

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
AT CAMP COURT, SWAT

Service Appeal No.26/2018

Date of Institution ... 08.01.2018
Date of Decision ... 06.07.2022

Bakht Amin S/O Umar Khan, Ex-Constable No.871 Swat Police R/O
Haroon Abad Odigram Tehsil Babozai, District Swat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Provincial Police
Officer/IGP at Peshawar and three others.

... (Respondents)

Barrister Adnan Khan, ... For appellant.

Noor Zaman Khattak,
District Attorney ... For respondents.

Rozina Rehman ... Member (J)
Fareeha Paul ... Member (E)

JUDGMENT

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

**"On acceptance of this appeal, the impugned order No.OB
218 dated 08.12.2010 may be set aside and appellant be
reinstated in service as Constable".**

2. Brief facts of the case are that appellant was inducted in the
Police Department and subsequently, posted in Police Force of District
Swat as Constable on 19.10.2004. During service, he performed his

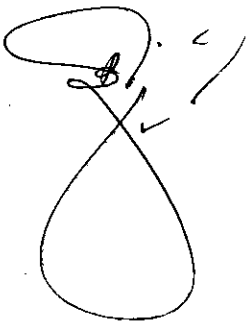
duties in extremely harsh security situation when the militants had occupied several parts of District Swat. The appellant even in the said circumstances did not avail his annual leave and continued performing his duties to the entire satisfaction of his high-ups. However, due to some compelling circumstances, appellant could not perform his duties for a certain period. That after the above-mentioned absence, when he appeared at his place of duty, he was informed about dismissal from service. Feeling aggrieved, he filed various written and oral requests which were never responded to by the respondents. That having his grievances not redressed by respondents, appellant lost all hopes about his reinstatement. However, in the year 2015-16, various Constables of Reserved Police with similar status as that of appellant were reinstated in service and last in the series of such orders was made on 18.03.2016. Relying on such like orders, one Adil Said Ex-Constable approached the Service Tribunal and his appeal was accepted. The above-mentioned reinstatement order and judgment of this Tribunal gave a fresh ray of hope to the appellant, hence, he filed a fresh departmental appeal for his reinstatement which was dismissed being time barred. Feeling aggrieved, the present service appeal was filed.

3. We have heard Barrister Adnan Khan, learned counsel for the appellant and Noor Zaman Khan Khattak, learned District Attorney for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Barrister Adnan Khan, learned counsel for the appellant argued inter alia that the impugned order had been passed unilaterally and in

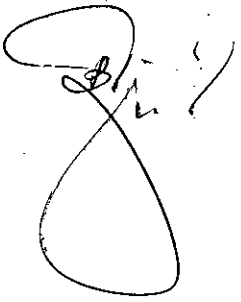
blatant violation of law, hence, liable to be set aside; that the requirements of due process, fairness and justness were not complied with as the appellant was neither issued a show cause notice nor charge sheet alongwith statement of allegations. Learned counsel submitted that the appellant was never associated with the inquiry proceedings and he was condemned unheard. It was further submitted that numerous officers and officials of Malakand Region Police had fled away at the time of insurgency but majority of those were reinstated into service after restoration of peace in the area and that appellant was not treated at par with those reinstated individuals. He submitted that last in the series of the reinstatement, application had been made by the appellant at belated stage, however, these were the reinstatement orders in respect of sacked constables of FRP and that judgment of this Tribunal in Service Appeal No.1214 of 2015 gave the appellant a fresh cause of action. Reliance was placed on 2002 PLC (CS) 268, wherein, it was held that no limitation shall run in cases of similarly placed employees. He, therefore, requested that the impugned order being void ab-initio is liable to be set aside and the appellant may kindly be reinstated with all back benefits.

5. Conversely, learned District Attorney submitted that the appellant being member of the disciplined force was under an obligation to perform his duties with zeal, zest and devotion irrespective of harsh and tense environment, hence, stance of the appellant is not tenable in the eyes of law. He submitted that the appellant could not perform his duties for a certain period and that he was proceeded against departmentally on the allegations of absentia, therefore, he was



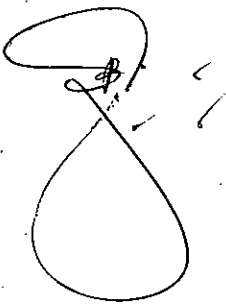
awarded major punishment of dismissal from service by the competent authority after fulfillment of all codal formalities.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that Constable Bakht Amin absented himself from duty w.e.f 17.08.2008 till the date of impugned order i.e. 08.12.2010 vide DD No.09 dated 17.08.2008 followed by DD No.12 dated 11.10.2010 of Police Line without any permission or leave and vide order dated 08.12.2010 of District Police Officer, Swat major punishment of dismissal from service was awarded from the date of his absence i.e. 17.08.2008. No doubt, departmental appeal was not filed within time and the case of the present appellant was filed. Relying on the orders in respect of one Adil Said Constable No.763 of Swat Police who approached this Tribunal in Service Appeal No.1214/2015 and which appeal was accepted vide order dated 02.01.2017. He submitted different applications but when other constables of the Reserved Police were reinstated into service in the year 2015-16 and the last in the series of such of orders was made on 18.03.2016 which prompted the appellant to pursue his case. He, therefore, filed departmental appeal for his reinstatement on 26.07.2017. Learned counsel has placed on file different orders of Ex-Constables who were dismissed from service in the year 2009 w.e.f 2008 but was reinstated vide order dated 18.03.2016. In this regard, order of Commandant Frontier Reserved Police Khyber Pakhtunkhwa Peshawar in respect of Ex-Constable Khalil Ur Rehman is available on file as "Annexure-B". Similarly, one Bashir Khan Ex-Constable of FRP



Malakand Range was removed from service on 10.10.2008 but was reinstated on 04.03.2016. Another order is in respect of Ex-Constable Arshad Iqbal of FRP Malakand Range who was removed from service on 21.02.2008 but was reinstated on 29.03.2016. An order in respect of Ex-Constable Jamshaid Ali is also available on file who was proceeded against departmentally on allegation of absentia w.e.f 28.09.2008 till his removal from service. Lenient view was taken and he was reinstated in service vide order dated 23.09.2015. Similar orders in respect of Ex-Constables Imran and Muhammad Shahid are also available on file. One Ex-Constable Adil Said No.763 of District Swat preferred service appeal against the impugned order dated 29.12.2008 vide which he was awarded major penalty of dismissal from service and vide order of this Tribunal dated 02.01.2017, his appeal was accepted. Relevant Para from the judgment of this Tribunal in Service Appeal No1214/2015 is hereby reproduced for ready reference:

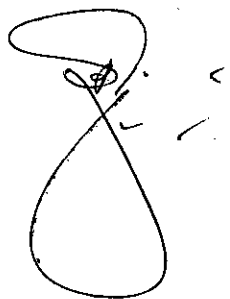
"The Commandant FRP vide orders referred to above had reinstated ex-constables including Khalilur Rehman, Bashir Khan, Arshad Iqbal, Basir Khan and similar others vide orders referred to above. We are not in a position to ascertain from the record that the case of the appellant is similar to the afore-stated constables who were reinstated in service despite their absence during the period of insurgency and militancy. In such a situation we are left with no option but to accept the present appeal, set aside the impugned orders and directed that the appellate authority shall examine the case of the appellant with the cases of those constables who were reinstated in service by the



Commandant FRP and in case the appellant is found entitled to similar treatment as extended to the said constables then the said authority shall also extend the same treatment to the present appellant. The appellant shall be afforded opportunity of hearing during the proceedings which shall be conducted and concluded within a period of 2 months from the date of receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room."

7. So far as limitation is concerned, in this respect the Rule laid down in judgment reported as 2002 PLC (CS) 268 is applicable where it was held that no limitation shall run in cases of similarly placed employees and the Apex Court condoned the delay which in some cases was more than 10 years, in the interest of justice and in view of the similarity of point involved in other cases.

8. In view of the above discussion, we have come to the conclusion that in such a situation, we are left with no option but to accept the present appeal, set aside the impugned orders and direct the appellate authority to examine the case of appellant in line with the cases of those constables who were reinstated in service by the Commandant FRP and in case the appellant is found entitled to similar treatment as extended to other constables, then the said authority shall also extend the same treatment to the present appellant. Needless to mention that the appellant shall be afforded opportunity of hearing during the proceeding which shall be conducted and concluded within a period of 60 days from the date of receipt of copy



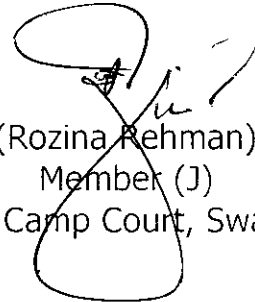
of this judgment. Parties are left to bear their own costs. File be
consigned to the record room.

ANNOUNCED.

06.07.2022



(Fareeha Paul)
Member (E)
Camp Court, Swat



(Rozina Rehman)
Member (J)
Camp Court, Swat

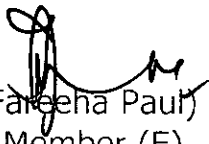
ORDER
06.07.2022

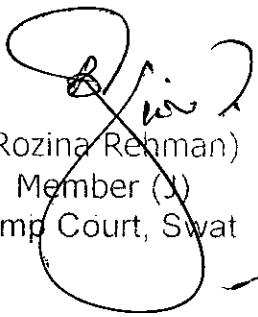
Appellant present through counsel.

Noor Zaman Khan Khattak, learned District Attorney for respondents present. Arguments heard. Record perused.

Vide our detailed judgment of today of this Tribunal placed on file, we have come to the conclusion that in such a situation, we are left with no option but to accept the present appeal, set aside the impugned orders and direct the appellate authority to examine the case of appellant with the cases of those constables who were reinstated in service by the Commandant FRP and in case the appellant is found entitled to similar treatment as extended to other constables, then the said authority shall also extend the same treatment to the present appellant. Needless to mention that the appellant shall be afforded opportunity of hearing during the proceeding which shall be conducted and concluded within a period of 60 days from the date of receipt of copy of judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
06.07.2022


(Farzana Paul)
Member (E)
Camp Court, Swat


(Rozina Rehman)
Member (J)
Camp Court, Swat

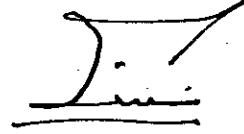
13.05.2022

Appellant in person present. Mr. Kabirullah Khattak,
Addl: AG for respondents present.

Appellant requested for adjournment on the ground that
his counsel is busy before the august Supreme Court of
Pakistan. Adjourned. To come up for arguments on 08.06.2022
before the D.B at camp court Swat. .



(Mian Muhammad)
Member(E)

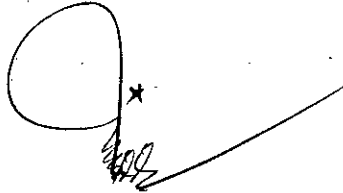


(Salah Ud Din)
Member(J)
Camp Court Swat

8th June, 2022

None for the appellant present. Mr. Kabirullah Khattak,
Addl: AG for respondents present.

Counsel are on strike. To come up for arguments on
06.07.2022 before the D.B at camp court Swat.



(Mian Muhammad)
Member(E)



(Kalim Arshad Khan)
Chairman
Camp Court Swat

09.12.2021


Junior to counsel for appellant present.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for respondents present.

Request for adjournment was made on behalf of appellant as senior counsel for appellant is not available today. Opportunity is granted and case is adjourned. To come up for arguments on 10.02.2022 before D.B at Camp Court, Swat.



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, Swat.



(Rozina Rehman)
Member (J)
Camp Court, Swat

10.02.2022

Tour is hereby canceled. Therefore, the case is adjourned to 07.04.2022 for the same as before at Camp Court Swat.



Reader

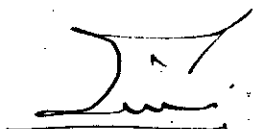
07.04.2022

Appellant alongwith his counsel present. Mr. Ali Rehman Inspector (Legal) alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he is proceeding for appearance in cases before Hon'ble Peshawar High Court, Mingora Bench (Dar-UI-Qaza) Swat, therefore, an adjournment may be granted. Adjourned. To come up for arguments on 13.05.2022 before the D.B at Camp Court Swat.



(Rozina Rehman)
Member (J)
Camp Court, Swat



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


05/04/2021

Due to COVID-19, the case is adjourned to

05/05/2021 for the same.


READER

*Due to COVID-19 the case is
adjourned to 06/10/21*



Reader


06.10.2021

Nemo for appellant.

Asif Masood Ali Shah learned Deputy District Attorney
for respondents present.

Preceding date was adjourned on a Reader's note,
therefore, appellant/counsel be put on notice for
09.12.2021 for arguments before D.B at Camp Court,
Swat.


(Atiq ur Rehman Wazir)
Member(E)
Camp Court, Swat


(Rozina Rehman)
Member(J)
Camp Court, Swat

07.12.2020

Due to COVID-19, case is adjourned to 01.02.2021 for the same as before.



Reader


01.02.2021

Nemo for parties.

Muhammad Riaz Khan Painsdakhel, Assistant Advocate General for respondents is present.

Preceding date was adjourned on account of Covid-19, therefore, both the parties be put on notice for the date fixed. Issue involved in the instant case is pending before Larger Bench of this Tribunal, therefore, case is adjourned to 05.04.2021 before D.B at camp court Swat.


(Mian Muhammad)
Member(E)


(Rozina Rehman)
Member(J)
Camp Court Swat

06.07.2020 Bench is incomplete. Therefore, the case is adjourned.
To come up for the same on 07.09.2020, at camp court
Swat.



Reader

07.09.2020

Appellant present through counsel.

Mr. Riaz Paindakhel learned Assistant Advocate
General for respondents present.

Learned counsel for appellant seeks adjournment as
issue involved in the present case is pending before
Larger Bench of this Tribunal.

Adjourned to 07.12.2020 for arguments before D.B.
at Camp Court, Swat.




(Attiq-ur-Rehman)
Member
Camp Court, Swat



(Rozina Rehman)
Member
Camp Court, Swat

Due to corona viruse tour
to camp court Swat has been cancelled.
To come up for the same on 1/6/20



Reader


03.06.2020 Due to Covid-19, the case is adjourned. To come up for the
same on 06.07.2020, at camp court Swat.


Reader

04.11.2019

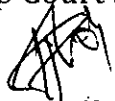
Appellant in person and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Mir Faraz, DSP (Legal) for the respondents present. Appellant submitted an application for adjournment on the ground that his counsel is busy before the Hon'ble Dara-ul-Qaza, Swat and cannot attend the Tribunal today. Application is placed on record. Case to come up for arguments on 08.01.2020 at Camp Court Swat:



(Hussain Shah)
Member
Camp Court Swat


(M. Amin Khan Kundi)
Member
Camp Court Swat

08.01.2020

Appellant in person and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Muhammad Ishaq, Head Constable for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 02.03.2020 for arguments before D.B at Camp Court Swat.

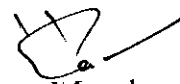

(Hussain Shah)
Member
Camp Court Swat


(M. Amin Khan Kundi)
Member
Camp Court Swat

02.03.2020

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 04.05.2020 before D.B at Camp Court Swat.


Member


Member
Camp Court, Swat.

لعد است ضابطہ: ہجرت ہسپتال اور کیمپ کو پورا کرنے کے لئے

محکمہ سب-انورستان بنام سرکار

اسٹیک

سرفہرست کے لئے تبدیل تاریخ سب سے پہلے
عدم موجودگی کے ساتھ ان کو سب کے لئے درالکھانہ
مقررہ سب سے تاریخ سب سے پہلے

ضابطہ

اسٹیک کے سب سے پہلے سب سے پہلے
ان کے لئے سب سے پہلے سب سے پہلے
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انورستان

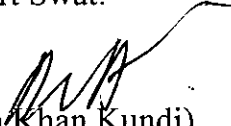
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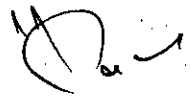
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انورستان (B) سب سے پہلے سب سے پہلے
انورستان

11.06.2019

Mr. Arshed Khan, Advocate on behalf of learned counsel for the appellant present and seeks adjournment. Mr. Mian Ameer Qadir, learned District Attorney for the respondents present. Adjourn. To come up for arguments on 02.09.2019 before D.B at Camp Court Swat.


(M. Amin Khan Kundi)
Member
Camp Court Swat


(M. Hamid Mughal)
Member
Camp Court Swat

02.09.2019

Learned counsel for the appellant present. Mian Amir Qadir, DDA alongwith Mr. Khawas Khan, SI for respondents present. Learned counsel for the appellant seeks adjournment as he has not prepared the brief. Adjourn. To come up for arguments on 04.11.2019 before D.B at camp court Swat.



Member


Member
Camp Court Swat

06.02.2019

Appellant in person and Mian Amir Qadar learned Deputy District Attorney alongwith Khawas Khan SI present. Due to general strike of the bar, the case is adjourned. To come up for arguments on 06.03.2019 before D.B at camp Court Swat.


Member



Member
Camp Court Swat.


06.03.2019

Counsel for the appellant and Mian Amir Qadir, District Attorney alongwith Khawas Khan, S.I (Legal) for respondents present.

Learned counsel for the appellant requests for adjournment due to his engagement before the Honourable High Court today in many cases.


Adjourned to 03.04.2019 before the D.B at camp court, Swat.

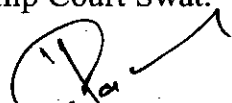

Member


Chairman
Camp Court, Swat

03.04.2019

Learned counsel for the appellant and Mr. Mian Ameer Qadir, District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment for arguments and to assist the Tribunal on the issue of limitation. Adjourn. To come up for arguments on 11.06.2019 before D.B at Camp Court Swat.


(M. Amin Khan Kundi)
Member
Camp Court Swat


(M. Hamid Mughal)
Member
Camp Court Swat

07.08.2018

Appellant in person present. Due to summer vacation the case is adjourned to 02.10.2018 for the same at camp court Swat.


Reader

02.10.2018

Appellant Bakht Amin in person present. Mr, Usman Ghani District Attorney for the respondents present. Appellant made a request for adjournment. Granted. To come up for arguments on 04.12.2018 before the D.B at camp court, Swat.

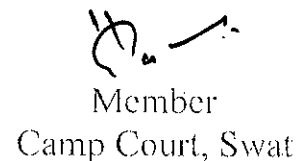

Member


Chairman
Camp Court Swat

04.12.2018

Irfan Muhammad Advocate present on behalf of appellant and Mr. Usman Ghani learned District Attorney for respondents present. Irfan Muhammad Advocate requested for adjournment on the ground that learned counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 06.12.2018 before D.B at Camp Court Swat.

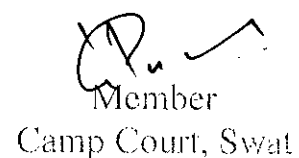

Member


Member
Camp Court, Swat

06.12.2018


Appellant in person and Mr. Usman Ghani learned District Attorney present. Appellant seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 06.02.2019 before D.B at Camp Court Swat.


Member


Member
Camp Court, Swat


03.04.2018

Clerk of counsel for the appellant and Mr. Usman Ghani, District Attorney Khawas Khan, S.I (Legal) for the respondents present. Seeks adjournment for submission of written reply. Granted. To come up for Written reply/comments on 08.05.2018 before S.B at camp court, Swat.


Chairman
Camp court, Swat

09.05.2018

The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 05.06.2018 before the S.B at camp court, Swat.


Reader

05.06.2018

Appellant Bakht Amin in person present. Mr. Khawas Khan, S.I (Legal) alongwith Mr. Usman Ghani, District Attorney for the respondents present. Written reply submitted. To come up for rejoinder, if any, and arguments on 07.08.2018 before the D.B at camp court, Swat.


Chairman
Camp Court, Swat

02.02.2018

Learned counsel for the appellant present. Preliminary arguments heard and case file perused.

Learned counsel for the appellant argued that the appellant was inducted in the Police Department and subsequently posted in Police Force of District Swat as Constable on 19.10.2004. At the time of dismissal from service, the appellant was performing his duty at Police Station Matta, District Swat. That during his service as Constable, the appellant has performed his duties in extremely harsh security situation when the militants had occupied several parts of District Swat. That due to some compelling circumstances the appellant could not perform his duty for certain period. Whereafter the appellant reported for duty, but he was informed about dismissal from service by respondent No. 3 vide order dated 08.12.2010, with effect from the date of absence i.e. 07.08.2008. That the impugned order dated 08.12.2010 is void as retrospective order is not acceptable in the eyes of law. That in similar cases belonging to Malakand Region the appellants were reinstated in service. That being similarly placed person, no limitation runs against void orders and similarly placed persons. Learned counsel also relied on the judgment reported as 2002 PLD (C.S) 268.

Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is also directed to deposit security and process fee within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 08.03.2018 before S.B at Camp Court, Swat.

Appellant Deposited
Security & Process Fee


(Gul Zeb Khan)
Member
Camp Court Swat.

08.03.2018



Appellant in person and Addl: AG alongwith Mr. Khawas Khan, SI for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 03.04.2018 before S.B at camp court, Swat.


Chairman
Camp court, Swat

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 26/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	8/1/2018	<p style="text-align: center;">The appeal of Mr. Bakht Amin presented today by Dr. Adnan Khan Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 2/11/18</p>
2-	11-1-2018	<p style="text-align: center;">This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>02-02-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE HON'BLE SERVICE TRIBUNAL,
KHYBER PAKHTHUKHWA, PESHAWAR

Service Appeal No. 26 of 2018

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o
Haroon Abad Odigram Tehsil Babozai, District Swat

..... Appellant

VERSUS

Government of Khyber Pakhtunkhwa and others

..... Respondents

INDEX

S. No.	Description	Annexure	Pages No.
1.	Memo of Appeal with certificate		1-6
2.	Condonation Application with affidavit		7-9
3.	Affidavit		10
4.	Addresses of the parties		11
5.	Copy of dismissal order	A	12
6.	Copies of reinstatement orders by Commandant FRP	B	13-19
7.	Copy of judgment	C	20-22
8.	Copy of reinstatement application	D	23
9.	Copy of order dated 30-08-2017	E	24
10.	Wakalatnama		25

08/01/2018
dated

(B) Amin
Appellant through Counsel

Dr. Adnan Khan, Barrister-at-Law
Office: Adnan Law Associates,
Opp. Grassy ground Mingora,
Swat. Cell: 0346-9415233

**BEFORE THE HON'BLE SERVICE TRIBUNAL,
KHYBER PAKHTHUKHWA, PESHAWAR**

Service Appeal No. 26 of 2018

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o
Haroon Abad Odigram Tehsil Babozai, District Swat

..... *Appellant*

**Khyber Pakhtukhwa
Service Tribunal**

Diary No. 15

VERSUS

Dated 08-01-2018

- 1) Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
- 2) The Regional Police Officer/DIG Police, Malakand Region at Saidu Sharif, Swat.
- 3) The District Police Officer, Swat at Saidu Sharif.
- 4) DSP, Legal Swat Police at Saidu Sharif, Swat.

..... *Respondents*

**APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE
ORDER OF IMPOSITION OF MAXIMUM
PENALTY WHEREBY APPELLANT WAS
DISMISSED FROM SERVICE.**

Filed to-day

Registrar
8/01/18

PRAYER:

On acceptance of this Appeal, the impugned order No. O.B 218 dated 08-12-2010 may be set aside and appellant be reinstated into service as Constable.

Respectfully Sheweth:

1. That the appellant was inducted in the Police Department and subsequently posted in police force of District Swat as Constable on 19-10-2004. At the time of dismissal from service, appellant was performing his duty at Police Station Matta, District Swat.
2. That during his service as Constable, appellant has performed his duties in extremely harsh security situation when the militants had occupied several parts of District Swat. Needless to say that a handsome majority of police officials serving in District Swat were hesitant to continue their duties in the said period.
3. That appellant even in the said circumstances did not avail his annual leave and continued performing his duties to the entire satisfaction of his high ups. However, due to some compelling circumstances arising out of severe financial burden in the family, appellant could not perform his duty for a certain period.
4. That after the above mentioned absence, when the appellant appeared at his place of duty, he was informed about dismissal from service by respondent No.3 vide order dated 08-12-2010 (Copy of dismissal order is attached as Annexure "A").
5. That appellant being aggrieved with the dismissal order, presented various written and oral requests for his reinstatement before his high-ups, which were never respondent to by them.

6. That having his grievances not redressed by respondents, appellant lost all the hopes about his reinstatement. However, in the year 2015-16, various constables of Reserve Police with similar status as that of appellant were reinstated to service by the competent authorities. The last in the series of such orders was made on 18-03-2016 (Copies of reinstatement orders by Commandant FRP are attached as Annexure "B").
7. That relying on such like orders, one Adil Said Ex-Constable No.763 of Swat Police approached this Hon'ble Tribunal through Service Appeal No.1214 of 2015. The said appeal was accepted by this Hon'ble Tribunal vide judgment dated 02-01-2017 (Copy of judgment is attached as Annexure "C").
8. That the above mentioned reinstatement orders and judgment of this Hon'ble Tribunal gave a fresh array of hope to appellant, hence he filed a fresh departmental appeal for his reinstatement before respondent No.2 on 27-07-2017 (Copy of reinstatement application is attached as Annexure "D").
9. That respondent No.2 vide order dated 30-08-2017, communicated very recently to the appellant, dismissed the above mentioned application alongwith applications of other Ex-employees of Police Department being time barred (Copy of order dated 30-08-2017 is attached as Annexure "E").

10. That feeling aggrieved with the above mentioned order of rejection of departmental Appeal, the appellant files this appeal, *inter alia*, on the following grounds:

GROUND:

- A) That the impugned order has been passed unilaterally and in blatant violation of law, hence the same is liable to be set aside.
- B) That the requirements of due process, fairness and justness have not been complied in the present case. The appellant was neither show caused nor a statement of allegations was given to him.
- C) That appellant was not associated with the alleged inquiry. Hence, appellant has been condemned unheard in the instant case. Therefore, on this score as well the impugned order is liable to be set aside.
- D) That the mandatory requirement of publication has not been fulfilled in the instant case. Therefore, on this ground as well the impugned order is not tenable in the eyes of law.
- E) That numerous officers and officials of Malakand Regional Police had fled their duties at the time of insurgency. Majority of those individuals were reinstated into service after restoration of peace in the area. Regrettably, appellant has not been treated at par with those reinstated individuals.
- F) That no doubt, the last in the series of reinstatement applications has been made by the appellant at belated stage. However, as mentioned in the facts, these were the reinstatement orders in respect of sacked constables of FRP

and judgment of this Hon'ble Tribunal in Service Appeal No.1214 of 2015, which gave the appellant a fresh cause of action. In this respect the rule laid down in a judgment reported as 2002 PLC (C.S) 268 is applicable, where it was held that no limitation shall run in cases of similarly placed employees.

- G) That by virtue of the impugned order, punishment by way of imposition of major penalty has been inflicted upon the appellant retrospectively, i.e from the date of appellant's alleged absence and not from the date of decision. The impugned order being *void ab initio*, is liable to be set aside on this score as well. Furthermore, as per the consistent view of superior courts and this Hon'ble Tribunal in numerous judgments, limitation shall not run against a void order. Hence, the present appeal is within time for the said reason.
- H) That further grounds with leave of this Hon'ble Tribunal will be raised at the time of oral submissions.

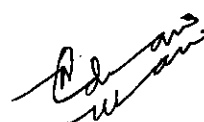
Therefore, it is humbly prayed that on acceptance of this appeal, the impugned order be set aside and the appellant be reinstated in service with all back benefits. Any other remedy though may not specifically prayed for but which canons of justice would demand may also be granted.

Appellant



Bakht Amin

Through Counsel



Dr. Adnan Khan, Barrister-at-Law

CERTIFICATE:

Certified that no such like appeal has earlier been filed before this Hon'ble Tribunal on the subject matter.

Appellant



Bakht Amin

Through Counsel



Dr. Adnan Khan, Barrister-at-Law

BEFORE THE HON'BLE SERVICE TRIBUNAL,
KHYBER PAKHTUKHWA, PESHAWAR

Misc: Application No. _____ of 2018

In Service Appeal No. _____ of 2018

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o
Haroon Abad Odigram Tehsil Babozai, District Swat

..... *Applicant/Appellant*

VERSUS

Government of Khyber Pakhtunkhwa and others

..... *Respondents*

APPLICATION FOR CONDONATION OF DELAY
IN FILING THE INSTANT APPEAL.

Respectfully sheweth,

- 1) That the captioned appeal is being filed before this Hon'ble Tribunal, which is yet to be fixed for regular hearing.
- 2) That the appeal is having some apparent delay, which may become condoned inter alia on the following grounds:

GROUND:

- A) That various civil servants at par with appellant have been recently reinstated into service by the competent authority. On the ground of rule of consistency and similar treatment, the appellant has a fresh cause of action to file this appeal.

- B) That as per the judgment of this Hon'ble Tribunal in Service Appeal No.1214 of 2015, a civil servant with similar case as that of the present appellant was reinstated into service, which also gave the appellant a fresh cause of action. In this respect the rule laid down in a judgment reported as 2002 PLC (C.S) 268 is applicable, where it was held that no limitation shall run in cases of similarly placed employees.

- C) That by virtue of the impugned order, punishment by way of imposition of major penalty has been inflicted upon the appellant retrospectively, which makes the order *void ab initio*. As per the consistent view of superior courts and this Hon'ble Tribunal in numerous judgments, limitation shall not run against a void order.

In view of above, it is therefore, humbly prayed that any delay in filing this appeal may be condoned in the interests of justice.



Appellant/ Applicant
Through Counsel



Dr. Adnan Khan, Barrister-at-Law

9

BEFORE THE HON'BLE SERVICE TRIBUNAL,
KHYBER PAKHTHUKHWA, PESHAWAR

Misc: Application No. _____ of 2018

In Service Appeal No. _____ of 2018

Bakht Amin..... *Applicant/Appellant*

VERSUS

Government of Khyber Pakhtunkhwa and others

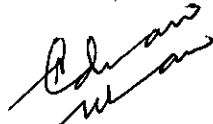
.....*Respondents*

AFFIDAVIT

I, **Bakht Amin** (Applicant/Appellant), do hereby solemnly affirm and declare that the contents of the above titled Misc: application are true and correct to the best of my knowledge and belief.

Identified by

DEPONENT



Dr. Adnan Khan, Barrister-at-Law



Bakht Amin



(10)

BEFORE THE HON'BLE SERVICE TRIBUNAL,
KHYBER PAKHTHUKHWA, PESHAWAR

Service Appeal No. _____ of 2018

Bakht Amin..... *Appellant*

VERSUS

Government of Khyber Pakhtunkhwa and others

.....*Respondents*

AFFIDAVIT

I, **Bakht Amin** (Appellant), do hereby solemnly affirm and declare that the contents of the above titled Appeal are true and correct to the best of my knowledge and belief. Furthermore, no such like appeal has earlier been filed before this Honourable Tribunal or elsewhere on this subject matter.

Identified by

DEPONENT



Dr. Adnan Khan, Barrister-at-Law



Bakht Amin



(11)

BEFORE THE HON'BLE SERVICE TRIBUNAL,
KHYBER PAKHTHUKHWA, PESHAWAR

Service Appeal No. _____ of 2018

Bakht Amin..... *Appellant*

VERSUS

Government of Khyber Pakhtunkhwa and others

.....*Respondents*

ADDRESSES OF THE PARTIES

APPELLANT:

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o
Haroon Abad Odigram Tehsil Babozai, District Swat

CNIC# 15602-0492973-9

Cell # 0344-9992393

RESPONDENTS:

- 1) Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
- 2) The Regional Police Officer/DIG Police, Malakand Region at Saidu Sharif, Swat.
- 3) The District Police Officer, Swat at Saidu Sharif.
- 4) DSP, Legal Swat Police at Saidu Sharif, Swat.

Appellant



Bakht Amin

Ann "A"

(12)

ORDER

This order will dispose off the enquiry initiated against Constable Bakht Amin No.871 of Police Station Matta absented himself from duty with effect from 17/08/2008 till to date vide D.D No. 09 dated 17/08/2008 followed by D.D No. 12 dated 11/10/2010 of Police Line without any prior permission or leave. As per finding report of Enquiry Officer DSP/Hqrs: Swat dated 11/11/2010 intimated that you have gone to Saudi Arabia for labour and not present in home, as per written verification of local elders namely Hazrat Bilal s/o Umar Khan r/o Odigram NIC No. 15602-8944617-3 and Itbar Ali s/o Mazang r/o Odigram NIC No. 15602-0454062-7. The charges leveled against you were proved and the enquiry officer recommended you for dismissal from service.

Consequently he was served Final Show Cause Notice No. 287/E dated 01/12/2010 but he did not submit his reply within stipulated period and remained absent.

Therefore I, Qazi Ghulam Farooq DPO Swat in exercise of the power vested in me under Removal from Service (Special Power) Ordinance 2000 (amendment ordinance 2001) awarded him major punishment of Dismissal from Service from the date of his absence i-e 17/08/2008.

Order announced.


District Police Officer, Swat

**CERTIFIED TO
BE TRUE COPY**


Barrister
Dr. Adnan Khan
Advocate High Court

OB No. 218

Dated: 8.12 /2010

RECEIVED
MAY 10 1964

U.S. DEPARTMENT OF
HEALTH, EDUCATION & WELFARE

Ann "B"

(13)

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11- of Khyber Pakhtunkhwa Police Rules 1975, submitted by Ex-Constable Khalil-ur-Rehman No.4289 of FRP Malakand Range, against the order of the SP, FRP/Malakand Range, Swat in which the applicant was removed from service.

Brief facts of the case are that Ex-Constable Khalil-ur-Rehman No.4289 of FRP Malakand Range was enlisted on 11-05-2006. He while posted to platoon No.78 district Swat, absented himself from lawful duty w.e.f. 02.12.2008 till to the date of his removal from service i.e. 21-02-2009 without any leave or prior permission of the competent authority for the period of 02 months and 20 days.

He was issued charge sheet along with summary of allegations vide SP FRP Malakand Range Swat office order Endst: No.775/EC, dated 16-12-2008, but neither he reported for duty nor submitted reply to the charge sheet in the stipulated period. He was also issued Urdu parwana to resume his duty but he failed to submit reply in the response of the same within stipulated period, therefore The defaulter Constable was recommended for removal from service by the enquiry Committee.

In the-light of recommendation of enquiry Committee he was removed from ~~service vide~~ office order OB: No.23, dated 21-02-2009.

The enquiry file of the applicant was perused and found that the applicant ~~has not dealt~~ with proper departmental proceedings as he was not participated with the enquiry proceedings while he was removed from service unheard.

He was also heard in person, during the course of hearing he advanced cogent reasons in his defense his plea was found plausible and satisfactory.

Keeping in view the above and as well as his poor family back ground, Take a lenient view, he (Ex-Constable Khalil-ur-Rehman No.4289 of FRP Malakand Range) is hereby ~~re-instated~~ in service from the date of removal from service. However, the period of absence and the intervening period from service are treated as extra ordinary leave without pay.

Order announced.

J. J. J.
Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

2388

No. /EC, dated Peshawar the 18/03/2016

Copy of above is forwarded for information and necessary action to the SP FRP Malakand Range Swat with R/O his office memo No. 190/EC, dated 04.02.2016. His Service Roll and D/File sent herewith.

*E. S/Record
along with B/Papers*

*OB No 163
22/3/2016*

**CERTIFIED TO
BE TRUE COPY**

Adnan Khan
Barrister
Dr. Adnan Khan
Advocate High Court

~~Stamp~~
~~Stamp~~
~~Stamp~~

ORDER

(14)

314
Date 7/3/2016
Swat

This order is hereby passed to dispose of departmental appeal under Rule 11-a, of Khyber Pakhtunkhwa Police Rules 1975, submitted by Ex-Constable Bshir Khan No. ³⁸¹⁴4837/7457 of FRP Malakand Range against the order of the SP/ FRP, Malakand Range ⁹¹swat, in which the applicant was removed from service.

Breif facts of the case are that Ex- Constable Bshir Khan No. 4837/7457 of FRP Malakand Range was enlisted in Police Department on 26.07.2007. While he was posted to Platoon No. 85 FRP/Swat absented himself form lawful duty w. e. from 27.06.2008 till the date of his removal from service i.e. 10.10.2008. He was issued charge sheet and summary allegation vide SP/FRP/Malakand Range swat office order Endst: No. 501/EC, dated 08.07.2008, but neither he reported his arrival for duty nor replied to charge sheet in the stipulated period. He was also issued final show cause notice vide this office Endst: No. 504 /EC, dated 015.07.2008, but his reply was not received in the stipulated period and the said Constable was recommended for removal from service by the enquiry committee.

In the light of recommendation of the enquiry committee he was removed from service vide SP/FRP/Swat Range office Endst: No. 138 dated 10.10.2008.

The enquiry file of the applicant was perused and found that the applicant has not dealt with proper departmental proceedings as he was not participated with the enquiry proceedings while he was removed from service with slipshod manner.

He was also heard in person, during the course of hearing he advanced cogent reasons in his defense his plea was found plausible and satisfactory.

Keeping in view the above and as well as his poor family back ground I, take a lenient view he (Ex-Constable Bshir Khan No. 4837/7457 of FRP Malakand Range Swat, is hereby re-instated in service from the date of removal from service. However, the period of absence and the intervening period from service are treated as extra ordinary leave without pay.

Order announced.

OB/EC/OASE/PO
for u/a.

SP/FRP Mied Range, Swat
7/3/2016

No 1977/EC, dated Peshawar the 04/03/2016

[Signature]
Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

Copy of above is forwarded for information and necessary action to the SP, FRP, Malakand Range Swat with R/O his office memo No. 115/EC, dated 19.01.2016, alongwith service record and other relevant papers sent herewith.

**CERTIFIED TO
BE TRUE COPY**

[Signature]
Barrister
Dr. Adnan Khan
Advocate High Court

OBNO 123
7-3-016

[Signature]

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11 of Khyber Pakhtunkhwa Police Rules 1975, submitted by Ex- Constable Arshad Iqbal No.4832 of FRP Malakand Range, against the order of SP/FRP, Malakand Range, Swat in which the applicant was removed from service.

Brief facts of the case are that, Ex-Constable Arshad Iqbal No.4832 of FRP/Malakand was enlisted in Police department on 26-07-2007. He while posted to Platoon No.85-FRP, Buniar was absented himself from his lawful duty w.e.f 16-07-2008 till to the date of his removal from service. He was issued charge sheet and statement of allegations vides SP FRP Malakand Range Swat Office NO.768/EC dated 16-12-2008. He neither reported his arrival for duty nor submitted his reply to the charge sheet in the stipulated period and the defaulter Constable was recommended for removal from service by the Enquiry Committee.

In the light of recommendation of the enquiry committee the defaulter Constable Arshad Iqbal No.4832 was removed from service vide SP FRP Malakand Range Swat office Endst: 241-dated 21-02-2008.

The enquiry file of the applicant was perused and found that the applicant was not participated with the enquiry proceedings while he was removed from service unheard. The SP/FRP Malakand Range Swat has narrated that the appellant a trained soldier and recommended him for re-instatement in service vide his office Memo No. 2211/EC, dated 08.12.2015.

He was also heard in person, during the course of hearing he advance cogent reasons in his defense his plea was found plausible and satisfactory.

Keeping in view the above and as well as his poor family back ground I take a lenient view, he (Ex- Constable Arshad Iqbal No.4832 of FRP/Malakand Range) is hereby re-instated in service from the date of removal from service. However, the period of his absence and the intervening period from service are treated as extra ordinary leave without pay.

Order announced.

[Signature]
Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No 2642/EC, dated Peshawar the 29/3 /2016

Copy of above is forwarded for information and necessary action to the SP.FRP, Malakand Range Swat with R/O his office memo No. 2211/EC, dated 08.12.2015. His Service Roll and D/File sent herewith.

OB/EC/OAS2/PO

For w/a

CERTIFIED TO BE TRUE COPY

SP/FRP Mucd Range Swat
31/3/2016

[Signature]
Barrister
Dr. Adnan Khan
Advocate High Court.

45
47
31/3/16

اب عالی!
مذکورہ بالا جو لاہم میر بالا اس دفتر کو الی 178
29/3/16 کو دوبارہ ملازمت پر بحال کر کے لیا گیا ہے
48 ادارت کے پلاٹون نمبر 73 میں دوسرے کیا گیا
[Signature]
N-0AS1

ORDER

This order shall dispose off the departmental appeal of Ex-Constable Bsir Khan No. 4730 of FRP / Malakand Range Swat.

Brief facts of the case are that he was enlisted in Police Department on 25.07.2007 and while posted to Platoon No. 82 FRP/Swat, absented himself from lawful duty w. e. from 04.08.2008 till his removal from service i.e. 19.11.2008. He was issued charge sheet and summary allegation vide SP/FRP/Malakand Range Swat office order Endst: No. 634/EC, dated 30.10.2008, but neither he reported his arrival for duty nor replied to charge sheet in the stipulated period. He was also issued final show cause notice vide this office Endst: No. 708 /EC, dated 01.11.2008, but his reply was not received in the stipulated period and the Enquiry Committee was recommended him for major penalty of removal from service.

In the light of recommendation of the enquiry committee he was removed from service by the SP/FRP/Malakand Range, Swat vide office order Endst: No. 1471 dated 19.11.2008.

The enquiry file of the applicant was perused and found that the applicant has not dealt with proper departmental proceedings as he was not participated with the enquiry proceedings while he was dismissed from service with slipshod manner.

He was also heard in person, during the course of hearing he advanced cogent reasons in his defense his plea was found plausible and satisfactory.

Keeping in view the above and as well as his poor family back ground he (Ex-Constable Bsir Khan No. 4730) of FRP / Malakand Range Swat, is here by re-instated in service from the date of dismissal from service. However, the period of absence and the intervening period from service are treated as extra ordinary leave without pay.

Order announced.

[Signature]
Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No. 10762/EC, dated Peshawar the 22 /10/2015.

Copy of above is forwarded for information and necessary action to the SP, FRP, Malakand Range Swat with R/O his office memo No. 1987/EC, dated 30.10.2015, alongwith service record and other relevant papers sent herewith.

[Handwritten notes in Urdu]
کاملاً سنبھال لیا گیا
23/12/15
3581
کاملاً سنبھال لیا گیا
کاملاً سنبھال لیا گیا

[Handwritten signature]
28/12/2015

CERTIFIED TO BE TRUE COPY

[Signature]
Barrister
Dr. Adnan Khan
Advocate High Court

CERTIFIED TO BE TRUE COPY

[Signature]
Barrister
Dr. Adnan Khan
Advocate High Court

ORDER

17

20

1293
34910

This order shall dispose of the departmental appeal lodged by Ex-Constable Jamshid Ali No.7838/4904 of FRP Malakand Range Swat against the order of SP FRP Malakand Range Swat.

Ex-Constable Jamshid Ali No.7838/4904 was enlisted as Constable on 26.09.2007; He while posted to Platoon No.86 Dir lower absented himself from his lawful duty w.e.f 28.09.2008 till his removal from service. He was issued charge sheet and statement of allegations vide SP Malakand Range Swat office No.750/EC dated 16.12.2008. Thus issued Final Show Cause Notice vide Endst: No.895/EC dated 03.01.2009. and the defaulter Constable was recommended for removal from service by the Enquiry committee. The defaulter Constable Jamshid Ali No.7838/4904 was removed from service vide SP Malakand Range Swat Office OB No.76 dated 12.05.2008.

He was heard in person. Keeping in view his poor family background, I take a lenient view and the order regarding award of punishment i.e. removal from service is here by set aside. Ex- Constable Jamshid Ali No.7838/4904 of FRP Malakand Range Swat is here by re-instated in service with immediate effect. However the period of absence and the intervening period from service are treated as extra ordinary leave without pay.

New No. 3811

[Signature]
Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No 8049 /EC dated Peshawar the 23/09/2015.

Copy of above along with service record is forwarded to SP FRP Malakand Range Swat for information and necessary action.

OB No 348
Done -1-10-15

OB/SAS/EC/PO
For n/a
SP FRP SWAT
29/09/15

CERTIFIED TO
BE TRUE COPY

[Signature]
Barrister
Dr. Adnan Khan
Advocate High Court.

[Faint official stamp and signature]

18

NO. 3099
Date: 4/13/16
Swat

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11 of Khyber Pakhtunkhwa Police Rules-1975, submitted by Ex-Constable Imran Khan No. 4279 of FRP Malakand Range, against the order of the SP, FRP/Kohat Range, in which the applicant was removed from service.

Ex-Constable Imran Khan No. 4279 of FRP Malakand Range was enlisted on 13-01-2004. He while posted to platoon No. 72 Gul Kadda district Swat, absented himself from lawful duty w.e.f. 06.10.2008 till to the date his removal from service i.e. 21-02-2009 without any leave or prior permission of the competent authority for the period of 04 months and 14 days.

He was issued charge sheet along with summary of allegations vide SP FRP Malakand Range Swat Order Endst: No. 775/EC, dated 16-12-2008, but neither he reported for duty nor submitted reply to the charge sheet in the stipulated period. He was also issued Urdu parwana to resume his duty but he failed to submit reply in the response of the same within stipulated period, therefore the defaulter Constable was recommended for removal from service by the enquiry Committee.

After completion of the enquiry the enquiry committee submitted the findings wherein recommending him for major punishment. In the light of recommendation of enquiry Committee he was removal from service vide office order Endst: No. 312/EC, dated 21-02-2009.

The enquiry file of the applicant was perused and found that the applicant has not dealt with proper departmental proceedings as he was not participated with the enquiry proceedings while he was dismissed from service with slipshod manner.

He was also heard in person, during the course of hearing he advanced cogent reasons in his defense his plea was found plausible and satisfactory.

Keeping in view the above and as well as his poor family back ground it, take a lenient view, he (Ex-Constable Imran Khan No. 4279 of FRP Malakand Range) is hereby reinstated in service from the date of removal from service. However, the period of absence and the intervening period from service are treated as extra ordinary leave without pay.

Order announced.

Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

OB/GAS/EC/PO
For n/a

SP, FRP/SWAT
04/03/16

OB: 123

No. 1922/EC, dated Peshawar the 03/03/2016

Copy of above is forwarded for information and necessary action, to the SP, FRP, Malakand Range Swat with R/O his office memo No. 2175/EC, dated 02.12.2015. His Service roll and Fuji missal sent herewith.

**CERTIFIED TO
BE TRUE COPY**

Barrister
Dr. Adnan Khan
Advocate High Court

19

ORDER

MAN No. 4241

OFFICE OF THE
No. 1225
14/9/2015

This order shall dispose of the departmental appeal lodged by, Ex- Constable Muhammad Shahid No.4890 of FRP Malakand Range Swat, against the order of SP FRP Malakand Range Swat.

Ex-Constable Muhammad Shahid No.4890 was enlisted as Constable in Police Department on 26.07.2007. He while posted to FRP Lines Timergara District Dir Lower platoon No.86 absented himself from his lawful duty w.e.f.1.09.2008 till his removal from service. He was issued charge sheet and statements of allegation vide Endst: No. 648/EC, dated 30.10.2008, thus issued Final Show Cause Notice vide Endst: No.886/EC, dated 3.01.2009. The Constable was recommended for removal from service by the enquiry committee.

In the light of the recommendation of the enquiry committee and material available on the record the defaulter Constable Muhammad Shahid No.4890 was removed from service vide SP FRP Malakand Range Swat Endst: No.239, dated 21.02.2008. Like some other personnel to the force the appellant also absented himself due to uncertain and tense situation in Malakand division especially at swat District. As the appellant is a trained Constable therefore in the best interest of the state he was recommended by SP FRP Malakand Range Swat for re-instatement in service.

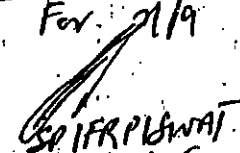
He was heard in person. Keeping in view his poor family background, I take a lenient view and the order regarding award of punishment i.e. removal from service is here by set aside. Ex- Constable Muhammad Shahid No.4890 of FRP Malakand Range Swat is here by reinstated in service from with immediate effect. However the period of absence and the intervening period from service are treated as extra ordinary leave without pay.


Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No. 7659 /EC dated Peshawar the 9 / 10 / 2015.


Copy of above is forwarded to SP FRP Malakand Range Swat for information and necessary action.

Encl - 5/Recor &
Enquiry Site

OB/AS/EC/PO
For 1/19

SP FRP SWAT
14/09/15.

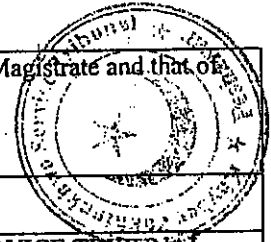
OB No- 318
DATE: 14/09/2015

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Barrister
Dr. Adnan Khan
Advocate High Court

20

Ann "C"



S. No.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	02.01.2017	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> <u>CAMP COURT SWAT</u></p> <p align="center">Service Appeal No. 1214/2015 Adil Said Versus the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others.</p> <p align="center"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u></p> <p>Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader alongwith Mr. Muhammad Imran, S.I (Legal) for respondents present.</p> <p>2. Adil Said Ex-Constable No. 763, District Swat hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against impugned order dated 29.12.2008 vide which he was awarded major penalty of dismissal from service against which his departmental appeal/mercy petition dated 4.6.2014 was also rejected vide order dated 17.08.2012 and 01.09.2015 communicated to the appellant on 11.09.2015.</p> <p>3. Brief facts giving rise to the present appeal are that the appellant was serving as constable when subjected to enquiry on the allegations of wilful absence and dismissed from service vide impugned order referred to above.</p> <p>4. Learned counsel for the appellant during the course of hearing referred to orders dated 4.3.2016, 18.03.2016, 29.03.2016 and similar</p>

ATTESTED

[Signature]
EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

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[Signature]
Barrister
Dr. Adnan Khan
 Advocate High Court

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other orders placed on record vide which similarly placed employees removed from service on the allegations of wilful absence during the insurgency period were reinstated in service by the Commandant, FRP Khyber Pakhtunkhwa, Peshawar while the intervening period of absence from service was treated as extra-ordinary leave without pay. Learned counsel for the appellant argued that the appellant is also entitled to similar treatment as laid down by the august Supreme Court of Pakistan in case of Hameed Akhtar Niazi reported as 1996-SCMR-1185 and Tara Chand reported as 2005-SCMR-499.

5. Learned Senior Government Pleader has argued that it is not ascertainable from record that the case and grievances of the appellant are similar to those who were reinstated in service by the Commandant FRP. That in the absence of any such record it cannot be ascertained that the appellant is entitled to treatment, similar in nature and extended to the said civil servants.

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

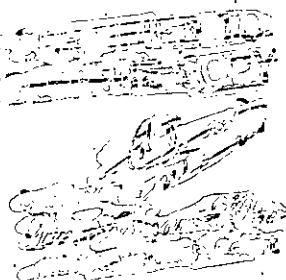
7. The Commandant FRP vide orders referred to above had reinstated ex-constables including Khailur Rahman, Bashir Khan, Arshad Iqbal, Basir Khan and similar others vide orders referred to above. We are not in a position to ascertain from the record that the case of the appellant is similar to the afore-stated constables who were reinstated in service despite their absence during the period of insurgency and militancy. In such a situation we are left with no option but to accept the present appeal, set aside the impugned orders and direct

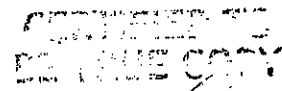
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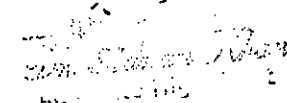

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Barrister
Dr. Adnan Khan
Advocate High Court







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Advocate High
School
Barrister



that the appellate authority shall examine the case of the appellant with the cases of those constables who were reinstated in service by the Commendant FRP and in case the appellant is found entitled to similar treatment as extended to the said constables then the said authority shall also extend the same treatment to the present appellant. The appellant shall be afforded opportunity of hearing during the proceedings which shall be conducted and concluded within a period of 2 months from the date of receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

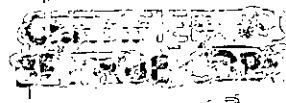
Announced
02.01.2017

Self M. Azim Khan Afzali,
Chairman
Civil Court Sialkot

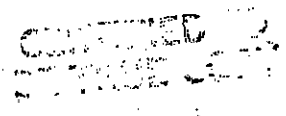
Certified to be true copy

 Ahmad Hussian
 Member

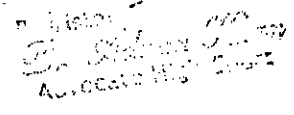
Self Ahmad Hussian,
Member

Date of Presentation of Application: 10-01-2017
 Number of Words: 1600
 Copying Fee: 10-00
 Urgent: Yes
 Total: 12-00
 Name of Copyist: AMH
 Date of Completion: 10-01-2017
 Date of Delivery of Copy: 10-01-2017

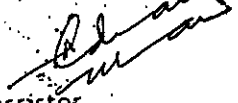






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 Barrister
 Dr. Adnan Khan
 Advocate High Court

آداب۔ بعد از آداب گزارش ہے کہ سائل سوات پولیس میں بطور کانٹیل
سر ایام رہا تھا چونکہ کو ناعساغدر ملکی حالات اور گھریلوں حالات
کیوجہ سے سائل مجبوراً ڈیوٹی سے غیر حاضر رہا۔ جس کا سائل کو انتہائی آفسوں
اور ڈکو ہے چونکہ یہ جو کو ہوا تھا انتہائی مجبوری اور حالات کی نراکت
کے تحت ہوا تھا۔

صواب عالی! محکمہ ہذا کے بیشتر پولیس آفیسرز جان بچانے کے خاطر
یا تو انہوں ملک روپوش ہو چکے تھے یا بیرون ملک بچوں کی رزق حلال
کے خاطر مسافرت کی زندگی گزار رہے تھے جن کو پولیس آفیسرز آپ صاحبان
کی ذاتی مہربانی سے دوبارہ بحال ہوئے ہیں۔

صواب عالی! میرا سابقہ سرورس ریکارڈ خدا کے فضل و کرم سے صاف ہے
جس کا آپ صاحبان خرید کر سکتے ہیں اور آئینہ بھی محتاط رہونگا۔
لہذا سائل آپ صاحبان سے ہمدردانه اپیل کرتا ہے کہ سائل کے معصوم
بچوں / لورھے والدین کی کفالت اور سائل کے مفلس اہالی کو مد نظر رکھتے ہوئے
سائل کو دوبارہ محکمہ پولیس میں واپس جگہ دینے کا حکم صادر فرمادیں
تو سائل تا صیات دعا گو رہیگا۔

العارض!

سر ایفانایع فرغان کانٹیل تحت آسین 871 سوات پولیس

تاریخ 26/7/17

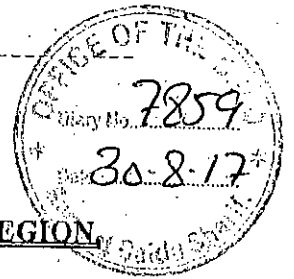
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Barrister
Dr. Adnan Khan
Advocate High Court

Amir "E"

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**OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND REGION,
AT SAIDU SHARIF SWAT**

ORDER:

The following Ex-Police officers of the Districts as noted against each were called in Orderly Room on 29/08/2017, in connection with their applications for reinstatement in Service and heard them in person. Their applications are hereby filed being time barred:-

S. No	Name and No	District
1.	Ex-Constable Said Ali No. 1187	Buner
2. ✓	Ex-Constable Bakht Amin No. 871	Swat
3.	Ex-Constable Hazrat Ali No. 458	Dir Lower
4. ✓	Ex-Constable Muhammad Rahman No. 639	Swat
5.	Ex-Constable Aziz Sultan No. 984	Dir Lower
6. ✓	Ex-SPF Naik Muhammad No. 868	Swat

(Signature)
(AKHTAR HAYAT KHAN)
Regional Police Officer,
Malakand, at Saidu Sharif Swat
Naqi

No. 8053-56/E,

Dated 30-08-2017.

Copy to District Police Officers, Swat, Buner and Dir Lower for information and with the directions to inform the applicants accordingly, please.

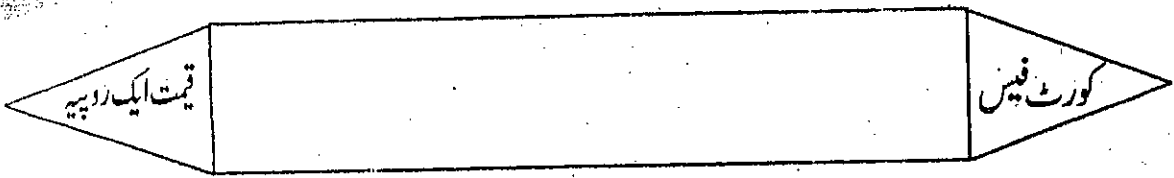
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BE TRUE COPY**

(Signature)
Barrister
Dr. Adnan Khan
Advocate High Court

(Signature)
OASI/EC.
For Maria
D/Posi
30/8/17

OASI
Informed S.No- 2, 3 and
6 about their
appeals and report.
(Signature)

بعدالت صبر محتوخواہ کروکس ٹریبونل پشاور



مورخہ 2 صوری 2018ء منجانب اسٹیلٹس
 مقدمہ عدالت اسٹیلٹس
 دعویٰ سروکس اپیل
 جرم

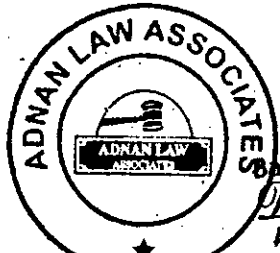
باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کریمینل کورٹ سوات کیلئے سروسز اور اکثر عدنان خان مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی نکل کاروائی کا کامل اختیاط ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداشتہ منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوا ایسے مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

المرقوم 2 ماہ صوری 2017ء

السید گداہ شہید العبد العبد
 Attested & Accepted

بمقام منگورہ سوات / پشاور کے لئے منظور ہے



Dr. Adnan Khan
 Advocate High Court

السید گداہ شہید العبد العبد

طقت اسٹیلٹس ولد عمر خان
 15662.0492973-9

0344 9992393

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.26/2018

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o Haroon
Abad Odigram, Teshil Babozai, District Swat.

----- (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
3. District Police Officer, Saidu Sharif, Swat
4. DSP, Legal Swat Police at Saidu Sharif Swat.

----- (Respondents)

INDEX

S.No:	Description of Documents	Annexure	Page
1	Para-wise Comments	-	1-3
2	Affidavit	-	4
3	Authority	-	5

District Police Officer, Swat
(Respondent No.03)

*Place on file
S.B. W/R*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.26/2018

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o Haroon
Abad Odigram, Teshil Babozai, District Swat.

----- (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
3. District Police Officer, Saidu Sharif, Swat
4. DSP, Legal Swat Police at Saidu Sharif Swat.

----- (Respondents)

Parawise comments on behalf of Respondents.

Respectfully shewith:

Preliminarily objection:-

1. That the service appeal is time barred.
2. That the service appeal is not maintainable in its present form.
3. The instant appeal is bad due to mis-joinder and non-joinder of necessary parties.
4. That the appellant is estopped due to his own conduct.
5. That the appellant has concealed material facts from this Honorable Tribunal.
6. That the appellant has got no cause of action and locus standi to prefer the instant appeal.
7. The appellant has not come to this Tribunal with clean hands.

ON FACTS

1. Para No.01 regarding enlistment in Police Department and subsequent posting pertains to record, hence need no comments
2. Incorrect. Being member of disciplined force every police official/officer is under obligation to perform his duties with zeal, zest and devotion irrespective of harsh, tense and calm environment, hence stance of the appellant is not tenable in the eye of Law.
3. Incorrect. Plea of the appellant regarding continued performance of his duties is not plausible because he was duty bound to do so. Moreover, the appellant admitted himself in a categorical manner that he could not perform his duties for a certain period but the fact regarding his absence

was not mentioned as he was proceeded abroad which had been established during the enquiry proceedings.

4. Incorrect. The appellant while posted at Police Station Matta absented himself from lawful duty vide DD No.09 dated 17/08/2008 whereupon a proper departmental enquiry was initiated during the course of which the appellant was summoned time and again to join enquiry proceeding for defending himself but to no avail he was proceeded abroad and in this regard proper verification was carried out through elders of the locality. Hence the appellant was awarded punishment of dismissal from service by the competent authority.
5. Incorrect. The application/presentation of the appellant was thoroughly considered by the appellate authority which was filed on sound reasons.
6. Incorrect. Each and every case has its own facts and circumstances and fate of one case has no effects on others
7. Para already explained, hence needs no comments.
8. Para already explained, hence needs no comments.
9. Incorrect. The appellant in order to give legal cover to the issue of limitation propounded this story which has no legal footing to stand on.
10. That appeal of the appellant is liable to be dismissed on the following grounds amongst the others.

GROUND

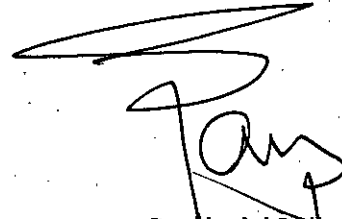
- A. Incorrect. Order passed by the competent authority is in consonance with Law, rules and material available on record, therefore liable to be maintained.
- B. Incorrect. The appellant was proceeded departmentally and enquiry was initiated during the course of which appellant was summoned time and again to defend himself but he did not bother to do so as he was proceeded abroad, hence plea of the appellant is not tenable in the eye of Law.
- C. Incorrect. As explained earlier he bitterly failed to join enquiry proceedings as report his arrival, hence after fulfillment of codal

formalities the punishment order was passed which does commensurate with the gravity of misconduct of appellant.

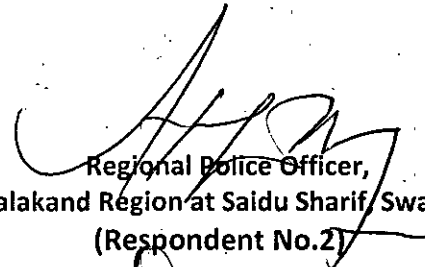
- D. Para explained earlier, hence needs no comments.
- E. Incorrect. Each and every case has its own facts and circumstances and fate of one case has no effect on the other, therefore stance of the appellant is not plausible.
- F. Para already explained in the preceding Para, hence needs no comments.
- G. Incorrect. As discussed earlier the appellant had been awarded appropriate punishment after taking into consideration each and every aspect of the case, hence liable to be maintained.
- H. That respondents also seek permission of this honorable Tribunal to adduce additional grounds at the time of arguments.

PRAYER:-

In view of the above comments of answering respondents, it is prayed that instant appeal may be dismissed with cost.



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



Regional Police Officer,
Malakand Region at Saidu Sharif Swat
(Respondent No.2)



District Police Officer, Swat.
(Respondent No.3)

12-10-16
Deputy Superintendent of Police, legal, Swat
(Respondent No.4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.26/2018

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o Haroon
Abad Odigram, Teshil Babozai, District Swat.

----- (Appellant)

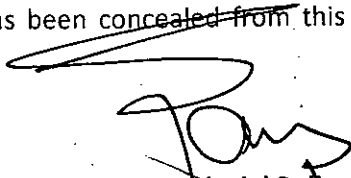
Versus

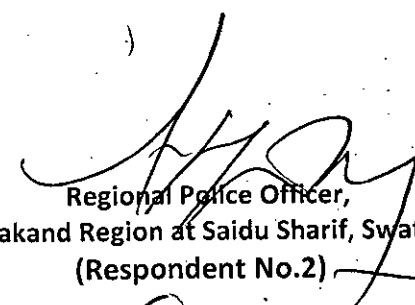
1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
3. District Police Officer, Saidu Sharif, Swat
4. DSP, Legal Swat Police at Saidu Sharif Swat.

----- (Respondents)

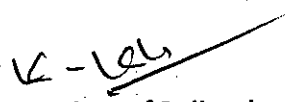
AFFIDAVIT

We, the above respondents do hereby solemnly affirm and declare on oath that the accompanying Para-wise comments submitted in reply to above cited service appeal are correct to the best of our knowledge and nothing has been concealed from this Honorable Tribunal.


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


Regional Police Officer,
Malakand Region at Saidu Sharif, Swat
(Respondent No.2)


District Police Officer, Swat.
(Respondent No.3)


Deputy Superintendent of Police, legal, Swat
(Respondent No.4)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.26/2018

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o Haroon
Abad Odigram, Teshil Babozai, District Swat.

----- (Appellant)

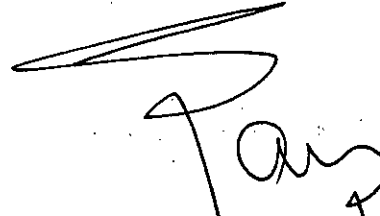
Versus

1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
3. District Police Officer, Saidu Sharif, Swat
4. DSP, Legal Swat Police at Saidu Sharif Swat.

----- (Respondents)

AUTHORITY LETTER

We, the above respondents do hereby authorize Mr. Khawas Khan SI Legal Swat to appear in the Service Tribunal on our behalf on each date fixed in connection with titled Service Appeal and do whatever is needed.



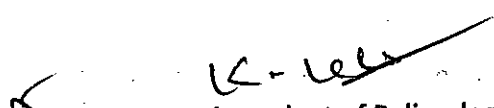
Provincial Police officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1)



Regional Police Officer
Malakand Region at Saidu Sharif, Swat
(Respondent No.2)



District Police Officer, Swat.
(Respondent No.3)



Deputy Superintendent of Police, legal, Swat
(Respondent No.4)

BEFORE THE HON'BLE SERVICE TRIBUNAL, KPK PESHAWAR



Service Appeal No. 368 of 2016

Fayaz Ali S/O Sardar Ali (Ex-Constable No. 914), R/O Village and Tehsil Charbagh, District Swat

Appellant

VERSUS

W.P. Province
Service Tribunal
Diary No. 337
Dated 05-4-2016

- 1) Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar
- 2) The Regional Police Officer, Malakand Division at Saidu Sharif Swat.
- 3) The District Police Officer, Swat at Saidu Sharif.
- 4) Sub Divisional Police Officer, Khwazakhela Circle, District Swat

Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF DISMISSAL FROM SERVICE AND IMPOSITION OF MAXIMUM PENALTY

PRAYER:

On acceptance of this Appeal, the impugned order O.B. No. 42 dated 11/03/2015 may be set aside and the appellant be restored as Constable in Swat Police.

Respectfully Sheweth:

1. That the appellant was appointed as constable in the Police Department in 2007. At the time of dismissal from service, the appellant was performing his duties at Police Station Mingora District Swat.

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT SWAT.**

Service Appeal No. 368/2016

Date of Institution... 05.04.2016

Date of decision... 02.01.2018



Fayaz Ali son of Sardar Ali (Ex-Constable No. 914) R/O Village and Tehsil Charbagh
District Swat. ... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Provincial Police Officer Peshawar
and 3 others. ... (Respondents)

Barrister Adnan Khan,
Advocate

... For appellant.

MR. Kabir Ullah Khattak
Addl. Advocate General

... For respondents.

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

CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned
counsel for the parties heard and record perused.

FACTS:

2. The appellant was removed from service on 11.3.2015 due to his absenc,
against which he filed an application for reinstatement to the concerned authority which
was rejected on 25.6.2015 and thereafter, the appellant filed an appeal to the Regional
Police Officer on 7.7.2015 which was again rejected on 4.3.2016 and thereafter he filed
the present service appeal on 05.04.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that the impugned order has been
given retrospective effect which is a void order and no limitation shall run against void
order, which cannot be sustained in the eyes of law.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.

4. On the other hand, the learned AAG argued that the present appeal is time barred as the departmental appeal was also time barred. That there was no provision for the reinstatement application to the same authority. That the limitation would run from the impugned order dated 11.3.2015 for the purpose of departmental appeal. That the departmental appeal was filed almost four years after the original order. That all the codal formalities were fulfilled.

CONCLUSION

5. Without advertng to the merits of the case, the very order of removal from service has been given retrospective effect which is a void order. No limitation shall run against void order. This Tribunal in a number of cases has decided this issue on the basis of judgment reported as 1985-SCMR-1178.

6. As a sequel to above discussion void order cannot be sustained in the eyes of law and no limitation shall run against void order. Hence this appeal is accepted and the appellant is reinstated in service The department is however, at liberty to hold denovo proceedings within a period of ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to final outcome of denovo proceedings and if no denovo proceedings are initiated then the absence period may be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

Announced
02-01-2018

SD/- Niaz Muhammad Khan,
Chairman
Appellate Tribunal

SD/- M. Hamid Nigral,
Member

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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2002 P L C (C. S.) 268

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, Mian Muhammad Ajmal and Hamid Ali Mirza, JJ

GOVERNMENT OF N.-W.F.P. and others

versus

MALIK AMAN

Civil Appeals Nos. 108, 698,699,701 to 712, 849 to 861, 951 to 967, 971 to 975 and 1012 to 1017 of 2000, decided on 11th June, 2001.

(On appeal from the judgments of the N.-W.F.P. Service Tribunal, Peshawar dated 24-9-1998 passed in Appeal No.340/96, dated 26-1-2000 passed in Appeals Nos.348 and 349/98, dated 2-3-2000 passed in Appeals Nos.692 to 695 and 697 to 703 of 1998, dated 5-1-2000 passed in Appeal No.2740 of 1997, dated 7-2-2000 passed in Appeals Nos. 16, 20, 21, 42 to 51 of 1999, dated 18-1-2000 passed in Appeals Nos.261 to 265, 267 to 272, 274, 276 to 279 and 281 of 1999 and dated 8-3-2000 passed in Appeals Nos.420, 421, 425, 427, 433 and 434 of 1999).

(a) North-West Frontier Province Civil Servants Act (XVIII of 1973)---

--S. 2(1)(e)---Qanun-e-Shahadat (10 of 1984); Art.114---Constitution of Pakistan (1973), Art. 212(3)---Claim of civil servants to graded pay from date of initial appointment---Service Tribunal accepted appeals of civil servants holding them entitled to get graded pay from date of their appointments and arrears of pay from date of filing of departmental appeals---Validity---Civil servants were appointed on fixed pay basis as they did not possess basic qualifications at that time---Civil servants never raised any objection with regard to their fixed pay when they were employed or till the time they were awarded graded pay on acquiring requisite qualification---Having once accepted fixed pay for lack of requisite qualifications, civil servants were estopped by their conduct to claim graded pay from date of their initial appointments and they could not be allowed to contend set after a considerable long time---Supreme Court allowed the department's appeals.

Muhammad Riasat SET (Science) and others v. The Secretary of Education, Government of N.-W.F.P., Peshawar and 2 others 1997 SCMR 1626; Province of Sindh through the Secretary, Education Department, Karachi and 2 others v. Ghulam Rasul and 35 others 1976 SCMR 297 and N.-W.F.P. Government through Secretary Education, Peshawar and others v. Muhammad Qavi Khan 1996 SCMR 1011 ref.

(b) North-West Frontier Province Service Tribunals Act (I of 1974)---

----S. 4---Constitution of Pakistan (1973), Art. 212(3)---Limitation--Condonation of delay---Contention was that respondents' appeals filed before Service Tribunal were liable to be dismissed being hopelessly time-barred--Supreme Court condoned the delay, which was in some cases more than ten years, in the interest of justice and in view of the similarity of point involved, in other cases.

Imtiaz Ali, Addl. A.-G., N.-W.F.P. for Appellants (in C.As. Nos. 108, 698, 699 and 701 to 712, 849 to 861, 951 to 967 and 1012 to 1017 of 2000).

Jan Muhammad Khan, Advocate-on-Record for Appellants (in C.As. Nos.971 to 975 of 2000).

Jan Muhammad, Advocate-on-Record for Respondents (in C.As. Nos. 701 to 711 of 2000).

Fateh Muhammad Khan, Advocate-on-Record for Respondents (in C.As. Nos. 108, 698 and 699 of 2000).

Khushdil Khan, Advocate Supreme Court for Respondents (in C.As. Nos.849 to 861 of 2000).

Muhammad Asif, Advocate Supreme Court for Respondents (in C.As. Nos. 951 to 967 of 2000).

Imtiaz Ali, Addl. A.-G., N.-W.F.P. for Respondents (in C.As. Nos. 971 to 975 of 2000).

Muhammad Asif, Advocate Supreme Court for Respondents (in C.As. Nos. 1012 to 1017 of 2000).

Respondent in-person (in C.A. No.712 of 2000).

Date of hearing: 11th June, 2001.

JUDGMENT

MIAN MUHAMAMD AJMAL, J.---By this common judgment we propose to dispose of Civil Appeals Nos. 108, 698, 699, 701 to 712, 849 to 861, 951 to 967, 971 to 975 and 1012 to 1017 of 2000 as they involve identical questions of law and facts.

Facts of C.A. No. 108 of 2000.

Malik Aman respondent was appointed as S.V. untrained Teacher on fixed pay by the Divisional Director of Education (Schools), Peshawar vide order dated 15-10-1980. He was allowed graded pay w.e.f. 1-8-1988 vide order dated 31-10-1988 after he passed C.T. examination. He also passed M.A. examination from University of Peshawar in 1992. He filed departmental appeal on 16-1-1996 for grant of running pay and other benefits claiming that he was entitled to graded pay from the date of his appointment. His departmental appeal was not responded within the statutory period, as such, he filed Appeal No.340 of 1996 before the N.-W.F.P. Service Tribunal, Peshawar (hereinafter to be called the Tribunals), which was allowed vide impugned judgment dated 24-9-1998, the respondent was declared entitled to the graded pay w.e.f 15-10-1980 i.e. 'the date of his appointment and he was also held entitled to the arrears from the date of his departmental appeal. Feeling aggrieved the appellants/department preferred C.P. 256-P/98, wherein leave was granted by this Court on 16-3-2000 as under:--

"Mr. Imtiaz Ali, learned Addl. A.G. N.-W.F.P., in support of this petition contended with reference to the case of Muhammad Riasat S.E.T. (Science) and others v. The Secretary Education, Government of N.-W.F.P. Peshawar and 2 others (1997 SCMR 1626) that besides the service appeal being hopelessly time-barred, the learned Tribunal has erred to grant relief to the respondent ignoring the law laid down by this Court in the case of Muhammad Riasat (supra)

(1997 SCMR 1626) that the civil servants were entitled to graded pay with effect from the date of obtaining basic qualification prescribed for the post he is holding and not from the date of appointment when he was not possessed of such prescribed qualification.

In the case of Muhammad Riasat (supra), this Court has held that the civil servants who had accepted the terms and conditions initially offered to them wherein they were entitled to a fixed pay of the scale without any increment and since he had attained the basic qualification from a specific date, he would be entitled to the graded pay with effect from the date he had acquired the basic qualification (in that case of B.Ed Examination) and not from the date of initial appointment on temporary basis.

Leave to appeal is granted to consider whether the learned Service Tribunal was not justified to follow the law laid down by this Court on the subject in the case of Muhammad Riasat (supra) (1997 SCMR 1626). "

Almost same is the position in connected Civil Appeals Nos.698, 699, 701 to 712, 849 to 864, 951 to 967 and 1012 to 1017 of 2000.

In Appeals Nos.971 to 975/2000, the appeals of the private appellants before the Tribunal were accepted as under:--

"On factual side, the appellants have got sufficient teaching experience at their credit. According to the authority of the Hon'ble Supreme Court of Pakistan 1976 SCMR page 297, no distinction can be made between a trained and untrained teacher with regard to the graded pay. Moreover, according to the Hon'ble Supreme Court of Pakistan, if an employee is made to work against a particular post, he is entitled to all the monetary benefits' attached therewith. The question of graded pay has been thoroughly thrashed by this Tribunal and the judgments have been upheld by the Supreme Court, of Pakistan. The reply of the respondent-department has got no cogent objection except the trained and untrained. If a person has qualified the basic requirement for a post from a certain date, he is fully entitled for the award of graded pay from the date of qualification and in other cases; the person holding the post is entitled to the pay of the post and not fixed pay. A civil servant who is made to work against a particular post is fully entitled to all the benefits attached to that post. So with these observations, the appeals in hand as well as the connected 10 appeals are accepted as prayed for, with no arrears and no advance increments. No order as to costs. File be consigned to the record."

Feeling aggrieved, the appellants challenged the, above decision of the 3J Tribunal before this Court through Petitions for Leave to Appeals Nos.301-P to 305-P of 2000, wherein leave was granted as under:--

"This order will dispose of C.Ps. 301-P to 305-P/2000. All these civil petitions call in question the legality of the order of the learned Service Tribunal whereby on the one hand they had been held entitled to graded pay from the date of induction in service as prayed for in the petition and on the other they were not given arrears and advance increments from the said date.

Learned counsel for the petitioners stated that this is contradictory order itself, because what was given on one hand has been taken on the other. He stressed that the petitioner should have been given all the benefits of graded pay from the date of joining the service. He referred to C.P. 170-P/2000 to C.P. 180-P/2000 and submitted that leave has been granted in the above cases on the same points. We also grant leave in these petitions to consider the above submission and also for the reasons given in the leave granting order of the other connected petitions."

Civil Appeals Nos.703 to 705 and 712 of 2000 are barred by time by 16 days and 92 days, respectively.

2. Learned Additional Advocate General contended that the appeals of the respondents were hopelessly time-barred from the date of their appointments as they approached the Tribunal after the lapse of long time, in some cases it is more than ten years, therefore, their appeals were liable to be dismissed on this score alone. He submitted that when they were employed in service they were untrained and did not possess the requisite qualifications for the posts, therefore, they were appointed on fixed pay as reflected in their letters of appointment. They on acceptance of the terms and conditions of their employment joined the service. They were granted graded pay after they acquired the requisite qualifications. They were estopped by their conduct to claim graded pay from the date of their initial appointment as they had accepted the terms and conditions of service when they were initially appointed. He urged that respondents were rightly given graded pay on acquiring the requisite qualifications for the post held by them. Reliance was placed on the case of Muhammad Riasat, SET (Science) and others v. The Secretary of Education, N.-W.F.P. Peshawar and 2 others (1997 SCMR 1626), wherein it has been laid down that the teachers were entitled to graded pay with effect from the date they attained basic qualification for the post and not from the date of initial appointment on temporary basis.

3. On the other hand, learned counsel for the appellants in C.As. 971 to 975 and respondents in other appeals, contended that no doubt respective appellants and the respondents were untrained teachers till they acquired the requisite qualification, whereupon they were allowed graded pay from the date they qualified the training course, however, they served as teachers and discharged full duties like trained teachers, as such, they were entitled to running pay alongwith annual increments and other service benefits. Reliance was placed on Province of Sindh through the Secretary, Education Department, Karachi and 2 others v. Ghulam Rasul and 35 others (1976 SCMR 297) and N.-W.F.P. Government through Secretary Education, Peshawar and others v. Muhammad Qavi Khan (1996 SCMR 1011)

4. In the interest of justice and similarity of the point involved in all the cases, the delay in filing Civil Appeals Nos.703 to 705 and 712 of 2000 is condoned.

5. After hearing the learned counsel for the parties and going through the record of the case, we are inclined to follow the law laid down in Muhammad Riasat's case, supra as the learned Bench, after examining the divergent decisions rendered in C.P. 204-P, 205-P of 1991 and C.P 288-P of 1993 (1996 SCMR 1011) and relying on page 1005 placitum H given in Federation of Pakistan v. Shahzada Shahpur Jan and others (1986 SCMR 991), held as under:--

"that in the circumstances of these cases the petitioners in all these petitions had accepted the terms and conditions initially offered to them wherein they were held entitled to a fixed pay of the scale without any increment. Since they have attained the basic qualification from a specific date, they are entitled to the graded pay with effect from the date they had passed their B.Ed. Examination and not from the date of initial appointment on temporary basis. The learned Service Tribunal was, therefore, correct to hold that the petitioners were not entitled to the graded pay with effect from the date of their appointment and that they could claim the graded pay with effect from passing their B.Ed. Examination. This finding of the learned Tribunal does not suffer from any infirmity of the kind warranting our interference under Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973."

It is an admitted fact that the respondents at the time of their initial appointment did not possess the basic qualification for the post and they accepted the terms and conditions of their service whereby they were employed on fixed pay. They never raised any objection with regard to their fixed pay

when they were employed or till the time they were awarded graded pay on acquiring the requisite qualification. Once the respondents had accepted the fixed pay for the lack of requisite qualification, they were estopped by their conduct to claim graded pay from the date of their initial appointment and they cannot be allowed to take a turn after a considerable long time to say that they were entitled to the graded pay from the date of their initial appointment though they were not qualified for the same.

6. Consequently, we allow appeals filed by the department and dismiss that of the private appellants i.e. C.As. 971 to 975/2000. In C.A. 962/2000 C as the respondent has not acquired the requisite qualification so far, therefore, the impugned judgment to his extent is set aside and he is declared to be not entitled to the graded pay. No order as to costs.

S.A.K./G-86/S

Order accordingly.