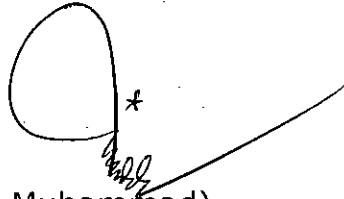


08.09.2022

Appellant in person present. Mr. Zewar Khan, Inspector (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 06.10.2022 before the D.B at Camp Court Swat.



(Mian Muhammad)  
Member (Executive)  
Camp Court Swat



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

06.10.2022

Appellant alongwith his counsel present. Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for respondents present.

Learned counsel for the appellant sought adjournment on the ground that he is proceeding for appearance in cases fixed in the august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat. Adjourned. To come up for arguments on 09.11.2022 before the D.B at Camp Court Swat.



(Rozina Rehman)  
Member (J)  
Camp Court Swat

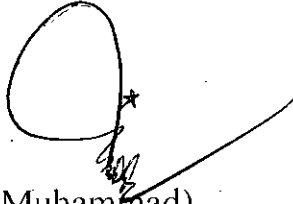


(Salah-Ud-Din)  
Member (J)  
Camp Court Swat

8<sup>th</sup> June, 2022

None for the appellant present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Ali Rehman, SI for respondents present.

Counsel are on strike. To come up for arguments on 07.07.2022 before the D.B at camp court Swat.



(Mian Muhammad)  
Member(E)



(Kalim Arshad Khan)  
Chairman  
Camp Court Swat

07.07.2022

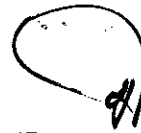
Appellant present through counsel.

Noor Zaman Khattak, learned District Attorney Ali Rehman SI for respondents present.

Former made a request for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 03.08.2022 before D.B at Camp Court, Swat.



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



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

3.8.22

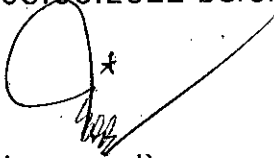
*Due to summer vacation the case is adjourned to 3.9.22 for the same.*



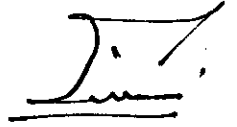
10.05.2022

Clerk of learned counsel for the appellant present. Mr. Zewar Khan, Inspector (Legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat. Adjourned. To come up for arguments on 08.06.2022 before the D.B at Camp Court Swat.



(Mian Muhammad)  
Member (E)  
Camp Court Swat



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

09.02.2022

Tour is hereby canceled .Therefore, the case is adjourned to 06.04.2022 for the same as before at Camp Court Swat.



Reader

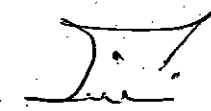
06.04.2022

Clerk of counsel for the appellant present. Mr. Zewar Khan Inspector (Legal) alongwith Mr. Muhammad Riaz Khan Paindakheil, Assistant Advocate General for the respondents present.

Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is unable to attend the Tribunal today due to strike of lawyers. Adjourned. To come up for rejoinder, if any, as well as arguments on 10.05.2022 before the D.B at Camp Court Swat.



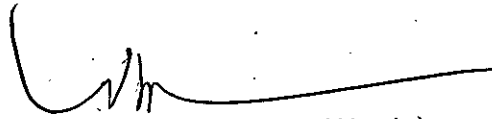
(Rozina Rehman)  
Member (J)  
Camp Court, Swat

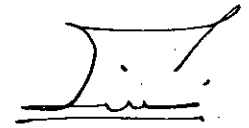


(Salah-Ud-Din)  
Member (J)  
Camp Court Swat

02.11.2021

Appellant in person present. Mr. Lal Bahadar, S.I (Legal) alongwith Mr. Riaz Ahmed Painsdakhel, Assistant Advocate General for the respondents present and sought time for submission of reply/comments. Adjourned. To come up for submission of reply/comments as well as arguments before the D.B on 04.01.2022 at Camp Court Swat.

  
(Atiq-Ur-Rehman Wazir)  
Member (E)  
Camp Court Swat

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

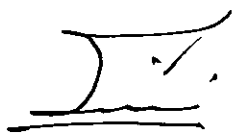
04.01.2022

Appellant in person present. Mr. Zewar Khan, Inspector (Legal) alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Para-wise reply on behalf of respondents No. 1 to 3 submitted, which is placed on file and copy of the same is handed over to the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments before the D.B on 07.03.2022 at Camp Court Swat.





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

8A of Government Servants (E&D) Rules, 1973 was to be involved for disciplinary action against the appellant. It appears from the mode and manner of the impugned order that the procedure as provided for disciplinary action in case of wilful absence was not followed. If the department fails to rebut the said presumptions as to omission in following the procedure under Rule 8A of Government Servants (E&D) Rules, 1973, the question as to voidness of impugned order becomes relevant. Let the appeal be fully heard by the D.B. The appeal is, therefore, admitted to full hearing, subject to question of limitation and all other just objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office at Peshawar within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 02.11.2021 before the D.B, at camp court, Swat.

Appellant Deposited  
Security & Process Fee

*[Handwritten signature]*  
7/11/21

*[Handwritten signature]*  
Chairman  
Camp court, Swat

671/20

24.08.2021

Counsel for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant contends that in light of definition of competent authority under Section 2(a) of the NWFP Removal from Service (Special Power) Ordinance, 2000, the powers of the competent authority vest in the Chief Minister and the authority other than the Chief Minister can act as competent authority only under the delegated powers of the Chief Minister. He further contends that action taken against the appellant comes from the DPO Dir Upper and unless it is proved that the DPO was delegated with powers of competent authority by the Chief Minister, the disciplinary proceedings conducted under his direction within the meaning of RSO 2000 are void. He further contends that no limitation runs against the void order. I am afraid to give consideration to the contentions as aforesaid. The appellant cannot take benefit of interpretation of the law for condonation of delay, therefore, the said contentions are not workable, as far as the question of limitation is concerned. However, it appears from the impugned order that the appellant was proceeded against under RSO on the ground of his absence from duty and reference to the findings of the enquiry committee is given in the impugned order that the appellant had proceeded abroad to Saudi Arabia for labour. The ground of wilful absence is not covered under Section 3 of RSO 2000. When there was no provision in RSO 2000 dealing with wilful absence, then Rule

7-1-2021

due to COVID, 19, the case is adjourned  
to 4-3-2021 for the same.



04.03.2021

Appellant present through counsel.

He made a request for adjournment. Adjourned. To  
come up for preliminary hearing on 6/5/2021  
before S.B at Camp Court, Swat.



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

26.07.2021

To come up for preliminary hearing on 24.08.2021  
before S.B at Camp Court, Swat. Notices be issued to  
appellant/counsel for the date fixed.



Chairman



04.06.2020

Due to Covid-19, the case is adjourned. To come up for the same on 09.07.2020, at camp court Swat.

  
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09.07.2020

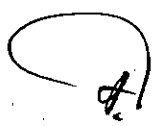
Bench is incomplete. Therefore, the case is adjourned. To come up for the same on 10.09.2020, at camp court Swat.

  
Reader

10.09.2020

Nemo for appellant.

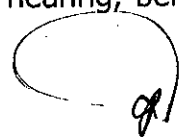
Notice be issued to appellant and his counsel for 05.11.2020 for preliminary hearing, before S.B at Camp Court, Swat.

  
Member (J)  
Camp Court, Swat

05.11.2020

Appellant present through representative.

Lawyers are on general strike, therefore, case is adjourned to 07.01.2021 for preliminary hearing, before S.B at Camp Court, Swat.

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

Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 671 /2020


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/01/2020	<p>The appeal of Mr. Mujahid Khan received today by post may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. decrease</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 27/1/2020</p>
2-	05.03.2020	<p>This case is entrusted to touring S. Bench at Swat for preliminary hearing to be put up there on <u>05/03/2020</u></p> <p style="text-align: right;"><i>[Signature]</i> MEMBER</p> <p>Learned counsel for the appellant present and seeks adjournment. Adjourn. To come up for preliminary hearing on 05.05.2020 before S.B at Camp Court, Swat.</p> <p style="text-align: right;"><i>[Signature]</i> Member Camp Court, Swat.</p> <p><i>Due to corona virus tour to camp court swat has been cancelled. To come up for the same on- 04/06/2020</i></p> <p style="text-align: right;"><i>Revised.</i></p>

The appeal of Mr. Mujahid Khan son of Qadar Khan r/o and Post Office Akhgram Ex-Constable received today i.e. on 02.01.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

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

No. 17 /S.T,

Dt. 7-1- /2020.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Muhammad Javaid Khan Adv.  
High Court Swat.

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

Service Appeal No. 671 /2020

Mujahid Khan

.....Appellant

**VERSUS**

Provincial Police Officer Government of Khyber Pakhtunkhwa and

others

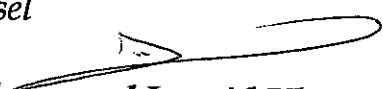
..... Respondents

**INDEX**

S. #	Description of Documents	Annexures	Pages
1.	Service Appeal		1-9
2	Affidavit		10
3	Addresses of the Parties		11
4.	Copy of order Dated 14/11/2009	A	12
5	Copy of Departmental Appeal Dated 30/09/2019	B	13
6	(Copy of Jugments of Superior Courts	"C"	14-23
7	Copy of jugments of Superior courts	"D"	24-25
8	Power of Attorney		26-27
9	Wakalat Nama		28

**Appellant**

Through Counsel

  
**Muhammad Javaid Khan**  
Advocate Supreme- Court  
Office: Allah-o-Akbar Masjid,  
College Colony, Saidu Sharif, swat  
Cell: 0343-9607492

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

Khyber Pakhtunkhwa  
Service Tribunal

Service Appeal No. 671 /2020

Diary No. 66

Date 2-1-2020

Mujahid Khan S/o. Qadar Khan Resident of Village & P/O  
Akhgram, Akhgram, Tehsil Wadh Sub District Khuzdar (Ex-  
Constable)

.....Appellant

**VERSUS**

- 1) Provincial Police Officer Govt. of Khyber Pakhtunkhwa at  
Central Police Office (CPO) Peshawar.
- 2) Regional Police Officer / DIG Malakand Renge at Saidu Sharif,  
District Swat
- 3) District Police Officer Dir Upper at Dir Khas

ل. ا. ا. ا.

.....Respondents

Appeal Under Section 4 of Service

Filed to-day

Registrar

2/01/20

Tribunal Act read with other relevant  
provisions against the impugned order No. 611

Re-submitted to -day  
and filed.

Registrar

27/1/2020

dated 14/11/2009 issued by respondent No.3,  
whereby the appellant was dismissed from  
service illegally, unlawfully and  
unconstitutionally.

PRAYER:

On acceptance of this service appeal the impugned order No. 611 Dated: 14/11/2009 issued by respondent No.3 may kindly be declared illegal, unlawful and unconstitutional and the appellant may be reinstated in service with all back benefits since 14/11/2009 OR in the alternative, the respondents may be directed to decide the service appeal of the appellant by deciding firstly issue of limitation (being mixed question of facts and law), after pro and contra evidence and then decide the case of the petitioner on merits.

ایف ایل

Any other relief, deemed fit and necessary in the given circumstances of the case may also be awarded in favor of appellant against respondents.

---

Respectfully Sheweth:

The appellant submits as under:

1. That the appellant was appointed as a Constable in the Police Department on 25/01/1995.
2. That from the date of appointment to July, 2009, the appellant performed his duties honestly, bravely (specially during the era of insurgency) to the utmost satisfaction of superior officers.
3. That the appellant went on leave with pay from 14/07/2009 vide OB No. 87.
4. That the appellant then went to Saudi Arabia for earning his livelihood (due to poor monetary position).
5. That the appellant then returned to Pakistan after 27 months, and after six months went back. In this intervening period no notice was received by the appellant nor issued to the appellant by the

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respondents in respect of any sort of enquiry.

6. That then the appellant again came back to Pakistan after sixteen months and after spending six months here in Pakistan, went back again to Saudi Arabia, here appellant was told that he has been suspended and enquiry is pending against him, but no notice was issued nor received in this period.
7. That the appellant again came back to Pakistan after spending fifteen months in Saudi Arabia. In this period not notice was issued nor received by the appellant.
8. That again appellant spent once again fifteen months in Saudi Arabia, came back for six months, still no notice was issued nor received by the appellant in respect of any enquiry or other proceedings.



(S)

9. That lastly, after spending another eleven months in Saudi Arabia, the appellant came back to Pakistan on 02/06/2019 and enquired from the respondent No.3 office in respect of enquiry / proceedings against appellant in the month of September, 2019.

The appellant was told that he was dismissed from service vide order dated 14/11/2009. (Copy of the order dated 14/11/2009 is attached herewith as annexure "A")

10. That the appellant then filed a departmental appeal on 30/09/2019 before respondent No.2. (Copy of the departmental appeal dated 30/09/2019 is attached here with as annexure "B")

11. That departmental appeal has not been decided up till now despite the passage of three months, hence this service appeal is

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filed inter alia on the following grounds  
amongst others.

**GROUND:**

i) That the impugned order dated:  
14/11/2009 is illegal, unlawful,  
unconstitutional, void ab initio and  
liable to be set aside.

ii) That the DPO Dir Upper at that time  
was not declared as competent  
authority under the removal from  
Service Special Power Ordinance,  
2000 by the Chief Minister or  
Governor, hence the proceedings  
initiated and the dismissal order  
passed by the DPO Dir Upper at that  
time was without lawful authority /  
without jurisdiction, hence void ab-  
initio.

با رضایت

iii) That no limitation run against a void order. In this regard wisdom may be drawn from the judgments of the August Superior Court of Pakistan, PLC 2019 CS Page 928, SCMR 1991, Page 640, SCMR 2007 Page 834.

(Copies of the judgments are attached herewith as annexure "C")

iv) That the dismissal order was never sent to the appellant, hence on this score alone no limitation will run against the departmental appeal as well as the service appeal of the appellant.

v) That the dismissal order has been passed illegally and unlawfully by ignoring the long sixteen years service of the appellant. In this regard wisdom may be drawn from the judgment of the Supreme Court of

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8

Pakistan, reported as PLC CS 2019

Page 111. (Copy of the judgment is attached herewith as annexure "D")

vi) That other grounds not specifically raised will be argued with the permission of this Honorable Court at the time of arguments.

12. That this appeal is being filed against the order No. 611 Dated: 14/11/2009 issued by respondent No.3, hence this Honorable Tribunal has got the jurisdiction.

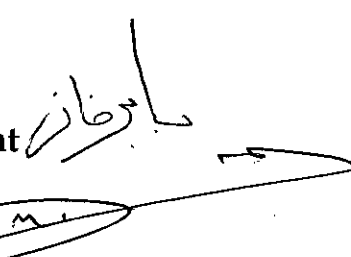
It is therefore humbly prayed that on acceptance of this service appeal the impugned order No. 611 Dated: 14/11/2009 issued by respondent No.3 may kindly be declared illegal, unlawful and unconstitutional and the appellant may be reinstated in service with all

بایضاح

back benefits since 14/11/2009 OR in the alternative, the respondents may be directed to decide the service appeal of the appellant by deciding firstly issue of limitation (being mixed question of facts and law), after pro and contra evidence and then decide the case of the petitioner on merits.


Any other remedy which is just, appropriate and efficacious may also be awarded in favor of the appellant please.

Appellant  
Through Counsel



**Muhammad Javaid Khan**  
Advocate, Supreme Court of  
Pakistan

BEFORE THE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA, PESHAWAR

Service Appeal No. \_\_\_\_\_/2019 

Mujahid Khan .....Appellant

**VERSUS**

Provincial Police Officer Government of Khyber Pakhtunkhwa and  
others.....Respondents

AFFIDAVIT

I, Babar Khan S/o Khayasta Bar Khan R/o Akhagram, Post  
Office Akhagram, Tehsil Warhi, District Dir Upper, Dir, do hereby  
solemnly affirm and declare on oath that all the contents of this  
Service Appeal are true and correct to the best of my knowledge and  
belief, and nothing has been concealed from this Honorable Court.

Identified by,



Muhammad Javaid Khan  
Advocate, Supreme Court of Pakistan

DEPONENT



Babar Khan

BEFORE THE SERVICE TRIBUNAL KHYBER  
PAKHTUNKHWA PESHAWAR

Service Appeal No. \_\_\_\_\_/2020

Mujahid Khan .....Appellant

**VERSUS**

Provincial Police Officer Government. of Khyber Pakhtunkhwa and  
others.....Respondents

MEMO OF ADDRESSES

ADDRESS OF THE APPELLANT:

Mujahid Khan S/o Qadar Khan Resident of Village & P/o  
Akhgram, Akhgram, Tehsil Wadh Sub District Khuzdar (Ex-  
Constable) *Mic: 157025-303909-9*

*No: 0314-9929503*  
ADDRESSES OF THE RESPONDENTS:

- 1) Provincial Police Officer Govt. of Khyber Pakhtunkhwa at  
Central Police Office (CPO) Peshawar.
- 2) Regional Police Officer / DIG Malakand Renge at Saidu Sharif,  
District Swat
- 3) District Police Officer Dir Upper at Dir Khas

APPELLANT  
THROUGH COUNSEL



Muhammad Javaid Khan  
Advocate, Supreme Court of Pakistan

611 ORDER

Constable MUJahid No. 418, while posted in Police Station Wari absented himself with effect from 17.6.2009 till to date without any leave or prior permission from the high ups. which is gross misconduct and against the discipline of the force.

He was served with Charge Sheet and Summary of allegation vide this office Emst: NO 3145-46/EC, dated 7-9-2009. An enquiry Committee comprising Mr. Khan Zahir Khan SDO Wari and Mr. Abdul Rehman Khan SHO PS: Gramdiga was constituted to enquiry into the matter.

However the defaulter constable did not appear before the said committee for recording his statement. The committee in its finding report stated that the defaulter constable is not present in his home he has gone to Saudi Arabia for labor. The enquiry committee also stated that he is not ready for further service in Police Department. and recommended him for major punishment.

Keeping in view the above facts defaulter Constable MUJahid No. 418 he is hereby dismissed from service under Section 3(a) of the NWFP removal from service (Special Power) ordinance 2000 with effect from the date of absence. The kit and other uniform articles shall immediately be deposited from him in the District Jail order announced.

D.P.O. DIR (U)

14-11-2009

11  
107



خدمت جناب ڈپٹی سیکرٹری جنرل آف پولیس بلاکنڈ ڈویژن  
درخواست خراج بحال کرنے سائل

جناب عالی :-

1) یہ کہ سائل محلہ پولیس میں بحالت کنسٹیبل

مخوضہ 25<sup>01</sup>/<sub>95</sub> میں بھرتی ہوا تھا

(2) یہ کہ سائل نے مخوضہ 07<sup>09</sup>/<sub>09</sub> 14 کو بحوالہ

OB نمبر 87-120 بلاک رخصت کلاں منظور ہوئی تھی

(3) یہ کہ اخیر میں سائل یوٹھ غریب اور گورنمنٹ پولیس  
کی خاطر سفوری عرب چلا گیا۔

(4) لیکن اخیر میں سائل کو پتہ چلا کہ محلہ پولیس کے

پولیس کے اور اطلاع دیا بغیر سائل کو بحوالہ OB نمبر

مخوضہ 08<sup>11</sup>/<sub>08</sub> 14 کو یوٹھ غریب حاضری پر غائب کر دیا گیا

(5) یہ کہ سائل حجامہ پولیس کو دوبارہ جوائنٹ کرتا ہے

لہذا اس پر عمل کیا جائے کہ سائل نے حال پر رہے

دوبارہ بدلے والے پولیشن پر بحال کرنے کا حکم صادر کیا

30/9/09

ایک نیا حکم کنسٹیبل حجامہ خان کے 4/8 ضلع دہلی

Handwritten marks and initials on the left margin.

Handwritten signature or initials on the right margin.

Ammer C<sup>h</sup>

(14)

2007 S C M R 834

[Supreme Court of Pakistan]

Present Rana Bhagwandas and Hamid Ali Mirza, JJ

ABDUL GHANI----Petitioner

Versus

Mst. SHAHEEN and others----Respondents

Civil Petitions Nos.90-K and 91-K of 2003.

(a) Civil Procedure Code (V of 1908)---

----Ss. 115, 96, &amp; O.XLIII, R.1---Revision would not lie, when an appeal lies.

(b) Limitation---

----Order passed in violation of mandatory provisions of law---Validity---Limitation--No period of limitation would run for challenging such order.

(c) Civil Procedure Code (V of 1908)---

----Ss. 115, 96, 151 &amp; O.XLIII, R.1---Order decreeing suit on basis of application under S.151, C.P.C.---Revision would be competent against such order for same being not appealable.

Abrar Hassan, Advocate Supreme Court and K.A. Wahab, Advocate-on-Record for Petitioner.

Muhammad Sharif, Advocate Supreme Court and Suleman Habibullah for Respondents.

**ORDER**

**HAMID ALI MIRZA, J.**---These two civil petitions for leave to appeal are directed against judgment dated 27-11-2002 in Civil Revision Applications Nos.66 and 67 of 1995 passed by learned Single Judge of the High Court of Sindh, Karachi, whereby both civil revisions were allowed thereby common order, dated 12-5-1993 in Civil Suits Nos.1091 and 1275 of 1990 passed by Vth Senior Civil Judge, Karachi South decreeing the suits of petitioner Abdul Ghani against respondents Mst. Shaheen and other respondents in terms of compromise allegedly signed by the parties out of the Court was set aside consequently both suits were remanded to the trial Court for disposal according to law.

2. Brief facts of the case are that petitioner/plaintiff Abdul Ghani filed Suit No.1091 of 1990 against Ghulam Muhammad and two others for declaration and injunction while Suit No.1275 of 1990 was tiled by Abdul Ghani for mandatory and prohibitory injunction against respondent Ghulam Muhammad and 15 others when both suits were in respect of premises No.G-1, Plot No.MIR-1/92, Katchi Gall No.3 Jodia Bazar, Karachi in Suit No.1091/90 all three respondents/defendants gave statements before the Court that they were having no concern with

(15)

the suit property while Suit No.1275/90 was contested by the parties. On 12-5-1993 applications under section 151, C.P.C. were moved in both the suits which were signed by learned counsel for respondent No.1 and learned counsel for respondent Abdul Rashid and Mst. Haleema. In the said application it was prayed that the suits be disposed of as the parties have patched up out of the Court and have signed such agreement. Photocopy of the same was annexed with the application. Trial Court in view of said application decreed both the suits in terms of compromise. The respondent Mst. Shaheen preferred Civil Revision No.66 of 1995 against Abdul Ghani and fifteen others and also filed Civil Revision No.67 of 1995 against Abdul Ghani and three others in the High Court of Sindh at Karachi which revisions were heard by learned Single Judge and were allowed vide impugned judgment, hence these petitions.

3. We have heard learned counsel for the parties and perused the record.
4. Learned counsel for the petitioners submitted that revision applications under section 115, C.P.C. were incompetent and not maintainable as appeal against the order, dated 12-5-1993 decreeing the suit in terms of alleged compromise, could have been filed. He has placed reliance upon Municipal Committee, Bahawalpur v. Sh. Aziz Elahi PLD 1970 SC 506. He also submitted that the compromise was entered into between the parties on the basis of which order, dated 12-5-1993 was passed by learned Single Civil Judge decreeing the suit of the petitioner/plaintiff. He also submitted that the respondent Mst. Shaheen could have filed an application under section 12(2), C.P.C. for setting aside the decree in case fraud was practised upon the Courts.
5. Learned counsel for the respondents submitted that suit was decreed by the Senior Civil Judge on an application under section 151, C.P.C., therefore, appeal was not competent. He also submitted that the said revision applications could be treated as applications under section 12(2), C.P.C. He also submitted that impugned order passed by learned Single Judge of the High Court is legal and proper as no agreement for the purpose of compromise was entered into between the parties and the agreement so filed was substituted in place of an agreement which was actually entered into by the parties. He further submitted that learned Single Judge of the High Court has attended to all submissions of the learned counsel for the petitioner and there being no substantial question of law of public importance involved in these petitions for grant of leave, hence no interference is called for by this Court.
6. We do not find merit and substance in the submissions of the learned counsel for the petitioners.
7. There is no cavil with the proposition that when an appeal lies revision would not lie. However, the facts of the instant case are quite different and distinguishable to the case cited by learned counsel for the petitioner, therefore, same would not be of any assistance to the petitioner's case. In fact learned Single Judge has carefully considered the record of the case minutely and has arrived at correct decision with the following observations:--

"The perusal of record shows that the document annexed with both applications was allegedly signed by applicant and respondent No.1. Applicant is not party to Suit No.1091 of 1990. Mr. Abdul Sattar Khatri was engaged as counsel for respondent Abdul Rashid and Mst. Haleema in Suit No.1275 of 1990 and he was not engaged as counsel for applicant. The applicant was not present before the trial Court on 12-5-1993 as is evident from the record and impugned orders. Admittedly no notice was issued by the trial Court to applicant in respect of applications under section 151, C.P.C. dated 12-5-1993, thus it is crystal clear that orders were passed without notice to applicant at her back and without her consent regarding acceptance of compromise outside the Court, hence the impugned order against applicant were passed in contravention of mandatory provisions

of law, therefore, the same are nullity in the eye of law and not binding upon the appellant. In the case of Miss Reeta (ibid) it is held by a D.B. of this Court that no period of limitation will run for challenging the orders which have been passed in violation of mandatory provisions of law. (16)

The further perusal of both the applications under section 151, C.P.C. moved before the trial Court shows that word "agreement" is written in both the applications, whereas the document presently annexed with the applications under section 151, C.P.C. is titled as "settlement/undertaking/ agreement". The certified true copy of original agreement between the parties obtained by applicant from other Courts in other matters has been produced, which shows that the document actually bear the title "agreement". Thus, the contention of learned counsel that the document annexed with 'applications under section 151, C.P.C. has been substituted has some force. On the original order passed in Suit No.1275 of 1990 there is cutting in the date of order and under the signature of the Presiding Officer year is mentioned as 1994.

The respondent No.1 has filed Suit No.684 of 1993 on 30-10-1993 before this Court for specific performance of the very document which has been challenged by the applicant to be forged one. If this very document had been made rule of Court in suits bearing Nos.1091 and 1275 of 1990, the respondent No.1 would not have filed Suit No.684 of 1993 on 30-10-1993 for specific performance of the document in written statement filed by applicant on 13-1-1994 in Suit No.684 of 1993 the applicant was specifically mentioned that Suits Nos.1091 and 1275 of 1990 are pending. If Suits Nos.1091 and 1275 of 1990 had been decided on 12-5-1993, the applicant would have not mentioned about the pendency of suits in the written statement of Suit No.684 of 1993 that these suits are pending. Had the plea of applicant in written statement of Suit No.684 of 1993 regarding pendency of Suits Nos.1091 and 1275 of 1990 been incorrect the respondent No.1 or any other person appearing on behalf of him would have immediately raised objection and he would have produced certified copies of order in both suits before this Court. No application under Order XXIII, rule 3, C.P.C. was moved before the trial Court for decreeing the suit in terms of compromise, hence contention of learned counsel for applicant that parties did not desire to make the compromise made by them outside the Court as rule of the Court appears to be plausible. Apparently both the properties i.e. G-II and G-III in respect of which the impugned orders have been passed belong to applicant she was not party to Suit No.1091 of 1990 and she had not engaged Mr. Abdul Sattar Khatri as counsel in Suit No.1275 of 1990 who submitted compromise application. The applicant was not present before the Court on 12-5-1993 and impugned orders were passed in her absence, hence they are nullity in the eye of law and appears to have been passed in back date. Thus, no period of limitation would run for challenging the said order."

The above observations and finding would indicate that the respondent was not party to the Suit No.1091 of 1990 and she had no knowledge and was not present before the Court on 12-5-1993 and no notice of application under section 151, C.P.C. was given to her and order, dated 12-5-1993 was passed behind her back and without consent in respect of the alleged compromise out of the Court and the said agreement, if made and on the basis of which if case stood disposed of in favour of said plaintiff Abdul Ghani on 12-5-1993 he would not have filed Suit No.684 of 1993 on 30-10-1993 and would have not stated in the written statement filed on 13-11-1994 in suit No.684 of 1993 stating therein that suits Nos.1091 and 1275 of 1990 were pending. On perusal of evidence record would show that fraud and misrepresentation having been practised upon the Court in obtaining order dated 12-5-1993 decreed the suit of the respondent which was passed on an application C under section 151, C.P.C. hence the said order was not appealable, hence revisions were competent.

8. In view of above reasoning we are of the opinion that the impugned order does not suffer from any legal or factual infirmity considering also that no substantial question of law of public importance is involved, consequently these petitions have no merit, hence leave to appeal is declined and the petitions are dismissed. (17)

S.A.K./A-17/SC

Leave refused.

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1991 S C M R 640

Present: Shafiur Rahman, S. Usman Ali Shah  
and Ali Hussain Qazilbash, JJ

**ZAFAR MAHMOOD, EX-LINE SUPERINTENDENT,  
WAPDA--Appellant**

versus

**WAPDA through Superintending Engineer  
(Electricity) and another--Respondents**

Civil Appeal No.422 of 1986, decided on 16th December, 1990.

(From the judgment of Federal Service Tribunal dated 1-6-1985 passed in Appeal No.105(R)/1985).

**(a) Service Tribunals Act (LXX of 1973)--**

----S. 4---Constitution of Pakistan (1973), Art.212(3)---Leave to appeal was granted to examine whether a departmental appeal which in fact was filed could be treated by Service Tribunal as not having been riled in law simply because it was time-barred particularly when the Departmental Authority had not dismissed it as time-barred.

**(b) Service Tribunals Act (LXX of 1973)--**

----S. 4---Appeal to Service Tribunal---If the Departmental Appellate Authority while dealing with the appeal upon its own investigation passes any order with regard to the question of limitation concerning the appeal before it, the appellate order would yet become itself a final order in terms of S.4 and independently be a subject-matter of appeal before the Service Tribunal---Such an appeal would not lie on the condonation or refusal to condone the delay but with regard to the appellate order on merits, the relief to be granted or not to be granted--Condonation of delay with the Departmental Authorities was a discretionary matter.

In the present case the appeal was not filed within time. The Tribunal was, therefore, concurrently with the appellate Authority and independently of it also obliged to examine the reasons and to deal with them, if the departmental authority had not already dealt with it. The jurisdiction of the Tribunal in the matter was not, therefore, lacking.

If the departmental appellate authority while dealing with the appeal upon its own investigation passes any order with regard to the question of limitation concerning the appeal before it, the appellate order will yet become itself a final order in terms of section 4 of the Service Tribunals Act and independently be a subject-matter of appeal before the Tribunal. However, such an appeal will not lie on the condonation or refusal to condone the delay but with regard to the appellate order on merits, the relief to be granted or not to be granted. With the departmental authorities the condonation of delay is discretionary matter. In the circumstances, the exercise undertaken by the Service Tribunal was within its jurisdiction and the finding of fact recorded cannot be said to be suffering from any infirmity. The appellant can certainly avail of second round of Service Tribunal if the appellate authority passes an order on merit condoning the delay that has taken place in the filing of the appeal before the departmental authority. There is no mechanism provided in the Service

Tribunals Act whereby the disposal of an appeal pending with a departmental authority can be ensured. (19)

Ejaz Anwar, Advocate Supreme Court and S. Abul Aasim Jaferi, Advocate-on-Record (absent) for Appellant.

Asif Hussian Siddiqi, Advocate Supreme Court and Khan Imtiaz Muhammad Khan, Advocate-on-Record for Respondents.

Date of hearing: 16th December, 1990.

## JUDGMENT

**SHAFIUR RAHMAN, J:** --Leave to appeal was granted under Article 212(3) of the Constitution to examine whether a departmental appeal which in fact is filed can be treated by the Service Tribunal as not having been filed in law simply because it was time-barred particularly when the departmental authority had not dismissed it as time-barred.

2. The appellant was an employee of WAPDA. He got two days casual leave for 16th and 17th of May, 1981, but thereafter went on extending the leave. He was asked to report for duty but did not. He was dismissed from service on 14-2-1982. He filed a departmental appeal, which was required under the service rules applicable to him to be filed within sixty days, on 20-12-1984 i.e. after about two years and 10 months. That departmental appeal remained un-disposed of. He, therefore, filed an appeal before the Service Tribunal on 24th of April, 1985. The appellant filed a number of medical certificates in order to show his prolonged illness accounting for the absence and for the delay in filing the departmental appeal. The Tribunal examined all the medical certificates, found them unsatisfactory and held that the appeal was barred because the appellant had not preferred the appeal within time before the departmental authority and consequently was not within time before the Tribunal.

3. The arguments addressed at the bar before us pertained mostly to the validity and genuineness of the medical certificates and the proper explanation for the delay, which to us appears to be primarily a question of fact. The question of law to be examined under the leave granting order concerns the proper interpretation of section 4 of the Service Tribunals Act, 1973 which reads as hereunder:---

**"4. Appeal to Tribunal :** -(1) Any Civil Servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of any of the terms and conditions of his service may, within thirty days of the communication of such order to him, or within six months of the establishment of the appropriate Tribunal, whichever is later, prefer an appeal to the Tribunal:

**Provided that:--**

(a) where an appeal, review or representation to a departmental authority is provided under the Civil Servants Act, 1973, or any rules against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was preferred;

(b) no appeal shall lie to a Tribunal against an 'order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade; and

(20)

(c) no appeal shall lie to a Tribunal against an order or decision of a departmental authority made at any time before the 1st July, 1969.

(2) Where the appeal is against an order or decision of a departmental authority imposing a departmental punishment or penalty on a civil servant, the appeal shall be preferred.

(a) in the case of a penalty of dismissal from service, removal from service, compulsory retirement or reduction to a lower post or time-scale, or to a lower stage in a time-scale, to a Tribunal referred to in subsection (3) of section 3; and

(b) in any other case, to a Tribunal referred to in subsection (7) of that section.

**Explanation:** In this section, 'departmental authority means any authority, other than a Tribunal, which is competent to make an order in respect of any of the terms and conditions of civil servants."

4. There are two features of this section 4 which are relevant for our purposes. In the first place, unlike the general law final order has been taken to be one which is yet to become final on appeal i.e., one which is not yet final and still under examination by the appellate authority. Secondly by using the negative language that 'no appeal shall lie to the Tribunal', it has been made to satisfy itself of the departmental rules existing for whether in terms of it an appeal has been filed or not. In the case before us, the appeal was not filed within time. The Tribunal was, therefore, concurrently with the appellate authority and independently of it also this mandate to examine the reasons and to deal with them, if the authority had not already dealt with it. The jurisdiction of the r was not, therefore, lacking.

5. If the departmental appellate authority while dealing with the appeal upon its own investigation passes any order with regard to the question of limitation concerning the appeal before it the appellate order will yet become itself a final order in terms of section 4 of the Service Tribunals Act and independently be a subject-matter of appeal before the Tribunal. However, such an appeal will not lie on the condonation or refusal to condone<sup>3</sup> the delay but with regard to the appellate order on merits, the relief to be granted or not to be granted. With the departmental authorities the condonation of delay is discretionary matter. In the circumstances, the exercise undertaken by the Service Tribunal was within its jurisdiction and the finding of fact recorded cannot be said to be suffering from any infirmity. The appellant can certainly avail of second round of Service Tribunal if the appellate authority passes an order on merit condoning the delay that has taken place in the filing of the appeal before the departmental Authority. There is no mechanism provided in the Service Tribunal Act whereby the disposal of an appeal pending with a departmental authority can be ensured.

6. The appeal is dismissed with no orders as to costs.

M.B.A./Z-119/S

Appeal dismissed.



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2019 P L C (C.S.) 928

[Supreme Court of Pakistan]

Present: Gulzar Ahmed, Faisal Arab and Ijaz ul Ahsan, JJ

Qazi MUNIR AHMED

Versus

**RAWALPINDI MEDICAL COLLEGE AND ALLIED HOSPITAL through Principal and others**

Civil Petitions Nos. 606 and 607 of 2018, decided on 6th March, 2019.

(Against the Judgment dated 07.12.2017 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Intra Court Appeals Nos. 181 and 196 of 2012)

**(a) Limitation---**

---Void order---No period of limitation ran against a void order.

Yousaf Ali v. Muhammad Aslam Zia PLD 1958 SC 104 ref.

**(b) Appeal---**

---Aggrieved person---Scope---Any aggrieved person whether or not he was a party in a lis had the right to approach an appellate forum.

H.M. Saya and Co. v. Wazir Ali Industries Ltd. PLD 1969 SC 65 ref.

**(c) Constitution of Pakistan---**

---Art. 199---Constitutional petition---Competency---Necessary and proper party i.e. Provincial Government not impleaded---Where petitioner did not implead the Provincial Government as a party in the constitutional petition, despite the fact that the said Government was a necessary and proper party in the case, the constitutional petition was not competent and was liable to be dismissed.

Government of Balochistan v. Mir Tariq Hussain Khan Magsi 2010 SCMR 115 ref.

**(d) Constitution of Pakistan---**

---Art. 199---Contract employment---Constitutional petition filed by a contract employee---Maintainability---Contract employee was debarred from approaching the High Court in its constitutional jurisdiction---Only remedy available to a contract employee was to file a suit for damages alleging breach of contract or failure to extend the contract.

Federation of Pakistan v. Muhammad Azam Chatha 2013 SCMR 120 ref.

**(e) Master-servant---**

---Contract employee---Contract employee could not press for reinstatement to serve for the left-over period and could at the best claim damages to the extent of unexpired period of his service.

Federation of Pakistan v. Muhammad Azam Chatha 2013 SCMR 120 ref.

Sardar Abdul Raziq Khan, Advocate Supreme Court and Syed Rafaqat Hussain Shah, Advocate-on-Record for Petitioner (in both cases).

Mian Abdul Rauf, Advocate Supreme Court for Respondents.

Date of hearing: 6th March, 2019.

referring the matter to the Re-employment Board, and on his own accord directly appointed the petitioner on contract basis. Such order was clearly in violation of the aforementioned letter as well as beyond the powers of the said office. 23

9. We have specifically asked the learned counsel for the petitioner that under what authority of the law the Chief Minister had the power to issue directives regarding re-employment of government servants. He has not been able to provide any legally sustainable response to the same.

10. It also appears that the case of one Rizwana Bibi involving identical questions had been dismissed by a Division Bench of the High Court. The said matter came up for hearing before this Court in C.P.L.A. No.155 of 2010 which was dismissed vide judgment dated 15.02.2010. The points of law involved in the petitioner's case are the same regarding which findings have already been relieved and law laid down in Rizwana Bibi's case. As such, the learned High Court was justified in relying on the same and refusing to grant relief to the petitioner.

11. It is also noticed that the petitioner did not implead the Province of Punjab as a party in the constitutional petition. This was despite the fact that the said Government was a necessary and proper party in the case. In the circumstances, even otherwise, the constitutional petition was not competent and was rightly dismissed by the Division Bench. Reference in this regard may usefully be made to *Government of Balochistan v. Mir Tariq Hussain Khan Magsi* (2010 SCMR 115).

12. We have also noticed that the dispute between the parties related to contract employment. This Court has in various pronouncements settled the law that a contract employee is debarred from approaching the High Court in its constitutional jurisdiction. The only remedy available to a contract employee is to file a suit for damages alleging breach of contract or failure to extend the contract. Reference in this behalf may be made to *Federation of Pakistan v. Muhammad Azam Chattha* (2013 SCMR 120), where it has been held that it is a cardinal principle of law that a contract employee cannot press for reinstatement to serve for the left over period and can at the best claim damages to the extent of unexpired period of his service. Therefore, it was correctly held that the petitioner approached the wrong forum in the first place and the learned Single Judge had exceeded his jurisdiction by interfering in a purely contractual matter.

13. The learned counsel for the petitioner has not been able to show us any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment that may require interference by this Court in exercise of its jurisdiction under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973. The impugned judgment of the Division Bench is well reasoned, based on settled principles of law on the subject and the conclusions drawn are duly supported by the record. We are therefore not inclined to grant leave to appeal in this matter.

14. For the foregoing reasons, these petitions being devoid of merits stand dismissed. Leave to appeal is refused.

MWA/M-12/SC  
Petitions dismissed.

2019 P L C (C.S.) 111

[Supreme Court of Pakistan]

Present: Ejaz Afzal Khan and Faisal Arab, JJ

SECRETARY ESTABLISHMENT DIVISION and others

Versus

Dr. IMDAD ALI RAZA SEEHAR Civil Petition No. 589 of 2017, decided on 1st March, 2018.

(On appeal against the judgment dated 9.1.2017 passed by the Federal Service Tribunal, Karachi in Appeal No. 92/(K)CS/2013)

Civil service---

---Removal from service---Absence from duty---Unblemished service of more than 21 years---Effect---Removal from service converted to compulsory retirement---Respondent-employee at the relevant time was eligible to avail leave with full pay for upto 387 days and extraordinary leave up to five years, but without extension of leave he could not stay away from his duty even for a day let alone weeks and months---Respondent went abroad for higher education and then his mother allegedly fell ill for which the respondent required extension in his extraordinary leave---Questions whether respondent's mother was suffering from a disease which was incapable of being treated in the country and if he was alone in the family to attend to his mother had not been answered---Respondent, in the circumstances, could not go unpunished, but at the same time his unblemished service of more than 21 years could not be allowed to go unrequited---Supreme Court converted respondent's removal from service into compulsory retirement, and observed that it had become routine for high ranking officers to go abroad on different pretexts and stay there for good without knowing that their country, which had spent a great deal on them while holding examination for Civil Superior Service and providing them training in the academies, needed their undivided and whole hearted service more than any other entity; and that such a casual and even callous attitude towards the civil service could not be ignored lightly.

Rashid Hafeez, DAG for Petitioners.

Abid S. Zuberi, Advocate Supreme Court and Tariq Aziz, Advocate-on-Record for Respondent.

Date of hearing: 1st March, 2018.

**ORDER**

**EJAZ AFZAL KHAN, J.**---This petition for leave to appeal has arisen out of the judgment dated 9.1.2017 of the Federal Service Tribunal, Karachi whereby it allowed the appeal filed by the respondent in the terms as under:-

"For the foregoing reasons, we have come to the conclusion that the appellant has not been dealt in accordance with law, therefore, we have no hesitation in accepting the appeal, setting aside the impugned order dated 08.07.2013. Order accordingly. The respondents are directed to reinstate the appellant into service from the date of removal from service. The question of back benefits shall be decided by the competent authority in accordance with the instructions contained at Serial No.155, Vol.II of Estocode 2007, which mode had been approved by the Hon'ble Supreme Court of Pakistan in the case reported as 2010 SCMR 11."

2. The learned DAG appearing on behalf of the petitioner contended that where absence of

the petitioner was a writ large on the face of the record and no plausible explanation was offered therefore, his misconduct was proved to the hilt, therefore, he having been found guilty of misconduct was rightly removed from service. He next contended that even if it is assumed that the respondent rendered more than ten years service he could not ask for extraordinary relief for more than three years as of right and that if such interpretation of the rule is allowed to prevail the entire edifice of civil service would collapse like a house of cards. The learned DAG lastly argued that disagreement with the Inquiry Officer in the matrix of the case and absence of reasons therefor cannot be blown out of proportion when unauthorized absence stood proved to the hilt. (25)

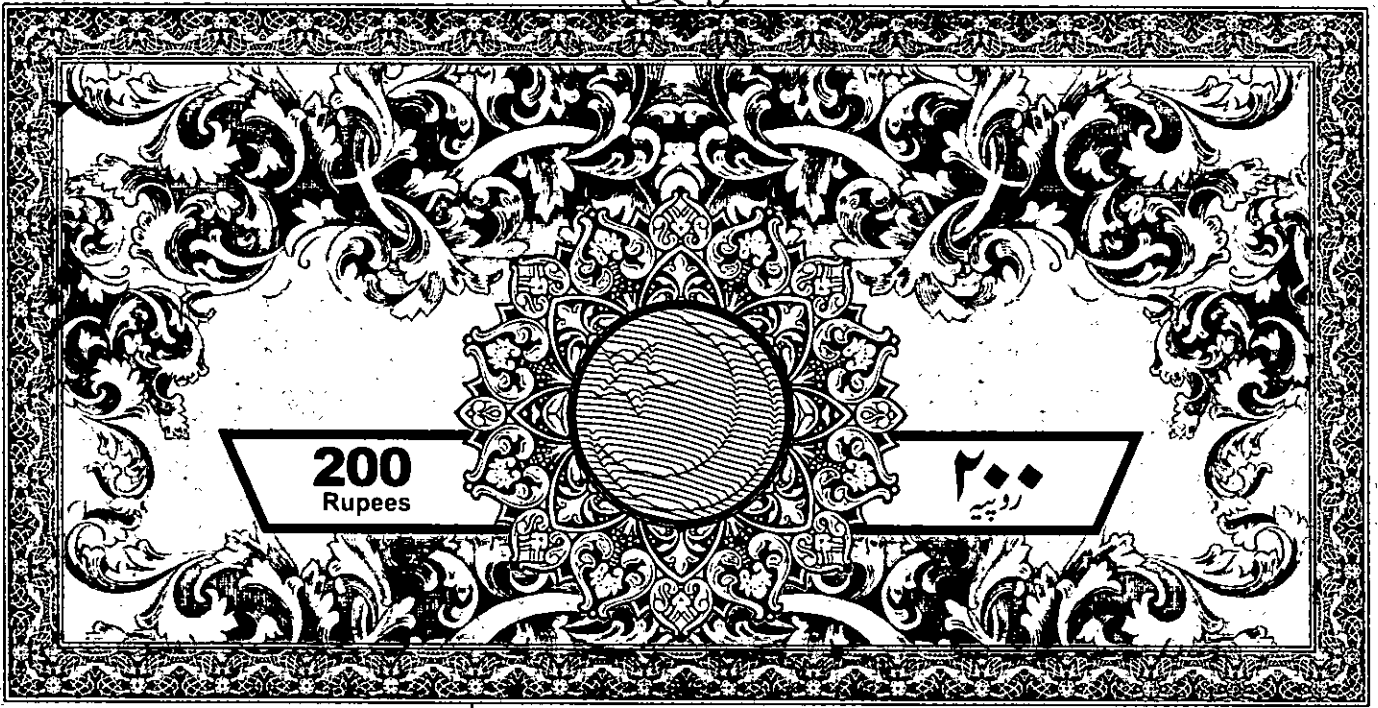
3. Learned ASC appearing on behalf of the respondent contended that the respondent asked for extension of extraordinary leave before its expiration; that no decision was taken there and then and that the moment the respondent came to know that he is being proceeded against, he reported his arrival on 7.1.2006; that in the circumstances it cannot be held that he was guilty of misconduct; that the finding of the Inquiry Officer being in line with the admitted facts could not have been brushed aside by the Authority without recording any reason and that the impugned judgment being well reasoned on all essential aspects of the case merits no interference.

4. We have carefully gone through the record and considered the submissions of the learned DAG as well as learned ASC for the respondent.

5. Yes, the respondent at the relevant time rendered ten years service. He as such could avail leave with full pay upto 387 days and extraordinary leave upto five years. But extension could not be taken for granted. Nor could the unauthorized absence be justified on this ground. The respondent without extension of leave could not stay away from his duty even for a day let alone weeks and months. What were the circumstances justifying grant of extraordinary leave for three years and what were the circumstances justifying the extension of extraordinary leave. We have been told that in the first instance respondent went abroad for higher education and then his mother fell ill which called for extension in his extraordinary leave. But the questions whether his mother was suffering from a disease which was incapable of being treated in the country and that if at all it was so, was he alone in the family to attend his mother and bear the scourge have not been answered. It has become routine with the high ranking officers to go abroad on such pretexts and stay there for good without knowing that this country which has spent a great deal on them while holding examination for Civil Superior Service and providing training in the Academy needs their undivided and whole hearted service more than any other entity. Such a casual and even callous attitude towards the civil service tending to worsen it cannot be ignored so lightly. Respondent in the circumstances cannot go unpunished. But at the same time his unblemished service of more than 21 years cannot be allowed to go unrequited. We, therefore, convert this petition into appeal, allow it, set aside the impugned judgment and orders of the authority and convert his removal from service into compulsory retirement. Needless to say the service he rendered even after his reinstatement shall be counted towards his pensionary benefits.

MWA/S-34/SC

Order accordingly.



### مختار نام خاص

مختار نام خاص: مجاہد خان ولد قادر خان ساکن گاؤں وڈا کھانہ اطراہہ تحصیل وارانہ ضلع دربارہ کاہوں۔ اندر میں وقت نقاشی، تخیل، دیش و جاس، حسد، برضا مندی، خوشی افرار کر کے لکھ دیتا ہوں کہ من مقرر ایک سروس ایپل بعنوان مجاہد خان بنام پرسنل پولیس آفیسر وغیرہ سروس ٹریبول سیریکوٹوخواہ پشاور میں دائر کرنا چاہتا ہوں۔ چونکہ من مقرر بوجہ دیگر مصروفیات کے ایپل عنوان بالا کی پیروی و جواب دہی سے اصالتاً قاصر ہوں لہذا من مقرر اپنے جانب سے بارخان ولد خاستہ برخان سکنہ انگرام، دیر ضلع دربارہ کو مختار خاص مقرر کر کے اختیار دیتا ہوں کہ وہ بذریعہ وکیل/سیرٹرازا ابتدائی عدالت تا عدالت عالیہ پشاور ہائی کورٹ میں گوارہ بیچ ادارہ لقصاء سوات و سپریم کورٹ آف پاکستان یا دیگر عدالت ہائے نگرانی وغیرہ مردج کرے اور کوائے، درخواست ہائے، عذرات جواب عذرات دائر کرے، جواب درخواست ہائے جواب الجواب یا دیگر درخواست ہائے دیوے۔ ایپل۔ نگرانی۔ نظر ثانی۔ رٹ پیشین دائر کرے اور کوائے۔ وکالت نامہ تصدیق کرے، عرائض کی تصدیق کریں، درخواست گردانا جائے۔ فریق وغیرہ دائر کریں۔ ایپل گمشدہ مقرر کریں، ایپل گمشدہ کے ساتھ برصورت کارروائی عمل میں لائیں، دستاویزات پیش کریں، عذرات داخل کریں، حلف بالقرآن تعویض عمل میں لائیں، مختار خاص من مقرر کی طرف سے راضی نامہ کریں تالیقی قبول کریں، مصلح مقرر کریں بیان حلفی دیوے/تحریر ذبانی بیان دیوے/ترمیمی جواب دعویٰ دیوے/فیصلہ ڈگری ہونے کی صورت میں کارروائی اجراء دائر کریں۔ زرڈگری وصول کریں۔ ریمانڈ ہونے کی صورت میں پیروی مقدمہ کرے، عدالت عالیہ پشاور ہائی کورٹ تا عدالت عظمیٰ سپریم کورٹ آف پاکستان جو بھی ضروری اور قانونی کارروائی ہو عمل میں لائیں۔ الغرض جو بھی قانونی کارروائی بابت مقدمہ ہذا ضروری ہو عمل میں لائے۔ جملہ کارروائی بابت مقدمہ ہذا من مقرر کو قبول و منظور ہوگی۔ لہذا مختار نامہ سنداً تحریر ہے۔

المرقوم: 18/11/2019

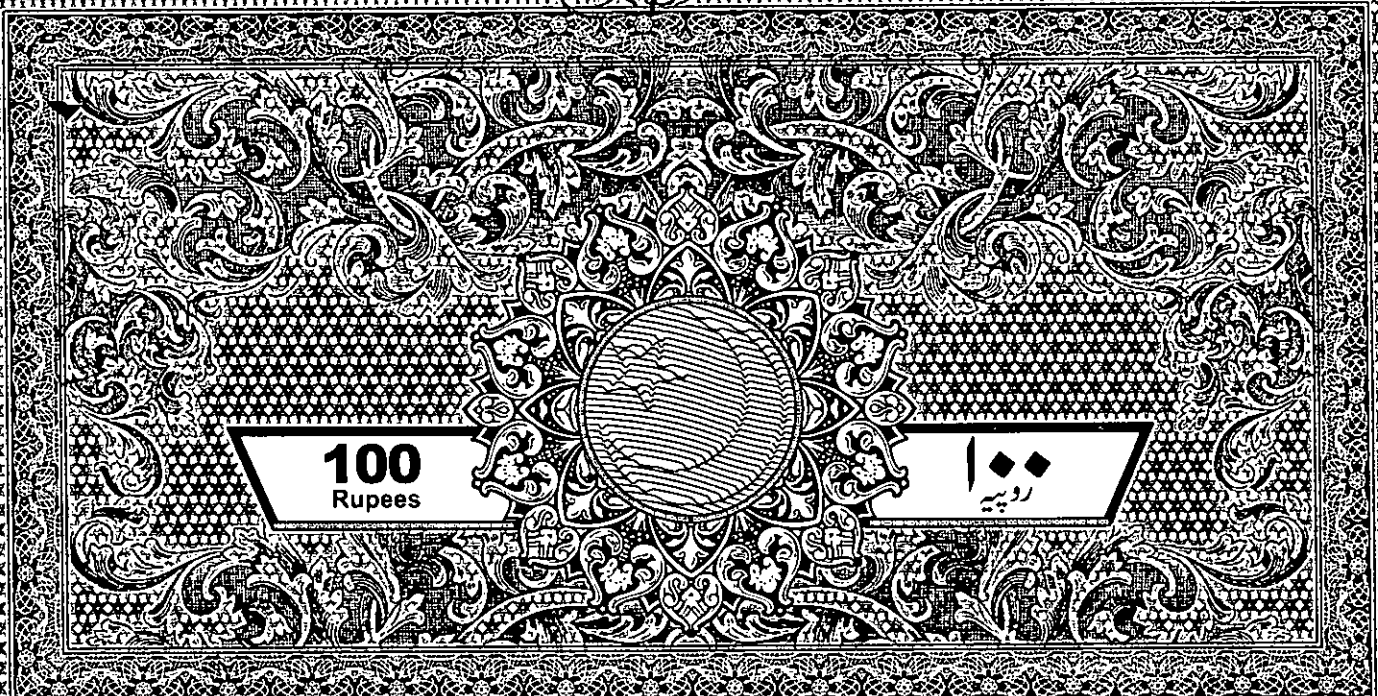


مجاہد خان ولد قادر خان

گواہ  
محمد علی ولد انور جمال سنگھ  
سنیور وکیل بارہنگ  
ضلع سوات  
42501-2734480-5

گواہ  
صافی اللہ ولد بخت روان  
سنیور وکیل بارہنگ  
ضلع سوات  
15602-123752-3

A195021



۱۰۰

بعدالت جناب سروس ٹریبونل جینرل کونسل اور ایڈووکیٹس کونسل کے سوا

مورخہ 30 دسمبر 2019 منجانب سائل بذریعہ مختار خاص

مقدمہ جابدخان بنام حکومت بزرگ لبریس افسانہ دسرہ

دعویٰ S.A سروس ٹریبونل

جرم

## باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنے طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام کیس کے کوڈ سوائے سندس جابدخان ایڈووکیٹس پی ایم کوڈ کو مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر حالت و فیصلہ بر حلف دینے جواب دہیا اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زر اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف اپیل کی برآمدگی اور منسوخ مذکور کے مکمل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اسکا ساختہ برواختہ 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 پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا کہ سند رہے

2019

دسمبر

ماہ

۵

المرقوم

العبد

گواہ شد

العبد  
جابر خان - مختار خاص

العبد

گواہ شد

العبد

Attention & accept  
کیلیے منظور ہے

مقام کیس کے کوڈ سوائے

M. Javid Khan  
A.S.S.  
0343 9607492.

"A"

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

713

No.

APPEAL No. 674 of 20

Mujahid Khan

Appellant/Petitioner

Versus

P.P.O. 12 P/S Pesh.

RESPONDENT(S)

Notice to Appellant/Petitioner

Mujahid Khan Eto Qadav  
R/O Village 9 P/O Akhgar  
Tehsil Wadh Sub Distt. Khuzda  
Distt. Khuzdar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 5-11-2020 at 11:00 A.M.

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

at Camp Court. Quat

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



"A"

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

No.

78

APPEAL No. 611 of 20 20

Mujahid Khan

Appellant/Petitioner

Versus

P.P.O. K.P.S. Pesh.

RESPONDENT(S)

Notice to Appellant/Petitioner

Mohammad Javed Khan  
Advocate Supreme Court  
of Pakistan at Swat

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal

on 24/8/2021 at 7:30 AM

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

at Camp Court Swat

*[Signature]*

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

"A"

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

No.

APPEAL No. 571 of 20<sup>20</sup>

Mujahid Khan

Appellant/Petitioner

Versus

P.P.O. 14 P.O. Pesh.

RESPONDENT(S)

✓  
Notice to Appellant/Petitioner

Mujahid Khan S/o Qadar Khan  
R/o Village 2 P.O. Akhgram  
Tahsil Wadh Sub Distt. Khuzdar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 24/8/2021 at 9:00 AM

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

at Camp Court Swat

[Signature]

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

**"B"**

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

No.

TB

Appeal No. 674 of 20 20

Munir Ahmad Khan Appellant/Petitioner

Versus

P.P.O. Dir Upper Respondent

Respondent No. 3

Notice to:

Distt. Police Officer Dir Upper  
at Dir Khwa

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 21/11/2021 at 8.00 A.M. If you wish to urge anything against the appellants/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this~~

office Notice No.....dated.....

Given under my hand and the seal of this Court, at Peshawar this 9/11

Day of Sep 20 20

at Camp Court Swat

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

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

**"B"**

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

No.

T13

Appeal No. 671 of 200.

Mujahid Khan Appellant/Petitioner

Versus

P.P.O. 14114 Pesh. Respondent

Respondent No. 2

Notice to: —

Regional Police Officer / DIG, Malakand,  
Range at Said Shikif Distt. Swat

WHEREAS an appeal/petition under the provision of the Khyber Pakhtunkhwa Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal \*on 21/9/20 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

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

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

Given under my hand and the seal of this Court, at Peshawar this 9/9/20

Day of Sep 2021

at Complaint Swat

Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

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

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

Service appeale, No. 671 of 2020.

Mujahid khan s/o Qadar khan Resident of village & p/o Akhagram Teh  
Wari District Dir upper.

(Petitioner)


**Versus**

Provincial police officer Khyberpakhtunkhwa Peshawar & others.

(Respondents).

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4	Charge sheet	-B-	9
5	Statement and notices	-C &D-	10,11,12,13

  
**Respondents Through**  
**DSP /Legal, Upper Dir.**

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

Service appeale, No. 671 of 2020.

Mujahid khan s/o Qadar khan Resident of village & p/o Akhagram Teh  
Wari District Dir upper.

(Petitioner)

**Versus**

Provincial police officer Khyberpakhtunkhwa Peshawar & others.

(Respondents).

**Para wise reply by respondents**

**Respectfully sheweth:-**

**PRELIMINARY OBJECTIONS.**

1. That the instant appeal is not maintainable in the present form and liable to be dismissed.
2. That the appellant has got no cause of action and locus standi to file the instant appeal.
3. That the appellant estopped due to his own conduct.
4. That the appellant has concealed the material facts from the Honorable Court.
5. That the jurisdiction of this Honorable tribunal has wrongly been invoked.
6. That the appeal is bad due to mis-joinder and non-joinder of necessary parties.

**ON FACTS.**

1. Correct to the extent that appellant was enlisted in service on 25/01/1995.
2. Incorrect the performance of appellant during service was not up to the mark as he having previous bad entries/punishment in his service record.  
(List of bad entries enclosed as annexure A)
3. Correct to the extent that the appellant was allowed leave but after the termination of his leave period he did not attend his duty nor informed high ups but proceeded to Saudi Arabia without prior permission during his leave period.

4. Appellant proceeded abroad without sanctioning of ex-Pakistan leave which is a gross miss conduct on his part.

5. Incorrect the appellant willfully remained absent from his lawful duty w.e.f 17/06/2009 till to date which was followed by a proper departmental enquiry, resultantly dismissed from service.

6. Incorrect the appellant was called for duty on 17/06/2009 but he failed to attend his duty whereupon a report of his absence was registered in daily dairy on the same date and charge sheet was served upon the appellant and a reasonable opportunity was provided to him but he never replied nor he presented himself before the competent authority. (Charge sheet Annexed as B).

7. Incorrect a proper departmental enquiry was conducted against the appellant and several notices were issued for his appearance and statements of his persons were recorded by stating that the appellant was not interested in service anymore and proceeded to Saudi Arabia for 17/18 months ago. (Statement and Notices are annexed as C& D)

8. Incorrect as mentioned in the above Para that appellant was preceded to Saudi Arabia without permission of ex-Pakistan leave and was not interested in service and a notice was served upon him.

9. Incorrect as mentioned above that the appellant has already been informed and a notice was served upon him but he badly failed to reply.

10. Pertains to the record the departmental appeal of appellant, which was badly barred by Law and limitation.

11. As explained above, appeal of appellant was badly barred by Law and limitation.

### ON GROUNDS

A. Incorrect, the appellant was dismissed from service in accordance with law rules on account of his long willful absence from service.

B. Incorrect, the appellant was properly informed/called for duty through several notices but he willfully remained absent from service which

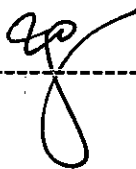
service which is a gross misconduct on his part resultantly the appellant was dismissed from service .

- C. Incorrect the district police officer was the competent authority to dismiss the appellant on the ground of willful absence from duty.
- D. Incorrect charge sheet was served upon the appellant and proper opportunity was provided to him but he badly failed to reply .
- E. Incorrect, the appellant willfully remained absent from service and proceeded to Saudi Arabia and was not interested to join the department anymore hence the order is legal, lawful and in accordance with law/rules.
- F. That respondent may also be allowed to raise any additional grounds at the time of arguments...


### Prayer

Keeping in view the above facts it is prayed that on acceptance of this Para Wise reply on facts and on grounds the instant appeal may kindly be dismissed with costs please.

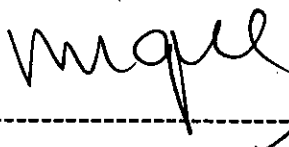
1. Provincial Police Officer,  
Khyber Pakhtunkhwa Peshawar.



2. Regional Police officer,  
Saidu Sharif Swat.

  
Regional Police Officer,  
Malakand Region,  
Saidu Sharif, Swat.

3. District police officer.  
District Dir. Upper.





(4)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

Service appeale, No. 671 of 2020.

Mujahid khan s/o Qadar khan Resident of village & p/o Akhagram Teh  
Wari District Dir upper.

(Petitioner)

**Versus**

Provincial police officer Khyberpakhtunkhwa Peshawar & others.

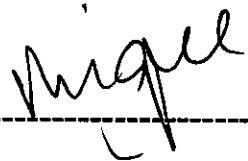
(Respondents).

**POWER OF ATTORNY.**


We, the undersigned do hereby authorized and appoint Mr. Ziwar Khan, DSP/Legal Dir. Upper to appear in the above mentioned appeal on each and every date fixed by the Honorable Service Tribunal.

He is also authorized to file Para-wise comments and all relevant documents before the Tribunal.

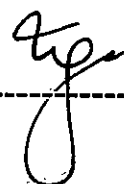
**District Police Officer**  
**Dir Upper.**

  
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**Regional Police Officer,**  
**Malakand, at swat.**

  
-----  
Regional Police Officer,  
Malakand Region,  
Saidu Sharif, Swat.

**Provincial Police Officer, Khyber**  
**Pakhtunkhwa, Peshawar.**

  
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5

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

Service appeale, No. 671 of 2020.

Mujahid khan s/o Qadar khan Resident of village & p/o Akhagram Teh  
Wari District Dir upper.

(Petitioner)

**Versus**

Provincial police officer Khyberpakhtunkhwa Peshawar & others.

(Respondents).

**AFFIDAVIT**

I the undersigned do hereby solemnly affirm and declared that the contents of para wise reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.



Deponent,  
Ziwar Khan,  
DSP/Legal Dir upper.

(6)

CHARACTER ROLL OF

(Continued).

15-CENSURES AND PUNISHMENTS.

Charge! Absented himself from 7<sup>3</sup>/<sub>96</sub> to 8<sup>6</sup>/<sub>98</sub>

Punishment: one day Quarter guard and one day extra drill.

~~SP/Dir~~

OB No 815  
13-8-96

Charge! Absented himself from General band

Punishment: 2 days Extra drill

~~SP/Dir~~

OB 957  
1-9-9-97

Charge absented himself from G. Parade on 31-7-98

Punishment 2 days Quarter Guard

~~SP/Dir~~

OB 702  
15-8-98

365  
365  
730

(7)

Annexure "A"

13

16. LEAVE, ABSENCE AND BREAKS IN SERVICE.

All periods not counting as "approved service" to be entered in red ink.

1		2			3	4
DATE		EXTENT			No. of District Order	Description of leave i.e. privilege, hospital, sick leave, or furlough, or of absence, or forfeiture of approved service.  All entries to be initialed, by Superintendent of Police.
From	To	Years	Months	Days		
28/97	to 28/97			one day	OBNO 963 dt 2-9-97	leave w/o pay. <i>[Signature]</i> SP/DIR
3/98	to 9/98			6 days	OB 1019 27-10-98	leave w/o pay. <i>[Signature]</i> SP/DIR
7/2000	to 6/2002			730 days	OB No 610 dt: 26-10-2000	extra ordinary leave with out pay under rules 12 of the M.P. civil servants revised leave rules 1981. <i>[Signature]</i> SP/DIR
7/2002	to 26/2005			919 days		The period be remained out of service be counted as leave w.o-pay vide order No 1672/P dated 19/5/2005 and this office order Beck No 320 dt: 24/5/2005. <i>[Signature]</i> SP/DIR-11

## 14. COMMENDATORY ENTRIES

(8)

Const. mujahid No. 436 was actually had gone to Saudi Arabia and absented himself from service w.e. from 11.11.2002 without any permission from his senior, therefore dismissed him from service with immediate effect and his period of absence is treated as leave without pay. Vide O.B. No 675 dt. 30.12.2002.

## CHARACTER ROLL OF

7

Continued.

## 14. COMMENDATORY ENTRIES—Contd.

Dismissed From Service

Constable mujahid no- 418 absent himself w.e. - 17-6-09 to date without any leave or prior permission which is gross misconduct and against the discipline of the Force. Now constable upon is hereby Dismiss from service under Section 3 (Special power)

OB- 611

dt. 14.11.09

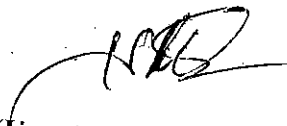
DDO

CHARGE SHEET.

I, Ijaz Ahmad District Police Officer, Dir Upper as competent authority hereby charged  
You Constable Mujahid No.418 as follows:-

*You Constable Mujahid No.418 while posted in Police Station Wari  
absented your self-w.e.f. 17.06.2009 till to date with out any leave or  
prior permission of the high ups.*

2. By reason of the above, you appear to be guilty of misconduct under section 3 of the NWFP Removal from Service (Special powers) Ordinance 2000 and have rendered yourself liable to all or any of the penalties specified in Section-3 of the Ordinance ibid.
3. You are therefore, directed to submit your written defence within 07 days of the receipt of this charge sheet to the enquiry officer/committee.
4. Your written defence, if any should reach to the enquiry Committed within the specified period, failing which it should be presumed that you have no defence to offer and in that case the exparte ation shall follow against you.
5. Intimate whether you wish to be heard in person
6. Statement of allegations is enclosed.

  
(Ijaz Ahamad)  
District Police Officer,  
Dir Upper.  
/2009.

No 3145-46 /EC, Dated Dir Upper, the

Copy to:-

1. Mr. Khan Zarin Khan SDPO Wari.
2. Mr. Abdur Rehman SHO PS: Gandigar
3. Constable Mujahid No.418 to submit your reply to the Enquiry committee within stipulated period.

بیان ازان عالمگیر خان ولد لائق خان ساکن اٹلہ

نے یہ اقرار صالح بیان کیا کہ مجاہد میراٹوسی ہے

سال 2000 میں وہ محکمہ پولیس سے بھی لیکر سعودی عرب

جائے گیا تھا۔ لیکن وہ برمیاریس سو کر تقریباً 16/17 مئی بعد واپس

آکر پشاور میں زیر علاج تھا۔ یہ مجھے پتہ ہے۔ کیونکہ میں

اسکی برمیاریسی کئے پشاور جا کر وہاں ہرا کے ساتھ رہا

گذاری ہے۔ یہ میرا بیان ہے

عالمگیر خان ولد لائق خان ساکن اٹلہ

لائق خان  
برمیاریس  
16/17 مئی

آزاد دفتر ریڈر اسد مسٹر کنرا واہی  
خدمت ۱۱ جوی آگرم

سٹار سٹار فری ہیک کیشل فی ایڈ ڈاکٹر 418  
سہکنہ آگرم کولف ہم وری مطاع کریا کہ وہ  
اد کو اتری عبد صغری لفرض ملی ای بیان کل جوم  
دفتر ہذا سا صام جو جائے لفرض عدم جو ہو دنی  
فد کورہ کے قہر ہمار شتہ دار والد باغی سے نو کرمی کہ  
نہ کرے کے مذاقے فرس لیکہ سرواٹر صدا ورس کی  
سرواٹر ہڈائی ہیل آج با ناچ کر کے کل تک ہوسا کی

~~77~~  
DSP Wani  
9 09

Handwritten notes in Urdu on the left margin, including the name 'D. S. P. Wani' and the date '9 09'.




بیات کے آزادے فاروق خان مری و ولد قدر، حاکم سکنہ آگلا سندھ  
 جسے طلسمہ دفتر ہزارا اکبر بیات کیا۔ کہ میں صدی ہجرت قبل حکم ہزار  
 کولیا نو سیرا میں لکھی ہو کر آئے ہوئی آگلا میں ڈھولٹی سندھ آگلا  
 کھنڈل جا صد ہزار صفحہ نمائی ہے۔ تقریباً چار ماہ قبل لکھی گئی  
 میر دینی ملک سعودی طر۔ حاکم ہے۔ اور حکم کولیا میں نوکری  
 جو رہا کے میں ہے۔ ایسی میرا بیان ہے۔ جو درست ہے۔

او Farooq Khan

فاروق خان مری و ولد قدر  
 آگلا

Attested

  
 SDP