

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1523/2019

Date of Institution ... 29.10.2019
Date of Decision ... 30.07.2021

Muzamil Shah Ex-Constable No.879, District Police Officer,
Swabi.

... (Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar
and two others.

... (Respondents)

Taimur Ali Khan,
Advocate

... For appellant.

Kabir Ullah Khattak,
Additional Advocate General

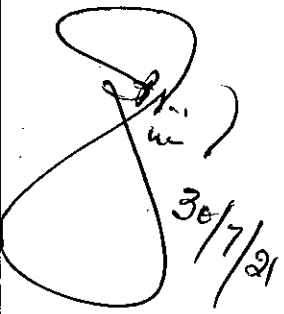
... For respondents.

AHMAD SULTAN TAREEN
ROZINA REHMAN

... CHAIRMAN
... MEMBER (J)

JUDGMENT

ROZINA REHMAN, MEMBER (J): Appellant was a Constable in the
Police Department. He was dismissed from service vide order dated
20.06.2019. It is the legality and validity of this order which has been
challenged by him in the present service appeal filed U/S 4 of the
Khyber Pakhtunkhwa Service Tribunal Act, 1974.


30/7/21

2. Brief facts of the case are that appellant remained absent from duty being ill and was having no other family member to inform the Department. As such, he was charge sheeted under Police Rules, 1975. Charge sheet and statement of allegations were issued to the appellant and an Inquiry Officer was appointed to conduct inquiry. After the recommendation of Inquiry Officer, final show cause notice was served upon appellant which was replied and lastly he was dismissed from service on 21.06.2019. He preferred departmental appeal but the same was also rejected, hence, the instant service appeal.

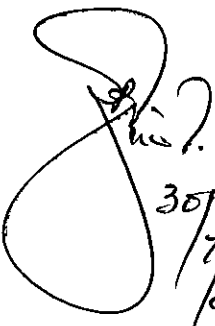
3. Learned counsel for appellant argued that the impugned order is against law and facts as inquiry was not conducted according to law and that the entire proceedings were carried out in the absence of appellant. He contended that the appellant was not afforded any opportunity of personal hearing and he was condemned unheard and lastly, he submitted that appellant has put in considerable pensionable service of almost 18/19 years and that he would have no objection if major penalty in shape of dismissal from service is converted into major penalty in shape of compulsory retirement.

4. Conversely, learned A.A.G argued that appellant being a member of disciplined force, was supposed to follow the rules and it was his responsibility to apply for leave but he absented himself from duty, therefore, he was served with charge sheet and statement of allegations and proper departmental proceedings were initiated

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against him in accordance with law. He submitted that despite proper service, appellant failed to join inquiry proceedings which shows his disinterest in his job, hence, he was recommended for major punishment by the Inquiry Officer. Lastly, he submitted that he was also served with final show cause notice but his reply was found unsatisfactory and the appellant deliberately absented despite service upon him before passing final order, therefore, he was dismissed from service.

5. Perusal of record would reveal that appellant was enlisted as Constable in the Police Department. On account of absence from duty, he was dismissed from service but Regional Police Officer Mardan reinstated him in service vide order dated 03.04.2019. He reported his arrival on 05.04.2019 but again absented himself from duty w.e.f 07.04.2019 till the date when he was served with charge sheet and statement of allegation bearing endorsement No.22/CC/PA dated 22.04.2019. D.S.P Topi was appointed as Inquiry Officer to conduct departmental inquiry against the appellant. The Inquiry Officer conducted inquiry, recorded statement of all concerned and submitted his report, wherein, he found the appellant guilty of misconduct and recommended him for major punishment. Final show cause notice was then issued to the appellant and he submitted his reply to the final show cause notice, wherein, he admitted his absence from Police Lines, Swabi. Despite proper service, he failed to appear for personal hearing. His service record shows that his service


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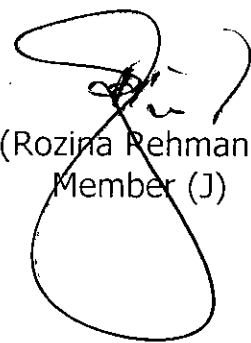
Roll is blotted with red ink. His service record is replete with 23 bad entries as against no good entry. He was also awarded punishment of censure, 5 days Extra Drill, twice minor punishment and major punishment of dismissal from service. He also remained absent from duty for 305 days. This shows his least interest in his job. However, keeping in view the last request of learned counsel for appellant, and without touching other merits of the case, we are of the view that since the appellant has put in considerable regular service, it would be appropriate, keeping in view the circumstances of the case to convert the major penalty awarded in the shape of dismissal from service into that of compulsory retirement from service. As such, we convert the said penalty into that of compulsory retirement w.e.f the date of his dismissal from service i.e. 20.06.2019. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

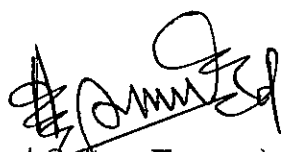
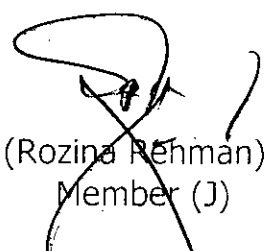
30.07.2021



(Ahmad Sultan Tareen)
Chairman



(Rozina Rehman)
Member (J)

S.No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	30.07.2021	<p><u>Present:</u></p> <p>Taimur Ali Khan, Advocate ... For Appellant</p> <p>Kabir Ullah Khattak, Additional Advocate General ... For respondents</p> <p>Vide our detailed judgment of today of this Tribunal placed on file, we are of the view that since the appellant has put in considerable regular service, it would be appropriate, keeping in view the circumstances of the case to convert the major penalty awarded in the shape of dismissal from service into that of compulsory retirement from service. As such, we convert the said penalty into that of compulsory retirement w.e.f the date of his dismissal from service i.e. 20.06.2019. Parties are left to bear their own costs. File be consigned to the record room.</p> <p><u>ANNOUNCED.</u> 30.07.2021</p> <p style="text-align: center;">  (Ahmad Sultan Tareen) Chairman </p> <p style="text-align: center;">  (Rozina Rehman) Member (J) </p>

13.01.2021


Junior to counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG for respondents present.

Due to COVID-19, the case is adjourned for the same on 21.04.2021 before D.B.


READER

21.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 30.07.2021 for the same as before.


Reader

22.07.2020

Junior counsel for appellant is present. Notices to respondents could not be issued due to public holidays on account of COVID-19, therefore, fresh notices be issued to the respondents for submission of written reply/comments. To come up for written reply/comments on 14.09.2020 before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER

14.09.2020

Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG seeks time to furnish reply/comments on behalf of the respondents. Adjourned to 03.11.2020 on which date the requisite reply/comments shall positively be furnished.

Chairman

03.11.2020

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

Written reply on behalf of respondents No. 1 to 3 submitted which is made part of record. File to come up for rejoinder and arguments on 13.01.2020 before D.B.

(Muhammad Jamal Khan)
Member (Judicial)

18.03.2020

Learned counsel for the appellant present. Preliminary arguments heard.

The appellant (Ex-Constable) has filed the present service appeal against the order dated 20.06.2019 whereby he was awarded major punishment of dismissal from service on the ground of absence from duty and against the order dated 30.09.2019 through which his departmental appeal was rejected.

Submissions made by the learned counsel for the appellant, need consideration. The present service appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments. To come up for written reply/comments on 07.05.2020 before S.B.

Appellant Deposited
Security & Process Fee

18/3/20



Member

07.05.2020

Due to COVID19, the case is adjourned to 22.07.2020 for the same as before.



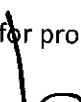
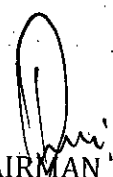
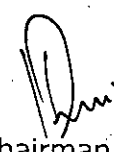

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1523/2019

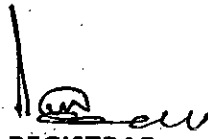
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/11/2019	<p>The appeal of Mr. Muzamil Shah resubmitted today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR 13/11/19</p>
2-	14/11/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>18/12/19.</u></p> <p> CHAIRMAN</p>
	18.12.2019	<p>Appellant present in person. Requests for adjournment as his learned counsel is not available today owing to personal engagements. Adjourned to 29.01.2020 before S.B.</p> <p> Chairman</p>
	29.01.2020	<p>Clerk to counsel for the appellant present. Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for preliminary hearing on 18.03.2020 before S.B</p> <p> Member</p>

The appeal of Mr. Muzamil Shah Ex-Constable No. 879 District Police Officer Swabi received today i.e. on 29.10.2019 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- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1904 /S.T.

Dt. 30/10 /2019.


REGISTRAR 30/10/19
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. M. Asif Yousafzai Adv. Pesh.

Respected Sir,

- 1- Removed.
- 2- Removed
- 3- Remanded.
- 4- Removed

Resubmitted after compliance



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

Service Appeal No. 1523 /2019

Muzamil Shah

V/S

The PPO, KPK

INDEX

.No	Documents	Annexure	Page No.
1	Memo of Appeal	-----	01-03
2	Copy of charge sheet	- A -	04
3	Copy of Statement of Allegation	- B -	05
4	Copy of Inquiry Report	- C -	06
5	Copy of Final Show Cause Notice	- D -	07
6	Copy of Reply to FSCN	- E -	08
7	Copy of Penalty Order	- F -	09
8	Copy of Departmental Appeal	-G-	10
9	Copy of Rejection order	H	11
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APPELLANT


Muzamil Shah

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT


(SYED NOMAN ALIBUKHARI)
ADVOCATE HIGH COURT

Room No. Fr-8, 4th Floor,
Bilour Plaza, Peshawar Cantt:
Contact No. 03339103240

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No. 1523 /2019

Muzamil Shah, Ex-Constable No. 879,
District Police Officer, Swabi.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1520

Dated 29-10-2019

APPELLANT

VERSUS

1. The Provincial Police officer, Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer Mardan Region, Mardan.
3. The District Police Officer Swabi.

RESPONDENTS

.....

APPEAL UNDER SECTION-4 OF THE KHYBER
PAKHTUNKHWA, SERVICE TRIBUNALS ACT, 1974
AGAINST THE ORDER DATED 21.06.2019 WHEREBY
THE PENALTY OF DISMISSAL FROM SERVICE WAS
IMPOSED UPON THE APPELLANT AND AGAINST
THE ORDER DATED 30.09.2019 WHEREBY THE
DEPARTMENTAL APPEAL OF APPELLANT WAS
REJECTED FOR NO GOOD GROUNDS.

.....

Filed to-day

Registrar

29/10/19 PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE
ORDER DATED 21.06.2019 AND 30.09.2019 MAY
GRACIOUSLY BE SET ASIDE AND THE APPELLANT
MAY BE REINSTATED WITH ALL BACK AND
CONSEQUENTIAL BENEFITS OR KEEPING IN VIEW
THE HARDSHIP THE SAME PENALTY MAY BE
MODIFIED INTO COMPULSORY RETIRMENT. ANY
OTHER REMEDY, WHICH THIS TRIBUNAL DEEMS
FIT AND APPROPRIATE THAT MAY ALSO BE
AWARDED IN FAVOUR OF APPELLANT.

Re-submitted to -day
and filed.

Registrar

13/11/19

RESPECTFULLY SHEWETH:

1. That the appellant was inducted in the Police Force on 30.06.2001 and he completed all the relevant courses and has more than 18 Years service at his credit.
2. That due to illness and having no other family members to inform the Department, the appellant was remained absent from duty for which the appellant was charge sheeted under Police Rules-1975. As the charge sheet was not communicated to the appellant therefore he remained undefended. **Copy of Charge Sheet and Statement of Allegation are attached as Annexure-A & B.**
3. That one sided inquiry was conducted without the association of the appellant. However, the inquiry officer recommended major penalty for the appellant. **Copy of inquiry report is attached as Annexure-C.**
4. That after the recommendations of inquiry officer the final show cause notice was served upon the appellant which was properly and fully explained the reasons of absence which was caused due to illness. **Copies of Final Show Cause Notice and reply are attached as Annexure-D & E.**
5. That vide order dated 21.06.2019 the appellant was dismissed from service against which the appellant preferred departmental appeal to the respondent No. 2 but the same was also rejected for not good ground on 30.09.2019. **Copies of penalty order, departmental appeal and rejection order are attached as Annexure-F, G & H.**
6. That now the appellant comes to this Tribunal on the following grounds amongst the others.

GROUND:-

- A) That the impugned order dated 21.06.2019 & 30.09.2019 are against the law, facts, norms of justice and material on record therefore liable to be set-aside.
- B) That the appellant has been condemned unheard and no proper chance of defence was provided to him at the time of inquiry, nor, the appellant was associated with the inquiry proceedings which caused the black miscarriage of justice.
- C) That the absence of appellant was not intentional but was due to illness which was beyond his control. Therefore, the appellant needs to be treated with a lenient view.

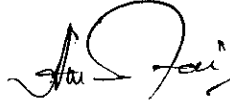
- D) That the appellant was not treated in accordance with the law, rules and principle of justice, especially, under Article-10A of the Constitution which was guaranteed the fundamental right of appellant for fair trial.
- E) That the impugned penalty is very harsh as the appellant has more than 18 Years Service at his credit and the impugned penalty could be converted into compulsory retirement so as to save him and his family for future and financial hardship.
- F) That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.


APPELLANT

Muzamil Shah

THROUGH:


(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT


(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT

A) 4

CHARGE SHEET

Whereas I am satisfied that formal enquiry as contemplated by Khyber Pakhtunkhwa Police Rules 1975 is necessary and expedient.

And whereas I am of the view that the allegations if established would call for Major/Minor penalty as defined in Rules 4(b) a & b of the aforesaid Rules.

Certified to be True Copy Now therefore as required by Rules 6(1) of the aforesaid Rules I **Syed Khalid Hamdani, PSP, QPM, District Police Officer, Swabi** charge you **Constable Muzamil No.879**, on the basis of statement of allegations attached to this charge sheet.

In case your reply is not received within seven days without sufficient cause it will be presumed that you have no defence to offer and exparte action will be taken against you.

ATTESTED

PIO
District Police Officer, Swabi.

District Police Officer,
Swabi.

(B) (E)

SUMMARY OF ALLEGATION.

It is alleged that on account of absence from duty, Constable Muzamil No.879 was dismissed from service. He was re-instated in service by Deputy Inspector General of Police Mardan Region I Mardan vide this office OB No.282 dated 03.04.2019. He reported his arrival on 05.04.2019, but again absented himself from duty with effect from 07.04.2019 till date, which is against the discipline and amounts to gross mis-conduct, hence summary of allegation.

Certified to be True Copy.

Mr. **Mohammad Ijaz, DSP, Topi**, is appointed to conduct proper departmental enquiry against him.

[Signature]
District Police Officer,
Swabi.

No. 22 /CC/PA

Dated: 22/04 /2019

ATTESTED

[Signature]
District Police Officer, Swabi.

DY: No. 179 /TP

DATED: 30/04/2019.

SUBJECT:

**DEPARTMENTAL ENQUIRY AGAINST CONSTABLE MUZAMIL No.879
CONDUCTED BY MUHAMMAD IJAZ DSP TOPI.**

It is submitted that a departmental enquiry against the above named Constable was entrusted to the undersigned vide Endst:No.22/CC/PA dated 22.04.2019 on the following allegations:-

ALLEGATIONS.

It is alleged that on account of absence from duty, Constable Muzamil No.879 was dismissed from service. He was re-instated in service by Deputy Inspector General of Police Mardan Region, 1 Mardan vide this office OB No.282 dated 03.04.2019. He reported his arrival on 05.04.2019, but again absented himself from duty with effect from 07.04.2019 till date, which is against the discipline and amounts to gross mis-conduct,

PROCEEDING :-

Certified to be true Copy.

During the course of enquiry on 22.04.2019 office of the undersigned informed moharrir Police Lines Swabi to direct /sent the delinquent constable Muzammil No. 879 for recording statement and provision of relevant record. But he told that the alleged constable is still absent from duty.

Moreover, Lines Officer (LO) Police Lines Swabi submit his statement, wherein he stated that " the alleged constable was reinstated made his arrival vide DD No. 15 dated 05.04.2019 and again absented vide DD No. 25 dated 07.04.2019 is still absent from duty without any leave/ prior permission. Further he stated that the delinquent constable does not take interest in Police duties".

It is further added that as the delinquent constable is still absent and he is resident of village Swabi, hence written PARWANA issued vide this office Dy: No. 163/TP dated 23.04.2019 on his home address to inform the delinquent constable for appearance before the undersigned for recording statement, but failed to do so.

CONCLUSION.

During the course of enquiry the undersigned perused service record of the delinquent constable, which revealed that :-

01. He was enlisted on 30.06.2001 as constable in Police department.
02. His Service Roll is blotted with red ink. During service he earned 23 bad entries as against no good entry.
03. He has been awarded punishment of "Censure" , 05 days Extra Drill, twice Minor Punishment and Major Punishment of Dismissal from service. Similarly he remained absent from duty total 305 days on own accord.

FINDING.

In view of the above the delinquent constable Muzammil No. 879 is not deserve for any leniency and recommended for MAJOR punishment, if approved please.

**Sub-Divisional Police Officer,
TOPI(Swabi)**

ATTESTED
District Police Officer, Swabi.

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FINAL SHOW CAUSE NOTICE.

Whereas you Constable Muzamil No.879, on account of absence from duty and dismissed from service. You are re-instated in service by Deputy Inspector General Of Police Mardan Region I Mardan vide this office OB No.282 dated 03.04.2019 you reported your arrival on 05.04.2019, but again absented yourself from duty with effect from 07.04.2019 till date, which is highly against the discipline and amounts to gross mis-conduct.

In this connection you were charge sheeted and served with summary of allegation and Mr. Mohammad Ijaz, DSP, Topi, was appointed to conduct proper departmental enquiry. The enquiry officer conducted proper departmental enquiry, collected evidence, recorded statements of all concerned and submitted his findings, wherein he held you responsible for the above misconduct and recommended for Major punishment.

Certified to be True Copy.

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

Hence I, **Syed Khalid Hamdani, PSP, QPM**, District Police Officer, Swabi in exercise of power vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you Constable Muzamil No.879 to show cause as to why the proposed punishment should not be awarded to you.

Your reply should reach to the undersigned within seven days of the receipt of this notice failing which it will be presumed that you have no explanation to make and ex-parte action will be taken.

You are also at liberty to appear for personal hearing.

~~Signature~~

02/05/09

District Police Officer,
Swabi.

ATTESTED

District Police Officer, Swabi.

(879)

F
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OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

ORDER.

Constable Muzamil No.879, while posted to Police Lines, Swabi has been found habitual absentee and unwilling worker. On account of absence from duty he was dismissed from service, but the Regional Police Officer Mardan re-instated him in service vide this office O.B No.282 dated 03.04.2019. He reported his arrival on 05.04.2019, but again absented himself from duty with effect from 07.04.2019 till date. Therefore, he was issued with Charge Sheet and Summery of Allegations and DSP, Topi was appointed to conduct departmental enquiry against him. The officer conducted enquiry, recorded statements of all concerned, collected evidence and submitted his findings wherein he found Constable Muzamil No.879 guilty for the mis-conduct and recommended him for Major punishment of Dismissal from service. The undersigned perused the enquiry papers and findings of the Enquiry Officer and by agreeing with him served Constable Muzamil No.879 with Final Show Cause Notice through local Police. His reply to the Final Show Cause Notice was received, perused and found unsatisfactory. However, it was decided to give him an opportunity of personal hearing, therefore, he was directed to appear in Orderly Room, but he did not appear. It is worth mentioning here that constable Muzamil No.879 has been enlisted on 30.06.2001. During his service he absented himself from service for 25 times for which he has been awarded punishments including dismissal from service, which speaks loudly that he is not interested in his job.

Certified to be True Copy.

Therefore, I, Syed Khalid Hamdani, PSP,QPM, District Police Officer, Swabi, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 1975, hereby award Constable Muzamil No.879, Major Punishment of dismissal from service, from the date of his absence i.e 07.04.2019.

O.B No. 503

Dated 20/6/2019.

(SYED KHALID HAMDANI) PSP,QPM
District Police Officer, Swabi.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

No. 1358-60 /PA, dated Swabi, the 21/06 /2019.

- Copies to the: -
1. DSP, HQrs.
 2. Pay Officer.
 3. Establishment Clerk.
 4. Fauji Missal Clerk.
 5. Official concerned

Date of Presentation of Application: 25/10/18

Copying Fee: (Nil)

Total Pages: 08

Name of Copying: Rahard Ali

Date of Completion of Copy: 25/10/18

Date of Delivery of Copy: 25/10/18

ATTESTED

District Police Officer, Swabi.

✓ پروانہ - تقدیرقا - لائبرول - بکوسٹ - سکریٹری - طابوٹر - ویکسٹی - رجسٹرار ایسی

جناب عزت مآب THE DIG POLICE Mardan, KPK صاحب

10

مضمون : درخواست برائے بحالی سروس آف پولیس کانسٹیبل منزل شاہ ڈسٹرکٹ پولیس صوابی

محترم Sir

میں مسی منزل شاہ آپ سے مندرجہ بالا مضمون شدہ درخواست میں بہت ہی احترام کے ساتھ رجوع فرما ہوں۔

یہ کہ مجھ کو ڈسٹرکٹ پولیس آفیسر صوابی نے آرڈر (O.B No.503 Dated 20.06.2019) کے ذریعے سروس سے معطل کیا ہے۔ سزا معطلی آرڈر اس درخواست کے ساتھ (نمبر الف) نام سے لف ہے۔

یہ کہ میں درخواست کنندہ 30.06.2001 سے پولیس سروس سے منسلک ہوں، اور تاحال 18 سال سروس مکمل کر چکا ہوں، اور ریٹائرمنٹ میں چند سال باقی ہے۔

یہ کہ میرے معطلی آرڈر میں بیان کیا گیا ہے، کہ میرے اوپر انکوائری کمیٹی DSP, TOPI Swabi صاحب کے زیر نگرانی بنائی گئی، لیکن اس انکوائری کے لیے سمن نہ مجھ سے ایصال التعمیل کی گئی اور نہ مجھے بروقت خبر ہوئی۔ جسکی وجہ سے میں اپنے موقف کو ظاہر نہ کر سکا۔

یہ کہ مجھے اس سے پہلے معطل کیا گیا تھا اور واپس بحالی پر مجھ سے دو انکریمنٹ اور تین مہینوں کی تجواہ کافی گئی جس کی وجہ سے میں defression کا شکار ہو کر بیمار ہوا اور ڈیوٹی پر حاضر ہونے کا قابل نہ رہا۔

اسی لیے آپ صاحبان سے بڑی احترام کے ساتھ درخواست گزار ہوں کہ برائے مہربانی مجھے اپنی ڈیوٹی پر دوبارہ مامور کرائیں، تاکہ میں اپنے بچوں اور اہل و عیال کی کفالت کر سکوں، کیونکہ یہی ڈیوٹی ہی میری ذریعہ معاش ہے۔ اور آئندہ کے لیے آپ سے وعدہ کر رہا ہوں، کہ مستقبل میں ہر قسم کے ایسے اقدام سے باز رہوں گا جو کہ میرے سروس، ڈیپارٹمنٹ اور آفیسرز کو ناقابل قبول ہوں۔

شکریہ

کانسٹیبل منزل شاہ

ڈسٹرکٹ پولیس صوابی

موبائل نمبر : 0346 9820102

0333-2768607

مرضہ 15-7-19

ORDER.

H (11)

This order will dispose-off the departmental appeal preferred by **Ex-Constable Muzamil No. 879** of Swabi District Police against the order of District Police Officer, Swabi, whereby he was awarded Major punishment of dismissal from service vide OB No. 503 dated 20.06.2019.

Brief facts of the case are that, the appellant while posted at Police Lines Swabi has been found habitual absentee and unwilling worker. On account of his absence from duty he was dismissed from service, but the Worthy Regional Police Officer, Mardan re-instated him in service vide this office order endorsement No. 2494/ES dated 25.03.2019. He reported his arrival on 05.04.2019, but again absented himself from duty with effect from 07.04.2019 till date of dismissal. Therefore, he was issued with Charge Sheet and summary of allegations and Deputy Superintendent of Police, Topi was appointed to conduct departmental enquiry against him. The Officer conducted enquiry recorded statements of all concerned, collected evidence and submitted his findings wherein he found the defaulter Constable guilty for his misconduct and recommended him for Major Punishment of Dismissal from service. The District Police Office, Swabi perused the enquiry papers and findings of the Enquiry Officer served the defaulter Constable with Final Show Cause Notice through local Police. His reply to the Final Show Cause Notice was received perused and found unsatisfactory. However, it was decided to give him an opportunity of personal hearing, therefore he was directed to appear in Orderly Room, but he did not appear. It is worth mentioning here that the defaulter Constable has been enlisted on 30.06.2001, while during this period he absented himself for 25 times for which he has been awarded punishments including dismissal from service which speak that he is not interested in his Official duties.

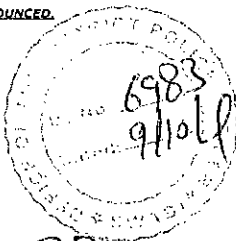
Therefore, he was awarded Major Punishment of dismissal from service from the date of his absence i.e 07.04.2019 by the District Police Officer, Swabi OB: No. 503 dated 20.06.2019.

Certified to be True Copy.

He was called in orderly room held in this office on 24.09.2019 for defending himself. He was heard in person but did not produce any solid grounds for his prolong absence. On perusal of previous service record it was noticed that he is habitual absentee and prior to this, the appellant was also dismissed from service for his disinterest in the official duty. Hence his departmental appeal for re-instatement into service is hereby rejected.

ORDER ANNOUNCED.

Handwritten notes and signatures on the left side of the page, including "OB/EC/Insp Legal" and "37/10".



Handwritten signature of Muhammad Ali Khan.

(MUHAMMAD ALI KHAN)PSP
Regional Police Officer,
Mardan.

No. 11577 /ES, Dated Mardan the 30/09 /2019.

Copy forwarded to District Police Officer, Swabi for information and necessary w/r to his office Memo: No. 80/Insp: Legal dated 13.09.2019. His Service Record is returned herewith.

(*****)

ATTESTED

PID
District Police Officer, Swabi.

VAKALAT NAMA

NO. _____/2019

IN THE COURT OF Service Tribunal, Peshawar

Muzamil Shah (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

P.O. Kille etc (Respondent)
(Defendant)

I/We, Muzamil Shah (Appellant)

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 13-11 /2019

وکیل
(CLIENT)

ACCEPTED

M. Asif Yousafzai
M. ASIF YOUSAFZAI
Advocate Supreme Court
Peshawar.
B.C NO# 10-7327
CNIC # 17301-5106574-3

Syed Noman Ali Bukhari
Advocate High Court

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1523/2019.

Muzamil Shah Ex-Constable No. 879..... Appellant

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
& Others..... Respondents.

WRITTEN REPLY BY RESPONDENTS.

Preliminary Objections.

1. That the appellant has got no cause of action and locus standi to file the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is barred by law & limitation.
4. That the appellant has not come to this Tribunal with clean hands.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant concealed the material facts from this Hon'ble Tribunal.
8. That the appellant has been estopped by his own conduct to file the appeal.

REPLY ON FACTS.

1. Para No. 01 of appeal to the extent of service is correct, however from the perusal of service record, appellant is found habitual absentee on account of which, he was awarded different minor as well as major punishments (**Copies of punishments orders are attached as Annexure A, B and C**).
2. Para No. 02 of appeal is incorrect. Appellant being member of discipline force is supposed to follow the rules and it was his responsibility to apply for medical leave, but he absented himself from duties on account of which he was served with Charge Sheet, and proper departmental proceeding was initiated against him in accordance with rules.
3. Para No. 03 of appeal is incorrect. Appellant despite of proper service did not bother to join enquiry proceeding, which shows his dis-interest in Police job, hence Enquiry Officer recommended him for major punishment (**Copy of process server report attached as Annexure D & E**).
4. Para No. 04 of appeal to the extent of service of Final Show Cause Notice in the light of recommendation of Enquiry Officer is correct. However, the reply of


appellant was not convincing/reliable nor he produced any documentary evidence in support of his willful absence despite of giving opportunity of personal hearing.

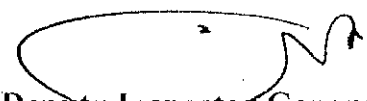
5. That on account of willful absence, appellant was proceeded against departmentally during which he was found guilty. On recommendation of Enquiry Officer, appellant was served with Final Show Cause Notice and his reply was found unsatisfactory and without any proof. Before passing final order, appellant deliberately absented despite repeated service upon him and his dis-interest in Police job was dismissed from service through speaking order.
6. That the appellant has got no cause of action and the instant appeal is groundless, which needs to be dismissed with cost.


GROUND.

- A. Incorrect. The orders of respondents are quite legal in accordance with rules.
- B. Incorrect. After proper departmental enquiry and providing an opportunity of personal hearing, appellant was dismissed from service.
- C. Incorrect. Appellant is habitual absentee and despite of lenient view previously by the appellate authority, he again absented from official duty without prior permission.
- D. Incorrect. Appellant was treated in accordance with the law and rules.
- E. Incorrect. The punishment commensurate with the guilt of appellant.
- F. That the respondents also seek permission of this Hon'ble Court to advance other grounds at the time of hearing of appeal.

Keeping in view the above narrated facts, it is humbly prayed that the instant appeal being devoid of merits may very kindly be dismissed with costs, please.


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1)


Deputy Inspector General of Police,
Mardan Region-I Mardan
(Respondent No. 2)


District Police Officer Swabi,
(Respondent No. 3)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1523/2019


Muzamil Shah Ex-Constable No. 879..... Appellant

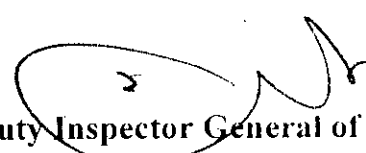
VERSUS

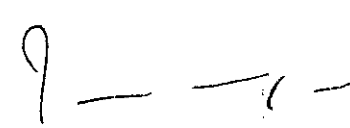
1: **Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
& Others..... Respondents.**

AFFIDAVIT:-

We the respondent No. 1 to 3 do hereby solemnly affirm and declare on oath that the contents of the written reply are correct/true to the best of our knowledge / belief and nothing has been concealed from the honorable Tribunal.


**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1)**


**Deputy Inspector General of Police,
Mardan Region-1 Mardan
(Respondent No. 2)**


**District Police Officer Swabi,
(Respondent No. 3)**

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

ORDER.

Constable Muzamil No.879, while posted to Police Lines, Swabi absented himself from duty with effect from 17.08.2018 to 07.11.2018 without any leave/prior permission of competent authority. Therefore, he was issued with Show Cause Notice. He was directed time and again to receive his Show Cause Notice. Therefore, he was served with Charge Sheet and Summary of Allegations and DSP, H.Qrs. Swabi was appointed to conduct departmental enquiry against him. The officer conducted enquiry, recorded statements of all concerned, collected evidence and submitted his findings wherein he expressed Constable Muzamil No.879 guilty for the misconduct and recommended him for punishment. The undersigned perused the enquiry papers and findings of the Enquiry Officer and by agreeing with him issued constable Muzamil No.879 with Final Show Cause Notice. His reply to the Final Show Cause Notice was received, perused and found un-satisfactory. However, he was directed to appear in Orderly Room for personal hearing, but despite of repeated direction he did not bother to appear in Orderly Room.

Therefore, I, Syed Khalid Hamdani, PSP, QPM, District Police Officer, Swabi, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 1975, hereby award Constable Muzamil No.879, Major Punishment of dismissal from service, with immediate effect. The pay for the period of his absence is hereby deducted from his salary.

O.B No. 93

Dated 30-1-2019.

(SYED KHALID HAMDANI) PSP, QPM
District Police Officer, Swabi.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

No. 220-24/PA, dated Swabi, the 30-01/2019.

Copies to the :-

1. DSP, H.Qrs, Swabi.
2. Pay Officer.
3. Establishment Clerk.
4. Fauji Missal Clerk.
5. Official concerned

Entry made in his S/Roll at Page No. 06

A/1

ORDER.

This order will dispose-off the departmental appeal preferred by ex-Constable Muzamil No. 879 of Swabi District Police against the order of District Police Officer, Swabi whereby he was awarded Major Punishment of dismissal from Service vide his office OB No. 93 dated 30.01.2019.

Brief facts of the case are that the appellant, he while posted at Police Lines, Swabi absented himself from duty with effect from 17.08.2018 to 07.11.2018 without any leave permission of the competent authority. He was served with Show Cause Notice and directed time and again to receive his Show Cause Notice. In this connection, he was Charge Sheeted with summary of allegations and DSP/HQrs Swabi was appointed as Enquiry Officer to conduct departmental enquiry against him. The Enquiry Officer conducted enquiry, recorded statements of all concerned, collected evidence and submitted his findings wherein he expressed that Constable Muzamil No. 789 guilty for the misconduct and recommended for punishment. The District Police Officer, Swabi perused the enquiry papers and findings of the enquiry Officer and by agreeing with him issued him Final Show Cause Notice. His reply of Final Show Cause Notice was received perused and found unsatisfactory and directed to appear in Orderly Room for personal hearing, but despite of repeated direction he did not bother to appear in Orderly Room. Therefore, he was awarded Major Punishment of Dismissal from Service and period of absence was deducted from his salary.

He was called in orderly room held in this office on 20.03.2019 and heard him in person. Taking a lenient view, appellant is re-instated into service and awarded punishment of Forfeiture of 02 years approved service and period of absence treated as leave without pay.

ORDER ANNOUNCED.

Muhammad Ali Khan
(MUHAMMAD ALI KHAN)PSP
Regional Police Officer,
Mardan.

No. 24/94/ES.

Dated Mardan the 25/03 /2019.

Copy to District Police Officer, Swabi for information and necessary action w/r to his office Memo: No, 24/Insp: legal dated 12.03.2019. The Service Record is returned herewith.

*Service record
received Adr D.C*

27/3

*OB No. 282
dt. 01/04/2019
021...*

*Inspected
OB Ec / Adr*

[Signature]
DPO Swabi

B

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI

ORDER

Constable Muzammil Belt No. 879, while posted to Police Station Zaida absented himself from duty with effect from 26.05.2017 to 20.10.2017 without any leave or prior permission of the competent authority, which is against the discipline and amounts to gross misconduct.

In this connection, he was served with Charge Sheet and Summary of allegations vide this office Diary No. 28/CC/PSO Dated 20.09.2017 and DSP Swabi was appointed as Enquiry Officer. The officer conducted proper departmental enquiry, called him to attend the office in pursuance of his departmental proceedings. The delinquent attended the office and recorded his statement and produced some medical prescriptions in support of his absence which were duly verified by the Enquiry Officer but the enquiry officer concluded that justification of such willful absence could not be adjust by providing medical prescriptions. The Enquiry Officer carried out enquiry against him, recorded the statements of all, collected evidence and thereby calculated his length of absence total 147 days and transpired that the delinquent has produced medical prescriptions for 112 days while 31X days was without any justification. The Enquiry Officer did not agree with his long willful absence and recommended him for suitable punishment. By agreeing with the Enquiry Officer, served him with Final Show Cause Notice vide this office Diary No. 257/PSO Dated 26.10.2017, but he neither attended the office nor joined back his duty which shows that he has nothing to offer in his defense. Moreover, the delinquent Constable again absented himself from duty w.e.f: 01.11.2017 to 10.11.2017 without any leave or prior permission. In this regard, he was directed to appear in Orderly Room who appeared in Orderly Room on 09.11.2017, heard in person but his reply was found unsatisfactory. Therefore, the delinquent constable is to be transferred to Police Lines Swabi from PP Daran and hereby warned to be careful in future and in case of getting a single day willful absence, shall be considered as dismiss from the service apart from initiating departmental proceedings against him.

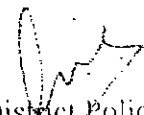
Therefore, I, Mr. Sohail Khalid, PSP, District Police Officer, Swabi, in exercise of the powers vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975, hereby award Constable Muzammil 879, minor punishment of "Censure" and his period of absence from 26.05.2017 to 20.10.2017 and from 01.11.2017 to 10.11.2017 will be treated as leave without pay. his pay is released.

Order announced:

On 17.10.2017

O.B No. _____

Dated _____ / _____ / 2017.


District Police Officer,
S W A B I.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI

No. 1008-12 /PSO, dated Swabi, the 14. 11 /2017.

Copies to the: -

- ✓ 1. DSP, II QRs, Swabi.
2. Pay Officer.
3. Establishment Clerk.
4. Fauji Missal Clerk.
5. Official Concerned.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

ORDER.

This order of mine is directed to dispose off the Enquiry against Constable Muzamil No.879.

The said constable while posted to Police Station, Yar Hussain absented himself from duty with effect from 25.10.2007 to 26.11.2007, 29.11.2007 to 24.12.2007, 3.12.2007 to 4.12.2007, 5.12.2007 to 5.12.2007, 23.12.2007 to 25.12.2007, 8.1.2008 to 9.1.2008, 15.1.2008 to 16.1.2008, 19.1.2008 to 22.1.2008 and from 22.1.2008 to 23.1.2008 without any leave/prior permission of the competent authority, which is against the discipline and amounts to gross mis-conduct. Therefore, he was served with Show Cause Notice.

His reply to the show cause notice was received, perused but was found un-satisfactory. Therefore, he was served with Charge Sheet and Summary of allegations and Mr. Mohammad Rasan, DSP, Swabi, was appointed as Enquiry Officer. The Officer conducted proper departmental enquiry, collected the evidence and recorded the statements of all concerned. He submitted his findings wherein he found Constable Muzamil No.879, guilty for the mis-conduct and recommended him for Major Punishment. The undersigned perused the enquiry papers and findings of the enquiry officer and by agreeing with the Enquiry Officer, served him with Final Show Cause Notice for Major Punishment. His reply to the Final Show Cause Notice was received, perused and heard in Orderly Room, but his reply was found un-satisfactory.

Therefore, I, Mohammad Rafique, District Police Officer, Swabi, in exercise of the powers vested in me under Removal from Service (Special Powers) Ordinance, 2000, hereby award constable Muzamil No.879, Minor Punishment stoppage of one year increment without cumulative effect. His period of absence is treated as leave without and his pay is released, with immediate effect.

O.B No. 176
Dated 21-02-2009.

(Mohammad Rafique)
District Police Officer, Swabi.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI

No. 139-41/P.A. dated Swabi, the 21-2-2009.

Copies to the:-

1. Pay Officer.
2. Establishment Clerk.
3. Fauji Missal Clerk.

Encls: (46)

[Handwritten signatures and notes at the bottom of the page]

D

ضلع صوابی

پروانہ

از دفتر DSP سرکل ٹوپی

نمبر (16)

نام: SHO/MHC تھانہ صوابی

عنوان: محکمانہ انکوائری۔

حوالہ انکوائری نمبری 22/CC/PA مورخہ 22.04.2019 تحریر ہے کہ کنستبل نزل نمبر 879 سکنہ صوابی جو کہ آپ کے

علاقہ اختیار کارہائشی سے مطلع کریں۔ کہ سلسلہ انکوائری قلمبندی بیان مورخہ 24.04.2019 بلات 10:00 بجے زیر خطی کو پیش ہو جائے۔ بصورت دیگر انکوائری ہذا میں یکطرفہ کارروائی کیجائیگی۔

ڈپٹی سپرنٹنڈنٹ آف پولیس

ٹوپی سرکل

۵۶

سلسلہ
Soro
طوبی انڈسٹری نمبر 163
23.4.19

میں اس تحریر کی رو سے اقرار کرتے ہوئے رہتا ہوں کہ
کو میں آگاہ کروں گا اور حلفہ، دفتر میں جاؤ گا
اور رہتا رہتا رہتا رہتا رہتا

0332-9400793

202-67116269

بھارت شاہ ولد مظفر شاہ ساکن گلپانہ ہوا

۵۶

میں اس تحریر کی رو سے اقرار کرتے ہوئے رہتا ہوں کہ
کو میں آگاہ کروں گا

7209028-3

313-9799071

بھارت شاہ ولد مظفر شاہ ساکن گلپانہ ہوا

طوبی انڈسٹری نمبر 163 کو مزید سے تعلق ہوا

3469828102

الحمد للہ رب العالمین، اللہ تعالیٰ سے دعا ہے کہ
اس تحریر کی رو سے اقرار کرتے ہوئے رہتا ہوں کہ
کو میں آگاہ کروں گا اور حلفہ، دفتر میں جاؤ گا
اور رہتا رہتا رہتا رہتا رہتا

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