer

Bannu
16/8/18



6

OFFICE OF THE
SUPERINTENDENT OF POLICE,
INVESTIGATION, BANNU.

Phone No: 0928-9270178.

No. _____

Dated: ____/08/2018.

Subject: - FINDINGS: DE-NOVO DEPARTMENTAL ENQUIRY

Reference: The DIG Enquiry & Inspection Office Memo: No. 1010-12/E&I, dated 02.08.2018 and RPO Bannu office Endstt: No. 2095/EC, dated 07.08.2018.

Accused:- Ex-Constable Mohammad Yasin No. 2055 of District Police Bannu.

Allegations:- Constable Mohammad Yasin No.2055 of District Police Bannu was dismissed by the District Police officer Bannu vide OB No. 605, dated 10.08.2016 on the following allegations:-

1. That he, while posted to Police Line Bannu, left his station of duty on 28.08.2015 without any prior permission of the competent authority and is still absent.

Accordingly the said delinquent police constable Mohammad Yasin No. 2055 was proceeded against departmentally under KPK Police Rules 1975. He was charge sheeted based upon the summary of allegations mentioned above vide No. 500-501 dated 06.11.2015 and the then DSP HQRs Bannu was appointed as enquiry officer.

The enquiry officer conducted proper departmental enquiry proceedings and after thorough probe, submitted his findings wherein the said delinquent police constable was found guilty of the misconduct, hence he was dismissed from service by the DPO Bannu vide OB No. 605, dated 10.08.2016 as mentioned above.

In compliance with the judgment dated 20.06.2018 of Service Tribunal KPK Peshawar, the said constable was re-instated in to service conditionally and purely for the purpose of DE-novo departmental enquiry proceedings and the undersigned was appointed as inquiry officer for initiating De-novo enquiry against the delinquent Police constable.

Proper enquiry proceedings were carried out. statements of the following Police officials were recorded.

1. Accused Constable
2. MHC Police Line Bannu
3. OHC Police Office Bannu
4. Pay Clerk of DPO Office Bannu
5. DFC of Police Station Saddar.

QUESTIONS/ANSWERS BETWEEN THE EO AND ACCUSED EX CONSTABLE.

Reply No. 01:- I was appointed as constable on 15.07.2009.

Reply No. 02:- I became ill on 28 august 2015.

Reply No. 03:- I was posted in police line Bannu General Duty.

Reply No. 04:- No I never inform my immediate incharge i.e MHC Asghar Khan

Reply No. 05:- No I Never informed regarding my illness.

Reply No. 06:- No I Never went to Police Hospital

Reply No. 07:- No I Never carried out any operation

Reply No. 08:- I was suffering from severe back pain.

Reply No. 09:- Yes.

Reply No. 10:- I had gone DHQ Hospital but I never informed any one in police line regarding my illness and bad rest.

Reply No. 11:- I was absent for eleven Months from Govt: Duty.

Reply No. 12:- No, during this course I never informed Moharrar Line or anybody else.

Reply No. 13:- No I never inform Police Line by myself or through somebody else.


Reply No. 14:- During my service I have twisely absented from Govt: duty
1. 01 Month.
2. 10/15 days.

Reply No. 15:- No I had not informed Moharrar Line or Police Line staff through my cell or PTCL number.

Moreover a opportunity of cross question/examination was given but he did not avail

CONCLUSION.

- 1) He failed to give any cogent reason about his long span more than eleven months, during which he had not informed his senior officer about his illness.
- 2) After provisionally re-instatement to his service he was required to have immediately submission of medial documents the plea he has taken despite of the effect that he attended the hospital.
- 3) The defective official during the course of question answer has admitted the misconduct on his part.
- 4) According to Police Rules (Chapter 8 Para 4) Leave on Medical grounds can be extended up to three Months, but the delinquent official remained absent for eleven (11) months without obtaining permission or extension of leave. He could not produce Medical documents i.e admission and discharge slips in support of his plea reasons for his absence.
- 5) In the light of above discussion, attached document, question and answer the allegations leveled against constable Muhamamd Yasin No. 2055 mentioned in the charge sheet have been proved against him without any shadow of doubt, please.


(ABDULHAYEE KHAN)
 Superintendent of Police,
 Investigation, Bannu.
 Enquiry Officer.

بجرت جیٹا DPD صاحب بنوں (9)

CHARGE SHEET

جیٹا جیٹا CHARGE SHEET منجانب کنسٹیبل محمد اسحاق خان
صاحب ذیل ہے۔

1۔ یہ کہ سائل نے کہیں بھی قانون کی خلاف ورزی نہیں کی ہے۔
اور اسے ڈیوٹی سے نجات دینا یا نڈاری کیا تو سرانجام دیا ہے۔

2۔ یہ کہ 2015ء سے سائل اپنے بے گناہی ثابت کرنے کی
کوشش کی ہے۔ لیکن جارج ٹیٹ میں جو الزامات سائل
کے اوپر لگائے گئے ہیں وہ سراسر تلافی اور سافٹ اور سن کر رہے
اور سراسر ظلم قانون ہیں۔ سائل کا ریکارڈ مفاد
شکاف ہے۔ اور سائل نے کہیں بھی اپنے ڈیوٹی سے کوتاہی، غفلت
نہ کی ہے۔

3۔ یہ کہ سروس ٹرانسفر کے فیصلے سے یہ بات باپہ تکمیل تک
چلا کہ سائل کا خلاف ریکارڈ پر کس قسم کا گواہی ہو۔ جو
نہ ہے۔ یہ میں یہ یہ جو وہ از سر نو انگریزی اور جارج ٹیٹ
میں مزید کارروائی قابل دقت ہے۔ اور قابل اعتراض ہے۔

4۔ یہ کہ سائل ایک سرفیس ہے اور جارج ٹیٹ سائل کا خلاف
کس قسم کا گواہی کیلئے فراہم ہے۔

مسلحہ وار طلب

1۔ یہ کہ صرف 2015ء اور 2016ء کے سائل میں اور جو یہ سائل
میں 2015ء کے لئے DAA میں کیا گیا ہے۔ اور
ڈی آئی نے بیگز میں کس قسم سے کیا ہے۔ واضح یہ کہ جب
سائل میں قاتل کے زخم سے جا رہا تھا تو سائل نے احتجاج
کر اپنے میاں کے بارے میں سائل کو رہا کر دیا تھا۔ اور
سائل ان کے اعزاز کے لئے DAA میں کیا گیا تھا۔ اور
سائل کے بارے میں سائل میں کیا گیا تھا۔ اور

SP Inv: Banna

I, MUHAMMAD
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1. By r
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No. 27th
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2. rec

سوال - جب آپ ہسپتال آئے تھے کس ہسپتال پر
اور اسکے بعد پولیس اسٹیشن میں کئی گواہی بیماری
پارسیٹ کے بارے میں زبانی یا تحریری اظہارِ رائے دی

⑨ 2 - DHQ بنوں گیا تھا اور پولیس اسٹیشن میں کئی
گواہی بیماری کے بارے میں پارسیٹ کے بارے میں اظہارِ رائے دی
سوال - آپ کتنا عرصہ غیر حاضر رہے؟

2-10 - گیارہ مہینے -

سوال - ان گیارہ مہینوں میں آپ نے کئی ذریعے سے
پولیس اسٹیشن، محکمہ اسٹیشن گواہی بیماری پارسیٹ کے
بارے میں اظہارِ رائے دی؟

2-11 - نہیں دی -

سوال - کیوں -


2-12 - مگر درد کی وجہ سے نہیں آتا تھا -

سوال - آگے، پیچھے کئی بھی ذریعے سے نہیں آتا تھا

2-13 - کوئی ساکھو آئے والا نہیں تھا اور اسے خود کیا دو جمعہ کے بعد
میں جو آگے اور آگے میں پڑھتے ہیں - باقی رشتہ دار ہیں جو
انگ رہتے ہیں -

سوال - کیا رشتہ دار آگے بیماری پارسیٹ کے بارے میں اظہارِ رائے دی؟

2 - جی ہاں آگے
سوال - پھر آپ نے انکو پولیس اسٹیشن اظہارِ رائے دی کیوں نہ


SP Inv. Bannu

سوال: آپ کس تاریخ کو بیمار ہوئے؟

① 28 اگست 2015

سوال: جس دن آپ بیمار ہوئے آپ کی پوسٹنڈ لمفائی؟

② 2 - پولیس لائن میں جبریل ڈیوٹی -

سوال: کیا آپ نے اپنی بیماری کی اطمینان اپنے انچارج کو دی؟

③ 2 - لائن حیدر اصف خان H.C. میں نے اپنی بیماری کی اطمینان نہیں دی تھی۔

سوال: کیا حیدر لائن کے پاس آپ گئے تھے اور اپنی بیماری کی اطمینان دی تھی؟

④ 2 - نہیں -

سوال: کیا آپ پولیس سپتال میں لکھے گئے تھے؟

⑤ 2 - نہیں گیا تھا۔

سوال: کیا آپ نے کبھی کبھی اسپریشن کرایا؟

⑥ 2 - نہیں کرایا۔

سوال: آپ کو کیا تکلیف تھی؟

⑦ 2 - کمر میں درد۔

سوال: آپ دل کو تکتے تھے؟

⑧ 2 - جی ہاں

Attested
SP Inv: Bahau


سوال

(13)

بیان اذان و روح نماز 2008 ^{LHC} چنانہ صدر حال ^{city}

بر یافت بیان کیا نہ بنا کہ پیش شد پس کو جو و لہذا نہ
کنہ کوٹ ماول کی بابت پروانہ طلبی / اطلاع دہائی دفتر

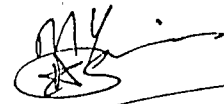
صبا DSP/HQ صاحب نیوں سے موصول ہوا تھا جو
مشرکہ چنانہ صدر نے بجا و تعین من DFC/LHC کو
کارکر کے جن کی تعین کوشش شد پس خان سے بڑا فود
کر کے واپس حوالہ عسور کیا گیا ہے وہی میرا
بیان ہے جو درست ہے

Attested

SP Inv: Banna.

~~Niqe~~
~~Zha~~
LHC/city
13/08/2018

XXX

کر اس کا جو دیا گیا لیکن کر اس
نہیں کیا


13-8-18

(15)

جناب عالی!

کنسٹیبل محمد یسین نمبر 2049/2055 ولد گل پذیر خان سکنہ کوٹ عادل تھانہ صدر ضلع ہذا ریگولر پولیس میں مورخہ 15.07.2009 کا بھرتی شدہ ہے۔ بدوران سروس مختلف اوقات میں ٹوٹل 63 مرتبہ غیر حاضر رہ چکا ہے۔ جن کی ٹوٹل عرصہ غیر حاضری 247 یوم بنتی ہے۔ جن پر مذکورہ کو آفسران بالانے بلا تخواہ، ایکسٹرا ڈول، عارضی بندش انکریمنٹ، کوارٹر گارڈ اور ڈسمسل کی سزا دی گئی ہے۔ اب مذکورہ کنسٹیبل بحوالہ آرڈر انڈورسٹمنٹ نمبر 8903-08/EC مورخہ 10.07.18 جاریہ RPO صاحب بنوں ریجن بنوں دوبارہ سروس پر آزمائشی طور پر بحال ہو کر بحوالہ OB نمبر 656 مورخہ 16.07.18 جاریہ جناب DPO صاحب کنسٹیبلری نمبر 2049 الاٹ کیا گیا ہے۔

رپورٹ عرض ہے۔

Null
A-OHC
13-8-18

Approved
SP Inv: Bannu.

XXX
کراس کا صحت دیا گیا
لیکن کوئی کراس نہیں کیا
نمبر
13-8-18

76

بیان ازان کلبیس شیخ انس DFC
274

میرا وہی بیان ہے جو میں نے لکھا دیا ہے

Shahid

DFC
274
کلبیس شیخ انس
کا بیان

XXX

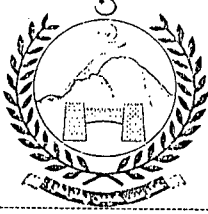
کراس کا حوق دیا گیا
لیکن کوئی کراس نہیں کیا

Attested

SP Inv: Bannu.

my
13-8-18

(21)



OFFICE OF THE
SUPERINTENDENT OF POLICE
INVESTIGATION BANNU.

Phone No: 0928-9270178.

Fax No: 0928-9270141

No. 4178 /Inv:

Dated: 15/08/2018.

To: The Medical Superintendent,
DHQ; Hospital Bannu.

Subject: - VERIFICATION OF MEDICAL DOCUMENTS

Memo: -

It is submitted that a departmental enquiry against constable Muhammad Yasin No. 2055 is under process with the undersigned. During the enquiry proceedings, the accused official produced the attached medical documents about his treatment.

It is therefore requested that the medical documents may please be verified and report sent to this office to finalize the departmental enquiry against the accused official please.

(ABDULHAYEE KHAN)
Superintendent of Police,
Investigation, Bannu.

1- Ms سے اس کیڈ کا جواب
سیکیورٹی کا حکم بنا میں
2- میڈیکل ریپورٹ کے دو کاپی میں
وہ دستا حکم بنا میں
3- پولیس ڈولر کے میڈیکل ریپورٹ کے
Code کریں

(22)

MEDICAL SUPERINTENDENT DHQ; TEACHING HOSPITAL BANNU.

3219-1 DHQ; BU; DATED BANNU 31/07/2018

The Dy: Superintendent Police Officer
Cannt Circle Bannu.

Subject: - MEDICAL TREATMENT VERIFICATION.

emo :-

Reference Your letter NO 256/C dated 19/07/2018 .

It is stated that the Medical rest in respect of Yaseen khan NO 2055 duly
verified from the Hospital record and concerned Doctor .

Medical Superintendent
DHQ: Teaching Hospital Bannu.

31/7/18
Medical Superintendent
D.H.Q Teaching Hospital
Bannu

2. سرد نہیں آئے تو خوردیش آئی کئی کئی

سوال - بلیے کئی دفع غیر طاری ہوئے ہوں؟

2. دو دفعہ -

سوال کتنا عرصہ - 4

14) 2. ایک تہہ اور دوسری دفعہ 15/10 دن -

15) سوال - تم آج کے بذریعہ جوابوں یا ایچ پی اپنی بیماری کا علاج

تھورہ میں یا کئی دیگر سٹاف تھروری کھی

سن کر درست لکھی

2. - جی نہیں جیہ نہیں دلا گیا

سوال - آج جوابوں (سوال) کے ہیں؟

2. - جی ہاں 0332-5485577 دوسرا سے یہ ہے

0302 88 79658 یہ 2011 سے اسٹاک پر

سن کر درست لکھی

13-08-18

Attested

SP Inv: Bannu.



(24)

OFFICE OF THE
DISTRICT POLICE OFFICER,
BANNU.

Ph: No. 0928 - 9270038

Fax # 0928 - 9270045

To: - The Deputy Inspector General of Police,
Enquiry & Inspection,
Khyber Pakhtunkhwa, Peshawar.

No: - 9711 /Dated Bannu, the 27 / 07 /2018.

Subject: - SERVICE APPEAL NO.1249/2016. TITLED MUHAMMAD
YASEEN No.2055 S/O GUL PAZIR KHAN V/S INSPECTOR
GENERAL OF POLICE KHYBER PAKHTUNKHWA.

Memo:-

Kindly refer to CPO Peshawar Memo No. 2148/Legal,
dated 18.07.2018 on the subject cited above.

In this connection, the original enquiry file containing
pages (17) alongwith judgment of the Honorable Service Tribunal and re-
instatement order of Constable Muhammad Yaseen No.2055 is submitted to
your good office for the purpose of Denovo departmental enquiry
proceedings, please.

No. 9712 dated: / /2018.


District Police Officer,
Bannu.

Copy of above is submitted to the SP Court & Litigation, for
Inspector General of Police Khyber Pakhtunkhwa CPO, Peshawar.


District Police Officer,
Bannu

o/c

34

SUMMARY OF ALLEGATIONS:

I, MUHAMMAD KHURRAM RASHID District Police Officer, Bannu as competent authority, to initiate denovo departmental proceedings against Constable Yaseen Khan No. 2055, who has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014).

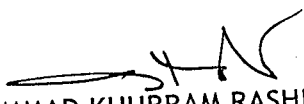
SUMMARY OF ALLEGATIONS:

- That Constable Yaseen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28-08-2015 without any permission from the competent authority and was still absented.
- Such act on his part is against service discipline and amounts to gross misconduct/ negligence in duty.

1. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations DSP Cantt Murad is appointed as Enquiry Officer.

2. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within the targeted days after the receipt of this order.

3. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(MUHAMMAD KHURRAM RASHID)PSP
District Police officer,
Bannu.

No. 301-302 ISRC dt-10-7-2018
Copies to :-

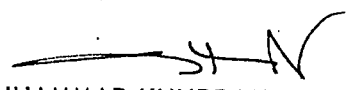
1. The Enquiry Officer
2. The Accused Officer/Official.

32

CHARGE SHEET:

I, MUHAMMAD KHURRAM RASHID, District Police Officer, Bannu, as competent authority, hereby charge you Constable Yaseen Khan No. 2055 for the purpose of denovo departmental enquiry proceedings as follows:-

- That you Constable Yaseen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28-08-2015 without any permission from the competent authority and were still absented.
 - Such act on your part is against service discipline and amounts to gross misconduct/ negligence in duty.
1. By reason of the above you appear to be guilty of misconduct under the Police Rules 1975 (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014) and have rendered yourself liable to all or any of the penalties specified in the said rules.
 2. You are therefore, directed to submit your defense within 07 days of the receipt of this Charge Sheet to the enquiry officer.
 3. Your written defense, if any, should reach to 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 be taken against you.
 4. You are directed to intimate whether you desire to be heard in person.
 5. A statement of allegation is enclosed.


(MUHAMMAD KHURRAM RASHID)PSP
District Police officer,
Bannu.

SUMMARY OF ALLEGATIONS:

(12)

I, MUHAMMAD KHURRAM RASHID District Police Officer, Bannu as competent authority, to initiate denovo departmental proceedings against Constable Yaseen Khan No. 2055, who has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014).

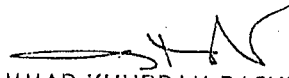
SUMMARY OF ALLEGATIONS:

- That Constable Yaseen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28-08-2015 without any permission from the competent authority and was still absented.
- Such act on his part is against service discipline and amounts to gross misconduct/ negligence in duty.

1. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations DSP Cacht Murad is appointed as Enquiry Officer.

2. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within the targeted days after the receipt of this order.

3. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.


(MUHAMMAD KHURRAM RASHID)PSP
District Police officer,
Bannu.

No. 301-202 ISRC dt-10-7-2018
Copies to :-

1. The Enquiry Officer
2. The Accused Officer/Official.

(11)

CHARGE SHEET:

I, MUHAMMAD KHURRAM RASHID, District Police Officer, Bannu, as competent authority, hereby charge you Constable Yaseen Khan No. 2055 for the purpose of denovo departmental enquiry proceedings as follows:-

- That you Constable Yaseen Khan No. 2055 while posted to police lines, Bannu left the station of duty on dated 28-08-2015 without any permission from the competent authority and were still absented.
- Such act on your part is against service discipline and amounts to gross misconduct/ negligence in duty.

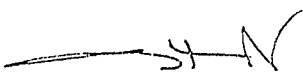
1. By reason of the above you appear to be guilty of misconduct under the Police Rules 1973 (As amended vide Khyber Pakhtunkhwa gazette Notification, No.27th of August 2014) and have rendered yourself liable to all or any of the penalties specified in the said rules.

2. You are therefore, directed to submit your defense within 07 days of the receipt of this Charge Sheet to the enquiry officer.

3. Your written defense, if any, should reach to 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 be taken against you.

4. You are directed to intimate whether you desire to be heard in person.

5. A statement of allegation is enclosed.


(MUHAMMAD KHURRAM RASHID) DSP
District Police officer,
Bannu.

charge sheet received

7-16

0332-5485577

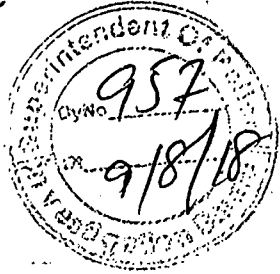
-7-018

20

41

Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

/E&I, dated Peshawar the 02 /08/2018



To: The District Police Officer,
Bannu.

Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC MUHAMMAD YASEEN NO. 2055

Memo: Please refer to your office letter No. 9711 dated 27.07.2018, on the subject cited above.

2. Denovo departmental enquiry against Ex-FC Muhammad Yaseen No. 2055 may be conducted through Mr. Abdul Khai, SP/Investigation Bannu and final outcome be communicated to this office, on or before 20.08.2018, before issuance of formal order, for the perusal of Worthy IGP.

PA/SRE
Put up early.

(DR. MUHAMMAD ABID KHAN), PSP
Deputy Inspector General of Police
Enquiry & Inspection
Internal Accountability
Khyber Pakhtunkhwa,
Peshawar

SP Inv: Bannu

No: 1011-12

- /E&I,
Copy of above is forwarded for information to:-
1. The Regional Police Officer, Bannu.
 2. Mr. Abdul Khai, SP/Investigation Bannu.

No. 2095 /EC dt 02/8/18
SP/Inv: Bannu

For enquiry & report.

RPO Bannu

7/8

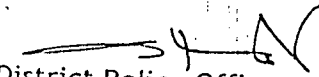
(DR. MUHAMMAD ABID KHAN), PSP
Deputy Inspector General of Police
Enquiry & Inspection
Internal Accountability
Khyber Pakhtunkhwa,
Peshawar

ORDER:

(27)

In compliance with the order of Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar Judgment dated 20.06.2018 in the Service Appeal No.1249/2016 received from Khyber Pakhtunkhwa Service Tribunal, Peshawar, Ex-Constable Mohammad Yaseen No. 2055, is hereby provisionally re-instated into service purely for the purpose of Denovo departmental Enquiry proceedings with immediate effect. The issue of his back benefits shall be subject to the final outcome of the denovo enquiry.

OB No. 642
Dated: 10-07 /2018.


District Police Officer,
Bannu.

No. 8903-08 /EC dated Bannu, the 10-7/2018.

Copy for information to:

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. Reader, Pay officer, SRC, OASI Line Officer Bannu, for information and necessary action.


District Police Officer,
Bannu.

25



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar

No. 2148 Legal dated Peshawar, the 18/7 2018.

To: The District Police Officer,
Bannu.

Subject: SERVICE APPEAL NO. 1249/2016. TITLED MUHAMMAD YASEEN
SO GUL PAZIR KHAN V/S INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA.

Memo:- Please refer to your office memo No. 9029 dated 12.07.2018, on the subject noted above.

Competent authority has directed that the judgment may be implemented as original enquiry file along with judgment of the Service Tribunal may be submitted before the Deputy Inspector General of Police E&I CPO, Peshawar for de-novo enquiry proceedings.

[Signature]
SP Court & Litigation,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

No. 2149 Legal

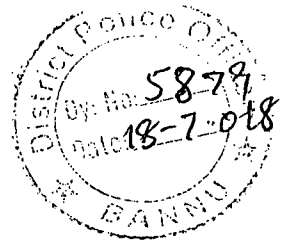
Copy of the above is forwarded for information to the Deputy Inspector General of Police, E & I Khyber Pakhtunkhwa CPO, Peshawar.

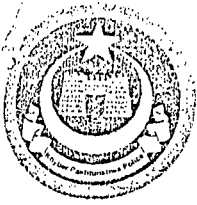
[Signature]
Legal/SRC

[Signature]
For compliance

[Signature]
SP Court & Litigation,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

District Police Officer
BANNU
18/07/18





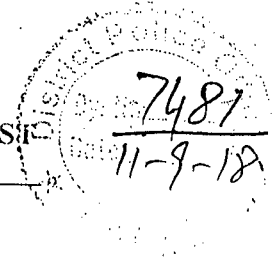
Office of the Deputy Inspector General of Police
Enquiry & Inspections
Khyber Pakhtunkhwa, Peshawar.

01st reminder

No. 1144 /E&I, dated Peshawar the 31 /08/2018

To: The District Police Officer,
Bannu

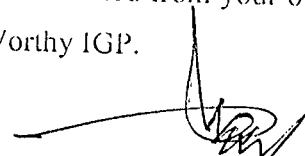
Subject: DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC MUHAMMAD YASEEN NO. 2055




Memo:

Please refer to this office letter No. 1010/E&I dated 02.08.2018, on the subject cited above.

2. Reply into the subject matter is still awaited from your office, which may please be sent to this office, for the perusal of Worthy IGP.


For Deputy Inspector General of Police
Enquiry & Inspection
Khyber Pakhtunkhwa
Peshawar

SRC
For compliance
report.


District Police Officer
BANNU

11/09/18

09/04/18

محضور جناب والا شان ریجنل پولیس آفیسر صاحب بہادر بنوں کے ہونے

اپیل: استدعا یہ کہ سائل کو جناب DPO صاحب بنوں نے بحوالہ OB نمبر 849 مورخہ 26-09-18 انکوٹری کے تحت فائل شوکا زائشو کے بغیر ملازمت سے ڈسمس کیا ہے۔ اور جناب SP انوسٹی گیشن بنوں کے ایک فرضی اور غلط فائل رپورٹ کو حقیقت تسلیم کرتے ہوئے سائل کو نہ تو دفاع موقع دیا۔ اور نہ ہی آخری فائل شوکا زائشو ایڈووکیٹا۔ حالانکہ میری انکوٹری ابتداء میں مراد علی خان DSP کینٹ صاحب کو مارا گیا تھا۔ جس نے DHQ ہسپتال بنوں سے میری بیماری کے ڈاکٹری کاغذات کی ویریفیکیشن رپورٹ بھی حاصل کی۔ اس ویریفیکیشن کی فوٹو کاپی صداقت کے لیے لف ہمراہ ہے۔ میرے ساتھ ظلم ہوا ہے علاج معالجہ میرا قانونی حق بنتا ہے لہذا بحالی ملازمت بعہدہ کانسٹیبل کی اپیل کرتا ہوں۔

جناب عالی! کم ترین آجناب کے حضور عاجزانہ اپیل کرتا ہے۔

1۔ کہ سائل بوجہ بیماری زیر علاج ڈیوٹی سے غیر حاضر تصور ہوا اور ملازمت سے ڈسمس کیا گیا حالانکہ چاہیے تھا کہ میری بیماری کے بارے DHQ ہسپتال بنوں سے ویریفیکیشن کرتے لیکن ایسا نہ ہوا۔ بندہ نے RPO صاحب کو اپیل کی مگر وہ بھی مسترد ہوئی۔ تو سائل مجبوراً سروس ٹریبونل کے دروازے پر پہنچا سروس ٹریبونل نے مورخہ 20-06-18 سائل کو ملازمت پر بحال کرتے ہوئے DENOVE انکوٹری کے احکامات صادر کیے۔

2۔ جناب DPO صاحب بنوں نے سائل کو چارج شیٹ جاری کیا۔ جس کا معقول جواب پیش کیا۔ اور انکوٹری کے لئے مراد علی خان DSP کینٹ مقرر ہوا۔ جنہوں نے میری بیماری بارے کاغذات کی DHQ ہسپتال بنوں سے ویریفیکیشن حاصل کی۔ جس کی فوٹو کاپی لف ہمراہ کی جاتی ہے۔ لیکن نامعلوم وجوہات کی بناء پر میری انکوٹری جناب SP انوسٹی گیشن کو مارا گیا۔ جنہوں نے ایک فرضی اور غیر منصفانہ رپورٹ تیار کر کے جناب DPO صاحب بنوں نے مجھے دوبارہ ڈسمس کیا۔ اور مجھے کوئی فائل شوکا زائشو نہ کیا نہ ہی پیشی کا موقع دیا۔

علیجاہ! میرے ساتھ ظلم ہوا۔ علاج معالجہ میرا قانونی حق بنتا ہے، ویدہ دانستہ ڈیوٹی سے غیر حاضر نہیں ہوا ہوں۔

لہذا عاجزانہ خواستگار ہوں کہ سائل کو بعہدہ کانسٹیبل بحال کرنے کا حکم صادر فرمایا جاوے۔

ماتحت پروری ہوگی۔

اسٹیل 18 مورخہ:

سائل EX کانسٹیبل محمد یاسین نمبر 2055 پولیس فائن بنوں

حال ولدیت گل پذیر خان سکندر کورٹ عادل

رابطہ نمبر: 0332-5485577

(Signature)

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

DB

No.

APPEAL No. 478 of 20 19

Muhammad Yaseen

Appellant/Petitioner

Versus

The PPO, KPK Pesh.

RESPONDENT(S)

✓
Notice to Appellant/Petitioner

Muhammad Yaseen S/o
Gul Razvi Khan P/O
P.O, and Village Kot Adil
Distt. Bannu.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 15-9-2020 at 9:00 AM

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Handwritten signature and the number 11 in a circle.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.496/2016

Date of Institution ... 11.05.2016
Date of Decision ... 22.07.2020



Mr. Adnan Khan, Ex: Constable #.2773, Police Lines Peshawar.

(Appellant)

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & 02 others.

(Respondents)

Mr. Noor Muhammad Khattak,
Advocate ... For appellant.

Mr. Kabir Ullah Khattak,
Additional Advocate General ... For respondents.

MRS. ROZINA REHMAN ... MEMBER (J)
MR. ATTIQ UR REHMAN ... MEMBER (E)

ATTESTED

Handwritten signature and stamp of the Khyber Pakhtunkhwa Service Tribunal, Peshawar.

JUDGMENT

ROZINA REHMAN, MEMBER :- Pithy facts of the case are that appellant was serving as Constable in the Police Department. Departmental proceedings were initiated against appellant on the allegation of absence from duty and upon culmination, major penalty of dismissal from service was imposed upon him vide impugned order dated 31.07.2013. He filed departmental appeal which was rejected on 12.04.2016, hence instant service appeal on 11.05.2016.

2. Learned counsel for appellant contended that appellant was not treated by the department in accordance with law and that Article-4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 were violated. He argued


Handwritten signature and date 22/7/20.

that ex-parte proceedings were initiated against appellant and after conclusion, major penalty was imposed by the competent authority vide impugned order. He argued that the absence was not deliberate and intentional rather circumstances forced him to stay away from duty as his father was seriously ill and the respondents were requested for leave. Lastly, he submitted that absence period was treated as leave without pay and in addition to the said order, penalty in shape of dismissal from service of the appellant was also imposed which was not warranted and that such an act on the part of competent authority falls within the ambit of double jeopardy.

3. Conversely learned AAG argued that inquiry proceedings were properly conducted against appellant on account of willful absence from duty for two different periods and that two different inquiries were initiated and charge sheet alongwith statement of allegation were served upon the appellant besides final show cause notice at his given home address. He contended that all codal formalities were observed before awarding major punishment.

4. Perusal of record would reveal that appellant was departmentally proceeded on the allegations of absence from duty for two different periods without taking permission/leave. The first period is from 17.04.2012 to 25.04.2012 i.e. eight (08) days while second period starts from 15.10.2012 till the date of impugned order i.e. 31.07.2013 (09 months and 15 days). As per record, two different inquiries were initiated but the proceedings were ex-parte as appellant was not before the inquiry officer. The record is silent in respect of the intervening period between these two different periods for which appellant was charged i.e. the period in between 25.04.2012 to 15.10.2012. The respondents badly failed to show as to whether he remained absent during the period mentioned above which means that he

ATTESTED


 Service Tribunal,
 Peshawar

joined service after alleged absence of eight (08) days from 17.04.2012 to 25.04.2012. It was also not explained as to why departmental proceedings for absence of eight (08) days without permission were carried out so late when the appellant allegedly remained absent for the second time on 15.10.2012 and remained absent for nine (09) months and fifteen (15) days. It is also evident from the comments of the respondents that inquiry proceedings were conducted at the back of appellant. He was placed ex-parte. Whatever may be the circumstances, the appellant was condemned unheard and the moment he came to know about the proceedings, departmental appeal was filed. In order to look after his ailing father, he stayed away from duty and as per appellant, the absence was not willful and deliberate. He remained absent for few months and we are of the view that the penalty awarded to the appellant seems to be harsh.

dup

5. The long and short of the above discussion is that appeal is partially accepted and the penalty of dismissal from service is modified/converted into stoppage of two (02) annual increments for two (02) years. The absence period and intervening period shall be treated as leave without pay. No order as to costs. File be consigned to the record room.

dup

ANNOUNCED.
22.07.2020

(ATTIQ UR REHMAN)
MEMBER (E)

(ROZINA REHMAN)
MEMBER (J)

[Signature]
Service Tribunal,
Peshawar

Date of Presentation of Application 02/09/2020
 Number of Words 1200
 Copying Fee 14.00
 Urgent 4.00
 Total 18.00
 Name of Officer [Signature]
 Date of Copy 02/09/2020
 Date of Delivery of Copy 02/09/2020



2008 S C M R 214

For Appellant's file

[Supreme Court of Pakistan]

Present: Rana Bhagwandas and Muhammad Nawaz Abbasi, JJ

MUHAMMAD ALI S. BUKHARI----Appellant

Versus

**FEDERATION OF PAKISTAN through Establishment Secretary, Islamabad and 2 others----
Respondents**

Civil Appeal No.86 of 2005, decided on 28th August, 2007.

(On appeal from the judgment of Federal Service Tribunal, Islamabad, dated 30-7-2004 passed in Service Appeal No.554(K) (C.S.) of 2002).

(a) Government Servants (Efficiency and Discipline) Rules, 1973---

---Rr. 3(b) & 4(b)(i)(ii)(iii)---Civil Servants Act (LXXI of 1973), S.18---Constitution of Pakistan (1973), Art.212(3)---Removal from service---Charge of non-compliance of order of superiors and absence from duty without prior permission---Conversion of such penalty into compulsory retirement by Service Tribunal in appeal of civil servant---Plea of civil servant that he was not supposed to accept special assignment without order in writing; and that he had availed medical leave on advice of doctor---Validity---In service discipline, oral order of superiors in relation to official business would be as good order as in writing---Civil servant could earn leave on his own right, but for its grant, he must have followed proper procedure provided under the Rules---Civil servant was not supposed to avail any kind of leave entirely in his discretion and choice in departure to the Rules and service discipline---Absence from duty without leave, even if not wilful, but same being an act of disorder in service would constitute misconduct---Availing of medical leave without permission could not be considered an act of gross misconduct entailing major penalty of dismissal from service---Charge against civil servant was not so grave as to propose any of such two penalties---Major penalty of compulsory retirement was harsh and did not commensurate with nature of charge---Supreme Court converted penalty of compulsory retirement into reduction of two steps in time scale for a period of two years in consequence to which civil servant would be deemed to have earned two increments for a period of two years.

(b) Civil service---

---Oral order of superiors---Validity---In service discipline, oral order of superiors in relation to official business would be as good order as in writing.

(c) Civil Servants Act (LXXI of 1973)---

---S. 18---Leave, right of---Scope---Civil servant would not be supposed to avail any kind of leave entirely in his discretion and choice in departure to the Rules and service discipline---Principles.

(d) Government Servants (Efficiency and Discipline) Rules, 1973---

---R. 3(b)---Civil Servants Act (LXXI of 1973), S.18---Misconduct---Absence from duty without

leave, even if not wilful, but same being an act of disorder in service, would constitute 'misconduct'.

(e) Civil service---

---Disciplinary proceedings---Penalty, imposition of---Scope---Penalty in service matters would always be imposed in the light of charge against civil servant---Concept of major or minor penalty in service laws would be to determine quantum of punishment in the light of nature and gravity of charge.

Appellant in person.

Rizwan Ahmed Siddiqui, Deputy Attorney-General for Pakistan.

A.S.K. Ghouri, Advocate-on-Record for Respondent No.2.

Date of hearing: 28th August, 2007.

JUDGMENT

MUHAMMAD NAWAZ ABBASI, J.--- This appeal by leave of the Court, has been directed against the judgment of Federal Service Tribunal, dated 30-7-2004 passed in Appeal No.554(K) (C.S.) of 2002 whereby the penalty of removal from service awarded to the appellant was converted into compulsory retirement from service.

2. The leave was granted in this appeal vide order, dated 26-1-2005 as under:--

"It is inter alia, contended that the petitioner was subjected to discriminatory treatment in the matter of successive show-cause notices and inquiries; that the Inquiry Officer kept on consulting with the Director-General, Commercial Audit, who was unfavourably disposed and hostile towards the petitioner; that enquiry was not conducted according to law; that the charges of not submitting the project reports and unauthorized absence from duty were not established against him; that the statement of the petitioner was recorded in question-answer format which has caused miscarriage of justice and that despite the recommendation of the Authorized Officer for lesser penalty competent authority imposed major penalty or removal from service on the petitioner.

Leave to appeal is granted to consider the above questions which appear to be of public importance."

3. The short facts leading to the filing of this appeal are that appellant, a Grade-18 Officer of Audit and Account Service, while posted as Deputy Director Audit, Office of the Director-General Commercial Audit and Evaluation (South) Karachi, was served with a show-cause notice, dated 1-11-1997 by the Auditor-General for Pakistan to the effect that despite Director-General's repeated directions, he failed to submit audit report of Saindak Metals Ltd. and similarly he did not comply with the orders regarding special assignment of audit of Port Qasim Authority given to him and thereby he committed an act of insubordination. The appellant, on rejection of his application submitted on 25-9-1997 for grant of 15 days LFP, was directed to appear before the D.G. but he absented from duty, therefore, he was served with a charge-sheet on 3-3-1998 containing the above charges. In view of the nature of allegations, successive inquiries were held against the appellant and he having been found guilty of the charges, was awarded major penalty

of removal from service vide order, dated 8-8-2002. The appellant after availing the remedy of departmental appeal, approached the Federal Service Tribunal and the Tribunal with conversion of penalty of removal from service into compulsory retirement, disposed of his appeal and appellant being dissatisfied with the judgment of Tribunal has filed this appeal before this Court in which leave was granted as aforesaid.

4. The main charge against the appellant was that he having disobeyed the orders of his superiors in respect of the assignment of special audit given to him committed an act of insubordination and also was guilty of wilful absence from duty. The appellant giving an evasive reply to the show-cause notice stated that he was not given an order in writing for the special assignment and similarly the absence of the appellant from duty was not deliberate and wilful rather his failure to attend the duty, was due to his ailment and he availing the medical leave under the advice of the doctor, sent an intimation to the office therefore, he could not be treated absent from duty without permission. In nutshell submission of the appellant, was the departmental action against him was the result of mala fide of the Director-General and the forums below without giving due consideration to the circumstances leading to the departmental action, held him guilty of the charge in a perfunctory manner. The appellant when confronted that the departmental authorities namely the Inquiry Officer as well as the Authorized Officer and competent authority having found him guilty of the charge concurrently proposed major penalty of removal from service, he submitted that initially penalty of reduction in time scale was proposed but subsequently, he was imposed the penalty of removal from service and Tribunal converted the same into compulsory retirement from service.

5. Learned D.A.-G., on the other hand, has submitted that the appellant being a senior member of Accounts Service, was not supposed to behave in the manner he acted and that the act of wilful absence from duty would be sufficient to constitute the misconduct and insubordination entailing major penalty of dismissal or removal from service and in view of the fact that Tribunal has converted the penalty of removal from service imposed upon the appellant into compulsory retirement, no further indulgence is required in the matter.

6. Having perused the record with the assistance of learned D.A.-G. and the appellant in person, we have found that the charge regarding non-compliance of order of the superiors and absence from duty, without prior permission, stood established against the appellant who instead of repenting on his conduct and giving plausible explanation, has made an attempt to convince us that he was neither supposed to accept the special assignment without order in writing nor his absence from duty would be treated without permission as he availed the medical leave as per his entitlement. This may be seen that in the service discipline, the oral order of the superior in relation to the official business, is as good as order in writing and the mere fact that order passed by the Director-General on the file deputing the appellant to special audit assignment was not conveyed to him in writing, would not be sufficient to justify his conduct and he without denying the fact relating to the special assignment given to him and absence from duty, denied charges with unsatisfactory explanation.

7. The civil servant can avail earned leave in his own right but for grant of such right he must follow the proper procedure provided under the rules and is not supposed to avail any kind to leave entirely in his discretion and choice in departure to the rules and service discipline. The conduct of appellant was thus, unbecoming of a good officer and in the given circumstances, the absence of appellant from duty without leave even if was not wilful, it being an act of disorder in the service, would certainly constitute misconduct and consequently, no exception can be taken to the opinion expressed by the Tribunal. However, in service matters, the penalty is always imposed in the light of nature of charge and in the present case the charge against the appellant was not so grave to propose major penalty of removal from service or compulsory retirement.

8. The leave is right of a civil servant which can be availed in terms of the rules and mere fact that appellant did not obtain permission before proceeding on sick leave rather availed medical leave on the advice of doctor, may not be considered an act of gross misconduct entailing major penalty of dismissal from service. The concept of major and minor penalty in the service laws is to determine the question of punishment in the light of nature of gravity of the charge and we find that in the present case, concerned authorities without attending this aspect of the case, awarded major penalty to the appellant. In the light of facts and circumstances of the present case, we are of the view that major penalty of compulsory retirement is harsh and does not commensurate with the nature of charge, therefore, we while modifying the judgment of Tribunal, convert the penalty of compulsory retirement into reduction of two steps in time scale for a period of two years in consequence to which the appellant would be deemed not to have earned two increments for a period of two years.

9. In the light of foregoing reasons, this appeal, with the above modification, in the penalty of appellant, is partly allowed with no order as to costs.

S.A.K./M-116/SC

Appeal partly accepted.

denovo

20-6-18

Medical - 12-11-15 ✓
9-11-15

Verification by M.S. 31/7/18
Sent on ³¹8-7-18.

Removed on: 28.9.18 ✓
- 5.11.18 Not responded
- 5/11.

Service appeal late on: 9.4.19

findings 5/11/18 8/18

31/20

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Gulzar Ahmed, HCJ
Mr. Justice Ijaz ul Ahsan

Case No. 58 of 2020
Absence 6 months
AER

Civil Appeal No.58 of 2020

Against judgment dated 20.11.2017 of Khyber
Pakhtunkhwa Service Tribunal, Peshawar,
passed in Service Appeal No.734 of 2014.

Govt
5/20

Government of Khyber Pakhtunkhwa
through Capital City Police Officer
Peshawar & others

Appellant(s)

VERSUS

Shahid

Respondent(s)

For the Appellant(s) : Barrister Qasim Wadood,
Addl.AG, KP.

For the Respondent(s) : Mr. Muhammad Asif, ASC

Date of Hearing : 02.04.2020

ORDER

GULZAR AHMED, CJ. We have heard the learned Additional Advocate General, Khyber Pakhtunkhwa as well as learned ASC for the Respondent and have gone through the material available on record. The Respondent was employed as a Police Constable in the Police Department, Khyber Pakhtunkhwa. He was issued a charge sheet alongwith statement of allegations. An Inquiry Officer was appointed to inquire into the allegations levelled against the Respondent. Despite successive notices issued to the Respondent, he did not

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Court Associate
Supreme Court of Pakistan

appear before the Inquiry Officer. Although, the Respondent was informed through mobile phone to appear before the Inquiry Officer, but he avoided attending the inquiry proceedings. The Inquiry Officer recommended that a major penalty of dismissal from service be imposed upon the Respondent. On such recommendations, the competent authority in the Department issued final show cause notice to the Respondent to which he failed to submit any explanation. After having fulfilled the codal formalities, the Respondent was dismissed from service on the allegation of wilful absence from duty for a period of six months and three days, vide office order dated 04.03.2014. The departmental appeal filed by the Respondent was rejected and then he filed a service appeal bearing No.734 of 2014 before the Khyber Pakhtunkhwa Service Tribunal, Peshawar ("**the Tribunal**") which vide impugned judgment dated 20.11.2017 came to the following conclusion:

"It is not disputed that the appellant remained absent without permission and the stance of appellant is that he was absent due to unavoidable circumstances. In these circumstances, the impugned order appears to be harsh one and not commensurate with the lapse/guilt on the part of the appellant and as such the punishment of removal from service of the appellant is converted to withholding of two increments for two years. The absence period and intervening period shall be treated as leave of the kind due."

2. The learned Additional Advocate General, Khyber Pakhtunkhwa contends that once the allegation of unauthorized absence from duty stood proved against

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Court Associate
Court of Pakistan

the Respondent and the same having not been seriously disputed before the Tribunal, there was no power vested in the Tribunal to modify the penalty of dismissal from service to that of withholding of two increments for a period of two years for which the Tribunal has not cited any law, but it has just whimsically stated that the penalty imposed upon the Respondent was harsh. What are the parameters of imposition of major and minor penalties, under what circumstances such penalties are to be imposed and what law governs the imposition of such penalties, the Tribunal has not taken trouble of examining the same or making any observations in that regard in the impugned judgment. Just whimsically stating that the punishment is harsh could not be made basis by the Tribunal to modify the penalty imposed by the competent authority. Learned ASC for the Respondent has also not been able to show that the Tribunal while modifying the penalty has acted in accordance with law, in that, no law in this regard whatsoever was cited by him.

3. For what has been discussed above, we find that the Tribunal by interfering with the penalty imposed by the department has exceeded from its jurisdiction more so when the Respondent was employed in a disciplined force where he could not have remained absent from duty for a long period of 06 months and 03

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4,
days as noted in the impugned judgment. We find that the impugned judgment passed by the Tribunal suffers from illegality and is unsustainable in the eyes of law. The same is therefore set aside, the penalty of dismissal from service imposed upon the Respondent by the Department vide office order dated 04.03.2014 is restored and the present appeal is allowed.

4. All pending CMAs are also disposed of.

Sd/- HCJ
Sd/- J

ISLAMABAD, THE

02.04.2020

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~~Not Approved For Reporting~~

Certified to be True Copy

[Signature] 28/4/2020
Court Associate
Supreme Court of Pakistan
Islamabad



Leave without pay

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, HCJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sajjad Ali Shah

Civil Appeal No. 1618/2019.

(Against the order dated 18.7.2017 passed by the
Islamabad High Court in WP No.3793/2016)

NAB through its Chairman

... Appellant(s)

Versus

Muhammad Shafique

... Respondent (s)

For the Appellant (s) : Mr. Imran ul Haq Khan, DPG NAB

For the Respondent(s) : Raja Muhammad Anwar Khan Abbasi, ASC
Mr. Ahmed Nawaz Ch. AOR

Date of Hearing : 06.01.2020

Judgment

Sajjad Ali Shah, J. The respondent in the year 1990 was appointed as Upper Division Clerk in the Ministry of Food, Agriculture and Life Stock. Islamabad and thereafter was placed in surplus pool. The respondent ultimately on 18.12.2002 was absorbed in the appellant-NAB as UDC. He absented himself from duty for a continuous period of 66 days from 23.11.2009 giving rise to disciplinary proceedings which resulted in his compulsory retirement. The respondent against such major penalty invoked constitutional jurisdiction of the Islamabad High Court by pleading *inter alia* that since the office order dated 12.3.2010 through which major penalty of compulsory retirement from service was imposed also directs the treatment of his un-authorized absence from duty of 66 days from 23.11.2009 to 27.1.2010 as extraordinary leave (EOL) without pay, therefore, the major penalty of compulsory retirement could not be sustained. The High Court, through the impugned judgment, while accepting such plea allowed the petition by setting aside the major penalty

of compulsory and directed the reinstatement of the respondent with all back benefits.

2. Leave was granted by this Court vide order dated 30.9.2019 to examine as to whether in the circumstances, penalty of compulsory retirement could not be imposed upon the respondent.

3. The learned Deputy Prosecutor General NAB contends that during 7 years of service with the appellant, the respondent remained absent for a total period of 1627 days and in this respect various warning letters were issued to him but he did not improve his behaviour rather once again on 23.11.2009 absented himself which absence continued for 66 days. Show cause notice in the meanwhile was accordingly issued on 18.12.2009. It was responded by the respondent on 29.12.2009 requesting the adjustment of his casual leave against his absence. However, the response submitted by the respondent did not find favour with the competent authority, consequently, vide order dated 12.3.2010 the competent authority while imposing major penalty directed the compulsory retirement of the respondent. So far as the conversion of the un-authorized absence from duty as extraordinary leave, it was submitted that this was only for the purpose of settlement of respondent's dues. In the circumstances, it was submitted that the impugned judgment lacks legal sanctity and could not be sustained.

4. On the other hand, learned counsel for the respondent contended that rule 9(3) of the Revised Leave Rules, 1980 empowers the competent authority to grant extraordinary leave retrospectively in lieu of absence from leave and since the competent authority has exercised such discretion by treating the respondent's un-authorized absence of 66 days as extraordinary leave, therefore, there was no occasion to impose major penalty of compulsory retirement. Counsel, in support of his contention, placed reliance on the judgments of this Court in the case titled Lahore Development Authority vs. Muhammad Nadeem Kachloo (2006 SCMR 434),

Director General Intelligence Bureau vs. Muhammad Javed (2012 SCMR 165) and Muhammad Sharif Abbasi vs. Member, Water, WAPDA Lahore (2013 SCMR 903).

5. We have heard the contentions of learned counsel for both the parties and have perused the record as well as the case law cited at bar.

6. It appears from the record that the respondent not only absented himself from duty but during his absence, he received a show cause notice, responded to it and still continued with his absence. The show cause notice seeking explanation of the respondent for his un-authorized absence was issued on 18.12.2009 containing the following charge:-

"You are absent from duty since 23rd November, 2009 without any intimation/prior approval of your office incharge as reported by Ops Division. You were served an explanation on 1st December, 2009 with the direction to explain your position within three days followed by 2 x reminders dated 10th and 14th December, 2009, but you did not reply so far. You were also directed to report for duty immediately, but you are still absent from duty". Therefore, you Mr Muhammad Shafique, UDC, NAB (HQ), Islamabad are called upon to show cause within period of 10 (Ten days) from the date of receipt of this notice as to why one of the penalties as defined in para 11.03(1) of NAB's TCS should not be imposed upon you on account of misconduct".

7. The respondent on 29.12.2009, almost within the prescribed period, responded to the show cause notice, the relevant portion of the said response, which is very relevant to resolve the controversy, is reproduced as follows:-

"In the mean time I had been suffering from severe back-ach and getting some formal treatment but in vain and the pain was increasing day by day. It is worth of mention here that I had been attending the office during those days. So I decided to be treated from some specialist and I did so. In the result of detailed check up by the doctor I was advised complete bed-rest (Doctor's advice will be submitted in couple of days) and because of that I submitted casual leave applications one after another, u.e.f. 1st December 2009 onward. It is humbly requested to treat my absent days as leave. I shall be highly obliged".

8. The response submitted by the respondent did not find favour with the competent authority which vide office order dated 12.3.2010

directed the respondent's compulsory retirement by imposing one of the major penalties. Since this office order also directed the treatment of respondent's un-authorized absence as extraordinary leave without pay and the entire controversy, as projected before us, revolves around the treatment of respondent's such un-authorized absence from duty as extraordinary leave, therefore, it would be proper to reproduce the office order dated 12.3.2010 imposing major penalty of compulsory retirement which reads as under:-

"In pursuance of Show Cause Notice issued vide this Bureau's letter of even number dated 18th December, 2009 the competent authority i.e. Director General HR & Fin has imposed a major penalty i.e. 'compulsory retirement from service' upon Mr. Muhammad Shafique, UDC, NAB, Islamabad under section 11.03(1)(b)(ii) of NAB's TCS with immediate effect.

The un-authorized absence from duty for a period of 66 days from 23rd November, 2009 to 27th January, 2010 is hereby treated as EOL (without pay)."

9. Perusal of this office order would reflect that the competent authority in the first paragraph of office order has expressed its mind explicitly on the unauthorized absence of the respondent by imposing the major penalty of compulsory retirement from service with immediate effect. So far as the second portion of the office order is concerned, since the penalty imposed by the competent authority was of compulsory retirement which follows the payment of salaries and other dues till the date of imposing such penalty, therefore, in our opinion, it was necessary to give finding as to how such absence is to be treated, therefore, to say that since the un-authorized absence of the respondent was treated as extraordinary leave in term of rule 9(3) of the Revised Leave Rules, 1980 does not appeal to our mind. If this would have been the case then the first paragraph of the office order would be redundant, on the contrary it categorically provides for the consequences of the un-authorized absence.

10. No doubt sub-Rule 3 of Rule 9 of "The Revised Leave Rules, 1980" empowers the authorized officer to treat the un-authorized absence

of an employee as extraordinary leave without pay but such treatment is not to be automatically allowed in every case. In our opinion, such powers are to be exercised in very genuine cases where the authorized officer finds that imposing of major penalty on account of unauthorized absence of an employee would be too harsh or is not warranted under the circumstances. However, where the authorized officer after due application of mind upon examining/adjudging the misconduct has imposed one of the major penalties and thereafter keeping in mind that the gap between the unauthorized absence of the employee and the imposition of major penalty is to be provided with some kind of treatment provides for accordingly, then such treatment may it not be necessary would undo the major penalty.

11. So far as the case law relied upon by the learned counsel for the respondent is concerned, in the cases of Lahore Development Authority vs. Muhammad Nadeem Kachloo and Director General Intelligence Bureau vs. Muhammad Javed (supra), the competent authority after awarding major penalty of dismissal from service had directed the petitioner's un-authorized absence as leave without pay. The cases can be differentiated as after imposing the penalty of dismissal from service, an employee may not be found entitled to any dues, therefore, there could hardly be any reason to provide for the treatment of their un-authorized absence as leave without pay. Beside in our view this was not a good interpretation of the office order imposing major penalty for the simple reason that the subsequent portion of the office order whereby the treatment of the un-authorized leave was provided as extraordinary leave without pay, at the most could be superfluous and redundant but could not be treated to nullify the major penalty which of course is imposed after adjudging the conduct of an employee. In case where the competent authority wanted to condone the absence of an employee by directing its treatment as one kind of leave, then the competent authority would have shown its intention by providing reasons for condoning such absence or at least would not have in the same

breath imposed major penalty of dismissal or compulsory retirement. The benefit of such naïve drafting cannot be given to an employee who otherwise by his conduct deserved one of the major penalties. Additionally, it is not disputed that the conversion of unauthorized absence, as EOL without pay is not a penalty/punishment so that one can say that such treat cannot co-exist with the major penalty/minor penalties. It is very obvious that if a man has absented himself from work without the permission of his employer, he of course is not entitled as of a right for payment of salary for such period.

12. So far as the case of Muhammad Sharif Abbasi vs. Member, Water, WAPDA Lahore (supra) is concerned, in that case on account of unauthorized absence, after awarding major penalty of compulsory retirement the un-authorized absence was treated as EOL without pay. However, in the said case the Court's opinion was mainly swayed on account of the fact that the petitioner in that case was an employee of the WAPDA and admittedly was hospitalized in WAPDA's own hospital, therefore, the major penalty of compulsory retirement was not found sustainable.

13. These are the reasons of our short order of even date which was in the following terms:-

"We have heard the learned counsel for the parties and have also gone through the record of the case. For reasons to be recorded, this appeal is allowed and the impugned judgment passed by the High Court dated 18.7.2017 is set aside resulting in dismissing of Writ Petition No. 3793/2016, filed by the respondent against the petitioner".

Chief Justice

Judge

Judge

Islamabad, the
6th January, 2020
A. Rehman

Not Approved for Reporting.

Leave without pay

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sajjad Ali Shah

C.A.No.1661 of 2019

[Against the judgment dated 26.05.2017, passed by the Federal Service Tribunal, Islamabad in Appeal No.2094(R)CS/2015]

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Kafydt Ullah Khan. ...Appellant (s)

Versus

Inspector General of Police, Islamabad and ...Respondent(s) another.

For the Appellant (s) : Malik Matee Ullah, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s) : Mr. Sajid Ilyas Bhatti, Addl. Attorney General.
Sajid Abbas, Inspector (Legal).

Date of Hearing : 10.02.2020

ORDER

Gulzar Ahmed, CJ:- The issue raised in the present case that after awarding of penalty, the treatment of the absence period as leave without pay, will amount to a double punishment. This issue has already been dealt with by a judgment of three member Bench of this Court dated 06.01.2020, passed in Civil Appeal No.1618/2019, titled NAB through its Chairman vs. Muhammad Shafique, where it has clearly been held that after imposition of penalty, the treatment of absence period as leave without pay or extraordinary leave, is not a punishment, rather the treatment of the absence period, which in any case has to be considered by the Competent Authority. The law in this regard having been settled by this judgment, thus, the matter stands

ATTESTED

Senior Court Associate
Supreme Court of Pakistan
Islamabad

qualified applied for the same. They were subjected to written test, typing test, interview and after fulfilling all the codal formalities, they were appointed as Junior Clerks vide Office Orders dated 11.2.2012 and 25.12.2012. During the course of performance of their duties, they were promoted from BS-7 to BS-11 vide order dated 20.5.2014 with no complaint made against them. However, vide impugned orders dated 3.7.2014 and 7.7.2014, the petitioners were directed to appear in the typing test or else they would lose their right to maintain their service hence, the petition in hand:

3. On 15.7.2014, when the petition came up for hearing before the court, directions were given to the learned AAG to submit comments on behalf of the respondents and by way of interim relief, operation of the impugned orders dated 3.7.2014 and 7.7.2014 was suspended. Accordingly, the desired comments were filed by the respondents.

4. The petition was adjourned on three occasions due to absence of the learned counsel for the petitioners and lastly it was argued on 28.10.2014 at a considerable length by the learned counsel for the petitioners as well as the learned AAG and in order to seek further assistance, this court directed the learned AAG to come alongwith the Director Education on 30.10.2014. Accordingly, the Director Education Khyber Pakhtunkhwa appeared before the court.

5. Keeping in view the allegations of the respondents that the petitioners were appointed without being subjected to typing test

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EXAMINER

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Since harsh punishment has been awarded to the appellant and the grounds mentioned in the application for condonation of delay are reasonable, as such in the interest of justice, the delay, if any, in preferring instant appeal is condoned.

clinched and the submission of the learned counsel for the appellant in this regard is also dealt with by the said judgment.

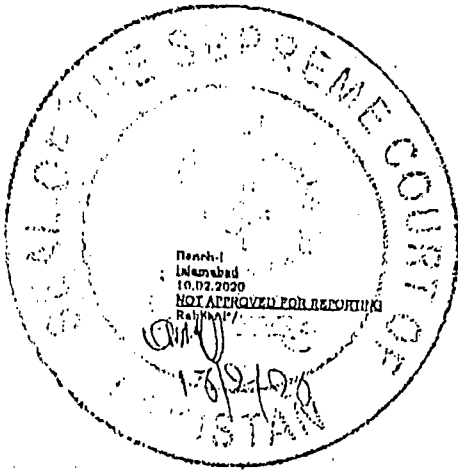
The appeal, thus, is dismissed with no order as to costs,

Sd/-HCJ

Sd/-J

Sd/-J

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Senior Court Associate
Supreme Court of Pakistan
Islamabad

GR No: 10190/20 Civil/Criminal
 Date of presentation: 13-07-20
 No of Parties: 600
 No of Issues: 6
 Remuneration Fee: 5-00
 Copy Fee: 3-72
 Court Fee: 8-72
 Date of Order: 19/7/20
 Date of discharge: 15/7/2020
 Compared by: [Signature]
 Received by: Basit

Settle Conclusively

2008 S C M R 214

For Appellant side

[Supreme Court of Pakistan]

Present: Rana Bhagwandas and Muhammad Nawaz Abbasi, JJ

MUHAMMAD ALI S. BUKHARI---Appellant

Versus

FEDERATION OF PAKISTAN through Establishment Secretary, Islamabad and 2 others---
Respondents

Civil Appeal No.86 of 2005, decided on 28th August, 2007.

(On appeal from the judgment of Federal Service Tribunal, Islamabad, dated 30-7-2004 passed in Service Appeal No.554(K) (C.S.) of 2002).

(a) Government Servants (Efficiency and Discipline) Rules, 1973---

---Rr. 3(b) & 4(b)(i)(ii)(iii)---Civil Servants Act (LXXI of 1973), S.18---Constitution of Pakistan (1973), Art.212(3)---Removal from service---Charge of non-compliance of order of superiors and absence from duty without prior permission---Conversion of such penalty into compulsory retirement by Service Tribunal in appeal of civil servant---Plea of civil servant that he was not supposed to accept special assignment without order in writing; and that he had availed medical leave on advice of doctor---Validity---In service discipline, oral order of superiors in relation to official business would be as good order as in writing---Civil servant could earn leave on his own right, but for its grant, he must have followed proper procedure provided under the Rules---Civil servant was not supposed to avail any kind of leave entirely in his discretion and choice in departure to the Rules and service discipline---Absence from duty without leave, even if not wilful, but same being an act of disorder in service would constitute misconduct---Availing of medical leave without permission could not be considered an act of gross misconduct entailing major penalty of dismissal from service---Charge against civil servant was not so grave as to propose any of such two penalties---Major penalty of compulsory retirement was harsh and did not commensurate with nature of charge---Supreme Court converted penalty of compulsory retirement into reduction of two steps in time scale for a period of two years in consequence to which civil servant would be deemed to have earned two increments for a period of two years.

(b) Civil service---

---Oral order of superiors---Validity---In service discipline, oral order of superiors in relation to official business would be as good order as in writing.

(c) Civil Servants Act (LXXI of 1973)---

---S. 18---Leave, right of---Scope---Civil servant would not be supposed to avail any kind of leave entirely in his discretion and choice in departure to the Rules and service discipline---Principles.

(d) Government Servants (Efficiency and Discipline) Rules, 1973---

---R. 3(b)---Civil Servants Act (LXXI of 1973), S.18---Misconduct---Absence from duty without

leave, even if not wilful, but same being an act of disorder in service, would constitute 'misconduct'.

(e) Civil service---

---Disciplinary proceedings---Penalty, imposition of---Scope---Penalty in service matters would always be imposed in the light of charge against civil servant---Concept of major or minor penalty in service laws would be to determine quantum of punishment in the light of nature and gravity of charge.

Appellant in person.

Rizwan Ahmed Siddiqui, Deputy Attorney-General for Pakistan.

A.S.K. Ghouri, Advocate-on-Record for Respondent No.2.

Date of hearing: 28th August, 2007.

JUDGMENT

MUHAMMAD NAWAZ ABBASI, J.--- This appeal by leave of the Court, has been directed against the judgment of Federal Service Tribunal, dated 30-7-2004 passed in Appeal No.554(K) (C.S.) of 2002 whereby the penalty of removal from service awarded to the appellant was converted into compulsory retirement from service.

2. The leave was granted in this appeal vide order, dated 26-1-2005 as under:--

"It is inter alia, contended that the petitioner was subjected to discriminatory treatment in the matter of successive show-cause notices and inquiries; that the Inquiry Officer kept on consulting with the Director-General, Commercial Audit, who was unfavourably disposed and hostile towards the petitioner; that enquiry was not conducted according to law; that the charges of not submitting the project reports and unauthorized absence from duty were not established against him; that the statement of the petitioner was recorded in question-answer format which has caused miscarriage of justice and that despite the recommendation of the Authorized Officer for lesser penalty competent authority imposed major penalty or removal from service on the petitioner.

Leave to appeal is granted to consider the above questions which appear to be of public importance."

3. The short facts leading to the filing of this appeal are that appellant, a Grade-18 Officer of Audit and Account Service, while posted as Deputy Director Audit, Office of the Director-General Commercial Audit and Evaluation (South) Karachi, was served with a show-cause notice, dated 1-11-1997 by the Auditor-General for Pakistan to the effect that despite Director-General's repeated directions, he failed to submit audit report of Saindak Metals Ltd. and similarly he did not comply with the orders regarding special assignment of audit of Port Qasim Authority given to him and thereby he committed an act of insubordination. The appellant, on rejection of his application submitted on 25-9-1997 for grant of 15 days LFP, was directed to appear before the D.G. but he absented from duty, therefore, he was served with a charge-sheet on 3-3-1998 containing the above charges. In view of the nature of allegations, successive inquiries were held against the appellant and he having been found guilty of the charges, was awarded major penalty

of removal from service vide order, dated 8-8-2002. The appellant after availing the remedy of departmental appeal, approached the Federal Service Tribunal and the Tribunal with conversion of penalty of removal from service into compulsory retirement, disposed of his appeal and appellant being dissatisfied with the judgment of Tribunal has filed this appeal before this Court in which leave was granted as aforesaid.

4. The main charge against the appellant was that he having disobeyed the orders of his superiors in respect of the assignment of special audit given to him committed an act of insubordination and also was guilty of wilful absence from duty. The appellant giving an evasive reply to the show-cause notice stated that he was not given an order in writing for the special assignment and similarly the absence of the appellant from duty was not deliberate and wilful rather his failure to attend the duty, was due to his ailment and he availing the medical leave under the advice of the doctor, sent an intimation to the office therefore, he could not be treated absent from duty without permission. In nutshell submission of the appellant, was the departmental action against him was the result of mala fide of the Director-General and the forums below without giving due consideration to the circumstances leading to the departmental action, held him guilty of the charge in a perfunctory manner. The appellant when confronted that the departmental authorities namely the Inquiry Officer as well as the Authorized Officer and competent authority having found him guilty of the charge concurrently proposed major penalty of removal from service, he submitted that initially penalty of reduction in time scale was proposed but subsequently, he was imposed the penalty of removal from service and Tribunal converted the same into compulsory retirement from service.

5. Learned D.A.-G., on the other hand, has submitted that the appellant being a senior member of Accounts Service, was not supposed to behave in the manner he acted and that the act of wilful absence from duty would be sufficient to constitute the misconduct and insubordination entailing major penalty of dismissal or removal from service and in view of the fact that Tribunal has converted the penalty of removal from service imposed upon the appellant into compulsory retirement, no further indulgence is required in the matter.

6. Having perused the record with the assistance of learned D.A.-G. and the appellant in person, we have found that the charge regarding non-compliance of order of the superiors and absence from duty, without prior permission, stood established against the appellant who instead of repenting on his conduct and giving plausible explanation, has made an attempt to convince us that he was neither supposed to accept the special assignment without order in writing nor his absence from duty would be treated without permission as he availed the medical leave as per his entitlement. This may be seen that in the service discipline, the oral order of the superior in relation to the official business, is as good as order in writing and the mere fact that order passed by the Director-General on the file deputing the appellant to special audit assignment was not conveyed to him in writing, would not be sufficient to justify his conduct and he without denying the fact relating to the special assignment given to him and absence from duty, denied charges with unsatisfactory explanation.

7. The civil servant can avail earned leave in his own right but for grant of such right he must follow the proper procedure provided under the rules and is not supposed to avail any kind to leave entirely in his discretion and choice in departure to the rules and service discipline. The conduct of appellant was thus, unbecoming of a good officer and in the given circumstances, the absence of appellant from duty without leave even if was not wilful, it being an act of disorder in the service, would certainly constitute misconduct and consequently, no exception can be taken to the opinion expressed by the Tribunal. However, in service matters, the penalty is always imposed in the light of nature of charge and in the present case the charge against the appellant was not so grave to propose major penalty of removal from service or compulsory retirement.

8. The leave is right of a civil servant which can be availed in terms of the rules and mere fact that appellant did not obtain permission before proceeding on sick leave rather availed medical leave on the advice of doctor, may not be considered an act of gross misconduct entailing major penalty of dismissal from service. The concept of major and minor penalty in the service laws is to determine the question of punishment in the light of nature of gravity of the charge and we find that in the present case, concerned authorities without attending this aspect of the case, awarded major penalty to the appellant. In the light of facts and circumstances of the present case, we are of the view that major penalty of compulsory retirement is harsh and does not commensurate with the nature of charge, therefore, we while modifying the judgment of Tribunal, convert the penalty of compulsory retirement into reduction of two steps in time scale for a period of two years in consequence to which the appellant would be deemed not to have earned two increments for a period of two years.

9. In the light of foregoing reasons, this appeal, with the above modification, in the penalty of appellant, is partly allowed with no order as to costs.

S.A.K./M-116/SC

Appeal partly accepted.

2020 P L C (C.S.) 67

[Sindh High Court]

Before Syed Hassan Azhar Rizvi and Adnan-ul-Karim Memon, JJ

Maj (R) Syed MUHAMMAD TANVEER ABBAS and others

Versus

FEDERATION OF PAKISTAN through Secretary Ministry of Interior, Islamabad and others

C.Ps. Nos.D-6555 of 2016 and D-931 of 2017, decided on 12th March, 2018.

(a) Civil service---

---Contract employee of National Database and Registration Authority---Sought regularization of service---Non-statutory rules of service---Effect---If a service grievance was agitated by an employee who was not governed by the statutory rules of service his constitutional petition was not maintainable---Where conditions of service of employees of a statutory body were not regulated by rules/regulations framed under the statute, any violation thereof could not be enforced through constitutional petition---Constitutional petition being not maintainable was dismissed, in circumstances.

Muhammad Ashraf Tiwana and others v. Pakistan and others 2013 SCMR 1159; Abdul Wahab and others v. HBL and others 2013 SCMR 1707; Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawed Ahmed 2013 SCMR 1707; Muhammad Rafi and others v. Federation of Pakistan and others 2016 SCMR 2146; Muhammad Musa v. Habib Bank Limited and others 2012 SCMR 979; Iqbal Hussain Sheikh and 2 others v. Chairman Federal Board of Revenue and another 2013 SCMR 281; Government of Balochistan Department of Health through Secretary v. Dr. Zahida Kakar and 43 others 2005 SCMR 642, Chief Secretary Government of Sindh and others v. Al-Haj Professor Syed Sibte Hassan Zaidi 2005 SCMR 646; Trustees of the Port of Karachi v. Saqib Samdani 2012 SCMR 64; Tehsil Municipal Officer and another v. Gul Fraz Khan 2013 SCMR 13; Ameer Solangi and others v. WAPDA and others 2016 SCMR 46; Mubashar Majeed v. Province of Punjab and 3 others 2017 PLC (C.S) 940; Saeed Ahmed-Sethar v. Province of Sindh and others 2016 PLC (C.S) 589; Miss Mehwish Asif v. Vice-Chancellor Shaheed Benazir Bhutto University and 2 others 2016 MLD 95; Lt. Col. (Retd.) Sultan Zeb Khan v. Board of Governors, Fazle Haq College Mardan and 5 others 2015 PLC (C.S.) 1385; PIA Corporation v. Syed Suleman Alam Rizvi and others PLD 2015 SC 1545 and Pakistan Telecommunication v. Iqbal Nasir and others PLD 2011 SC 132 rel.

Pakistan Defence Housing Authority v. Mrs. Itrat Sajjad Khan and others 2017 SCMR 2010; Chairman NADRA and others v. Muhammad Ali Shah 2017 SCMR 1979; Abdul Wahab and others v. HBL and others 2013 SCMR 1383 and Muhammad Zaman and others v. Government of Pakistan 2017 SCMR 571 rel.

Pakistan Defence Housing Authority v. Mrs. Itrat Sajjad Khan and others 2017 SCMR 2010 and Chairman NADRA and others v. Muhammad Ali Shah 2017 SCMR 1979 rel.

(b) Constitution of Pakistan---

---Art. 199---Constitutional petition---Maintainability---Civil service---If a grievance is agitated by an employee who is not governed by the statutory rules of service, constitutional petition is not maintainable; however, where conditions of service of employees of a statutory body were not regulated by rules/regulations framed under the statute, any violation thereof could not be enforced through constitutional petition.

Abdul Wahab and others v. HBL and others 2013 SCMR 1383 and Muhammad Zaman and others v. Government of Pakistan 2017 SCMR 571 rel.

(c) Civil service

7d appellant

---Contract/probation employee--- when a person is to be condemned for the misconduct and even if he is employed on contract basis or probation, he is entitled to fair trial and sufficient opportunity to clear his position.

Malik Naeem Iqbal for Petitioners in both the Petitions.

Abdul Wasay Khan Kakar, D.A.G.

Ghulam Hassan for NADRA.

Choudhary Muhammad Farooq Assistant Director (Legal) RHO, NADRA, Karachi.

Date of hearing: 5th March, 2018.

JUDGMENT

ADNAN-UL-KARIM MEMON, J.---The above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common question of law and facts are involved therein.

C.P. No.D-6655 of.2016.

2. Petitioner was appointed as Manager Admin at Regional Headquarters NADRA, Sukkur on contractual basis vide offer letter dated 15.07.2010. Petitioner has submitted that Respondent- Authority (NADRA) initiated regularization scheme and in response thereto Petitioner was offered an option to either opt for regular service in BPS Scheme or NADRA Pay Scale (NPS). Petitioner has averred that he agreed and signed the option-1 (Employment under O / T Scale) open ended contract till the age of superannuation. Petitioner has claimed that he performed significant duty and was promoted to the post of Director in BS-19/ 0-9 vide office order dated 15.10.2012. Petitioner has further added that Respondent-Authority settled the terms and conditions of his service vide letter dated 13.10.2014 as a confirmed employee of the Respondent Authority and subsequently he was recommended for another promotion vide office order dated 19.04.2016. The grievance of the Petitioner is that due to his untimely posting order as Director Regional Head Office Sargodha vide order dated 24.08.2016, he approached to the Chairman of Respondent Authority against such transfer order but the grievance of the Petitioner could not be redressed, however he devolved differences with Director General Karachi. Consequently petitioner's service was terminated vide impugned letter dated 24.10.2016. Petitioner being aggrieved by and dissatisfied with the impugned termination letter dated 24.10.2016, has filed the instant Petition on 30.11.2016.

C.P. No.D-931 of 2017.

Petitioner was appointed as Supervisor, at Regional Headquarters NADRA, Sukkur on contractual basis vide appointment letter dated 16.12.2004. Petitioner has submitted that he was promoted as System Engineer vide letter dated 19.10.2005 and further promoted as Senior System Engineer (T-5) vide office letter dated 27.1.2009 and his salary was further increased vide letter dated 23.8.2010. Petitioner has averred that Respondent-Authority initiated regularization scheme in the year 2012 and in response thereto Petitioner was offered an option to either opt for regular service in BPS Scheme or NADRA Pay Scale (NPS). Petitioner has averred that he agreed and signed the option-I (NPS) of open ended contract till the age of superannuation. Petitioner has claimed that he performed significant duty and was promoted to the post of Assistant Director (T-6) vide office order dated 19.4.2016. Petitioner has further added that Respondent-Authority called explanation from him regarding absence from emergency meetings convened on 24.9.2016 and 2.10.2016 respectively. As per Petitioner he replied to the said explanation letter on 10.10.2016, but of no avail. The grievance of the Petitioner is that his service was terminated vide letter dated 24.10.2016 without assigning any reason. Petitioner being aggrieved by and dissatisfied with the impugned termination letter dated 24.10.2016, has filed the instant Petition on 14.2.2017.

3. Upon notice, Respondent-Authority filed para-wise comments and denied the allegations.

4. Mr. Malik Naeem Iqbal learned counsel for the Petitioners has contended that both the termination orders dated 24.10.2016 issued by Respondent-Authority are in gross violation of Section 24-A of General Clauses Act; that the Petitioners have illegally been removed from service upon false allegations and stigmatization of their personality; that the Petitioners have been condemned unheard and removed from service without holding proper inquiry into the allegations levelled against them, which is unwarranted under the law; that the act of Respondent-Authority is based on mala fide intention and personal ego; that the Petitioners though appointed on contract basis but subsequently their services were confirmed by the Respondent Authority that petitioners are entitled to a fair opportunity to explain their position in terms of Articles 4, 10-A and 25 of the Constitution of the Islamic Republic of Pakistan, 1973; that this Court has jurisdiction to interfere in the matters involving denial of rights of citizens by the State Functionaries. He has further contended that the Respondent-Authority has not taken decision in terms of the NADRA Employees (Service) Regulation, 2002; that if the Termination Order conveys a message of a stigma the employ cannot be ousted from service without resorting to the procedure as provided under the Government Servants (Efficiency and Discipline) Rules, 1973; that in the matter of the Petitioners, no procedure was adopted but they were removed from the employment against the law and procedure; that it is a principle of law that when a person is to be condemned for the misconduct and even if he is employed on contract basis or probation, he is entitled to fair trial and sufficient opportunity to clear his position; but in the instant matter not only the Petitioners were condemned unheard but, their earlier stigmatized removal had disintitiled them for future appointment; that the Respondent- Authority cannot be allowed to punish its employees for illegal acts of its own. He has further contended that the impugned orders dated 24.10.2016 are without lawful authority, unconstitutional, illegal, arbitrary, mala fide, discriminatory and in violation of principles of natural justice, equity and also in violation of NADRA Employees (Service) Regulations, 2002, which do not provide for termination of services in the aforesaid manner; that regulations 18 to 20 and 56 provide for termination of service without any notice or assigning any reasons, however the same relate to officers/employees on probation; that similarly, regulation provides for termination of service on the recommendation of Performance Assessment Committee. In the case of the Petitioner, firstly, there is no recommendation of the said committee and secondly, the same is also violative of the dictum laid down by Honorable Supreme Court in the case of Muhammad Ashraf Tiwana and others v. Pakistan and others (2013 SCMR 1159). He next contended that the Petitioner's terms of contract stood revised vide letter dated 13.10.2014, whereby, the Petitioners were liable to serve until the date of their superannuation, as such, their services cannot be terminated without any reason or justification; that the clause 15 of the contract of the Petitioner's service stands abated, even otherwise, the same is violative of fundamental rights of the Petitioner as guaranteed by the Constitution of Pakistan. He has further contended that it is well settled law that such a draconian employment policy cannot possibly foster an independent and lawful institutional environment and if employees do not have safeguards against arbitrary or mindless termination; that in a civilized dispensation, which is rule based and is aimed at good governance, such whimsicality cannot be countenanced. He next contended that the impugned orders dated 24.10.2016 and clause 15 of the contract of the Petitioner is violative of Articles 9, 10A, 14, 18 and 25 of the Constitution of Pakistan, hence, are void ab-initio. He lastly prays for allowing the instant Petition. Learned counsel for Petitioner in support of his contention, has placed reliance upon the cases of Pakistan Defence Housing Authority v. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010), Muhammad Ashraf Tiwana and others v. Pakistan and others (2013 SCMR 1159), Abdul Wahab and others v. HBL and others (2013 SCMR 1707), Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawed Ahmed (2013 SCMR 1707) and Muhammad Rafi and others v. Federation of Pakistan and others (2016 SCMR

2146).

5. Mr. Ch. Muhammad Farooq learned counsel for the Respondent-Authority has raised the question of maintainability of the instant Petitions; that since the Petitioner was hired on contract basis and as per clause 15 of the contract of the Petitioner, his appointment was liable to be terminated on 90 days' notice on either side or payment of pay in lieu thereof, without assigning any reason; that the Rule of "Master and Servant" is applicable in the case of Petitioners; that all employees having entered into contract of service on the same or similar terms and conditions has no vested right to seek extension in contract regarding their employment, which is discretionary with the Respondent-Authority and have no right to invoke Constitutional jurisdiction of this Court, where their services were terminated/dispensed with as per terms and conditions set forth in their contract employment; that the Authorities of the answering Respondents have not acted malafidely nor violated any provisions of law or prescribed Rules in discharging their duties; that Petitioners concealed the material facts from this Court, which disentitled them to the relief claimed for; that the Respondent-Authority is a body corporate, which is controlled and regulated by the NADRA Ordinance, 2000, and service Regulations, 2002, which are not Statutory Rules of Service; that the Constitutional jurisdiction of this Court in cases of contractual Employees of a statutory organization having no statutory rules of service cannot be invoked under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In support of his contention he has placed reliance upon the case of Muhammad Musa v. Habib Bank Limited and others (2012 SCMR 979), Iqbal Hussain Sheikh and 2 others v. Chairman Federal Board of Revenue and another (2013 SCMR 281), Government of Balochistan Department of Health through Secretary v. Dr. Zahida Kakar and 43 others (2005 SCMR 642), Chief Secretary Government of Sindh and others v. Al-Haj Professor Syed Sibte Hassan Zaidi (2005 SCMR 646), Trustees of the Port of Karachi v. Saqib Samdani (2012 SCMR 64), Tehsil Municipal Officer and another v. Gul Fraz Khan (2013 SCMR 13), Ameer Solangi and others v. WAPDA and others (2016 SCMR 46), Mubashar Majeed v. Province of Punjab and 3 others (2017 PLC (C.S) 940), Saeed Ahmed Sethar v. Province of Sindh and others (2016 PLC (C.S) 589), Miss Mehwish Asif v. Vice-Chancellor Shaheed Benazir Bhutto University and 2 others (2016 MLD 95), Lt. Col. (Retd.) Sultan Zeb Khan v. Board of Governors, Fazle Haq College Mardan and 5 others (2015 PLC (C.S) 1385), Chairman NADRA and others v. Muhammad Ali Shah (2017 SCMR 1979), PIA Corporation v. Syed Suleman Alam Rizvi and others (PLD 2015 SC 1545) and Pakistan Telecommunication v. Iqbal Nasir and others (PLD 2011 SC 132). He lastly prays that Petition being not maintainable is liable to be dismissed.

6. Mr. Abdul Wasay Khan Kakar, learned DAG, on court notice has supported the stance taken by the learned Counsel for the Respondent- Authority.

7. We have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

8. First, we would address the question of maintainability of the instant Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

9. Upon perusal of the pleadings and arguments extended thereon by the learned counsel for both the parties, an important question of law requires our determinations, which is as follows:-

- (i) Whether, National Database and Registration Authority Employees (Service) Regulations, 2002 are non-statutory rules of service and a writ could be maintained in respect of service grievance by NADRA employee?

10. The issue of maintainability of the captioned Constitution Petitions has been raised, in view of the latest verdict by the Honorable Supreme Court of Pakistan in the case of Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and

others (2017 SCMR 1979).

11. To commence with, we have noticed that the National Database and Registration Authority is the creation of a statute established under Section 3 of the NADRA Ordinance, 2000. Section 35 of the Ordinance empowers the authority and its officers and employees on such terms and conditions as it may deem fit in order to carry out the purposes of this Ordinance. While Section 44 empowers the Federal Government to make Rules for carrying out the purpose of Ordinance and Section 45 empowers Authority to make regulations by Notification for carrying out its functions under the Ordinance and any other matter. Sub-Clauses (2) of sections 37 and 45 clarifies that such regulations may provide for appointment of officers mentioned in section 35. The authority, pursuant to sections 35, 37 and 45 notified its Regulations on 1.11.2002 vide S.R.O. 118 (KE)/2002. According to Regulation No.3 of the Regulations, employees of the authority are to be governed by these regulations with regard to their terms and conditions of service. Regulation No.4 of the Regulations empowers the authority to sanction, create, re-designate or abolish any post, discipline or cadre with the authority as it may deem fit. The service rules of the Respondent-Authority lay down the terms and conditions of service of their employees. In the light of findings given by the Honorable Supreme Court of Pakistan in the case of Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others (2017 SCMR 1979). The aforesaid service rules are basically instructions for the internal control or management of Respondent-Authority and are therefore, non-statutory. The relevant portion of the Judgment passed by the Hon'ble Supreme Court of Pakistan is reproduced herein below:-

"10. NADRA had opposed the petitions before the High Court. NADRA also took a specific plea that the NADRA Ordinance, and in particular section 35 thereof did not envisage outside interference in the affairs of NADRA and NADRA itself in alone competent to employ people, and this is required to be done in accordance with the prescribed mythology. NADRA had also raised the legal objection with regard to the jurisdiction of the High Court. Surprisingly, these legal questions did not receive any answer from the High Court."

11. Pursuant to the powers conferred by section 45 read with sections 35 and 37 of the NADRA Ordinance, NADRA had enacted the Regulations. The Regulations attend to the method of appointment and qualification of employees (Regulation 8), designate the appointing authority (Regulation 9), specify the Selection Boards and Selection Committee (Regulation 10), set out the procedure for initial appointment (Regulation 11), require that merit and provincial quota be observed (Regulation 12), require candidates to be medically fit (Regulation 13) and require verification of the character and antecedents of potential employees (Regulation 14).

It is not clear whether the prescribed procedure for the selection and appointment (as mentioned in the Regulations) was followed, however, NADRA had elected to regularize all contractual employees and there is no challenge to such regularization. NADRA, the appellant herein, is aggrieved by the impugned judgment which has struck down NADRA's letter dated March 6, 2012 " to the extent of equivalency table" attached, therewith and given directions to "re-designate their [the petitioners before the High Court] pay scales as mentioned in the Notifications No. F&A/ NADRA/ HQ/2002-2003, dated 21.6.2003 with all consequential benefits".

12. The referred to NADRA's letter dated March 6, 2012 had enclosed " Option Form" which was required to be "filled by all eligible employees" and the Option Form was to be submitted "latest by 22nd March 2012". The regularization process initiated by NADRA would proceed towards completion after the eligible contractual employees had submitted their Option Forms. However, before the submission of his/her Option Form a contractual employee would continue as such, that is remain a person who was

employed on contract by NADRA. The private respondents therein, who were the petitioners before the High Court, however, challenged certain terms./ components of NADRA's letter dated March 6, 2012; in doing so they undermined their own status of becoming regular or permanent employees of NADRA. If they did not accept NADRA's letter dated March 6, 2012, or any part thereof, they would remain as contractual employees of NADRA. The High Court could not renegotiate, alter and / or amend the terms of regularization that were offered by NADRA for the simple reason that the High Court did not have jurisdiction to do so. Therefore, till such time that the employees were regularized they would continue to be governed by the terms and conditions of the contract which they had with NADRA. The writ or constitutional jurisdiction of High Court under Article 199 of the Constitution could not be invoked by a contractual employee of a statutory organization, such as NADRA (see Pakistan Defence Officers Housing Authority v. Jawaid Ahmed reported as 2013 SCMR 1707, Pakistan Telecommunication Co. Ltd. v. Iqbal Nasir reported as PLD 2011 Supreme Court 132 and P.T.C.L v. Masood Ahmed Bhatti reported as 2016 SCMR 1362). It was only after the terms and conditions as offered by NADRA had been accepted and the Option Form had been submitted that the status of a contractual employee would convert to that of a regular employee of NADRA. Before accepting the terms offered by NADRA and submitting the Option Form the status of a contractual employee would remain as such and he/she would not be able to seek recourse to the constitutional jurisdiction of the High Court.

13. Therefore, for all the reasons mentioned shows, both these appeals are allowed and the impugned judgment dated March 6, 2014 of the Peshawar High Court is set aside and the petitions (W.Ps. Nos. 3210 and 3437 of 2012) filed before the Peshawar High Court are dismissed."

12. Our view is further strengthened by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Defence Housing Authority v. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010).

13. The next question for our consideration would be the maintainability of a writ filed by an employee of Authority against a statutory body having non statutory rules of service, seeking enforcement of the terms and conditions of his service rules. We are of the considered view that if a service grievance is agitated by a person/employee, who is not governed by the statutory rules of service in terms of Article 199 of the Constitution; such petition shall not be maintainable. Our view is supported by the case law decided by the Honorable Supreme Court of Pakistan in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383).

14. Our view is further strengthened by the case decided by the Honorable Supreme Court of Pakistan in the case of Muhammad Zaman and others v. Government of Pakistan (2017 SCMR 571). The Hon'ble Supreme Court has dilated upon the issue of statutory and non-statutory Rules of Service and held as follows:-

"the test of whether rules/regulations were statutory or otherwise was not solely whether their framing required the approval of the Government or not, rather it was the nature and efficacy of such rules/regulations. Court had to see whether the rules/regulations in question dealt with instructions for internal control or management, in which case they would be non-statutory, or they were broader than and were complementary to the parent statute in matters of crucial importance, in which event they would be statutory."

15. In the light of above dicta laid down by the Honorable Supreme Court of Pakistan, we are of the considered view that where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute any violation thereof cannot

normally be enforced through writ jurisdiction of this Court.

16. In view of the foregoing, the Constitutional Petitions in hand are not maintainable, hence, are dismissed with no order as to cost.

ZC/M-7/SINDH

Petition dismissed.

2020 PLC (C.S.) 67

[Sindh High Court]

Before Syed Hassan Azhar Rizvi and Adnan-ul-Karim Memon, JJ

Maj (R) Syed MUHAMMAD TANVEER ABBAS and others

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(a) Civil service---

---Contract employee of National Database and Registration Authority---Sought regularization of service---Non-statutory rules of service---Effect---If a service grievance was agitated by an employee who was not governed by the statutory rules of service his constitutional petition was not maintainable---Where conditions of service of employees of a statutory body were not regulated by rules/regulations framed under the statute, any violation thereof could not be enforced through constitutional petition---Constitutional petition being not maintainable was dismissed, in circumstances.

Muhammad Ashraf Tiwana and others v. Pakistan and others 2013 SCMR 1159; Abdul Wahab and others v. HBL and others 2013 SCMR 1707; Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawed Ahmed 2013 SCMR 1707; Muhammad Rafi and others v. Federation of Pakistan and others 2016 SCMR 2146; Muhammad Musa v. Habib Bank Limited and others 2012 SCMR 979; Iqbal Hussain Sheikh and 2 others v. Chairman Federal Board of Revenue and another 2013 SCMR 281; Government of Balochistan Department of Health through Secretary v. Dr. Zahida Kakar and 43 others 2005 SCMR 642, Chief Secretary Government of Sindh and others v. Al-Haj Professor Syed Sibte Hassan Zaidi 2005 SCMR 646; Trustees of the Port of Karachi v. Saqib Samdani 2012 SCMR 64; Tehsil Municipal Officer and another v. Gul Fraz Khan 2013 SCMR 13; Ameer Solangi and others v. WAPDA and others 2016 SCMR 46; Mubashar Majeed v. Province of Punjab and 3 others 2017 PLC (C.S) 940; Saeed Ahmed Sethar v. Province of Sindh and others 2016 PLC (C.S) 589; Miss Mehwish Asif v. Vice-Chancellor Shaheed Benazir Bhutto University and 2 others 2016 MLD 95; Lt. Col. (Retd.) Sultan Zeb Khan v. Board of Governors, Fazle Haq College Mardan and 5 others 2015 PLC (C.S.) 1385; PIA Corporation v. Syed Suleman Alam Rizvi and others PLD 2015 SC 1545 and Pakistan Telecommunication v. Iqbal Nasir and others PLD 2011 SC 132 rel.

Pakistan Defence Housing Authority v. Mrs. Itrat Sajjad Khan and others 2017 SCMR 2010; Chairman NADRA and others v. Muhammad Ali Shah 2017 SCMR 1979; Abdul Wahab and others v. HBL and others 2013 SCMR 1383 and Muhammad Zaman and others v. Government of Pakistan 2017 SCMR 571 rel.

Pakistan Defence Housing Authority v. Mrs. Itrat Sajjad Khan and others 2017 SCMR 2010 and Chairman NADRA and others v. Muhammad Ali Shah 2017 SCMR 1979 rel.

(b) Constitution of Pakistan---

---Art. 199---Constitutional petition---Maintainability---Civil service---If a grievance is agitated by an employee who is not governed by the statutory rules of service, constitutional petition is not maintainable; however, where conditions of service of employees of a statutory body were not regulated by rules/regulations framed under the statute, any violation thereof could not be enforced through constitutional petition.

Abdul Wahab and others v. HBL and others 2013 SCMR 1383 and Muhammad Zaman and others v. Government of Pakistan 2017 SCMR 571 rel.

(c) Civil service*7d appellant*

---Contract/probation employee--- when a person is to be condemned for the misconduct and even if he is employed on contract basis or probation, he is entitled to fair trial and sufficient opportunity to clear his position.

Malik Naeem Iqbal for Petitioners in both the Petitions.

Abdul Wasay Khan Kakar, D.A.G.

Ghulam Hassan for NADRA.

Choudhary Muhammad Farooq Assistant Director (Legal) RHO, NADRA, Karachi.

Date of hearing: 5th March, 2018.

JUDGMENT

ADNAN-UL-KARIM MEMON, J.----The above referred Constitutional Petitions are being disposed of vide this Single Judgment, as common question of law and facts are involved therein.

C.P. No.D-6655 of 2016.

2. Petitioner was appointed as Manager Admin at Regional Headquarters NADRA, Sukkur on contractual basis vide offer letter dated 15.07.2010. Petitioner has submitted that Respondent- Authority (NADRA) initiated regularization scheme and in response thereto Petitioner was offered an option to either opt for regular service in BPS Scheme or NADRA Pay Scale (NPS). Petitioner has averred that he agreed and signed the option-1 (Employment under O / T Scale) open ended contract till the age of superannuation. Petitioner has claimed that he performed significant duty and was promoted to the post of Director in BS-19/ 0-9 vide office order dated 15.10.2012. Petitioner has further added that Respondent-Authority settled the terms and conditions of his service vide letter dated 13.10.2014 as a confirmed employee of the Respondent Authority and subsequently he was recommended for another promotion vide office order dated 19.04.2016. The grievance of the Petitioner is that due to his untimely posting order as Director Regional Head Office Sargodha vide order dated 24.08.2016, he approached to the Chairman of Respondent Authority against such transfer order but the grievance of the Petitioner could not be redressed, however he devolved differences with Director General Karachi. Consequently petitioner's service was terminated vide impugned letter dated 24.10.2016. Petitioner being aggrieved by and dissatisfied with the impugned termination letter dated 24.10.2016, has filed the instant Petition on 30.11.2016.

C.P. No.D-931 of 2017.

Petitioner was appointed as Supervisor, at Regional Headquarters NADRA, Sukkur on contractual basis vide appointment letter dated 16.12.2004. Petitioner has submitted that he was promoted as System Engineer vide letter dated 19.10.2005 and further promoted as Senior System Engineer (T-5) vide office letter dated 27.1.2009 and his salary was further increased vide letter dated 23.8.2010. Petitioner has averred that Respondent-Authority initiated regularization scheme in the year 2012 and in response thereto Petitioner was offered an option to either opt for regular service in BPS Scheme or NADRA Pay Scale (NPS). Petitioner has averred that he agreed and signed the option-I (NPS) of open ended contract till the age of superannuation. Petitioner has claimed that he performed significant duty and was promoted to the post of Assistant Director (T-6) vide office order dated 19.4.2016. Petitioner has further added that Respondent-Authority called explanation from him regarding absence from emergency meetings convened on 24.9.2016 and 2.10.2016 respectively. As per Petitioner he replied to the said explanation letter on 10.10.2016, but of no avail. The grievance of the Petitioner is that his service was terminated vide letter dated 24.10.2016 without assigning any reason. Petitioner being aggrieved by and dissatisfied with the impugned termination letter dated 24.10.2016, has filed the instant Petition on 14.2.2017.

3. Upon notice, Respondent-Authority filed para-wise comments and denied the allegations.

4. Mr. Malik Naeem Iqbal learned counsel for the Petitioners has contended that both the termination orders dated 24.10.2016 issued by Respondent-Authority are in gross violation of Section 24-A of General Clauses Act; that the Petitioners have illegally been removed from service upon false allegations and stigmatization of their personality; that the Petitioners have been condemned unheard and removed from service without holding proper inquiry into the allegations levelled against them, which is unwarranted under the law; that the act of Respondent-Authority is based on mala fide intention and personal ego; that the Petitioners though appointed on contract basis but subsequently their services were confirmed by the Respondent Authority that petitioners are entitled to a fair opportunity to explain their position in terms of Articles 4, 10-A and 25 of the Constitution of the Islamic Republic of Pakistan, 1973; that this Court has jurisdiction to interfere in the matters involving denial of rights of citizens by the State Functionaries. He has further contended that the Respondent-Authority has not taken decision in terms of the NADRA Employees (Service) Regulation, 2002; that if the Termination Order conveys a message of a stigma the employ cannot be ousted from service without resorting to the procedure as provided under the Government Servants (Efficiency and Discipline) Rules, 1973; that in the matter of the Petitioners, no procedure was adopted but they were removed from the employment against the law and procedure; that it is a principle of law that when a person is to be condemned for the misconduct and even if he is employed on contract basis or probation, he is entitled to fair trial and sufficient opportunity to clear his position; but in the instant matter not only the Petitioners were condemned unheard but, their earlier stigmatized removal had disentitled them for future appointment; that the Respondent- Authority cannot be allowed to punish its employees for illegal acts of its own. He has further contended that the impugned orders dated 24.10.2016 are without lawful authority, unconstitutional, illegal, arbitrary, mala fide, discriminatory and in violation of principles of natural justice, equity and also in violation of NADRA Employees (Service) Regulations, 2002, which do not provide for termination of services in the aforesaid manner; that regulations 18 to 20 and 56 provide for termination of service without any notice or assigning any reasons, however the same relate to officers/employees on probation; that similarly, regulation provides for termination of service on the recommendation of Performance Assessment Committee. In the case of the Petitioner, firstly, there is no recommendation of the said committee and secondly, the same is also violative of the dictum laid down by Honorable Supreme Court in the case of Muhammad Ashraf Tiwana and others v. Pakistan and others (2013 SCMR 1159). He next contended that the Petitioner's terms of contract stood revised vide letter dated 13.10.2014, whereby, the Petitioners were liable to serve until the date of their superannuation, as such, their services cannot be terminated without any reason or justification; that the clause 15 of the contract of the Petitioner's service stands abated, even otherwise, the same is violative of fundamental rights of the Petitioner as guaranteed by the Constitution of Pakistan. He has further contended that it is well settled law that such a draconian employment policy cannot possibly foster an independent and lawful institutional environment and if employees do not have safeguards against arbitrary or mindless termination; that in a civilized dispensation, which is rule based and is aimed at good governance, such whimsicality cannot be countenanced. He next contended that the impugned orders dated 24.10.2016 and clause 15 of the contract of the Petitioner is violative of Articles 9, 10A, 14, 18 and 25 of the Constitution of Pakistan, hence, are void ab-initio. He lastly prays for allowing the instant Petition. Learned counsel for Petitioner in support of his contention, has placed reliance upon the cases of Pakistan Defence Housing Authority v. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010), Muhammad Ashraf Tiwana and others v. Pakistan and others (2013 SCMR 1159), Abdul Wahab and others v. HBL and others (2013 SCMR 1707), Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawed Ahmed (2013 SCMR 1707) and Muhammad Rafi and others v. Federation of Pakistan and others (2016 SCMR

2146).

5. Mr. Ch. Muhammad Farooq learned counsel for the Respondent-Authority has raised the question of maintainability of the instant Petitions; that since the Petitioner was hired on contract basis and as per clause 15 of the contract of the Petitioner, his appointment was liable to be terminated on 90 days' notice on either side or payment of pay in lieu thereof, without assigning any reason; that the Rule of "Master and Servant" is applicable in the case of Petitioners; that all employees having entered into contract of service on the same or similar terms and conditions has no vested right to seek extension in contract regarding their employment, which is discretionary with the Respondent-Authority and have no right to invoke Constitutional jurisdiction of this Court, where their services were terminated/dispensed with as per terms and conditions set forth in their contract employment; that the Authorities of the answering Respondents have not acted malafidely nor violated any provisions of law or prescribed Rules in discharging their duties; that Petitioners concealed the material facts from this Court, which disentitled them to the relief claimed for; that the Respondent-Authority is a body corporate, which is controlled and regulated by the NADRA Ordinance, 2000, and service Regulations, 2002, which are not Statutory Rules of Service; that the Constitutional jurisdiction of this Court in cases of contractual Employees of a statutory organization having no statutory rules of service cannot be invoked under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. In support of his contention he has placed reliance upon the case of Muhammad Musa v. Habib Bank Limited and others (2012 SCMR 979), Iqbal Hussain Sheikh and 2 others v. Chairman Federal Board of Revenue and another (2013 SCMR 281), Government of Balochistan Department of Health through Secretary v. Dr. Zahida Kakar and 43 others (2005 SCMR 642), Chief Secretary Government of Sindh and others v. Al-Haj Professor Syed Sibte Hassan Zaidi (2005 SCMR 646), Trustees of the Port of Karachi v. Saqib Samdani (2012 SCMR 64), Tehsil Municipal Officer and another v. Gul Fraz Khan (2013 SCMR 13), Ameer Solangi and others v. WAPDA and others (2016 SCMR 46), Mubashar Majeed v. Province of Punjab and 3 others (2017 PLC (C.S) 940), Saeed Ahmed Sethar v. Province of Sindh and others (2016 PLC (C.S) 589), Miss Mehwish Asif v. Vice-Chancellor Shaheed Benazir Bhutto University and 2 others (2016 MLD 95), Lt. Col. (Retd.) Sultan Zeb Khan v. Board of Governors, Fazle Haq College Mardan and 5 others (2015 PLC (C.S) 1385), Chairman NADRA and others v. Muhammad Ali Shah (2017 SCMR 1979), PIA Corporation v. Syed Suleman Alam Rizvi and others (PLD 2015 SC 1545) and Pakistan Telecommunication v. Iqbal Nasir and others (PLD 2011 SC 132). He lastly prays that Petition being not maintainable is liable to be dismissed.

6. Mr. Abdul Wasay Khan Kakar, learned DAG, on court notice has supported the stance taken by the learned Counsel for the Respondent- Authority.

7. We have heard the learned counsel for the parties and perused the material available on record and case law cited at the bar.

8. First, we would address the question of maintainability of the instant Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

9. Upon perusal of the pleadings and arguments extended thereon by the learned counsel for both the parties, an important question of law requires our determinations, which is as follows:-

- (i) Whether, National Database and Registration Authority Employees (Service) Regulations, 2002 are non-statutory rules of service and a writ could be maintained in respect of service grievance by NADRA employee?

10. The issue of maintainability of the captioned Constitution Petitions has been raised, in view of the latest verdict by the Honorable Supreme Court of Pakistan in the case of Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and

others (2017 SCMR 1979).

11. To commence with, we have noticed that the National Database and Registration Authority is the creation of a statute established under Section 3 of the NADRA Ordinance, 2000. Section 35 of the Ordinance empowers the authority and its officers and employees on such terms and conditions as it may deem fit in order to carry out the purposes of this Ordinance. While Section 44 empowers the Federal Government to make Rules for carrying out the purpose of Ordinance and Section 45 empowers Authority to make regulations by Notification for carrying out its functions under the Ordinance and any other matter. Sub-Clauses (2) of sections 37 and 45 clarifies that such regulations may provide for appointment of officers mentioned in section 35. The authority, pursuant to sections 35, 37 and 45 notified its Regulations on 1.11.2002 vide S.R.O. 118 (KE)/2002. According to Regulation No.3 of the Regulations, employees of the authority are to be governed by these regulations with regard to their terms and conditions of service. Regulation No.4 of the Regulations empowers the authority to sanction, create, re-designate or abolish any post, discipline or cadre with the authority as it may deem fit. The service rules of the Respondent-Authority lay down the terms and conditions of service of their employees. In the light of findings given by the Honorable Supreme Court of Pakistan in the case of Chairman NADRA, Islamabad through Chairman, Islamabad and another v. Muhammad Ali Shah and others (2017 SCMR 1979). The aforesaid service rules are basically instructions for the internal control or management of Respondent-Authority and are therefore, non-statutory. The relevant portion of the Judgment passed by the Hon'ble Supreme Court of Pakistan is reproduced herein below:-

"10. NADRA had opposed the petitions before the High Court. NADRA also took a specific plea that the NADRA Ordinance, and in particular section 35 thereof did not envisage outside interference in the affairs of NADRA and NADRA itself in alone competent to employ people, and this is required to be done in accordance with the prescribed mythology. NADRA had also raised the legal objection with regard to the jurisdiction of the High Court. Surprisingly, these legal questions did not receive any answer from the High Court."

11. Pursuant to the powers conferred by section 45 read with sections 35 and 37 of the NADRA Ordinance, NADRA had enacted the Regulations. The Regulations attend to the method of appointment and qualification of employees (Regulation 8), designate the appointing authority (Regulation 9), specify the Selection Boards and Selection Committee (Regulation 10), set out the procedure for initial appointment (Regulation 11), require that merit and provincial quota be observed (Regulation 12), require candidates to be medically fit (Regulation 13) and require verification of the character and antecedents of potential employees (Regulation 14).

It is not clear whether the prescribed procedure for the selection and appointment (as mentioned in the Regulations) was followed, however, NADRA had elected to regularize all contractual employees and there is no challenge to such regularization. NADRA, the appellant herein, is aggrieved by the impugned judgment which has struck down NADRA's letter dated March 6, 2012 " to the extent of equivalency table" attached, therewith and given directions to "re-designate their [the petitioners before the High Court] pay scales as mentioned in the Notifications No. F&A/ NADRA/HQ/2002-2003, dated 21.6.2003 with all consequential benefits".

12. The referred to NADRA's letter dated March 6, 2012 had enclosed " Option Form" which was required to be "filled by all eligible employees" and the Option Form was to be submitted "latest by 22nd March 2012". The regularization process initiated by NADRA would proceed towards completion after the eligible contractual employees had submitted their Option Forms. However, before the submission of his/her Option Form a contractual employee would continue as such, that is remain a person who was

employed on contract by NADRA. The private respondents therein, who were the petitioners before the High Court, however, challenged certain terms/ components of NADRA's letter dated March 6, 2012; in doing so they undermined their own status of becoming regular or permanent employees of NADRA. If they did not accept NADRA's letter dated March 6, 2012, or any part thereof, they would remain as contractual employees of NADRA. The High Court could not renegotiate, alter and / or amend the terms of regularization that were offered by NADRA for the simple reason that the High Court did not have jurisdiction to do so. Therefore, till such time that the employees were regularized they would continue to be governed by the terms and conditions of the contract which they had with NADRA. The writ or constitutional jurisdiction of High Court under Article 199 of the Constitution could not be invoked by a contractual employee of a statutory organization, such as NADRA (see Pakistan Defence Officers Housing Authority v. Jawaid Ahmed reported as 2013 SCMR 1707, Pakistan Telecommunication Co. Ltd. v. Iqbal Nasir reported as PLD 2011 Supreme Court 132 and P.T.C.L v. Masood Ahmed Bhatti reported as 2016 SCMR 1362). It was only after the terms and conditions as offered by NADRA had been accepted and the Option Form had been submitted that the status of a contractual employee would convert to that of a regular employee of NADRA. Before accepting the terms offered by NADRA and submitting the Option Form the status of a contractual employee would remain as such and he/she would not be able to seek recourse to the constitutional jurisdiction of the High Court.

13. Therefore, for all the reasons mentioned shows, both these appeals are allowed and the impugned judgment dated March 6, 2014 of the Peshawar High Court is set aside and the petitions (W.Ps. Nos. 3210 and 3437 of 2012) filed before the Peshawar High Court are dismissed."

12. Our view is further strengthened by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Defence Housing Authority v. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010).

13. The next question for our consideration would be the maintainability of a writ filed by an employee of Authority against a statutory body having non statutory rules of service, seeking enforcement of the terms and conditions of his service rules. We are of the considered view that if a service grievance is agitated by a person/employee, who is not governed by the statutory rules of service in terms of Article 199 of the Constitution; such petition shall not be maintainable. Our view is supported by the case law decided by the Honorable Supreme Court of Pakistan in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383).

14. Our view is further strengthened by the case decided by the Honorable Supreme Court of Pakistan in the case of Muhammad Zaman and others v. Government of Pakistan (2017 SCMR 571). The Hon'ble Supreme Court has dilated upon the issue of statutory and non-statutory Rules of Service and held as follows:-

"the test of whether rules/regulations were statutory or otherwise was not solely whether their framing required the approval of the Government or not, rather it was the nature and efficacy of such rules/regulations. Court had to see whether the rules/regulations in question dealt with instructions for internal control or management, in which case they would be non-statutory, or they were broader than and were complementary to the parent statute in matters of crucial importance, in which event they would be statutory."

15. In the light of above dicta laid down by the Honorable Supreme Court of Pakistan, we are of the considered view that where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute any violation thereof cannot

normally be enforced through writ jurisdiction of this Court.

16. In view of the foregoing, the Constitutional Petitions in hand are not maintainable, hence, are dismissed with no order as to cost.

ZC/M-7/SINDH

Petition dismissed.

2016 S C M R 943

For appellants

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali, C.J., Umar Ata Bandial and Khilji Arif Hussain, JJ

ISHTIAQ AHMED---Petitioner

Versus

HON'BLE COMPETENT AUTHORITY through Registrar, Supreme Court of Pakistan---
Respondent

Constitutional Petition No. 97 of 2014, decided on 13th January, 2016.

(Under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973)

Per Khilji Arif Hussain, J.: Anwar Zaheer Jamali, C.J. and Umar Ata Bandial, J. agreeing.

(a) Constitution of Pakistan---

---Art. 9---'Access to justice'---Definition---Access to justice had been defined as an equal right to participate in every institution where law was debated, created, found, organized, administered interpreted and applied---Broadly it had been described as an integral part of the rule of law in constitutional democracies and was a hallmark of civilized society.

(b) Supreme Court Establishment Service Rules, 2015---

---R. 17---Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982, Rr. 11 & 13 [since repealed]---Constitution of Pakistan, Arts. 9 & 10A--- Officer/staff member of the Supreme Court---Appeal against dismissal from service---Bar against representation by a counsel before the Appellate Forum--- Constitutionality--- Rule 13 of the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982 [since repealed] and R. 17 of the Supreme Court Establishment Service Rules, 2015, which barred an accused officer/staff member of the Supreme Court from being represented by a counsel before the Appellate Forum were not ultra vires the Constitution---Besides no allegation of bias, prejudice or partisanship was made against any member of the Bench (Appellate Forum) who heard the appeal in the present case---[Per Umar Ata Bandial, J.: Procedural statutes which regulated Court proceedings and granted the right of representation to an accused or a defendant, did not apply to the proceedings of a domestic appellate forum in disciplinary proceedings]--- Constitutional petition was dismissed accordingly.

Petitioner, who served as a Private Secretary in the Supreme Court, was dismissed from service on orders of the Chief Justice of Pakistan. Petitioner filed an appeal against order of his dismissal before three most senior Judges of the Supreme Court contending that R. 13 of the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982 [since repealed] and R. 17 of the Supreme Court Establishment Service Rules, 2015 were ultra vires the Constitution as they barred the petitioner from being represented by a counsel.

Petitioner had failed to address that how prejudice had been caused by the Appellate Forum constituting of three senior most available Judges of the Supreme Court merely because he had

been denied the right of representation through a counsel. Issue before the Appellate Forum was whether there was any justification available for petitioner's long absence from the duty, against the documents produced by the parties and after taking into consideration the order of the dismissal passed by the Chief Justice of Pakistan imposing major penalty, the petitioner had not alleged any basis, prejudicial or partisan against any member of the Bench who heard the appeal.

Per Umar Ata Bandial, J. Constitutional right of fair trial, due process and access to justice or inherent rights that predicated every proceeding that may conclude in a penalty being imposed on an accused person, did not lay down any requirement that an affected accused officer before any 'domestic fora' in disciplinary proceedings must be represented by counsel.

Constitutional right of consultation with and defence by a counsel under Article 10(1) of the Constitution, in other words the right of representation was limited to cases involving arrest, detention and confinement under the law of the land, whether it was criminal law, a detention law or any other law imposing penalty of confinement upon an offending person. None of the penalties that could be imposed under the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982, [since repealed and replaced by the Supreme Court Establishment Service Rules 2015] inflicted the personal restraints on the liberty of an accused person that were envisaged by Article 10(1) of the Constitution. It was therefore clear that the express exclusion of the right of representation of an accused by counsel under Rule 13 of Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982 (since repealed and now replaced by Rule 17 of the Supreme Court Establishment Service Rules 2015) did not violate any of his rights conferred by the Constitution or the law. Equally procedural statutes which regulated the Court proceedings and granted the right of representation to an accused or a defendant, did not apply to the proceedings of a domestic appellate forum in disciplinary proceedings. These statutes were the Code of Criminal Procedure, 1898 and the Code of Civil Procedure, 1908. Exclusion of said statutes did not offend or violate any higher right conferred on an accused person in disciplinary proceedings by the law or the Constitution.

Significant difference existed between the substantive nature of trial by a Court of law as against the proceedings in a domestic disciplinary forum. Consequently, the entitlement of representation of an accused by counsel before a trial Court could not by analogy be imported for the proceedings of a domestic appellate disciplinary forum constituted by Rule 11 of the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982 (since repealed). The relief of representation through a counsel claimed by the petitioner in the present case was neither apt nor appropriate for the fora established under disciplinary laws governing the service rights of officers and staff (of the Supreme Court) that were governed by rules having the force of law. Constitutional petition was dismissed accordingly.

(c) Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982---

---Rr. 11 & 13---Supreme Court Establishment Service Rules, 2015, R. 17---Constitution of Pakistan, Art. 184(3)---Appeal against dismissal from service---Order passed by a three Member Bench of the Supreme Court, while exercising power under R. 11 of the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982 and R. 17 of the Supreme Court Establishment Service Rules, 2015 as a domestic Tribunal, was not and could not be equated to an order passed by the Supreme Court under Art. 184 of the Constitution, and an aggrieved person, if so advised, could question the same before the competent forum.

Per Umar Ata Bandial, J; agreeing with Khilji Arif Hussain, J.

(d) Constitution of Pakistan---

----Art. 4---Right of due process---Requirements---Right of due process required that a person shall have notice of proceedings which affected his rights; such person must be given a reasonable opportunity to defend himself; the adjudicatory tribunal or forum must be so constituted as to convey a reasonable assurance of its impartiality and that such tribunal or forum must possess competent jurisdiction.

New Jubilee Insurance Company v. National Bank of Pakistan PLD 1999 SC 1126 ref.

(e) Constitution of Pakistan---

----Art. 10-A---Right of fair trial---Scope---Right of fair trial meant grant of a proper hearing to an accused person by an unbiased competent forum, and that justice should not only be done but be seen to be done---Right of fair trial cast on an adjudicatory tribunal or forum a duty to treat a person in accordance with law, to grant him a fair hearing, and for itself to be an impartial and a fair tribunal.

Suo Motu Case No. 4 of 2010 PLD 2012 SC 553 ref.

(f) Civil service---

----'Disciplinary proceedings' and 'criminal proceedings' against an accused officer---Result of disciplinary proceedings was not bound by or dependent upon the outcome of criminal proceedings initiated for the same wrongful act against the same accused officer---Rationale for such rule was founded upon the subjective element present in disciplinary proceedings that concerned the suitability and the fitness of an accused officer to remain in government service when he had not been acquitted on the merits of the charge alleged against him.

Nawaz Khan v. Federal Government 1996 SCMR 315 and Arif Ghafoor v. Managing Director, HMC PLD 2002 SC 13 ref.

(g) Civil service---

----'Disciplinary proceedings' and 'criminal proceedings' against an accused officer---Burden of proof---Burden of proof in disciplinary proceedings was lighter than it was in criminal proceedings for the same wrong and against the same accused.

Hamid Khan, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Sohail Mehmood, DAG for the Federation on Court's Notice.

Ayaz Khan Swati, Additional AG for the Balochistan on Court's Notice.

Abdul Latif Yousafzai, A.G. for Khyber Pakhtunkhwa on Court's Notice.

Muddassar Khalid Abbasi, Assistant A.G. for the Punjab on Court's Notice.

Sheryar Qazi, Additional A.G. for the Sindh on Court's Notice.

Date of hearing: 13th January, 2016.

JUDGMENT

KHILJI ARIF HUSSAIN, J.---The petitioner served as Private Secretary in the Supreme Court of Pakistan. Through this Petition under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 he prayed that Rule 13 of the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules 1982 (hereinafter referred to as the Rules, 1982) and Rule 17 of the Supreme Court Establishment Service Rules, 2015 (hereinafter referred to as the Rules, 2015) be declared ultra vires and the appeal of the petitioner (DSA No. 1 of 2011) may kindly be allowed to engage a counsel of his own choice.

2. Brief facts to decide this petition are that the petitioner while serving as Private Secretary of this Court at his own request was sent on deputation to the Office of the Federal Tax Ombudsman on 10.6.2005. His deputation period was extended from time to time and was eventually expired on 9.6.2010. While he was posted in the Regional Office of Federal Tax Ombudsman at Lahore, he was temporarily attached with the Regional Office at Quetta vide order dated 13th January, 2010 and was relieved from Lahore on 16.1.2010 to join his new place of posting at Quetta. However, he did not report for duty rather submitted application for leave on the ground of his illness. On 10.6.2010 he submitted joining report to this Court but he was not allowed to join this Court and was directed by Memorandum dated 26.6.2010 to obtain relieving order from borrowing department (FTO). The Federal Tax Ombudsman by his report dated 13.7.2010 stated that the petitioner had remained absent from duty since 16.1.2010 and the medical certificates submitted by him for grant of leave were not valid and were not accepted by the Office necessitating disciplinary action against him by the parent department for misconduct, insubordination and obstruction of public work. It appears from the record that Hon'ble Chief Justice of Pakistan directed that as the alleged misconduct had been committed during the deputation period, therefore, the borrowing department shall initiate disciplinary action and shall report its findings to this Court. Accordingly the Inquiry was conducted against the petitioner by the borrowing authorities. He was found guilty of misconduct on the basis of said report, therefore, Show Cause Notice was issued and eventually the petitioner was dismissed from service with effect from 7.3.2011 vide order dated 8.3.2011. The petitioner filed departmental appeal which was heard and dismissed on 19.2.2014 by three senior most Judges of this Court.

3. Through this petition the petitioner questioned Rule 13 of the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules 1982 and Rule 17 of the Supreme Court Establishment Service Rules, 2015 being violative of fair trial.

4. Mr. Hamid Khan, learned ASC for the petitioner contended that Rule 13 of the Rules, 1982 and Rule 17 of the Rules, 2015 are ultra vires to principle of fair trial and violative of Article 10-A of the Constitution of Islamic Republic of Pakistan and as such liable to be declared ultra vires and order passed by the Appellate Forum constituted under Rule 17 of the Rules, 2015 may be set aside and petitioner may be allowed to appear before the said forum through his counsel. In support of his contention, the learned counsel for the petitioner relied upon *Aslam Ali Shah v. Collector of Central Excise and Land Customs* (1983 PLC (C.S.) 498), *Collector Excise and Land Customs v. Aslam Ali Shah* (PLD 1985 SC 82), *Muhammad Saeed Ahmed Khan v. Secy. to Govt. of Pb., Housing and Planning Deptt.* (PLD 1983 Lahore 206), *Faisal v. State* (PLD 2007 Karachi 544), *Baz Muhammad Kakar v. Federation of Pakistan* (PLD 2012 SC 923), *Pett v. Greyhound Racing Assocn., Ltd.* (1968 [2] AER 545) and *Board of Trustees, Port of Bombay v. Dilipkumar* (AIR 1983 SC 109).

5. Learned Deputy Attorney General, Additional Advocate General, KPK, Assistant Advocate

General, Punjab and Additional Advocate General Sindh opposed the petition and contended that the Rule framed by this Court is not violative under Article 10A of the Constitution and Constitution Petition merits dismissal.

6. We have taken into consideration the arguments so raised by the parties and perused the record. From the perusal of the record it appears that the petitioner while serving as Private Secretary of this Court, at his own request, was sent on deputation to the Office of Federal Tax Ombudsman on 10.6.2005 which period was extended from time to time. On 13.1.2010 Federal Tax Ombudsman ordered his temporarily attachment with the Regional Office, Quetta. He was relieved from his office at Lahore on 16.1.2010 to join his new place of posting. However, he did not report for duty rather submitted applications for leave on the ground of illness. On 10.6.2010 eventually his deputation period expired and he submitted joining report to this Court. Petitioner was not allowed to join and was directed to obtain his relieving order from the borrowing department. Since the alleged misconduct had been committed during the deputation period, the Hon'ble Chief Justice of Pakistan directed that the borrowing department shall initiate disciplinary action and report his findings to this Court. The inquiry was directed against the petitioner by the borrowing authorities and found guilty of misconduct and report was submitted to this Court. After he joined this Court a final Show Cause Notice under Rules 4-5 of the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982 was served upon the petitioner on 20.1.2011. He was required to explain his position within 14 days from the date of issue of notice and to show cause why major penalty of dismissal from service under rule 4(1)(b)(d)(iv) of the Rules, 1982 may not be imposed upon him. The petitioner submitted his reply to show cause notice and requested that the departmental proceeding initiated against him by the Federal Tax Ombudsman Secretariat may be dropped and show cause notice issued on the basis of the same may be withdrawn. On 7.3.2011 the competent authority after taking into consideration all aspects of the matter awarded major penalty under Rule 4(1)(b)(d)(iv) of the Rules, 1982 and dismissed the petitioner from service as the charges of remaining absent from the duty were fully established. The petitioner being aggrieved by the order filed Appeal under section 11 of the Rules, 1982 and prayed that the impugned order of dismissal from service of the petitioner may be set aside and petitioner may be reinstated into service with all consequential benefits. It appears that the petitioner also filed an application that he may be allowed to represent through counsel.

7. The appeal filed by the petitioner came up for hearing before a Bench of three available senior most Judges of this Court in terms of Rule 11 of Rules, 1982. His request that permission to be represented through counsel was declined in view of bar contained under Rule 13 of the Rules, 1982. After hearing the petitioner and taking into consideration his submissions relating to his illness, his appeal was dismissed vide order dated 19.2.2014. The petitioner filed Review petition against the said Order. In order to appreciate contentions of learned counsel for the petitioner that Rule 13 of the Rules, 1982 and Rule 17 of the Rules, 2015 are ultra vires of the Constitution, we will like first to reproduce Rules 8, 11, 12 and 13 of the Rules, 1982 and Rules 13, 14 and 17 of the Rules, 2015:-

"Rule 8 of the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982.---To impose penalty on the Registrar. The Chief Justice alone shall have power to impose a penalty on the Registrar of the Court and where an inquiry is held against him the Inquiry Officer shall submit his findings to the Chief Justice.

Rule 11. Appeal. Where any penalty is imposed by the Registrar, an appeal shall lie from his order to the Chief Justice, and where any penalty is imposed by the Chief Justice, otherwise than on appeal from an order of the Registrar, an appeal shall lie from his order

to a Bench of three available senior most Judges of the Court.

Rule 12. Limitation. An appeal under rule 11 shall be filed within thirty days from the date of the order complained of.

Rule 13. Advocates Bar to appear. At no stage of the proceedings under these Rules, the person concerned shall be represented by an Advocate."

AND

Rule 13 of the Supreme Court Establishment Service Rules, 2015.---Imposition of penalty on the Registrar.- The Chief Justice alone shall have power to impose a penalty on the Registrar of the Court and where an inquiry is held against him, the Inquiry officer shall submit his findings to the Chief Justice.

Rule 14 Appeal.- Where any penalty is imposed by the Registrar, an appeal shall lie from his order to the Chief Justice, and where any penalty is imposed by the Chief Justice, otherwise than on appeal from an order of the Registrar, an appeal shall lie from his order to a Bench of three available senior most Judges of the Court.

Rule 17. Bar against appearance of counsel. At no stage of the proceedings under these Rules, the person concerned shall be represented by an Advocate".

8. The above noted rules are in line with Rule 10A of the Government Servant (Efficiency and Discipline) Rules, 1973 and Rule 18 of Punjab Employees Efficiency, Discipline and Accountability Rules, 2006 which, for ease of reference, are reproduced as under:

"Rule 10A of the Government Servants E&D Rules, 1973. Appearance of Counsel.- No party to any proceedings under these rules before the authority, the authorized officer, and Inquiry Officer or an Inquiry Committee shall be represented by an advocate.

Rule 18. The Punjab Employees Efficiency, Discipline and Accountability Act, 2006. Appearance of Counsel.- The accused, at no stage of the proceedings under this Act, except proceedings under section 19, shall be represented by an advocate".

9. It is, by now, well settled that in domestic inquiries employees of the respective organizations are not allowed to be represented through their counsel except where the Inquiry Officer appointed by the competent authority is a legally trained person as held in the case of Board of Trustees, Port of Bombay v. Dilipkumar (AIR 1983 SC 109). The question which needs to address, because in domestic inquiries petitioner has been denied to represent through counsel amount to denial of fair trial.

10. In the year 1993, an employee of the Supreme Court was removed from service by the then Hon'ble Chief Justice of Pakistan by order dated 1.9.1993 as a result of disciplinary proceedings initiated against him under Rule 4 of the Supreme Court Rules, 1982. He filed a review petition against the order dated 1.9.1993 before the Hon'ble Chief Justice of Pakistan, under Rule 11 of the Rules but the same was rejected on 9.11.1993. He thereafter preferred a service appeal before Federal Service Tribunal, Islamabad, under section 4 of the Service Tribunals Act, 1973 which was allowed on merits after overruling the preliminary objection raised in the appeal to the jurisdiction of the Tribunal to entertain appeal in respect of the employees of the Supreme Court of Pakistan, by order dated 10.7.1994. Leave was granted in the above appeal to consider the question, whether the view taken by the Federal Service Tribunal that persons serving in the Supreme Court of

Pakistan are 'Civil Servants' and thus a dispute relating to the terms and conditions of service of such persons is amenable to the jurisdiction of Service Tribunal, is in consonance with law. The Court ultimately held as under:-

"In the case before us, it is not disputed that the Supreme Court of Pakistan has framed the Rules under Article 208 of the Constitution which governed the terms and conditions of appointment of officers and servants of the Supreme Court of Pakistan. It is also not disputed that the respondent in the case was appointed as Research and Reference Officer in the Supreme Court of Pakistan under these Rules. Since the service of the respondent was not governed under any Act of Majilis-e-Shoora passed under Article 240 of the Constitution and terms and conditions of his service were regulated under the Rules directly framed in pursuance of Article 208 of the Constitution, he could not fall in the category of a civil servant as defined in the Civil Servants Act, 1973 in view of the rule laid down in the case of Government of Punjab v. Mubarik Ali Khan supra. Consequently, the appeal of respondent which related to the terms and conditions of his service was not cognizable by the Federal Service Tribunal. The appeal is, accordingly, accepted and the order passed by the Service Tribunal is set aside. Before parting with the case, we would however, like to mention here that Rule 11 of the Rules bars any appeal against the penalty which may be imposed by the Hon'ble Chief Justice of Pakistan on the employees of the Supreme Court. This rule, in our view, does not conform to the law laid down by the Shariat Appellate Bench of this Court in the case of Federation of Pakistan v Public at Large (PLD 1988 SC 202) and Pakistan through Secretary, Ministry of Defence v. The General Public (PLD 1989 SC 6) wherein it was declared that under the Islamic dispensation of justice at least one right of appeal must be provided to an aggrieved person and that the law barring such right to an aggrieved person is repugnant to the injunctions of Islam. We would accordingly, recommend that the provisions of Rule 11 of the Rules may be amended suitably to bring it in accordance with the aforesaid decision. The appeal stands disposed of with those observations."

11. In the light of the directions/observations made in the said case, the Rule 11 was amended to the following effect:-

"11. Where any penalty is imposed by the Registrar, an appeal shall lie from his order to the Chief Justice, and where any penalty is imposed by the Chief Justice, otherwise than on appeal from an order of the Registrar, an appeal shall lie from his order to the Bench of three available senior most judges of the Court."

12. Access to justice has been defined as an equal right to participate in every institution where law is debated, created, found, organized, administered interpreted and applied. Broadly it has been described as "an integral part of the rule of law in constitutional democracies and is a hallmark of civilized society". There can be no analytical, all comprehensive or exhaustive definition in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said deprived the quality of fairness to a decree, where a miscarriage of justice has resulted. In the instant Constitution Petition the petitioner has failed to address our intention that how a prejudice has been caused by the Appellate Forum constituting of three senior most available Judges of this Court merely because he has been denied the right of representation through a counsel. The issue before the forum was whether there was any justification available for his long absence from the duty against the documents produced by the parties and after taking into consideration the order of the dismissal passed by the Hon'ble Chief Justice of Pakistan imposing major penalty, the petitioner has not alleged any basis, prejudicial or partisan against any member of the Bench who heard the appeal.

13. The order passed by a three Member bench of this Court, while exercising power under rule 11 of the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982 and rule 17 of the Supreme Court Establishment Service Rules, 2015 as domestic Tribunal, is not and cannot be equated to an order passed by this Court under Article 184 of the Constitution of Pakistan and an aggrieved person, if so advice, can question the same before the competent forum.

14. In this view of the matter this Constitution Petition has no merits and is accordingly dismissed.

I respectfully concur with the conclusion arrived by my learned brother Khilji Arif Hussain, J. in terms of my additional note.

Sd/-
Anwar Zaheer Jamali, C.J.

Sd/-
Umar Ata Bandial, J.

Sd/-
Khilji Arif Hussain, J.

UMAR ATA BANDIAL, J.---I have had the privilege of reading the opinion rendered by my learned brother Khilji Arif Hussain, J. which cogently sets out the grounds for declining the relief prayed by the petitioner. In this behalf, I may respectfully record my agreement with the conclusion arrived by my learned brother. Notwithstanding that, it may be useful to briefly consider the limitations imposed, upon disciplinary proceedings initiated under statutory rules and procedure, by the constitutional rights of an accused to be given due process and fair trial conferred by Article 10A of the Constitution of Islamic Republic of Pakistan, 1973 ("the Constitution") and his right of access to justice emanating from Article 9 of the Constitution. These rights are invoked by the petitioner as a basis to challenge the bar contained in the Supreme Court (Appointment of Officers and Servants and Terms and Conditions of Service) Rules, 1982 ("the SC Rules, 1982") preventing his representation through counsel before the appellate forum adjudicating his appeal against the order of his dismissal from service passed on 08.03.2011 by the competent authority under the said rules.

2. The SC Rules, 1982 have recently been repealed and replaced by the Supreme Court Establishment Rules, 2015 ("the SC Rules, 2015"). Both sets of Rules, however, make identical provision with regard to the remedy of appeal against an order imposing a disciplinary penalty; and also for imposing an embargo on an accused officer or staff member from being represented by counsel at any stage of the proceedings under the respective Rules. The relevant provisions of the SC Rules, 1982 which are germane to the facts of the petitioner's case are reproduced herein below for facility of reference:

"Rule 11. Appeal. Where any penalty is imposed by the Registrar, an appeal shall lie from his order to the Chief Justice, and where any penalty is imposed by the Chief Justice, otherwise than on appeal from an order of the Registrar, an appeal shall lie from his order to a Bench of three available senior most Judges of the Court.

Rule 13. Advocate Bar to appear. At no stage of the proceedings under these Rules, the person concerned shall be represented by an Advocate."

The remedy of appeal against an order of dismissal from service provided under the SC Rules, 1982 to an officer of the Supreme Court lies before a forum comprising three senior Judges of the Court. Appellate fora that are constituted by disciplinary rules are often described as 'domestic' tribunals. The civil servants working in the Federal Government and the Provincial Governments are by their corresponding disciplinary laws also provided a remedy of appeal against imposition of penalty before domestic appellate fora. This is plain from the provisions of Rule 10 of the Government Servants (Efficiency and Discipline) Rules, 1973 ("E&D Rules") and also from section 16 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 ("PEEDA") which shows consistency of the SC Rules, 1982 with corresponding laws providing the disciplinary legal framework for civil servants.

3. Another common feature of the proceedings under the SC Rules, 1982, the E&D Rules and PEEDA is that each of these laws bars an accused officer from being represented by an advocate at any stage of the proceedings taken under the aforementioned laws. Thus the aforesaid bar contained in Rule 13 of the SC Rules, 1982, is also mirrored in Rule 10A of the E&D Rules and Section 18 of the PEEDA. It may also be noted that the domestic appellate proceedings under the said laws are not governed by the procedural laws that relate to the proceedings of Courts of law in the holding of trials or for the exercise of their jurisdictions. In this sense, the proceedings of a domestic forum of appeal are intended to be less formal, flexible and quicker. Nevertheless, the mode and manner of proceedings of these fora are not entirely discretionary but are regulated, in the first instance, by the rules laid down in or referred by the enabling law. It is settled generally that such rules must conform the substantive and procedural safeguards mandated by the constitutional rights of due process, fair trial and access to justice. These rights stand incorporated into the applicable rules by constitutional command and through judicial decree specifying the requirements prescribed for the enforcement of these rights of a citizen who is facing allegations about his service record before fact finding or resolatory fora governed by disciplinary rules. It remains to be seen whether the above said regulatory legal framework for disciplinary proceedings also entitles an accused officer to be represented through a counsel, inter alia, before a domestic appellate forum established by the applicable enabling law.

4. The right of due process is not new to our jurisprudence and finds expression in the provisions of Article 4 of the Constitution. This right has been interpreted by this Court in several pronouncements. The case of *New Jubilee Insurance Company v. National Bank of Pakistan* (PLD 1999 SC 1126) summarizes the features of that right very aptly. It is held that the right of due process requires that a person shall have notice of proceedings which affect his rights; such person must be given a reasonable opportunity to defend himself; the adjudicatory tribunal or forum must be so constituted as to convey a reasonable assurance of its impartiality and that such tribunal or forum must possess competent jurisdiction. Insofar as the right of fair trial under Article 10A of the Constitution is concerned in *Suo Motu Case No.4 of 2010* (PLD 2012 SC 553) that right has been interpreted to ensure the grant of a proper hearing to an accused person by an unbiased competent forum; that justice should not only be done but be seen to be done. The above noted features of this right share attributes associated with the fundamental right of access to justice enunciated by this Court in *Benazir Bhutto v. Federation of Pakistan* (PLD 1988 SC 416 at page-489), *Al-Jehad Trust v. Federation of Pakistan* (PLD 1996 SC 324) and reiterated in *Liaquat Hussain v. Federation of Pakistan* (PLD 1999 SC 405 at page-562). This right casts on an adjudicatory tribunal or forum a duty to treat a person in accordance with law, to grant him a fair hearing and for itself to be an impartial and a fair tribunal. Upon comparison, the said constitutional conditions requirements expand the principles of natural justice which according to our jurisprudence are treated as inherent rights that underlie the elements of fairness, both in terms of hearing as well as impartiality of the forum.

5. None of the above said constitutional rights or inherent rights that predicate every

proceeding that may conclude in a penalty being imposed on an accused person, lay down any requirement that an affected accused officer before any domestic fora in disciplinary proceedings must be represented by counsel. In the present context the term 'domestic fora' is used to depict the domestic appellate forum or for that matter any other proceedings under the enabling disciplinary law. On the other hand, it may be pointed out that where the Constitution so intends, it has in Article 10(1) specifically commanded representation of an accused through counsel in the following situation:

"10. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice."

Clearly, the constitutional right of consultation with and defence by a counsel under Article 10(1) *ibid*, in other words the right of representation which is presently desired by the petitioner for himself, is limited to cases involving arrest, detention and confinement under the law of the land whether it is criminal law, a detention law or any other law imposing penalty of confinement upon an offending person. None of the penalties that can be imposed under the SC Rules, 1982 inflict the personal restraints on the liberty of an accused person that are envisaged by Article 10(1) of the Constitution. It is therefore clear that the express exclusion of the right of representation of an accused by counsel under rule 13 of the SC Rules, 1982 (now Rule 17 of the SC Rules, 2015) does not violate any of his rights conferred by the Constitution or the law. Equally, the fact that procedural statutes which regulate the Court proceedings and grant the right of representation to an accused or a defendant, do not apply to the proceedings of a domestic appellate forum in disciplinary proceedings also becomes plausible. These statutes are the Code of Criminal Procedure, 1898 and the Code of Civil Procedure, 1908, Their exclusion does not offend or violate any higher right conferred on an accused person in disciplinary proceedings by the law or the Constitution.

6. The difference between the proceedings of a disciplinary Tribunal from the proceedings of a Court of law extends beyond the absence of checks imposed by the procedural statutes governing the Court proceedings. It is a well settled proposition of law that the result of disciplinary proceedings is not bound by or dependent upon the outcome of criminal proceedings initiated for the same wrongful act against the same accused officer. Reference may be made to *Nawaz Khan v. Federal Government* (1996 SCMR 315), *Arif Ghafoor v. Managing Director, HMC* (PLD 2002 SC 13). The rationale for this rule is founded upon the subjective element present in disciplinary proceedings that concerns the suitability and the fitness of an accused officer to remain in government service when he has not been acquitted on the merits of the charge alleged against him. The distinction between disciplinary fora and Courts of law is highlighted again by the rule of law that the burden of proof in disciplinary proceedings is lighter than it is in criminal proceedings for the same wrong and against the same accused.

7. There is a significant difference between the substantive nature of trial by a Court of law as against the proceedings in a domestic disciplinary forum. Consequently, the entitlement of representation of an accused by counsel before a trial Court cannot by analogy be imported for the proceedings of a domestic appellate disciplinary forum constituted by Rule 11 of the SC Rules, 1982. The relief claimed by the petitioner is neither apt nor appropriate for the fora established under disciplinary laws governing the service rights of officers and staff that are governed by rules having the force of law. It may also be kept in mind that the rights assured to such officers and staff under the applicable statutory rules, constitutional principles and inherent legal rights are available as an exception to the rule of master and servant. This is because an employment governed by statutory instrument assures rights conferred by law as opposed to contract. This Court has held that the violation of such rights of an accused officer to be justiciable in the

constitutional jurisdiction of the superior Courts of the country. Reference is made to Pakistan Defence Officers' Housing Authority v. Jawaid Ahmed (2013 SCMR 1707). The SC Rules, 1982 (now the SC Rules, 2015) that govern the discipline of officers and staff of the Supreme Court, including in the present case the petitioner, rest on the secure foundation of Article 208 of the Constitution. Such legal backing makes an accused officer eligible for relief by a competent Court of law to be granted in accordance with settled legal parameters governing exercise of its jurisdiction in relation to substantive rights appurtenant to disciplinary proceedings conducted under rules that have the force of law.

8. The foregoing points are intended to merely supplement the grounds for the conclusion given by my learned brother Khilji Arif Hussain, J., which I endorse fully to dismiss the petition.

Sd/-
Umar Ata Bandial, J.

MWAI-5/SC

Petition dismissed.