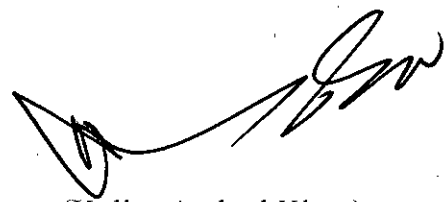


7th Oct, 2022

1. None present for the appellant. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

2. Called several times till last hours of the court but neither appellant nor his counsel is present. In view of the above, the instant appeal is dismissed in default.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 7th day of October, 2022.*



(Kalim Arshad Khan)
Chairman

8.8.2022 Due to the Public Holiday the
Case is Adjourned to 1-9-2022

(Signature)
Reader.

01.09.2022 Nemo for the appellant. Mr. Muhammad Adeel Butt,
Additional Advocate General alongwith Mr. Fayyaz H.C for the
respondents present.

Counsel was telephonically informed due to non-availability of postal tickets

(Signature)
Reply/comments on behalf of respondents have already
been submitted. Notice be issued to the appellant and his counsel
to attend the court on the next date Adjourned. To come up for
preliminary hearing on 07.10.2022 before S.B.

SCANNED
KPST
Peshawar

(Signature)

(Signature)
(Mian Muhammad)
Member (E)

06.01.2022

Nemo for the appellant. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

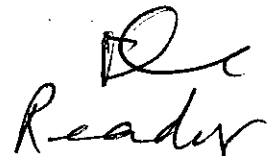
As per preceding order sheet, pre-admission notice was given to the respondents to assist the Tribunal on the point. Lawyers are on general strike today. Case to come up for preliminary hearing on 03.03.2022 before S.B.



(Rozina Rehman)
Member (J)

3-3-2022

Due to retirement of the Honorable Chairman the case is Adjourned to come up for the same as before on 2⁶/₂₂



Reader

02.06.2022

Appellant in person present. Mr. Muhammad Fayaz, Head Constable alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

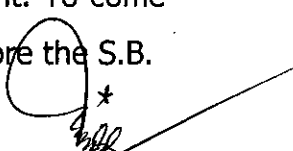
Representative of the respondents submitted reply, copy of which handed over to the appellant. Lawyers are on general strike, therefore, to come up for preliminary hearing before the S.B on 08.08.2022.



(Salah-Ud-Din)
Member (J)

02.11.2021

Learned counsel for the appellant contended that the appellant is aggrieved of the impugned order dated 16.05.2019 whereby, the appellant was dismissed from service from the dated of his absence i.e 19.12.2018. He preferred departmental appeal dated nil for reinstatement in service which was decided/rejected by the appellate authority vide order dated 22.01.2021. Thereafter the appellant preferred revision petition before respondent No.3 which was not responded within stipulated statutory period and then the instant service appeal was filed in the Service Tribunal on 19.07.2021. It was further contended that the departmental appeal has been rejected/filed on the basis of limitation whereas no limitation runs against a void order. To strengthen his arguments, learned counsel for the appellant placed reliance on citation (a) and Para-6 of 2019 SCMR 648, Citation (b) and (c) of 1985 SCMR 1178 and this Tribunal judgment dated 02.05.2016 in service appeal No. 588/2012 "titled Murád Ali-vs-Commandant FRP and others", judgement dated 07.12.2017 in service appeal No. 957/2016 "titled Shoukat Ali S/O M. Shafiq-vs-Superintendent of Police FRP Malakand Region" and judgement of larger bench of this Tribunal in service appeal No. 562/2016 dated 02.03.2018 "titled Rahim-Ud-Din son of Said Rehman-vs-Khyber Pakhtunkhwa IGP and other". Let pre-admission notice be issued to the respondents to assist the Tribunal on the point. To come up for preliminary hearing on 06.01.2022 before the S.B.

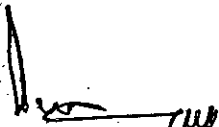



(Mian Muhammad)
Member(E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 2143 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
1	2	3		
1-	04/08/2021	<p>The appeal of Mr. Ziad Gul resubmitted today by Mr. Shah Faisal Ilyas Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p>	13.09.2021	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>13/09/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Nemo for the appellant present.</p> <p>Notices be issued to the appellant and his counsel. Adjourned. To come up for preliminary hearing before the S.B on 02.11.2021.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER (E)</p>

The appeal of Mr. Zahid Gul Ex-Constable No. 1353 District Nowshera received today i.e. on 19.07.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Certificate be given to the effect that appellant has not filed any service appeal earlier on the subject matter before this Tribunal.
- 2- Check list is not attached with the appeal.
- 3- Memorandum of appeal may be got signed by the appellant.

No. 1414 /S.T,

Dt. 27/07 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Shah Faisal Ilyas Adv. Pesh.

Respected Sir.

All objection
are cleared and file resubmitted.

Thanks



BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

CHECK LIST

1.	Case Title	<u>Ziad Gurell</u>VERSUS..... <u>D. P. O. Nowshera</u>	
2.	Case is duly signed.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
3.	The law under which the case is preferred has been mentioned.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
4.	Approved file cover is used.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
5.	Affidavit is duly attested and appended.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
6.	Case and annexures are properly paged and numbered according to index.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
7.	Copies of annexures are legible and attested. If not, then better copies duly attested have annexed.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
8.	Certified copies of all requisite documents have been filed.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
9.	Certificate specifying that no case on similar grounds was earlier submitted in this court, filed.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
10.	Case is within time.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
11.	The value for the purpose of court fee and jurisdiction has been mentioned in the relevant column.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
12.	Court fee in shape of stamp paper is affixed. [For writ Rs. 500, for other as required]	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
13.	Power of attorney is in proper form.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
14.	Memo of addressed filed.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
15.	List of books mentioned in the petition.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
16.	The requisite number of spare copies attached [Writ petition-3, civil appeal (SB-2) Civil Revision (SB-1, DB-2)]	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
17.	Case (Revision/ Appeal/petition etc) is filed on a prescribed form.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
18.	Power of attorney is attested by jail authority (for jail prisoner only)	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

It is certified that formalities/documentations as required in column 2 to 18 above, have been fulfilled.

Name:- Shah Faizal Aliyar
 Signature:- [Signature]
 Dated:- 4.8.2021

FOR OFFICE USE ONLY

Case:- _____
 Case received on _____
 Complete in all respect: Yes/ No, (If No, the grounds) _____
 Date in court:- _____

Signature _____
 (Reader)

Date:- _____

Countersigned:- _____
 (Deputy Registrar)

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2021

Zaid Gul.....(Appellant)

V E R S U S

District Police Officer (DPO) District Nowshera and
others.....Respondents)

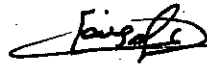
I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal with affidavit		1-8
2.	Addresses of Parties		9
3.	Copy of impugned order dated 15/05/2019	A	10-10A
4.	Copies of appeal and order dated 22/01/2021	B	11-13
5.	Copy of appeal to respondent No. 3	C	14
6.	Copy of judgment	D	15-41
7.	Wakalat Nama		42

زید گل
Appellant

Through

Date: 19/07/2021


Shah Faisal Ilyas
Advocate High Court,
Peshawar.
Cell: 0300-5850207

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 7143 2021

Diary No. 7348
Date 19/7/2021

Zaid Gul, Ex-Constable No. 1353, District
Nowshera.....(Appellant)

V E R S U S

1. District Police Officer (DPO) District Nowshera.
2. Regional Police Officer (DIG), Mardan Region.
3. Government of Khyber Pakhtunkhwa through
Inspector General of Police/ PPO, Khyber
Pakhtunkhwa, Peshawar.
4. Assistant Superintendent of Police, Nowshera Cantt,
Nowshera.....Respondents)

SERVICE APPEAL U/S 4 OF SERVICES

TRIBUNAL ACT, 1973/ AGAINST THE

IMPUGNED ORDER DATED 22/01/2021

PASSED BY RESPONDENT NO. 2

WHEREBY HE DISMISSED THE

DEPARTMENTAL APPEAL AGAINST THE

IMPUGNED ORDER DATED 15/05/2019

PASSED BY RESPONDENT NO 1,

WHEREBY THE APPELLANT HAS BEEN

AWARDED MAJOR PUNISHMENT OF

Filed to-day
Registrar
19/7/2021

Re-submitted to-day
and filed.

Registrar
4/8/2021

**DISMISSAL FROM SERVICE WITH
RETROSPECTIVE EFFECT.**

Prayer in Appeal:

On acceptance of this Service Appeal, the impugned order dated 22/01/2021 and order dated 15/05/2019 passed by respondents No. 1 and 2 may please be set aside and the appellant may very graciously reinstated in service with all back/ consequential benefits.

Respectfully Sheweth:

1. That appellant in the year of 2009 joined the police department as a constable and performed his duty with zeal and devotion.
2. That appellant has transparent service record with nine years service in his credit.
3. That applicant while posted at Police Post Bara Banda, District Nowshera, domestic problem raised and that's why appellant was not in the condition to perform his duty, hence, absented.

4. That applicant tried for leave but in vain, despite heacted efforts.
5. That respondent No. 1, nominated Enquiry Officer respondent No. 4 and in enquiry proceedings, applicant was dismissed from service vide impugned order dated 15/05/2019. (Copy of impugned order dated 15/05/2019 is attached as annexure "A").
6. That appellant approached to respondent No. 2 for reinstatement but the same was rejected due to time barred. (Copies of appeal and order dated 22/01/2021 are attached as annexure "B").
7. That being void order and no limitation run against the same, appellant file another application to IGP, but the later of the same is not conveyed to the appellant yet. (Copy of appeal to respondent No. 3 is attached as annexure "C").
8. That feeling aggrieved from the appellant having no other adequate, efficacious, alternate remedy,

approaches this Hon'ble Tribunal, inter alia, on the following grounds.

GROUND S:

- A. That being void orders no limitation run against the same, hence needs to be set aside. (Copy of judgment is attached as annexure "D").
- B. That the impugned orders dated 22/01/2021 and order dated 15/05/2019 passed by respondents No. 1 and 2 are illegal, against law, without lawful authority and jurisdiction, being void order with retrospective effect.
- C. That appellant was imposed major penalty, so, the respondents are bound to conduct regular inquiry to probe the allegations levelled against him, but respondents have not followed the prescribed procedure, therefore, action/ orders of respondents No. 1 & 2 are without lawful authority, hence, liable to be set aside.

- D. That the whole proceedings of the so-called inquiry was conducted in the absence of appellant, he was not provided an opportunity of hearing, hence he was condemned unheard which is violation of golden principle that no one should be condemned unheard.
- E. That against the appellant, general allegations have been levelled and no specific reference of any incident has been given, thus, findings of respondents No. 1 & 2 are based on assumptions, presumptions, which are not sustainable in the eyes of law.
- F. That so-called enquiry officer has not recorded statement of any witnesses nor collected any evidence in support of allegations levelled against the appellant, so, the inquiry was not conducted in a fair and transparent manner, therefore, dismissal of the appellant from service on such

so-called inquiry report is highly illegal, arbitrary, without lawful authority and jurisdiction.

G. That it is fundamental rights of the appellant to be treated equally and are also entitled to equal protection of law, but in the instant case, the respondents have blatantly bypassed all rules regulating the subject matter.

H. That appellant is not engaged in any profit oriented activity and remained jobless since removal order, therefore, he is entitled for all back benefits.

I. That appellant belongs from poor family, there is no other source of income without this job and the appellant is only source of livelihood of his entire poor family.

J. That any other ground may be adduced during the course of arguments, with the kind permission of this Hon'ble Tribunal.


It is, therefore, respectfully prayed that on acceptance of this Service Appeal, the impugned order dated 22/01/2021 and order dated 15/05/2019 passed by respondents No. 1 and 3 may please be set aside and the appellant may very graciously reinstated in service with all back/ consequential benefits.

Any other remedy which deemed appropriate and just in the circumstances of the case, be also issued/ ordered/ given.

زیاد علی
Appellant

Through

Date: 19/07/2021


Shah Faisal Ilyas
Advocate High Court,
Peshawar.

CERTIFICATE:

As per instruction of my client it is certified that no such like Service Appeal has earlier been filed on the subject matter before this Hon'ble Tribunal


ADVOCATE

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2021

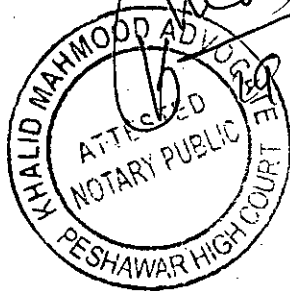
Zaid Gul.....(Appellant)

V E R S U S

District Police Officer (DPO) District Nowshera and
others.....Respondents)

AFFIDAVIT

I, Zaid Gul, Ex-Constable No. 1353, District Nowshera, do hereby solemnly affirm and declare on oath that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Zaid Gul
DEPONENT

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____/2021

Zaid Gul.....(Appellant)

V E R S U SDistrict Police Officer (DPO) District Nowshera and
others.....Respondents)**ADDRESSES OF PARTIES****APPELLANT:**

Zaid Gul, Ex-Constable No. 1353, District Nowshera.


RESPONDENTS:

1. District Police Officer (DPO) District Nowshera.
2. Regional Police Officer (DIG), Mardan Region.
3. Government of Khyber Pakhtunkhwa through
Inspector General of Police/ PPO, Khyber
Pakhtunkhwa, Peshawar.
4. Assistant Superintendent of Police, Nowshera Cantt,
Nowshera.

زیارڈ
Appellant



Through

Date: 19/07/2021


Shah Faisal Ilyas
Advocate High Court,
Peshawar.

10A

Khyber Pakhtun Khwa
S.No. 2075-18



**NOWSHERA
POLICE**

ZIYAD GUL
Designation: FC / 1357
CNIC: 17201-6724310-1
Nowshera Police Baidar Police

F/Name: Zafer Gul


Date Of Appointment: 5-8-2009

Identification Mark: Nil

Address: Pabbi

Date Of Issue: 10-05-2018

Emergency No: 0336-9467100



Valid Upto: 30-12-2021

Blood Group: Nil

NOWSHERA POLICE

ORDER

This order will dispose off a departmental enquiry initiated under the Khyber Pakhtunkhwa Police Rules-1975, against Constable Ziynd Gul No. 1353, under the charge that he while posted at Police Post Bara Banda selected for refresher course vide DD No. 19 dated 19.12.2018, but he did not report for the said course and remained absent without leave/permission of the competent authority vide DD No. 19 dated 25.12.2018, Police Post Bara Banda, Nowshera till date

On account of which he was issued Show Cause Notice and was not present at the time and again to collect his SCN, but failed, therefore, departmental action has been initiated against him through Mr Tassawar Iqbal, ASP Cantt Nowshera. The enquiry officer after fulfillment of legal formalities submitted his report to the undersigned, wherein the enquiry officer highlighted that the defaulter official has little interest in police job, he even did not bother to defend himself against the allegations leveled against him in the charge sheet and statement of allegations therefore recommended for major punishment of dismissal.

He was served with legal Show Cause Notice on 22.04.2019, but failed to submit his reply. His continuous absence seems that he is no more interested in police job

He was called in orderly room and heard in person by the undersigned on 15.05.2019, wherein he failed to produce any cogent reason in his defense, therefore, he is hereby awarded major punishment of dismissal from service from the date of absence, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules-1975

OB No. 558

Dated 16/5/2019

District Police Officer,
Nowshera

No. 2368-21 /PA, dated Nowshera, the 15.05 2019
Copy for information and necessary action to the:

1. Pay Officer.
2. Establishment Clerk.
3. OHC
4. FMC with its enclosures (21 sheets)

Fed
ATTESTED

SUBJECT APPLICATION FOR RE INSTATEMENT IN SERVICE

Respected Sir,

It is submitted as under:-

- 1 That applicant in the year of 2009 joined the police department as a constable and performed his duty with complete zeal and zest.
- 2 That applicant has transparent service record with nine years service in his credit.
- 3 That applicant while posted at Police Post Bara Banda, district Nowshera domestic problem raised and that's why applicant was not in the condition to perform his duty well and good hence, absented.
- 4 That applicant tried for leave but in vain.
- 5 That honorable DPO, Nowshera nominated enquiry officer Sp Cant, Nowshera and in enquiry proceedings applicant was dismissed from service (dismissal order attached).
- 6 That neither show cause notice was served nor any cross examination conducted upon the applicant.
- 7 That applicant belongs from poor family there is no other source of income without this job.
- 8 That all family responsibilities upon the shoulders of applicant.
- 9 That applicant absentia was not intentionally but due to domestic problems.

PRAYER

It is, therefore requested that applicant may kindly be reinstated in service, please.

*map legal
for comments.*

DPONSL

Ziad Gul
ATTESTED

Ziad Gul Ex-Constable No. 1353
District Nowshera
Mobile No. 0336-9467100

ORDER.

This order will dispose-off the departmental appeal preferred by Ex-Constable Ziad Gul No. 1353 of Nowshera District Police against the order of District Police Officer, Nowshera, whereby he was awarded major punishment of dismissal from service vide OB No. 558 dated 16.05.2019. The appellant was proceeded against departmentally on the allegations that he while posted at Police Post Bara Banda, selected for refresher course vide daily diary No. 09 dated 19.3.2018, but he did not report for the said course and remained absent without any leave/permission of the competent authority vide daily diary No. 19 dated 25.12.2018 till date of his dismissal.

He was issued Show Cause Notice and was informed time and again to collect the same but he failed. Therefore, proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Assistant Superintendent of Police Cantt Nowshera was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities, submitted his findings wherein he reported that the appellant was contacted time and again to appear before the enquiry Officer, but he failed and remained absent, which showed that he was no more interested in Police Service. He recommended the appellant for major punishment of dismissal from service.

He was issued Final Show Cause Notice on 22.04.2019, but neither did he submit his reply nor did he assume the duty.

He was also provided opportunity of self defense by summoning him in the Orderly Room by the District Police Officer, Nowshera on 15.05.2019, but he failed to advance any cogent reasons in his defense. Hence, he was awarded major punishment of dismissal from service vide OB: No. 558 dated 16.05.2019.

Feeling aggrieved from the order of District Police Officer, Nowshera, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 20.01.2021.

From the perusal of service record of the appellant, it has been found that the allegations leveled against the appellant have been proved beyond any shadow of doubt. He had been earlier dismissed from service on account of his absence. Hence, the very conduct of appellant is unbecoming of a disciplined Police Officer. Moreover, the appellant approached this forum at a belated stage without advancing any cogent reason regarding such delay. Hence, order passed by the competent authority does not warrant any interference.

[Signature]
ATTESTED

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 badly time barred.

Order Announced.



Regional Police Officer,
Mardan.

No. 387 /ES, Dated Mardan the 22-01- /2021.

Copy forwarded to District Police Officer, Nowshera for information and necessary action w/r. to his office Memo: No. 63/PA dated 08.01.2021. His Service Record is returned herewith.

(*****)

Nowshera,

Dist. Nowshera

Pt.

It is found that the officer

has not followed the

rule



ATTESTED



14

BEFORE HONORABLE INSPECTOR GENERAL POLICE, KPK
PESHAWAR

Subject: APPLICATION FOR RE-INSTATEMENT IN
SERVICE.

Respected Sir,

It is submitted as under;

1. That applicant in the year of 2009 joined the police department as a constable and performed his duty with complete zeal and zest.
2. That applicant has transparent service record with nine years service in his credit.
3. That applicant while posted at police post Bara Banda, District Nowshera Domestic problem raised and that's why applicant was not in the condition to perform his duty well and good hence, absented.
4. That applicant tried for leave but in vain.
5. That honorable DPO, Nowshera nominated enquiry officer SP Cantt, Nowshera and in enquiry proceedings applicant was dismissed from service (dismissal order attached)
6. That neither show cause notice was served nor any cross examination conducted upon the applicant.
7. That applicant approached to regional police officer for re-instatement but the same was rejected due to time barred hence the instant application before your honour. (Order attached with)
8. That applicant belongs from poor family there is no other source of income without this job.
9. That all family responsibilities upon the shoulders of applicant.
10. That applicant absence was not intentionally but due to domestic problems.

Prayer:

It is, therefore, requested that applicant may kindly be reinstated in service, please.


ATTESTED

Ziad Gul Ex-Constable No. 1353

District Nowshera

Mob: 0336-6767100

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. _____/2018

Farman Ali S/O Wali Ahmad,
R/o Abuha, Barikot Swat,
Ex-Constable. No. 1425,
Police Line Swat Appellant

VERSUS

1. District Police Officer, Swat.
2. Regional Police Officer, Malakand
Region at Sadiu Sharif, Swat.
3. Provincial Police Officer,
KP, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST OB NO. 14 DATED 21-01-2006 OF R. NO. 01
WHEREBY APPELLANT WAS DISMISSED FROM
SERVICE RETROSPECTIVELY AND THE PERIOD OF
ABSENCE WAS TREATED AS LEAVE WITHOUT PAY OR
OFFICE ORDER NO. 8931 / E DATED 27-10-2016 OF
R. NO. 02 WHEREBY DEPARTMENTAL APPEAL OF
APPELLANT WAS REJECTED OR OFFICE ORDER NO.
7652 / 16 DATED 23-11-2016 OF R. NO. 03
WHEREBY REVISION PETITION OF APPELLANT WAS
REJECTED:**

[Signature]
ATTESTED

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth;

1. That appellant was enlisted in service in the year 2002 as Constable and served the department till the date of removal from service.

2. That appellant was deputed to PTC, Hangu for training in the year 2003 and qualified the same.
3. That thereafter appellant served in various Police Stations for about five (05) years without any complaint.
4. That at the time, Swat Valley was in clutches of the miscreants and it was well in knowledge of every one that they were ruling the area and the government machinery was totally collapsed. Employees were kidnapping, beheading and killing either through guns or bomb blasts. In such a situation employees of almost all of every department let their services, especially of the police department which was in target of the miscreants.
5. That on account of absence, appellant was removed from service on 21-01-2006 by R. No. 1 from the date of absence from duty, 02-07-2005 and the absence period was treated as leave without pay. (Copy as Annex "A")
6. That thereafter appellant appeal before R. No. 02 on 02-02-2006 for reinstatement in service followed by subsequent representation dated 22-08-2016, which was rejected on 27-10-2016. (Copies as Annex "B", "C" & "D")
7. That Revision Petition before R. No. 03 was filed for the aforesaid purpose which was rejected on 23-11-2016. (Copy as Annex "E")
8. That not only appellant was dismissed from service on the score of absence but numerous others were also dismissed as such and they were reinstated into their services vide order dated 30-11-2010, 15-03-2017 and 09-08-2017 (Copies as Annex "F")
9. That apart from the aforesaid fact, the subject matter came up for consideration before the hon'ble Tribunal and after thorough probe, their appeal's were accepted vide judgments dated 02-05-2016 and 07-12-2017, etc. (Copies as Annex "G")

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


ATTESTED

G R O U N D S :

- a. That appellant was enlisted in service in the year 2002 and served the department till the date of removal from service.
- b. That at the time, the Swat Valley was in clutches of the miscreants and it is will in knowledge of every one that they were ruling the area and the government machinery was totally collapsed. Employees were kidnapping, beheading and killing either through guns or bomb blasts. In such a situation employees of almost all of every department let their services, especially of the police department.
- c. That appellant was removed from service on the score of absence but such absence was not willful but was due to the deteriorated situation of the area.
- d. That absence does not constitute any misconduct when the same is not willful and as stated earlier, hundreds and thousands similarly and equally placed employees have been reinstated into their services not only by the department but also by the hon'ble Tribunal / courts which judgments were upheld by the apex court.
- e. That in the impugned order dated 21-01-2006, the authority regularized the absence period and in such situation, he cannot be dismissed from service.
- f. That as is evident from the impugned orders none was served upon appellant, so no question of limitation ever arises.
- g. That codal formalities enumerated in the Rules were never observed, being mandatory. The impugned orders not per the mandate of Law and based on malafide.

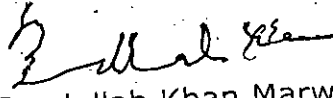

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It is, therefore, most humbly prayed that on acceptance of appeal, orders dated 21-01-2006, 27-10-2016 and 23-11-2016 of the respondents be set aside and appellant be reinstated in service with all consequential / back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

Appellant

Through


Saadullah Khan Marwat

Amjad Khan
Advocates.

Dated 30-10-2018


ATTESTED

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 588 /2012

Dr. Q. J. Jaffer
District Judge
Peshawar

Case No. 562

Date 23/05/12

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



Appellant

Versus

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

Respondents

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

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[Signature]

Respectfully Sheweth,

[Handwritten notes]

[Signature]

1. That on 25.07.2007, appellant was enlisted as FRP constable in Malakand Range by R.No.1.

That it was an admitted fact that the whole Swat valley was under the control of miscreants/Taliban. Normal law enforcement was absolutely ineffective. Miscreants/Taliban were indulging in killing and harassing Government employees, members of

[Signature]

Date of Order or proceedings.	2	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT.

APPEAL NO. 588/2012

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

JUDGMENT

02.05.2016

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:

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

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

Brief facts giving rise to the present appeal are that the appellant was appointed as Constable in FRP Matakand Range vide appointment order dated 23.07.2007. While serving to he was found absent from duty for a period of 3 months and 8 days and after conducting enquiry removed from service vide order dated 10.10.2008 where-against departmental appeal of the appellant was rejected on 09.4.2012 and hence the instant service appeal was preferred on 23.05.2012.

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

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

Since the appellant was subjected to enquiry wherein neither prescribed procedure was followed nor appellant associated with the same as such we deem it more appropriate to set aside the impugned original order dated 10.10.2008 as well as that order dated 09.11.2010 and as consequence thereof reinstate the appellant in service, placing the respondents at liberty to departmentally proceed against the appellant afresh, if need be, and that the plea of the appellant in respect of reinstatement of similarly placed persons in service shall also be taken into account during the enquiry which shall be concluded within the period of 2 month from the date of receipt of this judgment. In case

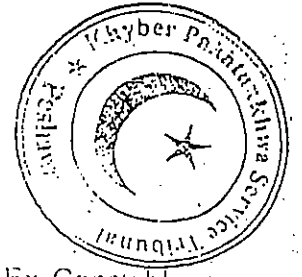
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No. 957/2016
Date of Institution... 04.08.2016
Date of decision... 07.12.2017



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

Versus

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

ARBAB SAIFUL KAMAL,
Advocate ... For appellant.

MR. KABIRULLAH KHATTAK,
Addl Advocate General ... For respondents.

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

JUDGMENT

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

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

FACTS

3. The appellant Shaukat Ali, Umar Ali and Afzal Khan were removed
from service on 28.08.2015, the appellant Fazal Yaseen was removed from

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EXAMINER

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

ARGUMENTS

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

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

CONCLUSION

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

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

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

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

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

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

sdf - M. Hamid Mughal,
Member

Certified true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 13-12-17
Number of Copies 1200
Copying Fee 8
Urgent _____
Total 8
Name of Copy _____
Date of Copy 15-12-17
Date of Delivery of Copy 15-12-17

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 562/2016

Date of Institution. ... 16.05.2016

Date of Decision. ... 02.03.2018

Rahim-ud-Din son of Syed Rehman, R/O Ajo Talash, Tehsil Timergara,
District Dir Lower. ... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar anmd two
others. ... (Respondents)

Mr. Sajjad Ahmad Khan, Advocate
Mr. Muhammad Asif Yousafzai, Advocate.
Arbab Saiful Kamal, Advocate ... For appellants.

Mr. Usman Ghani, District Attorney and
Mr. Muhammad Jan, Deputy District Attorney ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... Chairman.
MR. MUHAMMAD HAMID MUGHAL, ... Member.
MR. MUHAMMAD AMIN KHAN KUNDI, ... Member.
MR. AHMAD HASSAN, ... Member.
MR. GUL ZEB KHAN, ... Member.

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN-

The following appeals are also clubbed with this appeal for decision of
common issue explained below:-

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1. Appeal No. 1259/2011 Fazal Malik
2. Appeal No. 1994/2011, Mst. Zaitoon Bibi,
3. Appeal No. 1183/2014, Zafeerullah Khan,
4. Appeal No. 1186/2014, Muhammad Bashir,
5. Appeal No. 103/2015, Muhammad Raza.

FACTS.

1. In a number of appeals this tribunal (DB) delivered judgment as to void status of retrospective order of major punishment of removal/dismissal/compulsory retirement (for brevity "termination"). The mother ruling relied upon was *Noor Muhammad v The member Election Commission and others* (1985 SCMR 1178). One of such judgment of this tribunal is entitled "*Muhammad Ismail v Deputy Inspector General and another*" bearing Service Appeal # 463 OF 2012 decided on 22-11-2017. Another Judgment of this Tribunal is entitled "*Arif Khan v Inspector General of Police and three others*" bearing # 1213/2015 decided on 18-12-2017. In almost all these judgments of this tribunal it was decided that retrospective order being void could not be modified to give the same prospective effect under section 7 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. It was also decided that retrospective order being void order would not attract any limitation. All the present members of this Tribunal had delivered the same judgments. But during hearing of this appeal it was brought to the notice of the DB comprising of the Chairman and one Learned


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member that another bench (DB) of this tribunal had delivered a contrary opinion qua the modification of retrospective part of void order in service appeal No. 984/2013 entitled "Muhammad Ayaz Vs. Government of Khyber Pakhtunkhwa through Secretary, E&SE, Peshawar and others" decided on 14-11-2017. Going through this judgment it appeared that both the learned members of the bench had already delivered the former opinion in first two mentioned appeals above and now they have delivered contrary opinion while sitting not in larger bench and without discussing their earlier judgments. Perhaps the Learned members were not apprised of the earlier judgments neither the same judgments were pressed into service nor discussed. The bench (DB) hearing the present appeal could not decide the issue due to two contrary views of this tribunal. It was therefore, considered necessary to constitute a larger bench to decide the issue.

ARGUMENTS.

2. All the lawyers for different appellants defended the first opinion while the DDA supported the second opinion. In favor of first opinion the judgments referred to in conclusion part were relied upon. In favour of second opinion the DDA relied upon judgments discussed also in conclusion part.

file
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CONCLUSION.

3. This Tribunal is now to decide three questions. The first one is whether the retrospective order of termination in any form is a void order? And if so can void order be modified to make it operative prospectively? The third and final question would be that if prospective part of the order is held to be legal one after modification then whether limitation would be attracted to the legal portion of the order?
4. In the first opinion of this Tribunal as to void status of retrospective order and non modification of such order the reliance was placed only on the judgment reported as 1985 SCMR 1178 entitled "*Noor Muhammad v The member Election Commission and others*". This judgment declares retrospective order as void order. The other judgments relied upon by the lawyers for appellants also are based mainly on this mother judgment therefore, there is no need to discuss those judgments. But nothing is there in *Noor Muhammad* judgment as to modification of such void order and whether the order could be modified to make it prospective and legal. This tribunal is first to discuss *Noor Muhammad* case. In this case the issue before the august Supreme Court was not of a service matter but of disqualification of a candidate for elections who was in service and was terminated retrospectively. This Tribunal while delivering first opinion was not assisted anymore and it was opined that void order


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could not be rectified. The second opinion of this tribunal as to rectification of void order is also not based on any supportive rulings or law. The august Supreme Court in the same judgment had referred to a judgment of Lahore High Court (PLD 1953 L 295). This judgment was delivered in a service matter declaring such retrospective order as void. Another judgment delivered in service matter by august Supreme court also held the same view [2002 PLC(C.S) 1027] relying mainly on mother judgment of 1985. A judgment of FST [2007 PLC (C.S) 5] has declared such retrospective order as void *ab initio* and the whole proceedings were declared to be nullity for being retrospective. But in all these judgments the question of separation of prospective part of the order is not discussed. A judgment referred to by the august Supreme Court in mother judgment is PLD 1964 Dacca 647 entitled "*Dr Muhammad Abdul Latif v The Province of East Pakistan and others*" which has touched this aspect of the issue though not decided conclusively. In this judgment the worthy High Court referred to some judgments from Indian Jurisdiction and held that such retrospective order could be legal to the extent of prospectivity and needed not be bad in toto. But their lordships did not reach a definite conclusion and in para 9 of the judgment while discussing different judgments from Indian jurisdiction left the discussion unconcluded by holding that the counsel for the appellant requested that his client would be satisfied if declaration was given to the effect that the order


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of dismissal covering the period prior to the order was bad. Their lordships wrote that they did not enter into detailed discussion of the aforesaid question and held for the purpose of the appeal that an order of dismissal of the nature might be supported to the extent it was found valid and need not be declared bad in toto. But in this judgment reliance was placed on judgments from Indian Jurisdiction. Now we are to see whether position in India qua the present law in this part of our country (Khyber Pakhtunkhwa particularly) is the same and whether after the judgment of *Dr Muhammad Abdul Latif* above any change in legal scenario emerged in Pakistan and for that matter this Province.

5. In order to appreciate this judgment and its relevance and applicability we would have to discuss position in India on the subject. This issue was raised and discussed in India in many cases including *Sudhir Ranjan Halder v State of West Bengal* referred to in *Dr Muhammad Abdul Latif* case above. The Kerala High Court has now finally decided this issue in a case entitled "*State of Kerala v A.P Janardhanan*" in WA # 2773 of 2007 decided on 29-03-2008 (<https://indiankanoon/doc>). This judgment has traced the history of rulings on the subject and has finally decided that in India such retrospective order is not a void order for the reason that no legal precedent or law was available in India where under such order could be declared void. That in some Indian service laws express authority


ATTESTED

was given to executive to pass such retrospective orders (Para 12 to 14 of the judgment). It was then finally held that in those cases where no express authority was given to executive to pass retrospective order of removal then, that order would be illegal and not void and that prospective part can be separated from retrospective part and can be effective prospectively. The opinion in *Dr Muhammad Abdul Latif* case based on Indian jurisdiction had no relevance in Pakistan because at the time when this judgment was delivered we had a judgment of worthy Lahore High Court (PLD 1953 L 295) which had declared such retrospective order as void order. It was perhaps in this context that their lordships in *Dr Muhammad Abdul Latif* case did not deliver binding and conclusive judgment to be followed as ratio and left the matter undecided by giving just passing remarks which would be treated merely as *obiter*. And now in Pakistan two judgments of august Supreme Court referred to above have declared such order as void order. The first question is decided in positive.

6. Now this tribunal is to see whether a retrospective void order in this area can be modified and prospective portion be separated as effective and legal. This would need discussion and application of mind as we have failed to lay hand on any judgment which prohibited such severance. The first conclusion as drawn by this tribunal and the FST in case reported in [2007 PLC (C.S) 5] was based only on the status of void order. It was understood that since void order was a


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nullity hence could not be rectified. One other judgment on the same point is 1993 PLC (C.S) 308 of FST entitled *Abbas Ali v The Executive Engineer and others*. We have also failed to lay hand on any judgment of superior courts which allows such rectification of void orders (Indian judgments and *Dr Muhammad Abdul Latif* judgment allow such severance but as discussed above in India such order is only illegal and not void. In *Dr Muhammad Abdul Latif* case the order was held illegal and not void on Indian pattern). We are now to come out of this imbroglio by applying juristic sense and prevalent rules of interpretation on the subject.

The assistance and help can be sought from jurisprudence of *vires* of laws. We know that Courts while declaring any law as *ultra vires* have a tool and technique to save valid portion of *ultra vires* laws. This is called rule of reading down and severance. This leads us to conclusion that if any law is declared *ultra vires* then legal portion if separable can be saved and need not be held to be *ultra vires* in toto due to its being solely in conjunction with bad law. Though this tool is available in saving statutes but on the same analogy it can be used in executive orders. Similarly if any legal portion of an executive order is separable then there seems no hurdle in not saving the same. Secondly the retrospective order is not held to void *ab initio* by august Supreme Court but only void. Only FST [2007 PLC(C.S)5] has declared it as such but without any reference to any form of jurisprudence. The


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difference is that the former is invalid right from the foundation and cannot be corrected. But the latter is not invalid from the start but has been made invalid subsequently. In retrospective order the foundation is valid and whole proceedings are valid and only in the final order the termination is made retrospective. This tribunal is therefore, of the view that question no 2 as framed is decided in positively holding that such order can be modified.

8. Coming to the third question this tribunal is of the view that since the retrospective order is held to be a void order no limitation would be attracted to challenge the same. If limitation is applied then how the tribunal would rectify the same as rectification would be made only after declaring the appeals to be within time. The tribunal cannot rectify any such order without assuming jurisdiction and no jurisdiction can be assumed without bringing the appeal within time.
9. In the last this tribunal deems it appropriate to discuss one judgments of Punjab Service Tribunal on subject. This is in case entitled "*Ihsanul Haq Chaudhery v The Deputy Commissioner*". (1988 PLC (C.S) 511). According to this judgment the error of retrospectivity can be modified. This opinion is based not on any ruling but on wordings used in *Noor Muhammad's* case. In *Noor Muhammad* case the Court observed that order would not operate retrospectively but prospectively. From this observation the Punjab Service Tribunal held that such retrospective order was not void and could be rectified. But


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this tribunal with due deference is not inclined to accept the conclusion of the Punjab Service Tribunal about void status of the retrospective order as the august Supreme Court in *Noor Muhammad's* case has categorically held such order as void order. The Supreme Court did not discuss the rectification in this judgment. However the effect from prospective date as observed by august Supreme Court would strengthen our above conclusion that the prospective part can be severed and protected despite the nature of the order as void.

ANNOUNCED

02.03.2018

(NIAZ MUHAMMAD KHAN).

Chairman

(M. HAMID MUGHAL)

Member

(M. AMIN KHAN KUNDI)

Member

(AHMAD HASSAN)

Member

(GUL ZEB KHAN)

Member

(Approved for reporting)


ATTESTED

25.1.2019

Counsel for the appellant requests for adjournment on account of further preparation of brief. Adjourned to 20-02-19 before S.B.

Chairman

20.02.2019

Learned counsel for the appellant present.

Learned counsel for the appellant contended that he appellant was removed from service through order dated 14.01.2010, however, it was given effect from 07.01.2009, while, no executive order could operate retrospectively. It was further argued that a number of similarly placed person were reinstated into service by the respondents through recommendations of committee on 30.11.2010. On the other hand, the appellant was denied such treatment and his departmental appeal was rejected being barred by time. It was also the contention of learned counsel that the codal formalities were not fulfilled in the case of proceeding against the appellant whose absence from duty was attributable to the prevailing law and order situation in the Swat Valley. She relied on 1985 SCMR-1178, PLD 2008 Supreme Court 663 and a judgment of this tribunal passed in appeal No. 385/17.

In view of the above, the appeal in hand is admitted for regular hearing subject to all just and legal exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments for 08.04.2019 before S.B.

ATTESTED Chairman

1007 SEHR 729
2012 PLC CS 701

دستور کے تحت

No order could be given retrospective effect

BEFORE THE HONOURABLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

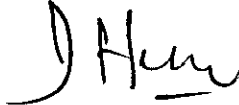
Appeal No. 7143/2021

MR. ZIAD GUL APPELLANT

V E R S U S

PPO Khyber Pakhtunkhwa and other
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S.No	Description	Annexure	Pages
1.	Reply		1,2,3
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3.	Detail of bad entries	A	5-6
4.	Copy OF showc�ase notice	B	B-7
5.	Copy of charge sheet	C	8-9
6.	Copy of enquiry report	D	10
7.	Copies of final showc�ase notice	E	11
8.	Copy of rejection order	F	12-13
9.	Copy of order	G	14


Inspector Legal
District Nowshera

(1)

**BEFORE THE HONOURABLE, KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 7143/2021

Ziad Gul, Ex-Constable No. 1353,
District Nowshera.

.....Appellant

V E R S U S

1. District Police Officer, Nowshera.
2. Regional Police Officer, Mardan.
3. Government of Khyber Pakhtunkhwa, through Inspector General of Police/PPO, Khyber Pakhtunkhwa.
4. Assistant Superintendnet of Police, Nowshera Cantt:.

.....Respondents

REPLY ON BEHALF OF RESPONDENTS

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS: -

1. That the appellant has got no cause of action and locus standi to file the instant appeal.
2. That the appeal is badly barred by law and limitation.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Honourable Tribunal with clean hands.
6. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.

Reply on Facts: -

1. Para to the extent of joining Police Department by the appellant pertains to record, while regarding rest of the para, it is stated that appellant has never performed his duty with zeal and devotion which is evident from the service record of the appellant as the same is tainted with bad entries. (Detail of bad entries is annexure "A").
2. Incorrect. Service record of the appellant is not transparent rather is full of bad entries. Detail of bad entries has already been annexed as annexure (A).
3. Incorrect. Appellant while posted at Police Post, Bara Banda was selected for refresher course vide daily diary No. 09 dated 19-12-2018, but he did not report for the said course and remained absent vide daily diary No. 19 dated 25-12-2018, Police Lines, Nowshera. On 28-01-2019, he was transferred to Police Post, Jalozai but he also failed to

report there and remained absent vide daily diary No. 12 dated 05-02-2019, Police Post, Jalozai. On account of his absence, appellant was issued show cause notice but despite being repeatedly informed, he did not bother to collect the same. (Copy of Show Cause Notice is annexure "B").

4. Incorrect. There is nothing on record to show that appellant applied for leave. It is worth to mention that appellant at para 03 of the appeal himself admitted that due to some domestic issue he was unable to perform duty hence, remained absent.
5. Para correct to the extent that appellant was issued Show Cause Notice and was informed time and again to collect the same but he did not bother to do so, hence, departmental proceedings were initiated against the appellant and the then ASP Nowshera Cantt: was nominated as enquiry office. Appellant was issued charge sheet and statement of allegations which were duly received by him on 05-04-2019 but he did not bother to submit his written defense. Hence, the enquiry officer after fulfillment of all legal and codal formalities, recommended the appellant for major punishment of dismissal from service. However, before awarding him major punishment he was issued Final Show Cause Notice which was duly received by him but this time too appellant did not bother to submit his reply, therefore, was awarded major punishment of dismissal from service. (Copy of charge sheet and statement of allegation is annexure "C", copy of enquiry report is annexure "D" and Final Show Cause Notice is annexure "E").
6. Para correct to the extent that appellant moved departmental appeal before respondent No. 02 however, the same was rejected/filed being badly time-barred. (Copy of rejection order is annexure "F").
7. Incorrect. Order passed by respondent No. 02 is valid and in accordance with law and rules. Moreover, revision petition of the appellant was also filed being badly time barred. (Copy of order is annexure "G").
8. That appeal of the appellant is liable to be dismissed inter-alia on the following grounds: -

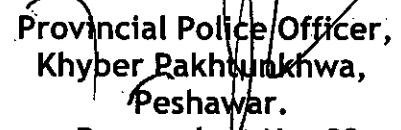
Reply on Grounds

- A. Incorrect. Orders passed against appellant were in accordance with law and rules hence, stood valid. Appellant had a very casual attitude towards his duties and did not bother to move departmental appeal within stipulated time, hence, he took this plea.
- B. Incorrect. Both the orders i.e passed by respondent No. 01 and 02 are legal and in accordance with law and rules.


- (3)
- C. Incorrect. Proper departmental enquiry was conducted against appellant but appellant despite this fact that he received charge sheet and statement of allegation as well as Final Show Cause Notice, did not bother to submit his reply or to join enquiry proceeding. Moreover, during short span of service i.e 08 years, appellant remained absent for 668 days which reflects that appellant was not interested in his official duty.
- D. Para already explained above.
- E. Para already explained above.
- F. Incorrect. Appellant's own conduct was sufficient to prove his misconduct.
- G. Incorrect. Appellant was provided ample opportunity to defend himself but did not bother to put forward anything in his defense.
- H. Para not related.
- I. Para not related.
- J. The respondents also seek permission of this Honourable Tribunal to advance additional grounds at the time of arguments.

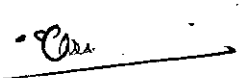
Prayers

It is, therefore, most humbly prayed that on acceptance of above submissions, the appeal of the appellant may very kindly be dismissed with costs, please.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No. 03


Regional Police Officer,
Mardan.
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No.01


Assistant Superintendent of Police,
Nowshera Cantt:
Respondent No.04

BEFORE THE HONOURABLE, KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 7143/2021

Ziad Gul, Ex-Constable No. 1353,
District Nowshera.

.....Appellant

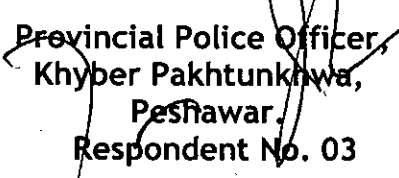
V E R S U S


1. District Police Officer, Nowshera.
2. Regional Police Officer, Mardan.
3. Government of Khyber Pakhtunkhwa, through Inspector General of Police/PPO, Khyber Pakhtunkhwa.
4. Assistant Superintendnet of Police, Nowshera Cantt:.


.....Respondents

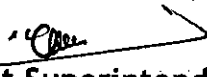
AFFIDAVIT

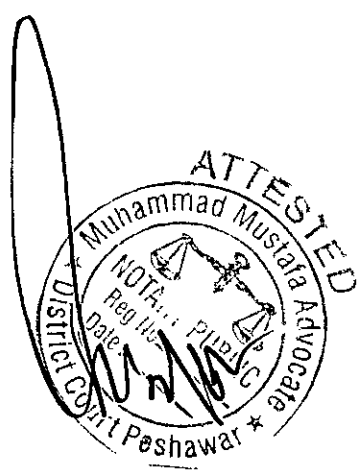
We the respondents No. 1, 2,3 & 4 do hereby solemnly affirm and declare on Oath that the contents of reply to the appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the Honourable tribunal.


 Provincial Police Officer,
 Khyber Pakhtunkhwa,
 Peshawar.
 Respondent No. 03


 Regional Police Officer,
 Mardan.
 Respondent No. 02


 District Police Officer,
 Nowshera.
 Respondent No.01


 Assistant Superintendent of Police,
 Nowshera Cantt:
 Respondent No.04



انڈکس فوجی مشل آذان کسنٹینیل ضیادگل نمبر 1353

سیریل نمبر	تفصیل	آرڈر بک معب تاریخ	کل قطعات
01	انسٹنٹ آرڈر، شناختی کارڈ کاپی، میڈیکل سرٹیفکیٹ، تھانہ دیر، میڈیکیشن، ڈومیسائل سرٹیفکیٹ	114/01.02.2010	05 عدد
02	02 یوم غیر حاضری پر 03 یوم ایکسٹرا ڈرل کی سزا دی گئی	807/21.02.2010	01 عدد
03	02 یوم غیر حاضری پر وارننگ دی گئی	08/02.01.2012	09 عدد
04	92 یوم غیر حاضری ڈیوٹی میں شمار ہوئی	215/26.06.2012	17 عدد
05	04 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	19.07.2012/ SP FRP MKD	01 عدد
06	13 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	354/15.10.2012	10 عدد
07	04 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	344/08.10.2012	01 عدد
08	03 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	396/12.11.2012	01 عدد
09	03 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	402/14.11.2012	01 عدد
10	59 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	169/31.01.2013	12 عدد
11	05 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	51/14.02.2013	01 عدد
12	08 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	86/07.03.2013	01 عدد
13	18 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	125/15.04.2013	01 عدد
14	22 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	182/27.05.2013	10 عدد
15	01 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	333/27.09.2013	01 عدد
16	10 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی اور 05 یوم ایکسٹرا ڈرل کی سزا دی گئی	364/22.10.2013	02 عدد
17	11 یوم غیر حاضری لانگ لیو میں شمار ہو کر وارننگ دی گئی	370/24.10.2013	10 عدد
18	21 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہو کر 10 یوم کواٹر گارڈ اور 10 یوم ایکسٹرا ڈرل کی سزا دی گئی	415/19.05.2014	14 عدد
19	95 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہو کر 03 اکھر سینٹ ضبط کئے گئے اور 07 یوم ایکسٹرا ڈرل کی سزا دی گئی	415/19.05.2014	16 عدد
20	05 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	657/19.07.2014	02 عدد
21	01 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی	841/08.09.2014	02 عدد
22	06 یوم غیر حاضری میں سے 03 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی 03 یوم رخصت کلاں میں شمار ہو کر 02 یوم ایکسٹرا ڈرل کی سزا دی گئی	894/19.09.2014	02 عدد

6

23	03 یوم غیر حاضری میں سے 02 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہوئی جبکہ ایک یوم ایکسٹرا ڈرل کی سزا دی گئی	1006/27.10.2014	02 عدد
24	02 یوم غیر حاضری پر 02 یوم ایکسٹرا ڈرل کی سزا دی گئی	1006/27.10.2014	02 عدد
25	01 یوم غیر حاضری پر 02 یوم ایکسٹرا ڈرل کی سزا دی گئی	22.10.2014/DSP-FRP	02 عدد
26	02 یوم غیر حاضری پر 03 یوم ایکسٹرا ڈرل کی سزا دی گئی	1075/14.11.2014	02 عدد
27	25 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہو کر ایک انکریمینٹ ضبط کیا گیا جبکہ 05 یوم ایکسٹرا ڈرل کی سزا دی گئی	198/18.02.2015	09 عدد
28	46 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہو کر وارنٹک دی گئی	02.05.2016/DY Commandant EF	13 عدد
29	97 یوم غیر حاضری لاگ لیو میں شمار ہوئی	No.16627/31EF/23.10.2017	72 عدد
30	ایلیٹ فورس پشاور سے ضلع ہذا تبدیل ہوا	240/06.12.2017	01 عدد
31	ایلیٹ فورس پشاور سے ضلع ہذا تبدیل ہو کر کنٹیننٹری نمبر 1353 الاٹ کیا گیا	1412/11.09.2017	01 عدد
32	12 یوم غیر حاضری رخصت بلا تخواہ میں شمار ہو کر سنسور کی سزا دی گئی	1616/13.10.2017	03 عدد
33	95 یوم غیر حاضری پر محکمہ پولیس سے برخواست کیا گیا	2041 / 201121017	08 عدد

عدد 6

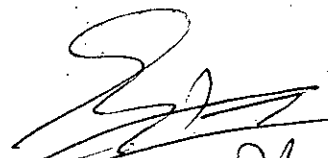
588/18-5-2018.

دو بارہ ٹوکری پر بحال ہو کر برخواست کیا گیا
جی سزا دو سال خانہ کسب سے برخواست کیا گیا

34

جناب عالی!

سائنس دان یا ملی مطالعے فوجی
مکمل سزا دو سال خانہ کسب سے
برخواست کیا گیا


FME. PL NSR
17-04-2018

FMC NSR PL

(7)

OFFICE OF THE DISTRICT POLICE OFFICER, NOWSHERA

SHOW CAUSE NOTICE

Annex: B

(Under Rule 5 (3) KPK Police Rules, 1975)


You Constables Ziyad Gul No.1353 while posted at PS Jalozai have rendered yourself liable to be proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct:-

Remained absent from duty without any leave or permission of the competent authority vide DD No. 12 dated 05.02.2019, PS Jalozai and is still absent.

2. That by reasons of above, as sufficient material is placed before the undersigned; therefore it is decided to proceed against you in general Police proceeding without aid of enquiry officer.
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force.
4. That your retention in the Police force will amount to encourage inefficiency and unbecoming of good Police officers. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules.
5. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
6. You should submit reply to this show cause notice within **07** days of the receipt of the notice failing which an ex-parte action shall be taken against you.
7. You are further directed to inform the undersigned that you wish to be heard in person or not.
8. Grounds of action are also enclosed with this notice.

No. 36 /PA

Dated: 08/03 /2019


**District Police Officer,
Nowshera.**

Annex: C, (8)

CHARGE SHEET


I, **Mansoor Aman, PSP** District Police Officer, Nowshera, as competent authority, hereby charge **Constable Ziad Gul No. 1353** as per Statement of Allegations enclosed.

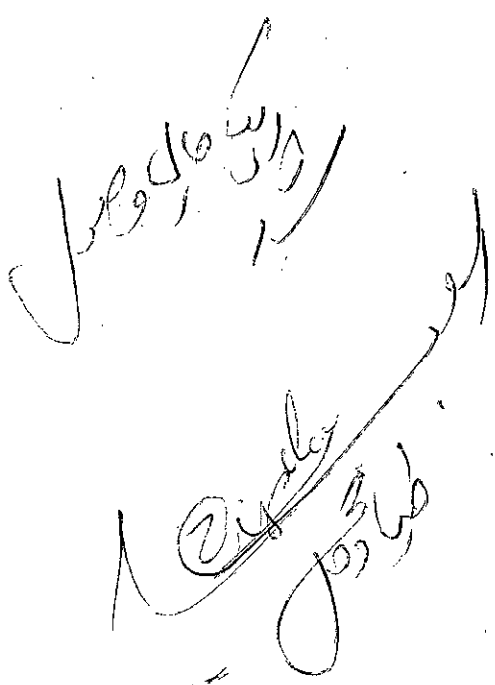
By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.

3. You are, therefore, required to submit your written defense within **07 days** of the receipt of this Charge Sheet to the Enquiry Officer, as the case may be.

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

5. Intimate whether you desire to be heard in persons.


**District Police Officer,
Nowshera.**



9

DISCIPLINARY ACTION

I, Mansoor Aman, PSP, District Police Officer, Nowshera as competent
in am of the opinion that Constable Ziad Gul No. 1353 has rendered himself liable to
be proceeded against as he committed the following acts/omissions within the meaning of Police
Rules, 1975.

STATEMENT OF ALLEGATIONS

Whereas, Constable Ziad Gul No. 1353, while posted at PP Bara Banda,
was sent for refresher course vide DD No. 09 dated 19.12.2018, but he did not report for the
said course and remained absent vide DD No. 19 dated 25.12.2018, Police Lines. On
13.01.2019, he was transferred to PP Jalozai, but he also failed to report there and is still absent
vide DD No. 12 dated 05.02.2019, PP Jalozai. On account of which he was issued Show Cause
Notice and was informed time and again to collect his SCN, but he failed, which seems that he is
no more interested in Police job, which amounts to grave misconduct on his part and rendered
him liable for Minor/Major punishment under Khyber Pakhtunkhwa Police Rules, 1975.

For the purpose of scrutinizing the conduct of the said accused official with
reference to above allegations, Mr. Tassawar Iqbal, ASP Cantt Nowshera is hereby
nominated as Enquiry Officer.

The Enquiry Officer shall in accordance with the provision of Police Rules,
1975, provide reasonable opportunity of hearing to the defaulter official, record his findings and
make immediate recommendations as to punish or other appropriate action against the defaulter
official.

Constable Ziad Gul No. 1353 is directed to appear before the Enquiry
Officer on the date, time and place fixed by the Enquiry Officer.


District Police Officer,
Nowshera.

No. 17 /PA,
Dated 14/03/2019.

Handwritten notes:
25/03/2019
Call him
05/04/19

Handwritten signature:
Call him

Handwritten signature and date:
14-3-19

Handwritten notes:
- earlier enquiries
- absent record.

Annex: D
10

ENQUIRY REPORT FC ZIAD GUL 1353 POSTED POLICE POST BARA BANDA

ALLEGATION:

Whereas, Constable Ziad Gul No. 1353, while posted at PP Bara Banda PS Risalpur , selected for refresher course vide DD.No. 09 dated 19.12.2018, but he did not report for the said course and remained absent vide DD.No. 19 dated 25.12.2018 at police Lines Nowshera. On 28.01.2019, he was transferred to PP Jalojai, but he also failed to report there and is still absent vide DD.No. 12 dated 05.02.2019, PP Jalojai. On account of which he was issued show cause notice and was informed time and again to collect his show cause notice, but he failed, which seems that he is no more interested in police job, which amounts to gross misconduct on his part and rendered him liable for Minor/Major punishment under Khyber Pakhtunkhwa Police Rules 1975.

PROCEEDINGS:

The delinquent police official was contacted through his mobile number and through local police to submit his written defense in response to charge sheet but he did not respond. Written notices were issued from this office No. 223/R, dated 14.03.2019, No. 289/R, dated 22.03.2019 and last notice No. 317/R, dated 28.03.2019 was served upon him through local police of PS Pabbi.

The delinquent police official received charge sheet on 05.04.2019, but did submit his reply even after repeated reminders.

The record of his 08 year service was perused, which reveals that he remained 668 days absent from duty. He has been awarded Major Punish one, three times Minor punishment and 27 bad entries.

FINDING:

The undersigned after enquiry has arrived at conclusion that the respondent police official has little interest in police profession. His service record who even does not bother to submit his defence against charge sheet. His conduct and previous record is evident to the fact that the respondent constable Ziad Gul No.1353 is not fit for police job. Therefore, it is recommended that he may be awarded Major punishment of dismissal from service , if agreed.

Assistant Superintendent of Police
Circle Cantt Nowshera

PA

No. 375 / St:

Dated 15/04 /2019.

Issue Final
Show Cause Notice.

DPD-NSR

Annex:
2/E/3
①

FINAL SHOW CAUSE NOTICE

Whereas, you **Constable Ziad Gul No. 1353**, while posted at Police Post Bara Faridkot selected for refresher course vide DD No. 09 dated 19.12.2018, but you did not report for the refresher course and remained absent without any leave/permission of the competent authority vide DD No. 09 dated 25.12.2018, Police Lines, Nowshera and is still absent.


On account of which you were issued Show Cause Notice and was informed to appear before me and again to collect your SCN, but failed, therefore, departmental action has been initiated against you through Mr. Tassarwar Iqbal, ASP Cantt Nowshera. The enquiry officer after fulfillment of legal formalities submitted his report to undersigned, highlighted therein that you have received your SCN but failed to submit your reply, which seems that you are no more interested in police job and recommended for major punishment.

Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence, I, Mansoor Aman, PSP, District Police Officer Nowshera, in exercise of the powers vested in me under Rules 5(3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you to Show Cause finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach this office within **07 days** of the receipt of this notice, failing which, it will be presumed that you have no defense to offer.

You are at liberty to appear for personal hearing before the undersigned.


District Police Officer,
Nowshera.

No. 119 /PA,
Dated 17/01/2019.

1353

Amnd, F3

12

ORDER.

This order will dispose-off the departmental appeal preferred by Ex-Constable Ziad Gul No. 1353 of Nowshera District Police against the order of District Police Officer, Nowshera, whereby he was awarded major punishment of dismissal from service vide OB No. 558 dated 16.05.2019. The appellant was proceeded against departmentally on the allegations that he while posted at Police Post Bara Banda, selected for refresher course vide daily diary No. 09 dated 19.3.2018, but he did not report for the said course and remained absent without any leave/permission of the competent authority vide daily diary No. 19 dated 25.12.2018 till date of his dismissal.

He was issued Show Cause Notice and was informed time and again to collect the same but he failed. Therefore, proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Assistant Superintendent of Police Cantt Nowshera was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities, submitted his findings wherein he reported that the appellant was contacted time and again to appear before the enquiry Officer, but he failed and remained absent, which showed that he was no more interested in Police Service. He recommended the appellant for major punishment of dismissal from service.

He was issued Final Show Cause Notice on 22.04.2019, but neither did he submit his reply nor did he assume the duty.

He was also provided opportunity of self defense by summoning him in the Orderly Room by the District Police Officer, Nowshera on 15.05.2019, but he failed to advance any cogent reasons in his defense. Hence, he was awarded major punishment of dismissal from service vide OB: No. 558 dated 16.05.2019.

Feeling aggrieved from the order of District Police Officer, Nowshera, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 20.01.2021.

From the perusal of service record of the appellant, it has been found that the allegations leveled against the appellant have been proved beyond any shadow of doubt. He had been earlier dismissed from service on account of his absence. Hence, the very conduct of appellant is unbecoming of a disciplined Police Officer. Moreover, the appellant approached this forum at a belated stage without advancing any cogent reason regarding such delay. Hence, 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 badly time barred.

Order Announced.


Regional Police Officer,
Mardan.

No. 387 /ES, Dated Mardan the 22-01- /2021.

✓ Copy forwarded to District Police Officer, Nowshera for information and necessary action w/r to his office Memo: No. 63/PA dated 08.01.2021. His Service Record is returned herewith.

(*****)

ee/mc
For m action

↓
DP Nowshera

NO. 142/PA
dt 22/1/2021



CR-2431/ES

Annex:
(4) (14)

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

No. S/ 495 /21, dated Peshawar the 12/02 2021.

To : The Regional Police officer,
Mardan.

Subject: REVISION PETITION.

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Ziad Gul No. 1353 of Nowshera district Police against the punishment of dismissal from service awarded by District Police Officer, Nowshera vide OB No. 558, dated 16.05.2019, being badly time barred.

The applicant may please be informed accordingly.

356
18/2/21

W
OS
17/2

pps Attached
A/Sec

(SYED ANIS-UL-HASSAN)
Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

10/2

EC/DPO, DSR
For inaction
RPO, Mardan
17/2/21

EC/PMC
For inaction

DPO DSR
23/2/2021

No. 952/ES
dt: 18-02-21

NO. 417/PA
dt 24/02/2021

42

WAKALATNAMA

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

BC-10-7965

Service Appeal No. _____/2021

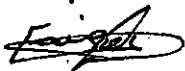
Zaid Gul.....(Appellant)

V E R S U S

District Police Officer (DPO) District Nowshera and
others.....Respondents)

I, Zaid Gul, Ex-Constable No. 1353, District Nowshera in the above noted **Service Appeal** do hereby appoint and constitute **Shah Faisal Ilyas**, *Advocate High Court and Federal Shariat Court of Pakistan* to appear. Plead, act, compromise, withdraw or refer to arbitration to me/ us as my/ our Counsel in the above noted matter, I/ we also authorized the said Counsel to file appeal, revision, review, application, and make any miscellaneous application in Criminal/ Civil matters or arising out of the matter and to withdraw and receive in my/ our behalf all sums and amounts deposited on my/ our account in the above noted matter.

ATTESTED & ACCEPTED



Shah Faisal Ilyas

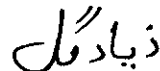
Advocate High Court,
Peshawar

Office: 17-B, Haroon Mansion

Khyber Bazar, Peshawar.

Cell: 0300-5850207

CNIC: 17201-8581525-7



CLIENTS

Zaid Gul