BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2403/2021

Date of institution 28.01.2021

Tariq Gul, Ex-Constable No. 2133, District Police Officer Mardan.

VERSUS

District Police Officer Mardan and two others.

ORDER
17.06.2022

Miss. Roeeda Khan, Advocate, for the appellant present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant stated at the bar that the appellant has been reinstated by the department and he is performing his duty, therefore, the appeal in hand may be dismissed as withdrawn. In this respect, learned counsel for the appellant submitted application, which his placed on file.

In view of the above, the appeal in hand stands dismissed as withdrawn. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
17.06.2022

(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

خدمت جناب جج صاحب ڈسٹرکٹ ایسٹ کراچی

طارق محمود نام ولدیت

درخواست بعدہ withdraw
کرنے سوٹ ایبل نمبر 3403/21
بعنوان ۱۲

جناب عالی

(۱) سائل / ایپلنٹ حسب ذیل عرض رسان ہے۔

(۱) یہ کہ عنوان بالا سوٹ ایبل نمبر 3403/21
عدالت معزز میں زیر کارروائی ہے جس میں آج
تاریخ مقرر تھی۔

(۲) یہ کہ سائل / ایپلنٹ کا مقدمہ بعنوان لاگو عا
پر بحال کر دیا تھا لہٰذا سائل نے اپنے ذاتی
کاموں کے واسطے

لہٰذا استدعا ہے کہ مقدمہ ہذا درخواست
ہذا سائل کے سوٹ ایبل بعنوان ۱۲
withdraw / واپس لینے کا حکم صادر فرمایا جائے

سائل / اپیلنٹ

16/5/2024

رویہ دار
ایڈووکیٹ

11-3-22

Due to Retirement of the Hon'ble Chairman the case is adjourned to come up for the same as before on 17-6-22

Registrar

07.06.2021 The Worthy Chairman is on leave, therefore, case to come up for preliminary hearing on 14.09.2021 before S.B.

Reader

14.09.2021 Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant contended that the appellant has been awarded major penalty of "dismissal from service" vide impugned order dated 11.12.2020 simply on the basis of a complaint mentioning two mobile numbers of unknown person to have been used immorally. The appellant preferred departmental appeal against the impugned order which was also dismissed by the appellate authority vide order dated 15.01.2021, hence, the instant service appeal instituted on 28.01.2021. Learned counsel for the appellant further argued that the impugned order is a void order and the appellant has been condemned unheard as no formal departmental enquiry or codal formalities fulfilled before awarding him the major penalty of dismissal from service.

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

Appellant Deposited
Security & Process Fee
14/9/21

(Mian Muhammad)
Member(E)

24.12.2021 Due to winter vacations, case is adjourned to 11.03.2022 for the same as before.

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 2403 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/02/2021	The appeal of Mr. Tariq Gul resubmitted today by Roeeda Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-		This case is entrusted to S. Bench for preliminary hearing to be put up there on 09/04/21 CHAIRMAN
	09.04.2021	Due to demise of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 07.06.2021 for the same as before. Reader

The appeal of Mr. Tariq Gul ex-Constable No. 2133 Mardan Police received today i.e. on 28/01/2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Annexures of the appeal may be attested.
2- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.

No. 227 /S.T,

Dt. 29/01 /2021

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Roeeda Khan Adv. Pesh.

objection No 1 has been
Removed while in Response
to objection No 2 copy of Charge
Sheet is not available with appellant
Furthermore No show cause notice
No Inquiry has been Conducted
against the appellant by the Respondent
Department

2/2/2021

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

In Re S.A No. _____/2021

Tariq Gul

VERSUS

DPO Mardan & Others

INDEX

S#	Description of Documents	Annexure	Pages
1.	Grounds of Petition.		1-5
2.	Application for Condonation of Delay (if any)		6-7
3.	Affidavit.		8
4.	Addresses of parties		9
5.	Copy of Charge Sheet Reply	"A"	10
6.	Copy of Impugned Order	"B"	11
7.	Copies of Departmental Appeal & Rejection Order	"C & D"	12 TO 13
8.	Wakalatnama		

APPELLANT

Through

Roeeda Khan
Advocate, High Court
Peshawar.

Dated: 28/01/2021

(1)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

In Re S.A No. 2403 /2021

Tariq Gul ex- Constable No.2133, District Police Officer Mardan

Appellant

VERSUS

1. District Police Officer Mardan.
2. Regional Police Officer Mardan.
3. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.

Respondents

APPEAL U/S-4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT 1974 AGAINST THE ORDER DATED 11/12/2020, WHEREBY THE APPELLANT HAS BEEN AWARDED MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE AND AGAINST WHICH THE APPELLANT FILED DEPARTMENTAL APPEAL WITHIN ONE MONTH FROM THE COMMUNICATION OF THE IMPUGNED ORDER DATED 11/12/2020 WHICH HAS BEEN REJECTED ON 15/01/2021 ON NO GOOD GROUNDS

Prayer:-

ON ACCEPTANCE OF THIS APPEAL BOTH THE IMPUGNED ORDERS DATED 11/12/2020

AND 15/01/2021 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED IN SERVICE ALONG WITH ALL BACK BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE ONWARD TRIBUNAL DEEMS FIT THAT MAY ALSO BE GRANTED IN FAVOUR APPELLANT.

Respectfully Sheweth,

1. That the Appellant has been initially appointed as Constable in Police department since long time.

2. That the appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.

3. That while posted at District Police Office Mardan, a charge sheet has been issued against the Appellant which has properly replied by the appellant, whereby the appellant deny all the allegations leveled against him. **(Copy of Reply to Charge Sheet is annexure "A").**

4. That the Respondent Department without fulfilling codal formalities and without providing opportunity of defense to the appellant, dismissed the appellant from

service on 11/12/2020. **(Copy of impugned order is attached at annexure "B").**

5. That the appellant submitted department appeal within one month from the communication of the impugned order dated 11/12/2020 which has been rejected on 15/01/2021. **(Copies of departmental appeal and rejection order are attached at annexure "C" & D").**

6. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

GROUNDS:-

A. That the impugned order 11/12/2020 is void and abinitio order because it has been passed without fulfilling codal formalities.

B. That no regular inquiry has been conducted by the Respondent department and no chance of personal hearing has been provided to the appellant in this respect the appellant relied upon the judgment dated 2008 SCMR Page:1369.

C. That no final show cause notice has been issued and communicated to the appellant by Respondent department before imposing the major penalty in this respect the appellant relied upon a judgment reported on 2009 PLC (CS) 176.

D. It is a well settled maxim no one can be condemned unheard because it is against the natural justice of law in this respect the appellant relied upon a judgment reported on 2008 SCMR page:678.

E. That no statement of witnesses has been recorded by the inquiry officer and there is no proof regarding the allegation leveled against the appellant.

F. That no opportunity of cross examination has been provided to the appellant.

G. That no opportunity of personal hearing has been provided to the appellant.

H. That any other ground not raised here may graciously be allowed to be raised at the time full of arguments on the instant service appeal.

(5)

It is therefore, most humbly prayed that on acceptance of this appeal both the impugned orders dated 11/12/2020 & 15/01/2021 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.

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

Roeeda Khan
Advocate, High Court
Peshawar.

Dated: 28/01/2021

NOTE:-

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.

Advocate.

(b)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

In Re S.A No. _____/2021

Tariq Gul

VERSUS

DPO Mardan & Others

AFFIDAVIT

I, Tariq Gul ex- Constable No.2133, District Police Officer Mardan, do hereby solemnly affirm and declare that all the contents of the **instant appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Court.

ATTESTED

DEPONENT

Identified by:

Roeeda Khan
Advocate High Court
Peshawar.

(7)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

In Re S.A No. _____/2021

Tariq Gul

VERSUS

DPO Mardan & Others

ADDRESSES OF PARTIES

PETITIONER.

Tariq Gul ex- Constable No.2133, District Police Officer Mardan

ADDRESSES OF RESPONDENTS

1. District Police Officer Mardan.
2. Regional Police Officer Mardan.
3. Provincial Police Officer Khyber Pakhtunkhwa Peshawar.

APPELLANT

Through

Roeeda Khan
Advocate, High Court
Peshawar.

Dated: 28/01/2021

(8)

BEFORE THE HON'BLE SERVICE TRIBUNAL PESHAWAR

In Re S.A No. _____/2021

Tariq Gul

VERSUS

DPO Mardan & Others

APPLICATION FOR CONDONATION OF DELAY (IF ANY)

Respectfully Sheweth,

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.

2. That the appellant filed departmental appeal within one month from the date of communication of the impugned order dated 11/12/2020, which has been rejected on 15/01/2021..

Grounds:

A. That the impugned order is void and illegal and no limitation runs against the void orders because the impugned order has been passed without fulfilling the codal formalities.

B. That there are number of precedents of the 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

Roeeda Khan
Advocate, High Court
Peshawar.

Dated: 28/01/2021

Ann "A" (15)

جناب عالی:

بحوالہ چارج شیٹ نمبری 349-PA مجازیہ جناب DPO صاحب مردان

11.9.20

معروض خدمت ہوں کہ سائل گارڈ تحصیل کاٹلنگ مین گیٹ میں ڈیوٹی پر تعینات ہے۔ سائل روزانہ کی بنیاد پر گیم کے لئے پولیس لائن گراونڈ میں آتا ہے۔ تقریباً 20-19 روز قبل جب سائل گراونڈ میں گیم کر رہا تھا۔ تو اس دوران سائل کو ایک عدد سیم زونگ زمین پر پڑا مل گیا۔ میں نے گراونڈ میں موجود کسان سے بھی دریافت کیا کہ مجھے ایک عدد سم زونگ ملا ہے۔ اگر کسی کا ہو تو مجھ سے لے لو۔ اسلئے سم کو اصل مالک تک پہنچانے کے لئے میں نے سم کو اپنے موبائل میں لگا کر سم میں جو نمبرز تھے اس میں کسی نمبر کو نام وغیرہ نہیں تھا۔ اسلئے سم میں جو بھی نمبر تھے میں نے نیک نیتی سے ان تمام نمبروں کو SMS کیا تھا کہ سم اپنے اصل مالک کو پہنچ سکے۔ اگر میرا ارادہ غلط تھا۔ تو ایک ساتھ اتنے سارے لڑکیوں کو کسطرح SMS کرتا۔ جناب والا میں شادی شدہ ہوں۔ اور میری ایک بیٹی بھی ہوں۔ اور میں ہر قسم تسلی کے لئے تیار رہوں۔ اسلئے میں نے اچھے شہری کے فرض ادا کرتے ہوئے تاکہ یہ سم کسی غلط ہاتھوں میں نہ چلا جائے۔ اور غلط استعمال نہ ہو۔ میں چار دن کوارٹر گارڈ بطور سزا بھی گزارا ہے۔ یہی میرا بیان ہے۔ جو کہ درست ہے۔

تحریر: Tariq Gul

العارض

طارق گل بیلٹ نمبر 2133

(متعنہ گارڈ کاٹلنگ تحصیل مردان)

0315-8899993

Attested By

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

Tel No. 0937-9230109 & Fax No. 0937-9230111
Email: dpomdn@gmail.com

2020

No. 1316-18/PA Dated 11/12/2020

ORDER ON ENQUIRY OF CONSTABLE TARIQ GUL NO.2133

This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, under the allegations that while posted at Guard Main Gate new Tehsil Katlang Logbook Entry Duty (now under suspension Police Lines) was placed under suspension & closed to Police Lines vide this office OB No.1475 dated 03-09-2020, issued vide order/endorsement No.4575-77/OSI dated 08-09-2020, on account of a complaint by Lady Constables Yusra No.2756, Shumaila No.2906, Fatima No.1315, Maria No.3275 & Aneela No.1328 vide DD report No.10 dated 02-09-2020 Police Lines Mardan, complaining therein that an unknown person from Mobile Nos: 0315-8899993 & 0313-7592974 is immorally disturbing them.

The matter was initially enquired into through DSP/HQrs Mardan, who after doing the needful, submitted his findings to this office vide his office letter No.427/HQrs dated 03-09-2020, holding responsible Constable Tariq Gul No.2133 of misconduct & recommended for proper departmental action, so he was proceeded against departmentally through Mr. Adnan Azam SDPO Rural Mardan vide this office Statement of Disciplinary Action/Charge Sheet No.349/PA dated 11-09-2020, who (E.O) after fulfilling necessary process, submitted his Finding Report to this office vide his office letter No.1015/ST dated 20-11-2020, recommending the alleged official for major punishment.

Final Order

Constable Tariq Gul was heard in OR on 09-12-2020, who failed to satisfy the undersigned, therefore, awarded him major punishment of dismissal from service with immediate effect, in exercise of the power vested in me under Police Rules-1975.

OB No. [illegible]
Dated 11/12 2020.

(Dr. Zahid Ullah) PSP
District Police Officer
Mardan

Copy forwarded for information & n/action to:-

1) The DSP/HQrs Mardan.
2) The P.O & E.C (Police Office) Mardan.

(۱۷)

بخضور جناب عزت مآب آر پی او صاحب مردان۔

برخاست کردہ کنسٹیبل طارق گل بیلٹ نمبر 2133 (سائل)

بنام

~~ڈسٹرکٹ پولیس افیسر صاحب مردان~~
وڈسٹرکٹ پولیس افیسر صاحب مردان۔

اپیل بنا راضگی حکم ارڈر چٹھی نمبر 4316-18/PA مورخہ 11/12/2020 OB نمبر 2203 مورخہ 09/12/2020
استدعائے اپیل منظوری اپیل ہذا حکم ارڈر نمبر OBNo2203 مورخہ 09/12/2020
از دفتر مسول علیہ موصوف حقوق سائل پر منسوخ قرار دیا جائے اور من سائل کو دوبارہ ملازمت سرکار پر بحال کرنے کے احکامات صادر فرمائے۔

جناب عالی! سائل ذیل عرض رسانی ہے۔

۱ یہ کہ سائل کو افسران بالا نے سال 2013 میں صلاحیت ولیاقت کی بنیاد پر ضلع مردان پولیس میں بحیثیت کنسٹیبل بھرتی کر کے سائل برخاستگی کیلئے ایام تک اپنی ڈیوٹی خوش اسلوبی سے سرانجام دی ہے۔

۲ یہ کہ سائل کو موبائل کے غلط استعمال کے الزام پر بحوالہ مد بالا بہ یک جنبش قلم سرکاری ملازمت سے برخاست کر دیا ہے ارڈر مجاریہ 4316-18PA مورخہ 11/12/2020 قابل بحالی اور قابل منسوخی ہے۔

۳ یہ کہ انکوائیری افیسر نے اپنے فائنڈنگ میں میرے لیے اخلاقیات کورس کی سزا تجویز کی تھی۔

۴ یہ کہ سائل اپنے گھر کا واحد مرد ہے۔ گھر بار میں دیگر کوئی نگران کفیل نہیں رکھتا۔

الہٰذا سائل بذریعہ درخواست ہذا استدعاء کرتا ہے کہ بہ منظوری اپیل ہذا حکم فیصلہ OBNo/2203 مورخہ 09/12/2020 از دفتر مسول علیہ موصوف سائل پر غیر موثر منسوخ قرار دیا جا کر من سائل کو دوبارہ ملازمت پر بحال کر کے احکامات صادر فرماویں۔ سائل افسران بالا کو آئندہ شکایت کا موقع نہیں دیگا اور تا عمر دعا گو رہے گا۔

Attested By

العبد

سائل برخاست کردہ کنسٹیبل طارق گل بیلٹ نمبر 2133

"D" 18

ORDER.

This order will dispose-off the departmental appeal preferred by **Ex-Constable Tariq Gul No. 2133** of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded major punishment of dismissal from service vide OB: No. 2203 dated 09.12.2020. The appellant was proceeded against departmentally on the allegations that he while posted at Guard Main Gate new Tehsil Katlang found involved in eve-teasing by sending filthy messages to Lady Constables. The complainant Lady Constables made complaint alleging therein that an unknown person from Mobile Nos: 0315-8899993 & 0313-7592974 sends obnoxious messages to them.

In order to probe into the allegations, the matter was initially enquired into through Deputy Superintendent of Police Headquarters, Mardan, who after doing the needful, submitted his findings to District Police Officer, Mardan and held responsible the delinquent Officer of the misconduct because both the above mentioned numbers were in his use. Hence, he was recommended for formal departmental proceedings.

Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Sub Divisional Police Officer (SDPO) Rural, Mardan was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities, submitted his findings, stating therein that the allegations leveled against him had been proved. He recommended the delinquent Officer for major punishment.

He was also provided opportunity of self defense by summoning him in the Orderly Room by the District Police Officer, Mardan on 09.12.2020, but he failed to advance any cogent reason in his defense. Hence, he was awarded major punishment of dismissal from service vide OB: No. 2203 dated 09.12.2020.

Feeling aggrieved from the order of District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 12.01.2021.

From the perusal of the enquiry file and service record of the appellant, it has been found that allegations against the appellant have been proved beyond any shadow of doubt. Being a member of disciplined/uniformed force, the involvement of the delinquent Officer in such like immoral activities brought a bad name for entire Police force in the eyes of general public, besides affecting other members of Police force. Moreover, the appellant was under

obligations to safeguard/protect the honor/dignity of the public irrespective of their gender but in the instant case the appellant himself indulged in immoral activities which is totally against the norms of disciplined force. Hence, the retention of appellant in Police Department will stigmatize the prestige of entire Police Force. Besides, during the course of personal hearing, he could not present any cogent justification to warrant interference in the order passed by the competent authority. Prior to this, the appellant had been earlier punished on various occasions on account of his misconduct. Hence, the very conduct of appellant is unbecoming of a disciplined Police Officer. Therefore, the order passed by the competent authority does not warrant any interference.

Keeping in view the above, **I, Sher Akbar, PSP S.St Regional Police Officer, Mardan,** being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being devoid of merit.

Order Announced.

Regional Police Officer,
Mardan.

No. 248 **/ES, Dated Mardan the** 15 - 01 - **/2021.**

Copy forwarded to District Police Officer, Mardan for information and necessary w/r to his office Memo: No. 362/LB dated 30.12.2020. His Service Record is returned herewith.

(*****)

Attested
By

بعدالت جوڈیشل مجسٹریٹ

مورخہ 2021ء منجانب

مقدمہ طارق گل بنام

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ

آن مقام کیلئے

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہٰذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 28 ماہ 2021ء

العبد گواہ العبد

مقام کے لئے منظور ہے۔

Accepted