

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

01.02.2021

Nemo for parties.

Muhammad Riaz Khan Paindakhel, 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

06.10.2021

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

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*

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(B) *amin*
Appellant through Counsel

Adnan Khan
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 PAKHTUKHWA, PESHAWAR**

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

..... *Appellant*

VERSUS

- 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.**

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 responded 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.

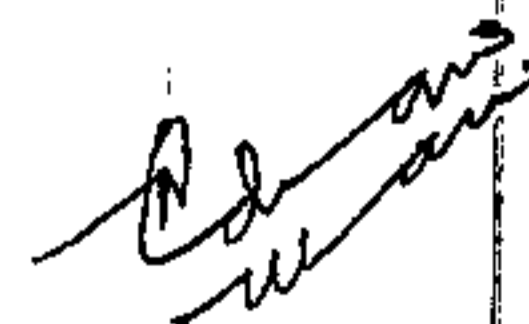
Therefore, it is humbly prayed that on acceptance of this appeal, the impugned order be set aside and the appellant be reinstated in service with all back benefits. Any other remedy though may not specifically prayed for but which canons of justice would demand may also be granted.

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

7

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

GROUNDS:

- 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

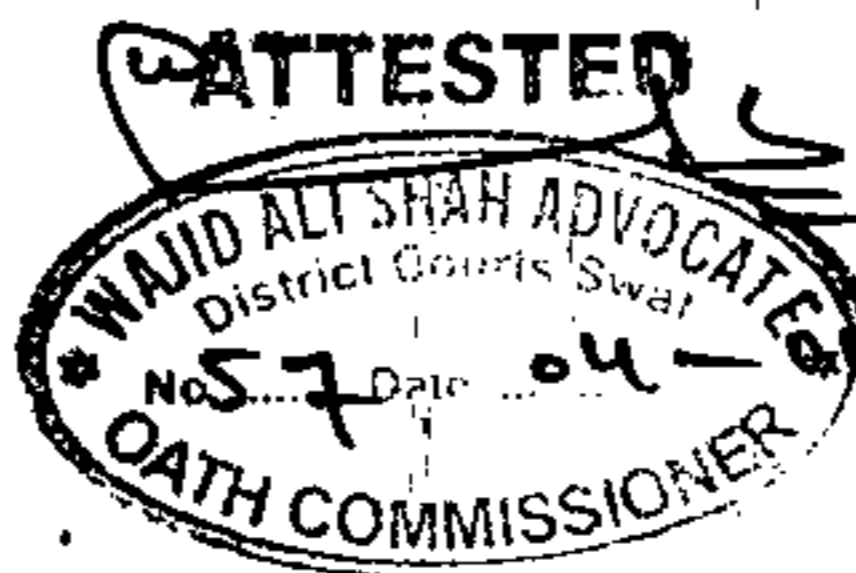


Dr. Adnan Khan, Barrister-at-Law

DEPONENT



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

Adnan Khan

Dr. Adnan Khan, Barrister-at-Law

DEPONENT

Bakht Amin

Bakht Amin



(11)

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

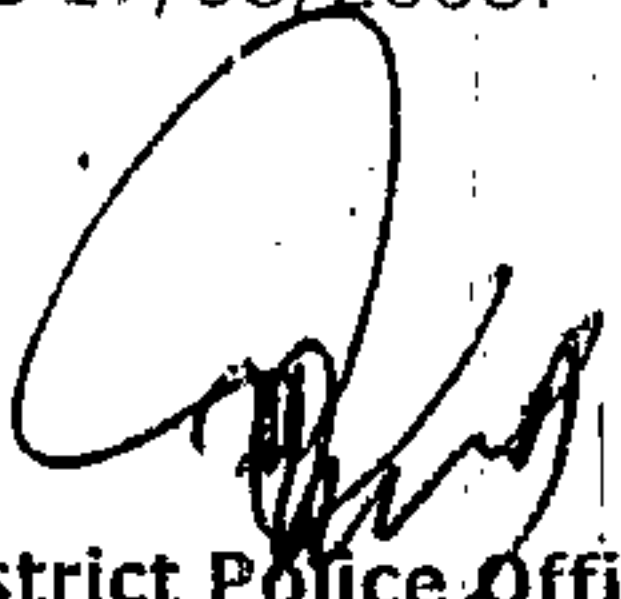
ORDER

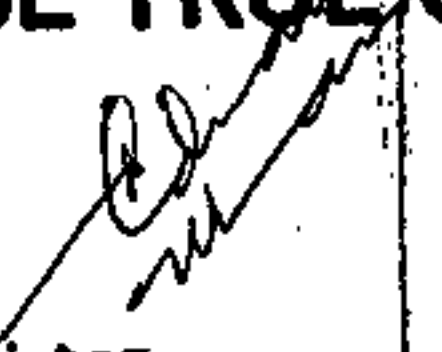
This order will dispose off the enquiry initiated against Constable Bakht Amin No.871 of Police Station Matta absented himself from duty with effect from 17/08/2008 till to date vide D.D No. 09 dated 17/08/2008 followed by D.D No. 12 dated 11/10/2010 of Police Line without any prior permission or leave. 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

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.

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

2388
No. 2388 /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

[Signature]
Barrister
Dr. Adnan Khan
Advocate High Court

ORDER

(14)

314
Date 7/3/2016

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/ORSI/PO
for u/a.

SP/FRP micd Range, Swat
7/3/2016
No. 1977/EC, dated Peshawar the 04/03/2016

J. Amin
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**

Adnan Khan
Barrister
Dr. Adnan Khan
Advocate High Court

OBNO 123
7-3-016

[Faint signature and stamp]

(15)

407
31/3/16

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 solder 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.

J. Amin
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/OAS/PO

For n/a

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SP/FRP Malakand Range Swat
31/3/2016

Adnan Khan
Barrister
Advocate High Court

ابن عالی!
بندگورہ با 11 جولاءِ حکیم میر بازا اس دفتر کو الٹر 178
وقف 29/3/16 کو دوبارہ ملازمت پر بحال کرنے کا فیصلہ ہو گیا ہے
48 ایلان کرنے پر بلاؤن نمبر 777 میں پوسٹ کیا گیا ہے
Shahid Khan
N-0551

16

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 his 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.

Handwritten notes in Urdu:
کے لئے 4730 کے بارے میں
3-23-15
3581
کے لئے 4730 کے بارے میں
کے لئے 4730 کے بارے میں

No. 1987/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.

[Signature]
28/12/2015

CERTIFIED TO BE TRUE COPY

[Signature]
Barrister
Dr. Adnan Khan
Advocate High Court

NOTIFIED TO
TRUE COPY
[Signature]
Barrister
Dr. Adnan Khan
Advocate High Court

ORDER

17

16

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
Date - 1-10-15

OB/8782/EC/170
For n/a
SP FRP SWAT
29/09/15.

CERTIFIED TO
BE TRUE COPY

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

ORDER

Swat
No. 309
Date: 4/3/16

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/CAS/EC/PO
For n/a

SP, FRP/SWAT
04/03/16

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.

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Barrister
Dr. Adnan Khan
Advocate High Court

OB-123

19

ORDER

new 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 21.02.2009. 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.

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

No. 7659 /EC dated Peshawar the 9 / 09 / 2015.

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

Encl - 5 / Record
Enquiry Side

OB/AS/EC/PO
For: 21/9
[Signature]
SP FRP SWAT
14/09/2015

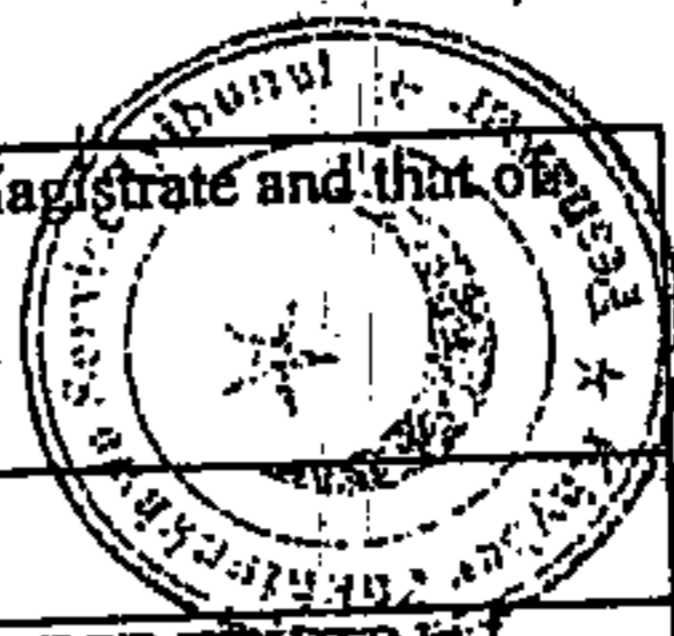
OB No. 318
Date: 14/09/2015

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[Signature]
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">BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL CAMP COURT SWAT</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">MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</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

**RETURNED TO
SENDER**

[Signature]

Secretary
Khyber Pakhtunkhwa
Service Tribunal


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

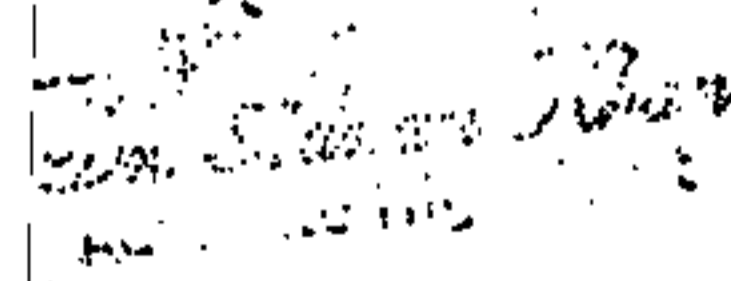
ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Barrister
Dr. Adnan Khan
Advocate High Court

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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.

Announced
02.01.2017

M. Azim Khan Afridi
Chairman
Civil Court Sialkot

Ahmad Hassan
Member

Certified to be true copy
EXAMINER
Khushwant Singh
Service of Documents
Peshawar

Date of Presentation of Application: 10-01-2017
Number of Words: 1600
Copying Fee: 10-00
Urgent: 2-2
Total: 12-00
Name of Copyist: *AKM*
Date of Completion: 10-01-2017
Date of Delivery of Copy: 10-01-2017

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Advocate High Court

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Adnan Khan
Barrister
Dr. Adnan Khan
Advocate High Court

آداب۔ لہذا از آداب گزارش ہے کہ سائل سوات پولیس میں بطور کانسٹیبل
سراجام رہا تھا چونکہ کچھ نامساعد ملکی حالات اور گوریلوں حالات
کیوجہ سے سائل مجبوراً ڈیوٹی سے غیر حاضر رہا۔ جس کا سائل کو انتہائی افسوس
اور دکھ ہے چونکہ یہ جو کچھ ہوا تھا انتہائی مجبوری اور حالات کی نراکت
کے تحت ہوا تھا۔

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

صاحب عالی! میرا سابقہ سرورس ریکارڈ خدا کے فضل و کرم سے صاف
جس کا آپ صاحبان پر یہ کر سکتے ہیں اور آئندہ بھی محتاط رہوں گا۔
لہذا سائل آپ صاحبان سے ہمدردانہ اپیل کرتا ہے کہ سائل کے معصوم
بچوں / لڑھھے 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 تاحیات دعا گو رہیگا۔

العارض!
سرکھانہ لوفروان کانسٹیبل نجات آفس (B) 871 سوات پولیس

تاریخ: 26/17/17

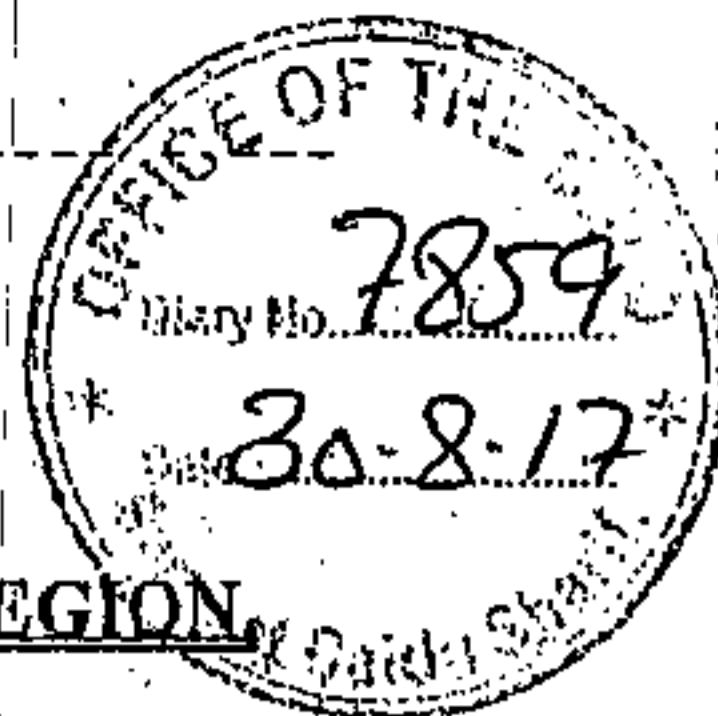
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BE TRUE COPY

Barrister
Dr. Adnan Khan
Advocate High Court

Ann "E"

24



**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

(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.

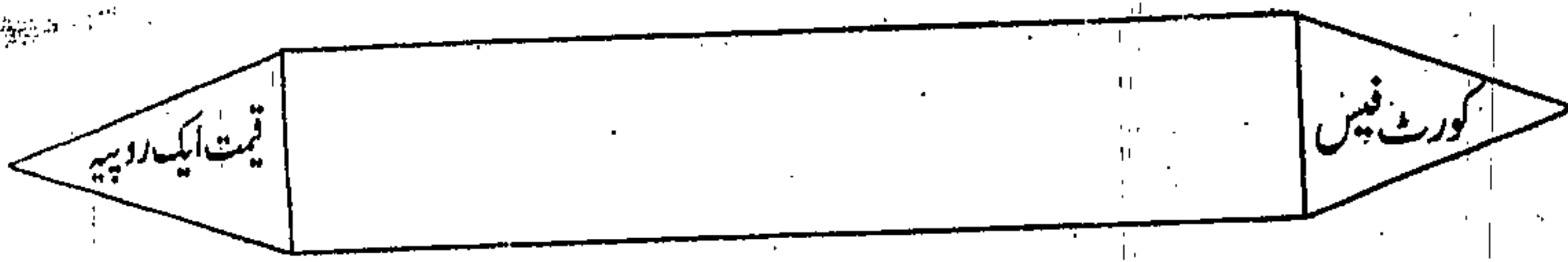
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BE TRUE COPY**

Barrister
Dr. Adnan Khan
Advocate High Court

OASI/EC.
Fr margin.
D/O S/S,
30/8/17

OASI
informed s. no. 2, 3 and
6 about their
appeals and report.
Ker

بعدالت حیدر خٹوخواہ کروکس ٹریبونل چاور



مورخہ 2 صوری 18 منجانب اسٹیلانٹ
 مقدمہ محنت امین بنام حکومت و غیرہ
 دعویٰ سروکس اپیل جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام مسا اور کیمپ کورٹ سوانٹ کیلئے سروسز اور اکثر عدالتاں مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جو اب 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 برداشت منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ و ہرجانہ التوائے 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 17

بسم اللہ الرحمن الرحیم

العبد گواہ شدہ العینہ
 Attested & Accepted

بمقام منگورہ سوات / چاور

کے لئے منظور ہے



Dr. Adnan Khan
 Barrister
 High Court

03449992393

کنت امین ولد غرغان
 15602.0492973-9

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)

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District Police Officer, Swat
(Respondent No.03)

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.

GROUNDS

- 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)



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

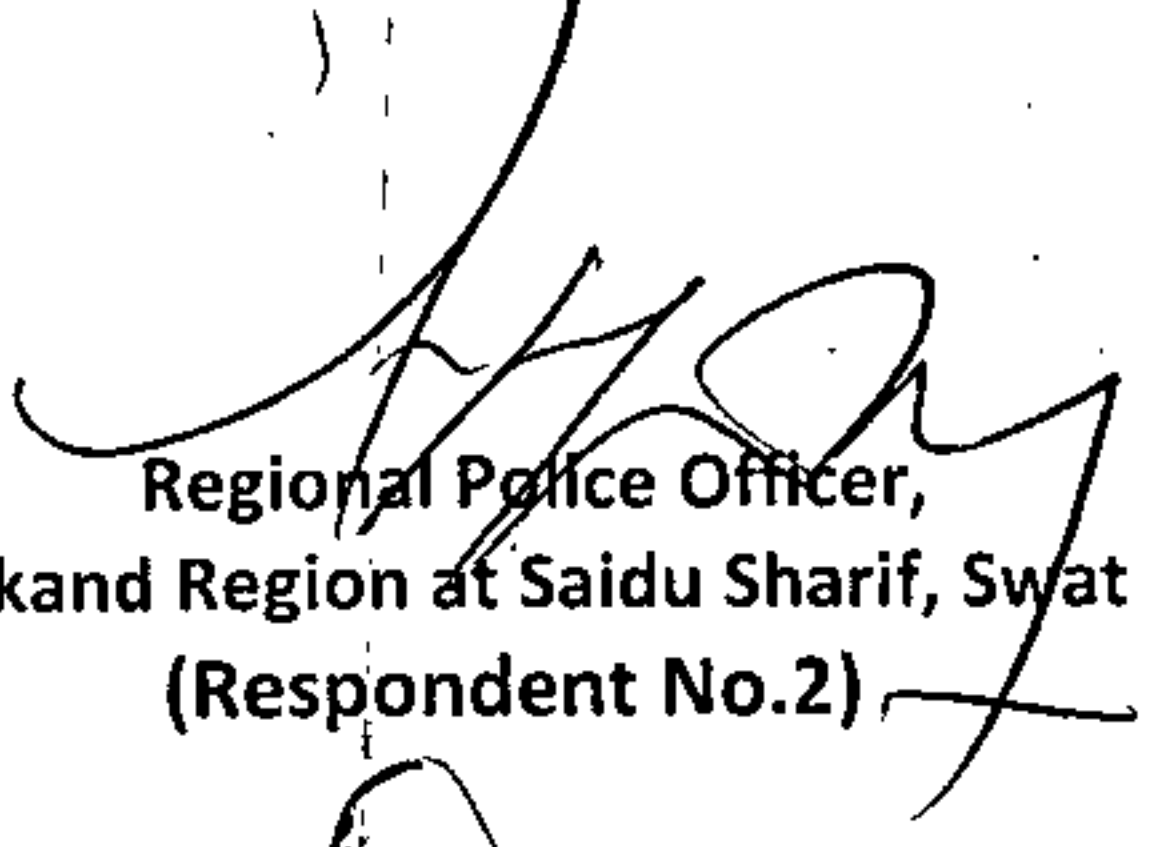
1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
3. District Police Officer, Saidu Sharif, Swat
4. DSP, Legal Swat Police at Saidu Sharif Swat.

----- (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)

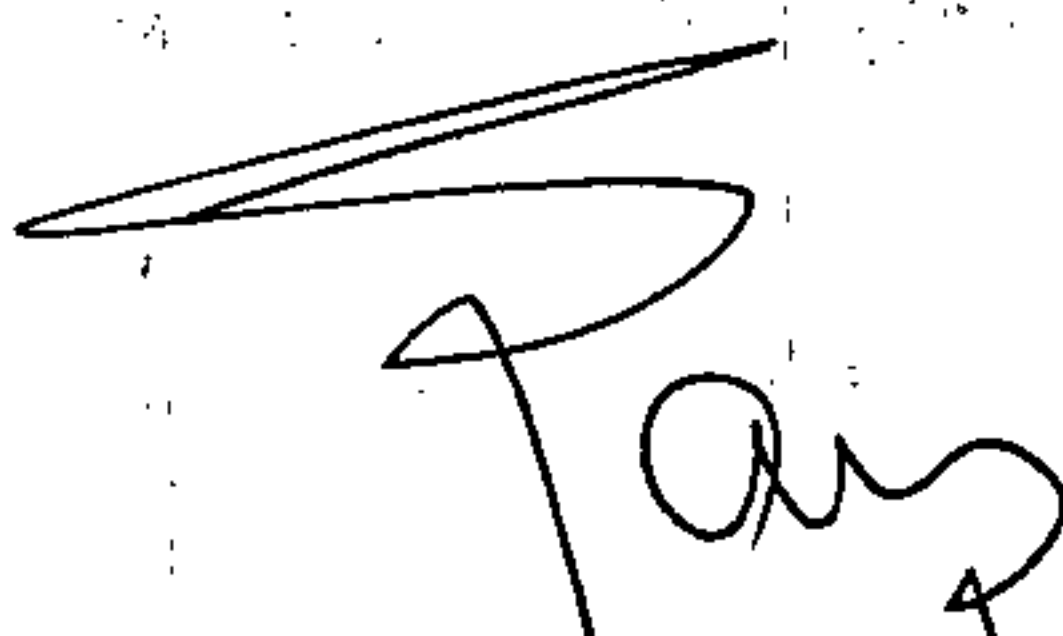
Versus

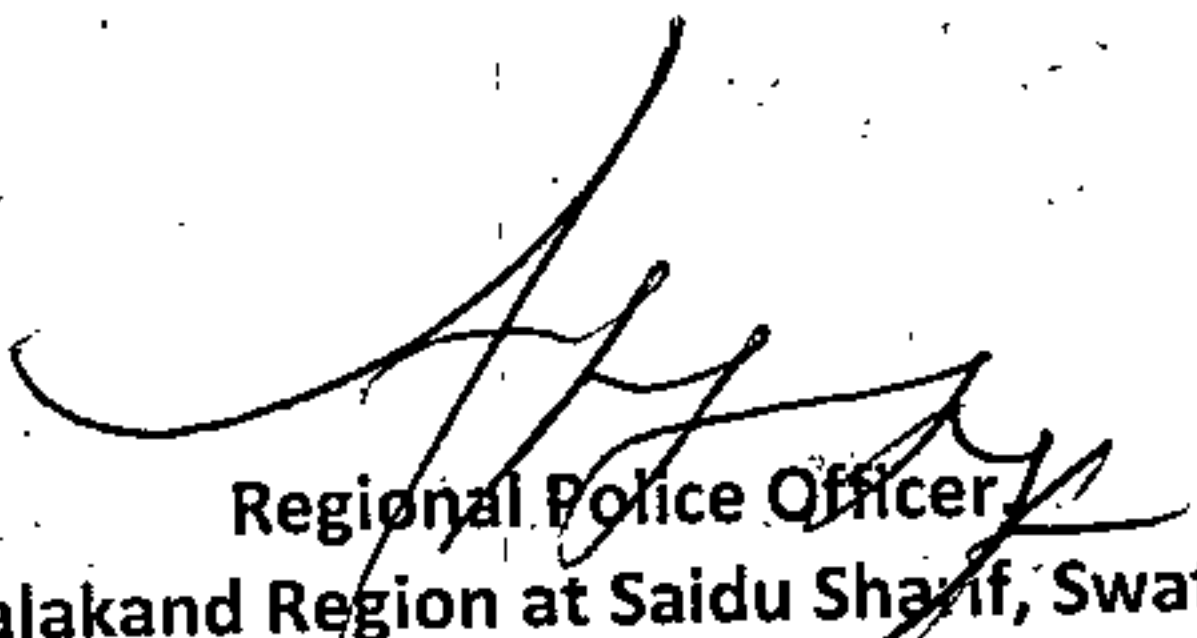
1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
3. District Police Officer, Saidu Sharif, Swat.
4. DSP, Legal Swat Police at Saidu Sharif Swat.

----- (Respondents)

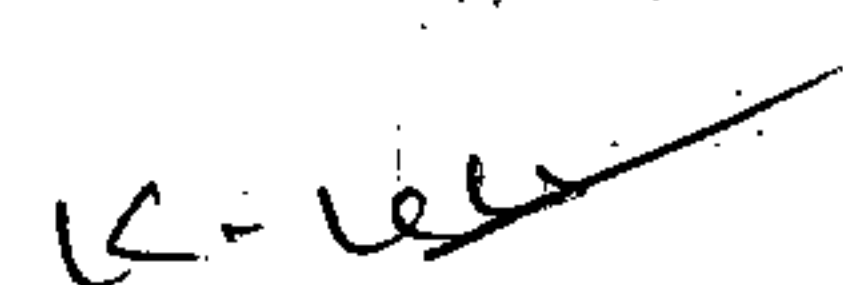
AUTHORITY LETTER

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)