

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.

Service Appeal No. 191/2018

Date of Institution ... 30.01.2018

Date of Decision ... 26.07.2022

Masood Usman S/O Muhammad Usman R/O Village Khushal Garh
Tehsil & District, Kohat.

... (Appellant).

VERSUS

Provincial Police Officer/Inspector General of Police Khyber
Pakhtunkhwa, Peshawar and three others.

... (Respondents)

MR. SHAHID QAYUM KHATTAK,
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the facts giving rise to filing of the instant service appeal are that disciplinary action was taken against the appellant on the allegations of his absence from duty and he was dismissed from service vide O.B No. 1048 dated 20.08.2014. After availing departmental remedy, the appellant filed Service Appeal No. 1426/2014, which was allowed vide judgment dated 07.09.2016 by reinstating the appellant into service and the matter was remitted to the respondents for conducting of de-novo inquiry. On conclusion of the de-novo inquiry, the appellant was again dismissed from service vide O.B No. 1042 dated 13.12.2017, which was challenged by the appellant



through filing of departmental appeal before Regional Police Officer Kohat Region, which was decided vide order dated 02.01.2018, whereby the penalty awarded to the appellant was set-aside and he was reinstated into service but the intervening period was treated as leave without pay. The appellant has now partially impugned order dated 02.01.2018 passed by Regional Police Officer Kohat Region to the extent that he may be granted all back benefits of service as well as payment of the salaries.

2. Respondents contested the appeal by way of submitting para-wise comments, wherein they refuted the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant agitated that the appellant remained out of service on account of his wrongful dismissal, therefore, he is entitled to all back benefits after his reinstatement in service vide order dated 02.01.2018 passed by Regional Police Officer Kohat Region. On the other hand, learned Additional Advocate General for the respondents has contended that as the appellant did not perform any duty during the period during which he remained out of service, therefore, he cannot claim payment of salaries for the said period on the principle of no work, no pay.

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

5. A perusal of the record would show that on conclusion of the de-novo inquiry proceeding, the appellant was awarded major penalty of dismissal from service. The departmental appeal of the appellant was disposed of by Regional Police Officer Kohat Region vide order dated 02.01.2018, the relevant para of which is reproduced as below:-

" I have gone through the available record and came to the conclusion that the punishment awarded to him is too harsh and is not commensurate with the gravity of the offense. Therefore, by taking lenient view, I set aside the punishment, passed by DPO Kohat



and reinstate the appellant Ex-Constable Masood Usman No. 1223 into service. The intervening period is treated as leave without pay. He is warned to be careful in future."

6. While going through the above reproduced para of order dated 02.01.2018 passed by Regional Police Officer Kohat Region, it is evident that the appellant has been reinstated in service by setting-aside the penalty of dismissal from service awarded to him by District Police Officer Kohat. As the appellant has not been awarded any punishment, therefore, the appellate Authority was not justified in treating the intervening period as leave without pay for the reason that it was due to wrongful dismissal of the appellant from service, which kept him away from performing of his duty during the intervening period. The appellant was proceeded against on the allegations of absence from duty, therefore, only the period of his absence from duty with effect from 29.05.2014 till 20.08.2014 could legally be treated as leave without pay.

7. In view of the above discussion, the absence period with effect from 29.05.2014 till 20.08.2014 may be treated as leave without pay, whereas the appellant shall be considered on duty during the intervening period and is held entitled to all financial as well as other service benefits for the said period. The appeal in hand is disposed of accordingly. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED
26.07.2022



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(KALIM ARSHAD KHAN)
CHAIRMAN

ORDER
26.07.2022

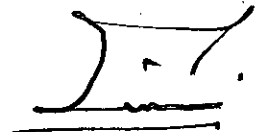
Appellant alongwith his counsel present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the absence period with effect from 29.05.2014 till 20.08.2014 may be treated as leave without pay, whereas the appellant shall be considered on duty during the intervening period and is held entitled to all financial as well as other service benefits for the said period. The appeal in hand is disposed of accordingly. Parties are left to bear their own cost. File be consigned to the record room.

ANNOUNCED
26.07.2022



(KALIM ARSHAD KHAN)
CHAIRMAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

before Regional Police Officer Kohat Region, which was decided vide order dated 02.01.2018, whereby the penalty awarded to the appellant was set-aside and he was reinstated into service but the intervening period was treated as leave without pay. The appellant has now partially impugned order dated 02.01.2018 passed by Regional Police Officer Kohat Region to the extent that he may be granted all back benefits of service as well as payment of the salaries.

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

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" I have gone through the available record and came to the conclusion that the punishment awarded to him is too harsh and is not commensurate with the gravity of the offense. Therefore, by taking lenient view, I set aside the punishment, passed by DPO Kohat and reinstate the appellant Ex-Constable Masood

OFFICE OF THE DISTRICT POLICE OFFICER, ABBOTTABAD

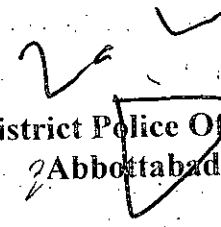
No: 114 /PA, Dated Abbottabad, the 14/07/2020.

FINAL SHOW CAUSE NOTICE**(Unit Rule (3) KPK Police Rules, 1975 amended 2014)**

1. That you HC Amjad Khan No. 552 rendered yourself liable to be proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) for following misconduct;
 - I. You while posted at PS Cantt involved yourself in case FIR No. 179 dated 14-12-2019 u/s 9(C)14,15 CNSA 1997 Police Station Anti Narcotics Force Peshawar. Your this criminal act earned bad name for Police department in the eyes of general public, which is tantamount to gross misconduct:-
 - II. During proper departmental enquiry the allegations have been proved against you.
2. That by reason of above, as sufficient material is placed before the undersigned therefore it is decided to proceed against you in general Police proceedings without aid of enquiry officer;
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force..
4. That your retention in the police force will amount to encouragement of inefficient Police officers;
5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the Rules.
6. You are, therefore, called upon to Final Show Cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975(amended 2014) for the misconduct referred to above.
7. You should submit reply to this Final Show Cause Notice within 07 days of the receipt of the notice failing which an ex parte action shall be taken against you.
8. You are further directed to inform the undersigned that you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.

Received by

Dated 14/07/2020



District Police Officer
Abbottabad

Usman No. 1223 into service. The intervening period is treated as leave without pay. He is warned to be careful in future."

5. While going through the above mentioned reproduced para of order dated 02.01.2018 passed by Regional Police Officer Kohat Region, it is evident that the appellant has been reinstated in service by setting-aside the penalty of dismissal from service awarded to him by District Police Officer Kohat. As the appellant has not been awarded any punishment, therefore, the appellate Authority was not justified in treating the intervening period as leave without pay for the reason that it was due to wrongful dismissal of the appellant from service, which kept him away from performing of his duty during the intervening period. The appellant was proceeded against on the allegations of absence from duty, therefore, only the period of his absence from duty with effect from 29.05.2014 till 20.08.2014 could legally be treated as leave without pay.

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ANNOUNCED
26.07.2022

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

(KALIM ARSHAD KHAN)
CHAIRMAN

B-1

P-15

OFFICE OF THE
SUPERINTENDENT
CENTRAL PRISON, PESHAWAR
NO. 623/W.E./ASH DI 14/1/2020



REGISTERED

To,

The District Police Officer,
Abbottabad.

Subject:- CHARGE SHEET AND SUMMARY OF ALLEGATIONS

Memo:

Reference your memo No. 41/PA dated 03-01-2020.

It is submitted that the subject cited letter (charge sheet & statement of allegations) has been served upon the undertrial prisoner Amjid Khan. A copy of the same is returned herewith for information and further necessary action after doing the needful please.

Shakil
SUPERINTENDENT
CENTRAL PRISON PESHAWAR
14/1/2020

*PA
16/1/2020*

*ASP
15/1/2020*

*with police pl
15/1/2020*

*4/16
16/1/2020*

*Stew
For proceeding*

*ASP
17/Jan/20*

12.01.2022

Due to non-availability of the concerned DB, the case is adjourned to 28.04.2022 for the same before D.B.

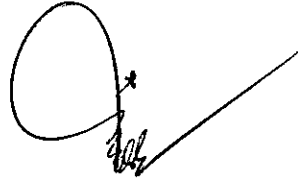


Reader

28.04.2022

Mr. Khalil Ullah, Advocate (junior of learned counsel for the appellant) present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Junior of learned counsel for the appellant sought adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 20.06.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-ud-Dih)
Member (J)

20th June, 2022

Junior to counsel for the appellant present. Mr. Muhammad Riaz Khan Painsdakhel, Asstt. AG for the respondents present.

Junior to the learned counsel for the appellant request for adjournment due to engagement of learned senior counsel for the appellant before Hon'able Peshawar High Court Peshawar. The appeal is old one and a number of opportunities were already granted, therefore, last opportunity is granted for arguments failing which the appeal will be decided on the basis of available record without the arguments. To come up for arguments on 26.07.2022 before the D.B.



(Fareeha Paul)
Member(E)



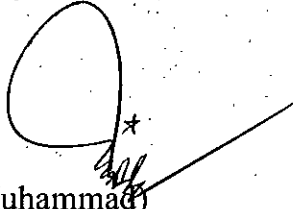
(Kalim Arshad Khan)
Chairman

25.11.2020

Junior to counsel for the appellant present. Addl: AG
alongwith Mr. Arif Saleem, Steno for respondents present:

Requests for adjournment as learned counsel for the
appellant is engaged in Bar Election at Charsadda.

Adjourned to 15.02.2021 for arguments before D.B.



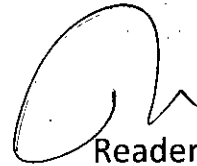
(Mian Muhammad)
Member (E)



Chairman

15.02.2021

Due to Pandemic of Covid-19, the case is adjourned to
24.05.2021 for the same.



Reader

24.05.2021

Due to demise of the Worthy Chairman, the Tribunal is
non-functional, therefore, case is adjourned to
01.09.2021 for the same as before.



Reader

*due to non availability of DB
to come up for the same as before
on*



Reader

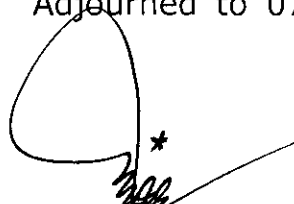
19:06.2020

Mr. Rizwanullah Advocate on behalf of learned counsel for the appellant and Mr. Kabirullah Khattak learned Addl. AG for the respondents present.

It is stated that learned counsel for the appellant is indisposed, therefore, adjournment is requested.

Adjourned to 07.09.2020 for arguments before


D.B.

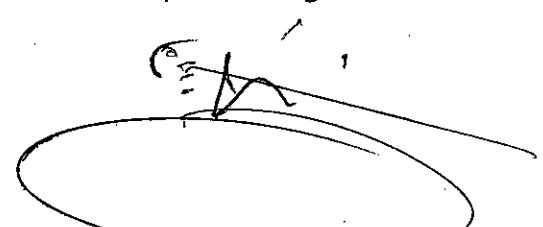

Member


Chairman

07.09.2020

Appellant has not forth come in person. Mr. Usman Ghani, District Attorney for the respondents is present. The bench was informed that the learned counsel representing appellant is not available at the station and has proceeded out of district and his clerk is seeking adjournment. Adjourned to 25.11.2020. File to come up for arguments before D.B.


(Mian Muhammad)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

Service Appeal No. 191/2018

31.12.2019

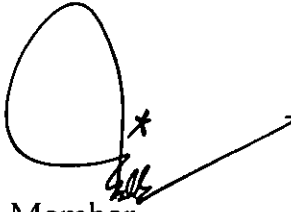
Appellant in person and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Appellant requested for adjournment as his counsel is not available today. Adjourned to 19.02.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

19.02.2020

Clerk to counsel for the appellant present. Mr. Ziaullah, DDA for respondents present. Clerk to counsel for the appellant submitted an application for adjournment as learned counsel for the appellant is not available today. Adjourned To come up for arguments on 30.03.2020 before D.B.


Member



Member

30.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 19.06.2020 before D.B.



Reader

16.07.2019 Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment Adjourned. To come up for arguments on 04.09.2019 before D.B


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member


04.09.2019 Junior to counsel for the appellant present. Mr. Riaz Khan Paindakhel learned Assistant Advocate General for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 17.10.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

17.10.2019 Roman Shah Advocate junior to counsel for the appellant present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn .To come up for arguments on 31.12.2019 before D.B.


Member


Member

06.03.2019

Counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Ishaq Gul, DSP (Legal) for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 01.05.2019 before D.B.


(M. HAMID MUGHAL)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

01.05.2019

Since 1st May has been declared as Public Holiday, therefore the case is adjourned. To come up on 21-5-19 before D.B.


Reader

21.05.2019

Mr. Fida Ullah Advocate on behalf of counsel for the appellant and Mr. Riaz Painsdakhel, Asst: AG for the respondents present.

A request for adjournment is made due to engagement of learned senior counsel for the appellant before the Hon'ble High Court today.

Adjourned to 16.07.2019 before D.B.


Member


Chairman

03.10.2018

Clerk to counsel for appellant and Kabir Ullah Khattak learned Additional Advocate General present. Clerk to counsel for appellant submitted rejoinder which is placed on file and seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 19.11.2018 before D.B.



(Hussain Shah)
Member



(Muhammad Hamid Mughal)
Member

19.11.2018

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Mr. Ishaq Khan DSP Legal Present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.01.2019 before D.B.



Member
Member



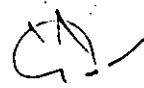
Member
Member

08.01.2019

Appellant in person and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Qaisar Alam H.C for the respondents present. Due to general strike of the bar, the case is adjourned. To come up for arguments on 06.03.2019 before D.B



Member



Member

191/2018

15.05.2018

Counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Arif Saleem, ASI for the respondents present. Learned Addl. AG requested for further time. To come up for written reply/comments on 09.07.2018 before S.B.



Chairman

09.07.2018

Counsel for the appellant and Mr. Sardar Shoukat Hayat, Addl. AG for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 9.08.2018 before S.B.


Member

09.08.2018

Appellant Masood Usman in person present. Mr. Arif Saleem, Steno alongwith Mr. Kabirullah Khattak, Addl. AG for respondents present. Written reply on behalf of the respondents submitted. To come up for rejoinder and arguments on 03.10.2018 before D.B.




Chairman

22.03.2018

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department and during service he was dismissed from service thereafter the appellant filed departmental appeal as well as service appeal and the service appeal of the appellant was partially accepted vide judgment dated 07.09.2016 and directed the respondents to reinstate the appellant and conduct de-novo inquiry according to the rules. It was further contended that after conducting de-novo inquiry the appellant was again dismissed from service by the competent authority but on departmental appeal the departmental authority partially accepted the appeal of the appellant, reinstated him in service however, back benefits of the intervening period was treated as leave without pay. It was further contended that since the departmental authority has accepted the appeal, reinstated the appellant which shows that the appellant was exonerated from the allegation leveled against him therefore, the appellant was entitled for the back benefits of the intervening period but the departmental authority has illegally treated the said period as leave without pay therefore, the same is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 15.05.2018 before S.B.

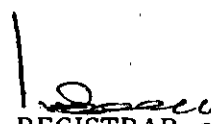


Appellant Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi)
Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 191/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	09/02/2018	<p>The appeal of Mr. Masood Usman resubmitted today by Mr. Shahid Qayyum Khattak Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR -</p>
2-	13/02/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26/02/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	26.02.2018	<p>Counsel for the applicant present and seeks adjournment. Adjourned. To come up for preliminary hearing on 22.03.2018 before S.B.</p> <p style="text-align: right;"> (Ahmad Hassan) Member (E)</p>

The appeal of Mr. Masood Usman son of Muhammad Usman r/o village Kohat received today i.e. on 30.01.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

Copy of departmental appeal against the impugned order is not attached with the appeal which may be placed on it.

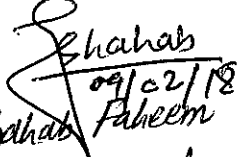
No. 239 /S.T,

Dt. 31/01 /2018


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Shahid Qayyum Khattak Adv.

The Copy of ^{dep.} appeal is already attached on page no. 22 of case file. Plz put up for further N/A. *pte*


09/02/18
Shahab Faheem
Associate Counsel.
Shahid Qayyum Khattak
Adv

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. 191 /2018

Masood UsmanAppellant

Versus

Inspector General of Police and others.....Respondents

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5.	Copy of Order dated 20/08/2014	C	9
6.	Copy of order dated 10/12/2014	D	10
7.	Copy Service Tribunal Order	E	11-14
8.	Copy of Applications	F	15-16
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13.	Copy of letter / appeal	K	22
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Appellant

Through

Shahid Qayum Khattak
Advocate, Peshawar

Dated: /01/2018

OFF: 105-A Town Tower, Jahangir Abad,
Peshawar

Cell No. 0333-9195776

①

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. 191 /2018

Masood Usman S/o Muhammad Usman R/o Village Khushal

Garh Teh & District, KohatAppellant

Versus

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 154

Dated 30-1-2018

1. Provincial Police Officer/ Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police Kohat Region, Kohat.
3. District Police Officer, Kohat
4. Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar.....Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 02/01/2018 OF RESPONDENT NO. 2
BY WHICH APPEAL FILED BY APPELLANT AGAINST ORDER DATED
13/12/2017 PASSED BY RESPONDENT NO. 3 HAS BEEN ACCEPTED
AND THE PUNISHMENT ORDER PASSED BY RESPONDENT No. 3 HAS
BEEN SET ASIDE BY REINSTATING APPELLANT INTO SERVICE BUT
THE INTERVENING PERIOD HAS BEEN TREATED AS LEAVE
WITHOUT PAY.

Filed to-day

Registrar

30/1/18 PRAYER

By accepting this service appeal, the punishment of intervening
period as leave without pay awarded to the appellant through
impugned order may graciously be set aside by declaring it
illegal, void, unlawful, without authority, based on mala fide, void
abinitio and thus not sustainable and the appellant is entitled for
all back benefits of pay and service.

Re-submitted to -day
and filed.

Registrar

9/2/18

Respectfully Sheweth;

1. That on 30/06/2014, the appellant while posted as Constable in Traffic
Kohat was charge sheeted for the Charges i.e

2

"You had absented yourself from official duty vide DD NO. 18 dated 29/05/2014 till to date, Which show inefficiency, negligence, irresponsibility and lak of interest in the discharge of government duties"

(Copy of the Charge sheet is attached as Annexure "A")

2. That alleged enquiry was conducted wherein no opportunity of proper hearing has been provided to the appellant and he has been held responsible for intentional / deliberate absence from duty with effect from 29/05/2014 and recommended major punishment of removal from service and thereafter final show cause notice was issued to appellant by respondent No. 3 and without affording any opportunity of hearing respondent No. 3 vide order bearing OB No. 1048 dated 20/08/2014 awarded major punishment and removed him from service form the date of his absence. (Copy of Show Cause notice and impugned order are Attached as Annexure "B" & "C")
3. That appellant filed departmental Appeal/ representation before respondent No. 2 on 27/08/2014 but he rejected the same vide order dated 11/12/2014. (Copy of order is attached as Annexure "D")
4. That appellant challenged the same before this Hon'ble Tribunal in service appeal bearing No. 1426/2014 which was accepted vide judgment dated 07/09/2016 by reinstated the appellant with further direction to conduct de-novo inquiry within reasonable time. (Copy of the Judgment is attached as Annexure "E")
5. That after the passing of judgment by this Hon'ble Tribunal appellant filed an application for his reinstatement vide an application dated 27/09/2016 and the respondent vide their letter dated 04/10/2016 opined for the implementation of the judgment. (Copies attached as Annexure "F")
6. That respondent without complying the judgment into its true prospect, without reinstating appellant conduct de-novo enquiry and thereafter final show cause notice was issued to him which was properly replied but vide OB No. 1042 dated 13/12/2017 award major punishment of Dismissal from service with immediate effect.(Copies of enquiry report, show cause notice, reply and order are attached as Annexure "G", "H", "I" and "J")

3

7. That appellant filed an application before the worthy respondent No. 2 who vide Impugned order dated 02/01/2018 accepted the same and reinstated appellant to his post but declaring the intervening period as leave without pay without considering the earlier order passed by this Hon'ble Tribunal. (Copy of application and order are attached as Annexure "K" and "L")
8. That appellant feeling aggrieved from the Impugned order dated 02/01/2018 to some extent, hence, filing this appeal on the following amongst other grounds inter alia:

GROUND:

- a. That Hon'ble tribunal vide it earlier order / judgment dated 07/09/2016 in very clear words order reinstated appellant on his service but respondent in utter disregard of the said direction failed to reinstate appellant but this aspect of the case has not been considered by respondent No. 2 while reinstated appellant on service.
- b. That the order of respondent No. 2 is very much harsh and is against the principle of natural justice as appellant was kept away by the respondent from performing his duties after he report for joining but this aspect of the case has also not been considered at all by the respondent.
- c. That similarly the question regarding the back benefit has not been considered in its true prospect by the learned respondent No. 2 while reinstated appellant to his post.
- d. That once appellant has been exonerated from the charged specially when the verification regarding his medical treatment has been found correct then respondent were required by the law to reinstate appellant with all back benefits of pay and service.
- e. That appellant has served the department for more than 13 long years but no opportunity of any complaint has been provide to his superior but this aspect of the case has not been taken into consideration.


(4)

- f. That appellant due to health and domestic problem applied for one year leave which was very much due to him but the same fact has also not taken into consideration.
- g. That respondent have not completed the enquiry proceeding within reasonable time thus there after any action on the part of respondent against appellant is illegal, without lawful authority and is liable to be struck down.
- h. That at the most the appellant is liable for payment of his salaries from the date when the this Hon'ble Tribunal reinstated him on service and other back benefits.

It is, therefore, most humbly prayed that by accepting this service appeal, the punishment of intervening period as leave without pay awarded to the appellant through impugned order may graciously be set aside by declaring it illegal, void, unlawful, without authority, based on mala fide, void abinitio and thus not sustainable and the appellant is entitled for all back benefits of pay and service.


Appellant

Through


Shahid Qayum Khattak
Advocates, Peshawar

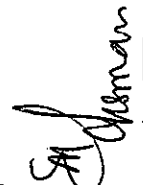
Dated: 30/01/2018

AFFIDAVIT

I, do hereby affirm and declare that the contents of the above appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.

ATTESTED




Deponent

14301-4081624-5

5

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR

Service Appeal No. /2018

Masood UsmanAppellant

Versus

Inspector General of Police and others.....Respondents

ADDRESS OF THE PARTIES

APPELLANT


Masood Usman S/o Muhammad Usman R/o Village Khushal
Garh The & District, Kohat

RESPONDENTS

1. Provincial Police Officer/ Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
2. Deputy Inspector General of Police Kohat Region, Kohat.
3. District Police Officer, Kohat
4. Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar

Appellant

Through


Shahid Qayum Khattak
Advocate, Peshawar

Dated: /01/2018

⑥
Annexure - A

CHARGE SHEET.

1. I MUHAMMAD SALEEM, DISTRICT POLICE OFFICER, KOHAT, as competent authority, hereby charge you Constable Masood Usman No. 1223 Under Disciplinary Police Rules, 1975 as you have committed the following illegal act.

You had absented yourself from official duty vide DD NO. 18 dated 29.05.2014 till to date. Which shows your inefficiency, negligence, irresponsibility and lake of interest in the discharge of government duties.

2. By reasons of the above, you appear to be guilty of misconduct as defined in Rule 2 (iii) of Police Disciplinary Rules, 1975 and have rendered yourself liable to all or any of the penalties explained in rule 04 of the said rules.

3. You are, therefore, required to submit your written statement within 07 days of the receipt of this Charge Sheet to the enquiry officer.

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

4. A statement of allegation is enclosed.

DISTRICT POLICE OFFICER,
KOHAT

ATTESTED
Encl Usman

777/c
01-7-2014

7

DISCIPLINARY ACTION

1. I, MUHAMMAD SALEEM, DISTRICT POLICE OFFICER, KOHAT, as competent authority, am of the opinion that you Constable Masood Usman No. 1223 have rendered yourself liable to be proceeded against departmentally under Police Disciplinary Rule 1975 as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

You had absented yourself from official duty vide DD No. 18 dated 29.05.2014 till to date. Which shows your inefficiency, negligence, irresponsibility and lake of interest in the discharge of government duties.

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations, Mr. Lal Farid Khan DSP City Kohat is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Disciplinary Rule-1975, provide reasonable opportunity of hearing to the accused official, record its findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

DISTRICT POLICE OFFICER,
KOHAT

No. 4202-03/PA, dated 30-6-2014.

Copy of above is forwarded to:-

1. Mr. Lal Farid Khan DSP City, Kohat:- The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.

2. Constable Masood Usman No.1223:- The concerned official/officer's with the directions to appear before the Enquiry officer, on the date, time and place fixed by the enquiry officer, for the purpose of enquiry proceedings.

ATTESTED
M. Masood Usman

M. Masood Usman
01-07-2014

(8)

Annexure - B

FINAL SHOW CAUSE NOTICE

1. I, Muhammad Saleem, District Police Officer, Kohat competent authority under the Police Rule 1975 serve you Constable Masood Usman No. 1223 as follow:-

The consequent upon the completion of enquiries conducted against you by the Enquiry Officer, Mr. Lal Farid Khan DSP City Kohat.

2. On going through the findings and recommendations of the Enquiry Officer, the materials on the record and other connected papers, I am satisfied that the charge against you is proved and you have committed the following acts/omission specified in Police Rule 1975.

You had absented yourself from official duty vide DD NO. 18 dated 29.05.2014 till to date. Which shows your in-efficiency, negligence, irresponsibility and lake of interest in the discharge of government duties.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Rule 1975.

4. You are therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. Copy of finding of the enquiry officer is enclosed.

No. 4563/PA

Dated 04-8-2014

DISTRICT POLICE OFFICER,
KOHAT

ATTESTED

SM Usman

(9)

Annexure - "C"

ORDER

This order is passed on the departmental enquiry against Constable Masaud Usman No. 1223 of this district Police under Police Rule 1975.

Brief facts are that he has absented himself from his official duty vide DD No. 18 dated 29.05.2014 till to date. Which shows his in-efficiency, negligence, irresponsibility and lake of interest in the discharge of government duties.

Charge Sheet/Summary of Allegations of the defaulter constable was sent on his home address, served upon him through his brother and Mr. Lal Farid Khan DSP City, Kohat was appointed as Enquiry Officer to proceed against him departmentally. The enquiry officer has submitted his findings and found him guilty of the charges leveled against him.

In-Spite of this Final Show Cause Notice was also sent on his home address through local police vide this office Memo: No. 4587/PA dated, 05.08.2014 which was received by his brother of the said constable and as per report of daily dairy of Traffic Staff was also reported that now he has gone abroad. Therefore, the undersigned took a departmental action against him and Removed from service from the date of his absence.

OB No. 1048
Date 20-08- /2014

DISTRICT POLICE OFFICER,
KOHAT

21/08/14
CWO
CWO
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CWO
CWO

TESTED
M. Usman

ORDER.

10

Annexure - D

This order is meant to disposed of a departmental appeal, moved by Ex-Constable Masood Usman No. 1223 of Kohat district Police against the punishment order of DPO Kohat vide O.B No. 1048, dated 20.08.2014, whereby he was awarded major punishment of removal from service. The defaulter Constable seeks to set-aside the punishment order and reinstatement in service.

Facts arising of the case are that the defaulter Constable was granted 120-days earned leave vide O.B No. 124, dated 27.01.2014. On expiry of his leave period, he was due to report back for official duty on 29.05.2014, but he failed to do so and absented himself from lawful duty w.e.f. 29.05.2014 till the date of removal i.e. 20.08.2014 about 03-months without any leave or prior permission from his immediate supervisory officer. This act of the defaulter speaks of negligence and disinterest in duty.

He was dealt with departmentally on the score of above charges. Charge sheet & statement of allegations was issued to him under Police Rules 1975 by the competent authority (DPO Kohat). His conduct was also examined through DSP/City Kohat as enquiry officer. He was found guilty of the charges leveled against him, which resulted into his removal from service.

Feeling aggrieved from the said punishment order, he preferred the instant appeal for reinstatement in service. Record requisitioned and perused by the undersigned, which transpired that he is not interested in duty. Furthermore, he was called in Orderly Room on 12.11.2014 & 26.11.2014 but he failed to attend this office.

The local Police of PS Gumbat was directed to inform the applicant to attend this office on 10.12.2014 in connection with his appeal, wherein the DFC reported that the applicant had gone to abroad for earning livelihood as per statement of the elder of locality.

Therefore, going through the available record, the undersigned came to the conclusion that the order passed by DPO Kohat is justified and upheld. Hence, appeal is hereby rejected.

ANNOUNCED.

10.12.2014.

8716
16/12/14

(DR. ISHTIAQ AHMAD MARWAT)

Dy: Inspector General of Police,
Kohat Region, Kohat.

No. 11370-71 /EC, dated Kohat the 11/12/2014.

Copy to the District Police Officer, Kohat for information w/r to his office Memo: No. 14766/LB, dated 15.09.2014. His service record is enclosed herewith.

2. Appellant Ex-Const: Masood Usman No. 1223 of Kohat.

ATTESTED TO BE TRUE COPY

(DR. ISHTIAQ AHMAD MARWAT)

Dy: Inspector General of Police,
Kohat Region, Kohat.

[Handwritten signature]

[Handwritten signature]

Annexure -
'E'

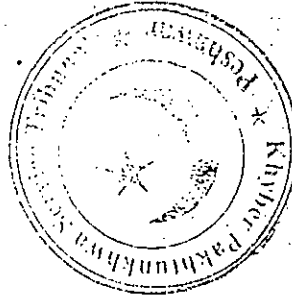
(113)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1426/2014

Date of institution ... 24.12.2014

Date of judgment ... 07.09.2016



Masood Usman S/o Muhammad Usman
R/o Village Khushal Garh The District, Kohat.

(Appellant)

VERSUS

1. Provincial Police Officer/Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
 2. Deputy Inspector General of Police Kohat Region, Kohat.
 3. District Police Officer, Kohat.
 4. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar.
- (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST ORDER DATED 20.08.2014 PASSED BY RESPONDENT NO.3 BY WHICH MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN AWARDED TO THE APPELLANT AND AGAINST THE ORDER DATED 10.12.2014 ISSUED ON 11.12.2014 RECEIVED ON 16.12.2014 OF RESPONDENT NO. 2 WHEREIN THE DEPARTMENTAL REPRESENTATION/APPEAL FILED BY APPELLANT HAS BEEN REJECTED.

Mr. Shahid Qayum Khattak, Advocate.
Mr. Ziaullah; Government Pleader

For appellant.
For respondents

MR. MUHAMAMD AAMIR NAZIR
MR. PIR BAKHSH SHAH

MEMBER (JUDICIAL)
MEMBER (JUDICIAL)

JUDGMENT

MUHAMMAD AAMIR NAZIR, MEMBER: Masood Usman S/o Muhammad Usman R/o Village Khushal Garh The District, Kohat hereinafter called the appellant, through instant appeal under Section 4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 has impugned order dated 20.08.2014 vide which he was awarded major penalty of removal from service. Against the impugned order, the appellant filed departmental appeal which was also rejected vide order dated 10.12.2014.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED
M. Usman

2. Briefly stated facts as per averments of the appeal are that the appellant while posted as constable in Traffic Police, Kohat was charge sheeted on account of absence from duty. Thereafter an inquiry was conducted without associating the appellant and finally the appellant was awarded major punishment of removal from service on the basis of the inquiry report vide impugned order dated 20.08.2014. Against the impugned order, the appellant preferred departmental appeal but the same was rejected by respondent No.2 vide order dated 10.12.2014; hence the instant appeal.

3. We have heard arguments of learned counsel for the appellant and learned Government Pleader for the respondents and have gone through the record available on file.

4. Learned counsel for the appellant argued before the court that a one sided inquiry was conducted by the respondents and the appellant was not associated with the inquiry proceedings nor any evidence was collected by the Inquiry Officer. That on the basis of one sided inquiry, the appellant was awarded major penalty of removal from service. That the absence from duty of the appellant was not intentionally as he was hospitalized and was not in a position to joined his duty. That this fact was not taken into consideration by the Inquiry Officer or by the Departmental Authority, hence appellant was condemned unheard. That impugned order suffers illegality, therefore, the same be set aside and the appellant be reinstated into service.

5. The learned Government Pleader on the contrary argued before the court that the appellant intentionally remained absent from duty for a long period without any intimation to the department. That he was called time and again to joined inquiry proceedings but in vain. That the final show cause notice was served upon the home address of the appellant even then he failed to appear. That the willful absence of the appellant has been proved, therefore, he was rightly awarded major punishment of removal from service, hence the instant appeal may be dismissed.

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

ATTESTED
M. Usman

6. Perusal of the case file reveals that the appellant while serving as Constable in Police Department, Kohat had got one twenty (120) days earned leave but later on he failed to the report to duty on expiry of his earned leave w.e.f 29.05.2014. Due to absence from duty, the appellant was issued charge sheet alongwith statements of allegation at his home address. Since the appellant was not available, therefore, an inquiry was initiated against him through Mr. Lal Farid Khan, DSP, City Kohat. The Inquiry Officer while relying on the report of DFC Police Station, Gumbat, held that the appellant is not available in his house and the absence from duty is proof, therefore, recommended major penalty of removal from service. Consequently, the District Police Officer/respondent No.3 issued final show cause notice upon the appellant at his home address and finally awarded major punishment of removal from service on the appellant. After passing the impugned order, the appellant appeared and submitted departmental appeal specifying therein that he was ill and his absence was not intentionally, therefore the impugned order be set aside, but the Departmental Authority vide order dated 10.12.2014 rejected the appeal filed by the appellant.

7. It is an admitted fact that the appellant was on earned leave for one twenty(120) days till 29.05.2014, failed to report to his duty and similarly he did not associate with the inquiry proceedings despite service of charge sheet and statements of allegation at his home address. However, when the final show cause notice was served upon his home address, it was received by his brother who disclosed that the appellant was ill and had gone to Lahore for his medical treatment as per report of DFC available on the back of the final show cause notice. Similarly, this plea was raised by the appellant in his departmental appeal but this contention of the appellant was not probe and he was removed from service. It would be in the interest of justice and in line with the Constitution of Islamic Republic of Pakistan that the appellant should have been provided opportunity of fair trial and defense and his plea of serious illness should have been probe. Therefore, by acceptance the instant appeal, we set aside the impugned order dated 20.08.2014, reinstate the appellant into service with the direction to the respondents to conduct a *de-novo* inquiry providing the appellant full opportunity of defense. The proceedings shall be completed within a reasonable time after receipt of this judgment. The matter of back benefits

M. Juman
 ATTESTED

will be subject to the outcome of the *de-novo* inquiry. The appeal in hand is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record room.

Self-Muhammad Aslam Nattar,
Number

Self-Pir Bakht Shah,
Number

ANNOUNCED
07.09.2016

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

19-09-2016

Date of Presentation _____
 Number of Pages _____
 Copying Fee _____
 Urgent _____
 Total _____
 Name of Applicant _____
 Date of Completion of Report _____
 Date of Delivery of Copy _____

En. Aslam
ATTESTED

صا - طای !

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(کوئی) (اس کو) صاف کرنا ہے

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القاری

۲۷/۱۶

Ex. 1223

DSP Legal

Emdusman

9432
27/9/18

ATTESTED
Emdusman

Office of the D.S.P.
Legal, Kohat.
Dy: No. 798
Dated 28/9/18

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reporting body
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16



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

No. 2625/leg dated Peshawar, the 4/1/10 2016.

To: - The District Police Officer,
Kohat

Subject:- APPEAL NO. 1426/2014, TITLED AS MASOOD USMAN NO. 1223
EX-CONSTABLE VS PROVINCIAL POLICE OFFICER & OTHERS.

Memo:-

Reference your office memo No. 19311/L.B dated 22.09.2016 on the subject noted above.

Competent authority has accorded approval that the judgment of Service Tribunal may be implemented and file may be submitted to Deputy Inspector General of Police E & I CPO, Peshawar for de-novo enquiry.

AIG/Legal,
For Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar

M. Usman
ATTESTED

**DENOVE DEPARTMENTAL ENQUIRY AGAINST EX-CONSTABLE
MASOOD USMAN NO. 1223.**

Complying with the orders of the W/DIG Enquiry & Inspection, Khyber Pakhtunkhwa Peshawar's Endst: No. 2910-11/E&I dated 21.11.2016, the undersigned has been appointed as Enquiry Officers against Ex-Constable Masood Usman No. 1223 of district police Kohat with the charge as under:

That he has been absented himself from official duty vide daily diary Madd No. 18 dated 29.05.2014 till date, which shows his in-efficiency, negligence and lake of interest in the discharge of Govt: duties.

Ex-Constable Masood Usman No. 1223 while he was posted in Traffic Police Kohat. He has granted 120 days Earned leave and his arrival report back for duty on 29.05.2014 but he failed to join the duty and remain absented himself from the duty without any leave/prior permission of the competent authority.

After detail enquiry he was found guilty of the charges, therefore finally removed from service. On acceptance of appeal, a denove enquiry was ordered by Service Tribunal which is hereby ordered to be initiated.

In order to establish the above allegations, the delinquent official was summoned and his statement got recorded:

EX-CONSTABLE MASOOD USMAN NO. 1223

Owth stated in his statement that he was enlisted in police department as Constable since 2001. On 28.01.2014, he submitted an application for granting 120 days Earned leave w.e. from 28.01.2014 to 28.05.2014 but unfortunately he fell ill and unable to join police duty. He has admitted in DHQrs Hospital KDA Kohat and has not joined the enquiry proceedings. He further stated that charge sheet and summery of allegation served upon on his home addressed. According to the report of DFC Gumbat the delinquent official was not found in

M. Usman
TESTED
 D:\Administrative Enquiry\2017.docx\Departmental Enquiry

(18)

his home. Final show cause notice was served upon his home address which was received by his brother who disclosed that his brother Masood Usman was ill and under treatment at hospital as per report of DFC. He submitted medical leave 102 days which was obtained from DHQrs KDA hospital Kohat.

FINDINGS.

From the perusal of record and statements and cross examinations of the delinquent official and given full opportunity of cross examination. The undersigned came to the conclusion that the absence period (83 days) may be counted as medical leave and the remaining period spent without duty may please be treated as leave without pay.

RECOMMENDATION

As per the above cited findings and impugned order of the Service Tribunal Khyber Pakhtunkhwa Peshawar, the undersigned is recommended his absence period as leave without pay and reinstate into service.

Submitted please.

M. Usman
M. Usman

(Signature)
(Sanaullah Khan)
Superintendent of Police,
Investigation Wing, Kohat.

19

Annexure - H

FINAL SHOW CAUSE NOTICE

1. I, **Javed Iqbal, District Police Officer, Kohat** as competent authority under the Khyber Pakhtunkhwa, Police Rule 1975 Amendment 2014 serve you **Ex-Constable Masaud Usman No. 1223** as follow:-

You were absented yourself from official duty vide DD No. 18 dated 29.05.2014 till date, which shows your in-efficiency, negligence, irresponsibility and lack of interest in the discharge of government duties.

2. You have submitted your reply which was found unsatisfactory from the material place before the undersigned, I am satisfied that the charges leveled against are sustainable and you have committed the following acts/omission specified in Police Rule 1975 Amendment 2014.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Khyber Pakhtunkhwa, Police Rule 1975 Amendment 2014.


4. You are, therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

No. 7652/PA

Dated 17-10-2017


DISTRICT POLICE OFFICER,
KOHAT


ATTESTED

﴿بیان ازاں سابقہ کانٹیشیل مسعود عثمان نمبر 1223﴾

نے حلفا بیان کیا کہ میں سال 2001 میں بحیثیت کانٹیشیل محکمہ پولیس میں بھرتی ہوا اور کامیابی کے ساتھ ریکروٹ کورس پاس کر کے ضلع کوہاٹ میں اپنی ذمہ داری احسن طریقے سے انجام دیتا رہا۔ مورخہ 28.01.2014 کو میں نے چار مہینے (120 Days) رخصت کلاں کے لئے درخواست پیش کی۔ جو کہ افسران بالا صاحبان نے منظور کر کے میں چھٹی گزارنے کے لئے مورخہ 28.01.2014 سے روانہ ہوا۔ بدوران رخصت بیمار ہوا۔ جس کے میڈیکل کاغذات بطور ثبوت لف ہیں۔ میں نے بدوران ڈیوٹی کسی قسم کی کوتاہی نہیں کی ہے۔ مورخہ 20.08.2014 کو مجھے معلوم ہوا اس سے نوکری سے برخاست کیا گیا ہے میں نے دفتر پولیس پہنچ کر نقولات حاصل کرنے کی درخواست دی اور نقولات حاصل کر کے جناب ڈپٹی انسپکٹر جنرل آف پولیس کوہاٹ ریجن کوہاٹ کو اپیل دائر کی لیکن بد قسمتی سے سائل کی اپیل خارج کر کے ملازمت پر بحال نہیں کیا گیا۔ نتیجہ کے طور پر سائل نے سروس ٹریبونل کا راستہ اختیار کیا جس میں سائل کسی قسم کی کوتاہی شامل نہیں ہے۔ مجھے دوبارہ نوکری بحال کیا جائے تا حیات دعا گور ہوں گا۔ یہ میرا بیان ہے۔



انکواری آفیسر

سپرٹنڈنٹ آف پولیس انوسٹی گیشن ونگ کوہاٹ

العبد Email

سابقہ کانٹیشیل مسعود عثمان نمبر 1223

موبائل نمبر 0345-9666032

***جرح منجانب انکواری آفیسر

- س۔ جب شوکا زونٹس اچارج شیٹ آپ کو گھر کے پتہ پر جاری ہوا جو کہ آپ کے بھائی فراز احمد نے وصول کیا آپ نے خود کیوں وصول نہیں کیا تھا؟
- ج۔ میں بذات خود بیمار تھا بدیں وجہ میرے بھائی نے انکواری کے کاغذات وصول کئے۔
- س۔ آپ نے انکواری Proceeding کو کیوں جائینٹ نہیں کیا؟
- ج۔ بیماری کی شدت زیادہ تھی اور باقاعدہ ہسپتال میں زیر علاج تھا جسکی وجہ سے حسب ضابطہ انکواری طریقہ کار سے غیر حاضر رہا۔
- س۔ کیا یہ درست ہے کہ آپ کی حاضری مورخہ 29.05.2014 کو مقرر تھی اس کے بعد آپ کیوں غیر حاضر رہے؟
- ج۔ میں مورخہ 25.05.2014 کو اچانک بیماری میں مبتلا ہوا اور بیماری کی شدت کی وجہ سے ڈسٹرکٹ ہیڈ کوارٹر ہسپتال KDA میں مورخہ 25.05.2014 تا 14.06.2014 تک داخل ہسپتال رہا۔
- س۔ متعینہ میڈیکل کے بعد آپ کہاں گئے؟
- ج۔ ڈاکٹر صاحب KDA ہسپتال نے گھر کے لئے مکمل Bed Rest دے کر مورخہ 14.07.2014 کو دوبارہ چیک آپ کے لئے طلب کیا۔
- مورخہ 14.07.2014 کے بعد دوبارہ ڈاکٹر نے مورخہ 14.7.2014 تا 24.8.2014 میڈیکل لیوسٹیکٹ جاری کیا جبکہ اسی دوران مورخہ 20.08.2014 کو نوکری سے برطرف کیا گیا۔

Attested



انکواری آفیسر

سپرٹنڈنٹ آف پولیس انوسٹی گیشن ونگ کوہاٹ

Sanjuman
ATTESTED

العبد Email

سابقہ کانٹیشیل مسعود عثمان نمبر 1223

موبائل نمبر 0345-9666032

(21)

Annexure - J

POLICE DEPTT:

DISTRICT KOHAT

ORDER

This order is passed on the de-nove enquiry against Ex-Constable Masaud Usman No. 1223 of this District Police under the Khyber Pakhtunkhwa, Police Rules, 1975 Amendment 2014.

Brief facts are that he had absented himself from official duty vide DD No. 18 dated 29.05.2014 till date, which shows his in-efficiency, negligence, irresponsibility and lack of interest in the discharge of government duties.

A denove departmental enquiry was ordered by DIG enquiry vide his letter No. 2903/E-I dated 21.11.2016 and SP Investigation Wing Kohat was appointed as enquiry officer.

The enquiry officer submitted his finding & guilty the constable for the charges leveled against him. He was issued Final Show Cause Notice. The defaulter was also called in OR and heard in person but he did not satisfy the undersigned about his innocence. The allegation leveled against him have been proved.

In view of above I, Javed Iqbal District Police Officer, Kohat in exercise of the powers conferred upon me, hereby award him a major punishment of "**Dismissal from Service**" with immediate effect.

OB No. 1042
Date 13-12-2017

(1)
DISTRICT POLICE OFFICER,
KOHAT

No. 9856-58 PA dated Kohat the 18-12-2017.

Copy of above is forwarded to the Reader, Pay Officer, EC and OHC for necessary action.

M. Usman
ATTESTED

بخدمت حیا - 15 دسمبر کو صحت

صحت عالی

تکرار شدہ حکیم EX4 کنیل سعود عثمان 1223

حوالہ ڈرٹھ سے فروری 12 18 کو جناب DPO صاحب کو صحت

نے نوکری سے درخواست کیا ہے ہمیں آڈر شپ کے کاپی

ہے۔ استدعا کی جاتی ہے کہ سائل جناب DPO صاحب کو صحت

عینے نوکری ہوگی

ہونا چاہیے۔

22 12 012

تحریر

الذ

سعود عثمان کنیل

1223

[Signature]

Sanjuman
TESTED

(23)

604/KT

Annexure
"2"

ORDER.

This order is passed on a departmental appeal, filed by Ex-Constable Masood Usman No. 1223 of Kohat district Police against the punishment order of dismissal from service passed by DPO Kohat vide Order Book No. 1042, dated 13.12.2017 for the allegations of prolong absence from official duty.

He preferred an appeal to the undersigned, upon which his service record and comments were obtained from DPO Kohat and perused.

I have gone through the available record and came to the conclusion that the punishment awarded to him is too harsh and is not commensurate with the gravity of offense. Therefore, by taking a lenient view, I set aside the punishment, passed by DPO Kohat and reinstate the appellant Ex-Constable Masood Usman No. 1223 into service. The intervening period is treated as leave without pay. He is warned to be careful in future.

Order Announced
02-01-2018

Awal Khan

(AWAL KHAN)
Regional Police Officer,
Kohat Region.

No. 31 /EC, dated Kohat the: 02-01-2018.

Copy to the District Police Officer, Kohat for information w/r to his office Memo: No. 28/LB, dated 01.01.2018. His Service Record alongwith Fauji Missal / Enquiry File is returned herewith please.

Awal Khan

(AWAL KHAN)
Regional Police Officer,
Kohat Region.

OHC/SRE
for objection.

(25)
3/1/18

(Signature)

M. Usman
ATTESTED

24

OFFICE OF THE
MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
KDA, KOHAT

No. 2010 /F-5A

Dated Kohat the 24 /12/2016

To
The Superintendent of Police,
Investigation Wing, Kohat.

Subject:- VERIFICATION OF MEDICAL LEAVE.

Memo:

Office of the
Medical Superintendent
DHQ Teaching Hospital
Kohat
1865
27-12-2016

Reference your office letter No.1892/PA, dated 16.12.2016 on the subject cited above and to state that the medical leave in respect of Ex.Constable Masud Usman No,1223 of your department are returned herewith (in photo state) duly found correct/verified as per record of this hospital.

Encl: As Above.

~~Ad~~
MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
KOHAT

PA
for m/s
A

26/

Masud Usman
TESTED Check date
To Resonance
through date

25

OFFICE OF THE
MEDICAL SUPERINTENDENT
DHQ HOSPITAL, KDA, KOHAT

No. 354 /F5A

Dated Kohat the 20/02/2017

To
The Superintendent of Police,
Investigation Wing, Kohat

Subject:- VERIFICATION OF MEDICAL LEAVE.

Reference your office letter ,No,04/PA, dated 04.01.2017 and reminder No,46/PA, dated 16.01.2017,on the subject cited above and to state that the medical documents in respect of Ex.Constable Masud Usman No,1223 are returned herewith (in original) duly found correct/verified as per record of this Hospital.

Encl: As Above.

eh.
MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
KOHAT

PA.
For m/g.
ly
:Superintendent Of Police
Investigation Kohat *24*

Ex Masud
ATTESTED

Office of the Superintendent of Police
No. *343*
Dated *28.2.17*

Phone No: 0922-9260274
Fax No: 0922-9260275

From: **The Superintendent of Police,
Investigation Wing, Kohat**

To: **The District Police Officer, Kohat.**

No. 480 /PA Dated Kohat the, 11-08 /2017.

Subject: **DENOVO DEPARTMENTAL ENQUIRY AGAINST EX-FC
MASOOD USMAN NO.1223 DISTRICT KOHAT**

Memo:

Please refer to your office Endst: No. 4650/PA dated 12.6.2017.

It is submitted that in compliance with your above quoted memo: I have gone through the record it has been revealed that the delinquent official was enlisted in Kohat Distt: Police as Constable w.e.from 11.3.2001. He is resident of village Khushalgarh Tehsil & Distt: Kohat. He is son of Mohammad Usman of the same village. He has 16-years four months and 29 days service in his credit.

It is further submitted that according to the record he was posted as Traffic Police Constable in the year, 2014. He has granted 120-days Earned leave w.e.from 28.01.2014 and his arrival report back for duty on 29.5.2014 but he failed to join the duty and remain absented himself from lawful duty without any leave or permission of the competent authority as detail given below :-

“He has absented himself from official duty vide DD No.18 dated 29.5.2014 till to date which shows his in efficiency, negligence, irresponsibility and lack of interest in the discharge of Govt: duties.”

Proper departmental proceeding was initiated against him by the then Distt: Police Officer, Kohat. The defaulter Constable was served with Charge Sheet and Statement of Allegation for his willful absence. DSP/City Kohat was appointed to conduct departmental enquiry against him and to submit finding in stipulated period. On the recommendation of Enquiry Officer he was removed from service vide DPO Kohat OB No.10-48 dated 20.8.2014.

M. Usman
REGISTERED

The delinquent official filed an appeal in the NWFP (Khyber Pakhtunkhwa) Service Tribunal against the order of removal from service which has been accepted vide Judgement dated 24.12.2014. The directions to conduct Denovo Departmental Enquiry against him. The defaulter Constable was issued Charge Sheet and Statement of Allegation and the undersigned was appointed as Enquiry Officer against him.

During the course of enquiry the defaulter Constable was called to the office heard in person and recorded his statement. He was given full opportunity of cross examination. The defaulter Constable stated in his statement that he has granted 120-days Earned leave w.e. from 28.01.2014 to 28.5.2014 but unfortunately he fell ill and unable to join Police duty. He further stated that he has admitted in DHQ KDA Hospital Kohat for that reason he has not joined the enquiry proceeding. Charge Sheet and Statement of Allegation also served upon his home address. According to the report of DFC PS Gumbat the delinquent official was not found in his home. Even Final Show Cause Notice was served his home address which was received by his brother who disclosed that his brother Masood Usman was ill and under treatment at Hospital. He obtained medical leave 102 days from DHQs: Hospital KDA Kohat.

RECOMMENDATIONS

Keeping in view the grounds facts, available record and long service, I am of the opinion that the allegation leveled against the delinquent Constable were proved, therefore he is recommended for major punishment Compulsory retirement from service.

SM Usman
ATTESTED

(Signature)
 (Sanullah Khan)
 Superintendent of Police
 Investigation Wing, Kohat



Phone: 091-9211947

Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

No. /E&I, dated Peshawar the 17/09/2017

To: The District Police Officer,
Kohat

Subject: **DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC MASAUD USMAN NO. 1223 DISTRICT KOHAT**

Memo:

Please refer to your office letter No.2805/PA dated 06.04.2017, on the subject cited above.

2. On perusal of the findings of the denovo departmental enquiry it has been revealed that a formal enquiry has been conducted as per direction of Service Tribunal.

3. You being competent authority in the instant case may proceed further in the light of recommendations of the enquiry officer, under intimation to this office.

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

No. 664-65 /E&I,
Copy of above is forwarded for information to:-

1. The Regional Police Officer, Kohat.
2. The Incharge CRC, CPO.

No 3549 /EC
21/4 1017

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

EC 2
P/S
19-4-17

DPO Kohat
For necessary action

please: Anwar

PA
for necessary P

DIG POLICE
KOHAT
20/4/17

4532
21/4/17

MASTATED



29

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

No. 2377 /Legal dated Peshawar, the 29 / 8 /2016.

ORDER

The Service Tribunal, Khyber Pakhtunkhwa, Peshawar often issues directions of de-novo inquiry proceedings while disposing the Service Appeals filed by Police personnel against the orders of departmental authorities. The bulk of cases are remanded to department on grounds of defective and faulty inquiries proceedings conducted by the department. The departmental authorities often exonerate the delinquent officers/officials during de-novo inquiry proceedings without making serious efforts for collecting evidence in support of the charges.

In order to streamline the conduct of de-novo departmental inquiry proceedings the Provincial Police Officers is pleased to direct that in future all de-novo inquiries in pursuance of the directions of Service Tribunal will be entrusted to Deputy Inspector General of Police Enquiry & Inspection CPO, Peshawar. He will nominate the penal of inquiry. The departmental authority will reinstate the officer/officials for the purpose of de-novo inquiry proceedings if so directed by the Tribunal.

(NASIR KHAN DURRANI)
Inspector General of Police
Khyber Pakhtunkhwa,
Peshawar



No. 2377 /Legal dated Peshawar, the 29 / 8 /2016

Copy of the above is forwarded to:-

1. All Units of Police of Khyber Pakhtunkhwa.
2. Deputy Inspector General of Police, E & I CPO, Peshawar.
3. PSO to IGP, Khyber Pakhtunkhwa, Peshawar.

M. Subman
ATTESTED

(Muhammad Alam Shafwari) PS
DIG Headquarters
Khyber Pakhtunkhwa Peshawar

قیمت 50 روپے	 	25102
ایڈوکیٹ: <u>Shahab Faheem</u>	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	
بار کونسل ایسوسی ایشن نمبر: <u>BC-15-5936</u>		
رابطہ نمبر: <u>0308-5387676</u>		

بعدالت جناب: Service Tribunal Peshawar

مخائب:	دعوی:
Appealant:	غلط نمبر:
Masood usman	مورخہ:
بنام	جرم:
Police	تھانہ:
باعث تحریر آنکہ	

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ آن مقام میں سے کیلئے شہداء پر حضور محترم (مقدمہ) صاحب علیہم (ریڈر لٹریچر) کو وکیل 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 کرنے و تقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ صل حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سندسہ Accepted

فونسل گزشتہ ضلع واپس آئی
صوبہ گلستان ملتان
مقامی عدالت

المرقوم: 30/1/18
 الع بد گ واہ شد الع بد
 مقام کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فونو کاپی ناقابل قبول ہوگی۔

(Signature)

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

Service Appeal No. 191/2018
Masood Usman

..... *Appellant*

VERSUS

PPO / Inspector General of Police,
Khyber Pakhtunkhwa & others

..... *Respondents*

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectively Sheweth:

Parawise comments on behalf of Respondents are submitted as under:-

Preliminary Objections:

1. That the appellant has got no cause of action.
2. That the appellant has got no locus standi.
3. That the appellant is estopped to file the instant appeal due to his own conduct.
4. That the appeal is not maintainable in its present form.
5. That the appeal is not maintainable for misjoinder and non-joinder of necessary parties.

Facts:

1. The appellant willfully absented himself from lawful duty without any legal proceedings vide DD No. 18 dated 29.05.2014. Therefore, he was proceeded departmentally in accordance with law & rules.
2. Incorrect, it was established during the course of inquiry that the appellant had gone on 120 days earned leave and deliberately failed to report his arrival on expiry of his leave on 29.05.2014. As reported by DFC the appellant had gone abroad for earning livelihood as per statement of the elders of the locality. Copy of inquiry is annexure "A".
3. The departmental appeal was devoid from merits and unjustified and correctly rejected by the respondent.
4. The judgment of the Honorable Tribunal was implemented in its true spirit. The appellant was reinstated in service for purpose of de-novo proceedings accordingly.
5. Pertains to record, hence no comments.

- 6. Incorrect, the judgment of the Tribunal was honored. The appellant was proceeded with de-novo inquiry. The charge of his willful absence for a long period was proved beyond any shadow of doubt. Therefore, on completion of all codal formalities, a major punishment of dismissal from service was imposed on the appellant. Copy of the **de-novo inquiry is annexure "B"**.
- 7. The departmental appeal was accepted by taking lenient view by the respondent No. 2 and he was reinstated in service. However, the appellant remained out of service for about one year and did not deserve for salary on the principle "**when there is no work, there is no pay**". Hence the intervening period was treated as leave without pay.
- 8. The appellant has got no cause of action to file the instant appeal due to his own conduct.

Grounds:

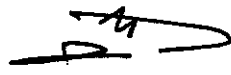
- a. The judgment /order of the Honorable Tribunal has been implemented in its true spirit. Furthermore, the appellant was proceeded in accordance with law & rules.
- b. Incorrect, the appellant was reinstated in service on acceptance of his departmental appeal by the respondent No. 2.
- c. Incorrect, the appellant was not entitled for any back benefit, as he remained out of service willfully. Furthermore, the appellant is not entitled for pay for intervening period on the principle "no work, no pay".
- d. Incorrect, the appellant after availing 120 days earned leave did not make his arrival report on due date.
- e. The service record of the appellant is in different, he was previously awarded punishments for willful absence.
- f. Incorrect, the appellant was granted 120 days earned leave, but he did not report his arrival on expiry of his leave. During a departmental proceedings, it was reported by the DFC that the appellant had gone abroad for earned leave.
- g. Incorrect, the inquiry was conducted in accordance with law / rules within stipulated period and the appellant was afforded ample opportunity of defence / hearing.
- h. Incorrect, the appellant remained willful absent from duty and is not entitled for any salary for the intervening period, as, the appellant did not serve during the intervening period, therefore, the appellant cannot be granted salary for a such period in the interest of public exchequer.

Prayer:

Keeping in view of the above, it is submitted that the appeal is without merit, substance and against fact / law, it is, therefore, prayed that the instant appeal of the appellant may kindly be dismissed with cost.



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



Govt of Khyber Pakhtunkhwa,
through Chief Secretary, Peshawar,
(Respondent No. 4)



District Police Officer
Kohat
(Respondent No. 3)



Dy: Inspector General of Police
Kohat Region, Kohat
(Respondent No. 2)

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

Service Appeal No. 191/2018
Masood Usman

..... *Appellant*

VERSUS

PPO / Inspector General of Police,
Khyber Pakhtunkhwa & others

..... *Respondents*


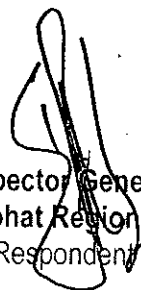
COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.



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

Govt of Khyber Pakhtunkhwa,
through Chief Secretary, Peshawar,
(Respondent No. 4)


~~District Police Officer
Kohat
(Respondent No. 3)~~
Dy: Inspector General of Police
Kohat Region, Kohat
(Respondent No. 2)

①

ORDER

This order is passed on the departmental enquiry against Constable Masaud Usman No. 1223 of this district Police under Police Rule 1975.

Brief facts are that he has absented himself from his office vide DD No. 18 dated 29.05.2014 till to date. Which shows his in-efficiency, negligence, irresponsibility and lake of interest in the discharge of government duties.

Charge Sheet/Summary of Allegations of the said constable was sent on his home address, served upon him through his brother and Mr. Lal Farid Khan DSP City, Kohat was appointed as Enquiry Officer to proceed against him departmentally. The enquiry officer has submitted his findings and found him guilty of the charges leveled against him.

In-Spite of this Final Show Cause Notice was also sent on his home address through local police vide this office Memo: No. 4587/P dated 05.08.2014 which was received by his brother of the said constable and as per report of daily dairy of Traffic Staff was also reported that now he has gone abroad. Therefore, the undersigned took a departmental action against him and Removed from service from the date of his absence.

OB No. 1048
Date 20-08- /2014


DISTRICT POLICE OFFICER
KOHAT

فناں عالی

فوری قسم لائل سوال OB No 1068 موسم 3/4
کو علم ہذا سے برخواست فرمایا

مذکورہ درخواستیں پیش کیا گیا قسم لائل دور
ریٹیل ٹولڈ سے 1000 روپے ہمارے پاس

عین فوری جواب

القاص

E لائل سے دعویٰ 1223 کے سوال زدہ

~~Almad~~

Subject: - FINAL SHOW CAUSE NOTICE.

Memo: -

Enclosed Final Show Cause Notice (in duplicate) against Constable Masud Usman No. 1223 is sent herewith to serve upon him on his home address. One copy of the same dully signed by him and return to this office for further necessary action. His home address is as under: -

Constable Masud Usman No. 1223 S/O Muhammad Usman
R/O Khushaal Garh PS Gumbat.

ایجاباً حوالیہ کا کارڈ
فوری توجہ کے لئے
3/8/14
6/8


DISTRICT POLICE OFFICER,
KOHAT

ایجاباً حوالیہ کا کارڈ

DFKHC
10/8/14

ایجاباً حوالیہ کا کارڈ
DFKHC
10/8/14

FINAL SHOW CAUSE NOTICE

1. I, **Muhammad Saleem, District Police Officer, Kohat** competent authority under the Police Rule 1975 serve you **Constable Masoo Usman No. 1223** as follow:-

The consequent upon the completion of enquiries conducted against you by the Enquiry Officer, **Mr. Lal Farid Khan DSP City Kohat.**

2. On going through the findings and recommendations of the Enquiry Officer, the materials on the record and other connected papers. I am satisfied that the charge against you is proved and you have committed the following acts/omission specified in Police Rule 1975.

You had absented yourself from official duty vide DD NO. 18 dated 29.05.2014 till to date. Which shows your in-efficiency, negligence, irresponsibility and lake of interest in the discharge of government duties.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Rule 1975.

4. You are therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. Copy of finding of the enquiry officer is enclosed.

No. 4563/PA

Dated 04-8-2014

**DISTRICT POLICE OFFICER,
KOHAT**

شاہ عالی

کے پل فتوح عثمان 1223 سنہ خوشالگرہ و حال خلدی علی فرزا
 ولد محمد عثمان کیا تو ملکر عمر ایسا ہی فتوح عثمان بیجا لکے اور حسین علی
 کر رہا ہے۔ اپنے اطلاع سے باختر کر دینگا۔ تمہارا صاحبہ کبھی لکھنؤ میں رہا ہے
 فرزا عثمان والی محمد عثمان سنہ خوشحال کر دھور دست
 فرزا عثمان والی محمد عثمان سنہ خوشحال کر دھور دست

3 - 176771 - 2076771 - 14301

شاہ عالی

کے پل فتوح عثمان 1223 سنہ خوشالگرہ و حال خلدی علی فرزا سے
 صاحبہ (فتوح والی) سے اطلاع سے باختر کر دینگا اور اس کے بعد فرزا عثمان کو
 اطلاع کر دینگا
 محمد عثمان والی محمد عثمان سنہ خوشحال کر دھور دست
 محمد عثمان والی محمد عثمان سنہ خوشحال کر دھور دست

14301 - 2076771 - 2076771 - 14301

شاہ عالی

اعلیٰ صاحبہ کی بی بی اور ان عزیز سے

10/8/14
 10/8/14

شاہ عالی

دعوت DF کے لئے مفصل ہے۔ یہاں تمہاری بہن صاحبہ
 کے پاس اس کے ساتھ
 8/10/14

Gunt.

FI

Subject: -

Memo: -

Cons

حنا علی
 1223 سٹوکار وٹس لفس
 ڈی اے کو حوالہ سے
 لکھنے سے

ڈی اے
 ڈی اے
 8/8
 014

Officer. Kohat
Masood

FINAL SHOW CAUSE NOTICE

1. I, Muhammad Saleem, District Police Officer, Kohat as competent authority under the Police Rule 1975 serve you Constable Masood Usman No. 1223 as follow:-

The consequent upon the completion of enquiries conducted against you by the Enquiry Officer, Mr. Lal Farid Khan DSP City Kohat.

2. On going through the findings and recommendations of the Enquiry Officer, the materials on the record and other connected papers, I am satisfied that the charge against you is proved and you have committed the following acts/omission specified in Police Rule 1975.

You had absented yourself from official duty vide DD NC 18 dated 29.05.2014 till to date. Which shows your in-efficiency, negligence, irresponsibility and lake of interest in the discharge of government duties.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Rule 1975.

4. You are therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no objection to put in and in that case an ex-parte action shall be taken against you. A copy of finding of the enquiry officer is enclosed.

6.

No. 4563 /PA

Dated 04-8-2014

**DISTRICT POLICE OFFICER,
KOHAT**

S Gumbat

No 4587 /PA
Dated 05-8-2014.

(6)

Subject: - **FINAL SHOW CAUSE NOTICE.**

Memo: -

Enclosed Final Show Cause Notice (in duplicate) against Constable Masud Usman No. 1223 is sent herewith to serve upon him on his home address. One copy of the same dully signed by him and return to this office for further necessary action. His home address is as under: -

**Constable Masud Usman No. 1223 S/O Muhammad Usman
R/O Khushaal Garh PS Gumbat.**

As
**DISTRICT POLICE OFFICER,
KOHAT**

FINAL SHOW CAUSE NOTICE

1. I, **Javed Iqbal, District Police Officer, Kohat** as competent authority under the Khyber Pakhtunkhwa, Police Rule 1975 Amendment 2014 serve you **Ex-Constable Masaud Usman No. 1223** as follow:-

You were absented yourself from official duty vide DD No. 18 dated 29.05.2014 till date, which shows your in-efficiency, negligence, irresponsibility and lack of interest in the discharge of government duties.

2. You have submitted your reply which was found unsatisfactory from the material place before the undersigned, I am satisfied that the charges leveled against are sustainable and you have committed the following acts/omission specified in Police Rule 1975 Amendment 2014.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Khyber Pakhtunkhwa, Police Rule 1975 Amendment 2014.

4. You are, therefore; required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

No. 7652/PA

Dated 17-10-2017


**DISTRICT POLICE OFFICER,
KOHAT**

(7)

FINAL SHOW CAUSE NOTICE

I, **Muhammad Saleem, District Police Officer, Kohat** as competent authority under the Police Rule 1975 serve you **Constable Masood Usman No. 1223** as follow:-

The consequent upon the completion of enquiries conducted against you by the Enquiry Officer, **Mr. Lal Farid Khan DSP City Kohat.**

2. On going through the findings and recommendations of the Enquiry Officer, the materials on the record and other connected papers, I am satisfied that the charge against you is proved and you have committed the following acts/omission specified in Police Rule 1975.

You had absented yourself from official duty vide DD NO. 18 dated 29.05.2014 till to date. Which shows your in-efficiency, negligence, irresponsibility and lake of interest in the discharge of government duties.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Rule 1975.

4. You are therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

6. Copy of finding of the enquiry officer is enclosed.

No. 4563/PA

Dated 04-8/2014


**DISTRICT POLICE OFFICER,
KOHAT**

8

DEPARTMENTAL ENQUIRY AGAINST
CONST:MASOOD USMAN NO.1223.

Constable Masood Usman No.1223 while posted at Traffic Police. He has granted 120 days Earned leave and his arrival report back for duty was due date on 29.5.2014. But he failed to do so and was absented himself from duty intentionally with out any leave/prior permission from the competent authority vide DD No.18 dated 29.5.2014 and is still absent.

Charge Sheet & statement of allegations was sent to his home address through special messenger DPC Shehzad Khan but the defaulter Constable is not avail and nor he attend the office of the enquiry officer uptill now.


According to the report of DPC Inteshar ul Haq No.87 of PS Gumbat which revealed that the defaulter Constable is not found present in his house/village.

Moharrir Traffic Police stated that the defaulter Constable above named has absented himself from official duty w.e.from 29.5.2014 and is still absent. He also stated that Constable Masood Usman has been gone to Abroad.

From the perusal of his service record he was enlisted in Police Department on 11.3.2001, bad entries 03 and good-1 is in his record.

Keeping in view the above circumstances and evidence on record above named defaulter Constable has absented himself from official duty intentionally/delebrately with out any leave or prior permission from the competent authority w.e.from 29.5.2014 and is still absent. He has gone to abroad. Therefore it is recommended that he may be awarded for major punishment of removal from service.

Submitted please.


Sub Divisional Police Officer,
City Kohat.

No. 200/4147.
dt: 21-7-2014

9) بی بی اذالہ بیگم رضوان 893 مکان شیخ کوہاٹ
DFC

کثیرا سعود عثمان 1223 میرا مہوں کا بیٹا ہے، چارج شیخ
بی بی اذالہ بیگم رضوان کے پاس ہے اور وہ لکھنؤ میں ہے۔
شیخ کوہاٹ - ضلع شیخ کوہاٹ - ضلع شیخ کوہاٹ
شیخ کوہاٹ - اور انکو شیخ کوہاٹ میں سمجھا جاوے۔

سعود عثمان کی لکھنؤ میں علی جوڑی کا دو ایک سرینہ چارج شیخ
کوہاٹ کے قریب ہے۔

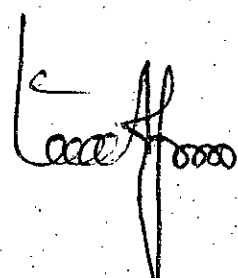
بی بی اذالہ بیگم رضوان
DFC
18-07-04

Attested
a
B.e


صاحب عالی!

کامیٹیل مسعود عثمان 1223 بحوالہ فرم 18 روزنامہ 29/5/14 بدستور غیر حاضر ہے۔

کامیٹیل مذکورہ بحوالہ فرم 23 روزنامہ 29/5/14 سے 4 مئی رخصت ملاک پر تھا۔ مورخہ 29/5/14 کو حاضری کے مطلوبہ فی حاضریس آیا۔ جو بائیل بند پر لکھی بار بار لکھ لیا گیا۔ جو بائیل مسلسل بند آ رہا ہے۔ معلوم ہوا ہے کہ لفرس محنت مزدوری کے باہر ملاک گیا ہے۔ حاضری کے کوئی خاص اُکید نہیں۔ رپورٹ غرض ہے۔


m. Traffic
21-07-14

Six
Forwarded


ie. Traffic
21-07-14

Attested
@
E101

میرزا محمد علی صاحب دہلی کے کنسٹریبل محفوق عثمان صاحب
والد عثمان مسکنہ فوٹو سٹالنگرہ ڈھوکے بیلے کو بیوی
انکوائری و طلب کر رہی۔ نمبر ۱۹۷۴ کو فرزند امیر صاحب
DSP/C صاحب حاضر ہے۔
اسلم نور خان شریک نام نمبر

صاحب عالی

کنسٹریبل محفوق عثمان صاحب کے بیوی کیساتھ بدولت خون باہ
جوئی خون نمبر ۱۹۷۴ کو فرزند امیر صاحب نے اپنا نام
شریک خان ولد محمد عثمان مسکنہ فوٹو سٹالنگرہ ڈھوکے بیلے پر لکھا
کہ میرا بیوی کنسٹریبل محفوق عثمان صاحب کی بیوی ہے اور میرا
بھائی ہے۔ اور اسکا جو نام نمبر ۱۹۷۴ ہے۔ بیوی صاحبہ نے قلم
لکھ کر رکھا ہے۔

Attest.

Signature
Bco

میرزا محمد علی صاحب دہلی
DPC
۱۹-۷-۵۴

حکومت - عالی

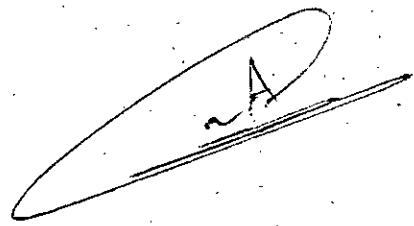
نور ملاح انوار شن ایف ایف سیل مسعود عثمانی سے 3
جوالہ ور 18 روزانہ 29 55/14 سے بدستور نمبر خافری
مذکورہ کیلئے آئی کی کوئی ایڈریس
سڈریو اور درخواست اسڈریو آف خافری ہے کہ مذکورہ کیل
کے خلاف محکمہ کا درائی کے کا حکم صادر نہ ہو

25-6-14 فوقی نمبر

العاوض

سڈریو آف ٹریفک پولیس

Sir Forwarded



cc. Traffic
25-6-14

Issue Charge Sheet and
Summary of allegation

~~D.P.O. KOHAT~~

نقلہ 8 روزنامہ کو 29/14

در 18 گنتی ملازمت اور نوڈل سے شہر خاندی - حورفہ کو 29/14 وقت 20:00 سے
 گنتی ملازمت کے گنتی گنتی میں فارغ از نوڈل کے ملازمت حورفہ ہائے
 گنتی گنتی میں کل مسطور عماد 322 اسکی آ 2020 نوم رخصت کلال
 سے فرغ مطلوب تھی تا حال حاضر نہیں آتا جس کے خلاف نوڈل
 میں فرغ روزنامہ کو کھاتے ہے
 مناسبتاً نقلہ مطابق اسکی ہے

Six Forwarded

amir
 m. traffic
 20-6-14

A
 m. traffic
 26-6-14

777/c
01-7-2014

DISCIPLINARY ACTION

1. I, **MUHAMMAD SALEEM, DISTRICT POLICE OFFICER, KOHAT**, as competent authority, am of the opinion that you **Constable Masood Usman No. 1223** have rendered yourself liable to be proceeded against departmentally under Police Disciplinary Rule 1975 as you have committed the following acts/omissions.

STATEMENT OF ALLEGATIONS

You had absented yourself from official duty vide DD No. 18 dated 29.05.2014 till to date. Which shows your inefficiency, negligence, irresponsibility and lack of interest in the discharge of government duties.

2. For the purpose of scrutinizing the conduct of said accused with reference to the above allegations, **Mr. Lal Farid Khan DSP City Kohat** is appointed as enquiry officer. The enquiry officer shall in accordance with provision of the Police Disciplinary Rule-1975, provide reasonable opportunity of hearing to the accused official, record its findings and make, within twenty five days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused official.

The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

**DISTRICT POLICE OFFICER,
KOHAT**

No. 4202-03/PA, dated 30-6-2014.

Copy of above is forwarded to:-

1. **Mr. Lal Farid Khan DSP City, Kohat:-** The Enquiry Officer for initiating proceedings against the accused under the provisions of Police Rule-1975.
2. **Constable Masood Usman No.1223:-** The concerned official/officer's with the directions to appear before the Enquiry officer, on the date, time and place fixed by the enquiry officer, for the purpose of enquiry proceedings.

Handwritten signature and date: 07-07-2014

Handwritten signature

CHARGE SHEET.

I **MUHAMMAD SALEEM, DISTRICT POLICE OFFICER, KOHAT**, as competent authority, hereby charge you **Constable Masood Usman No. 1223** Under Disciplinary Police Rules, 1975 as you have committed the following illegal act.

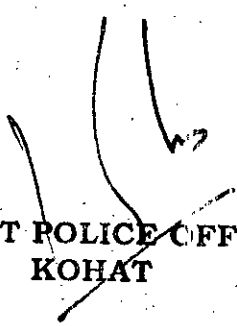
You had absented yourself from official duty vide DD NO. 18 dated 29.05.2014 till to date. Which shows your inefficiency, negligence, irresponsibility and lake of interest in the discharge of government duties.

2. By reasons of the above, you appear to be guilty of misconduct as defined in Rule 2 (iii) of Police Disciplinary Rules, 1975 and have rendered yourself liable to all or any of the penalties explained in rule 04 of the said rules.

3. You are, therefore, required to submit your written statement within 07days of the receipt of this Charge Sheet to the enquiry officer.

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

4. A statement of allegation is enclosed.


**DISTRICT POLICE OFFICER,
KOHAT**

604/RT

①

ORDER

This order is passed on a departmental appeal, filed by Ex-Constable Masood Usman No. 1223 of Kohat district Police against the punishment order of dismissal from service passed by DPO Kohat vide Order Book No. 1042, dated 13.12.2017 for the allegations of prolong absence from official duty.

He preferred an appeal to the undersigned, upon which his service record and comments were obtained from DPO Kohat and perused.

I have gone through the available record and came to the conclusion that the punishment awarded to him is too harsh and is not commensurate with the gravity of offense. Therefore, by taking a lenient view, I set aside the punishment, passed by DPO Kohat and reinstate the appellant Ex-Constable Masood Usman No. 1223 into service. The intervening period is treated as leave without pay. He is warned to be careful in future.

Order Announced

02-01-2018

Awal Khan

(AWAL KHAN)
Regional Police Officer,
Kohat Region.

No. 31 /EC, dated Kohat the 02-01-2018.

Copy to the District Police Officer, Kohat for information w/r to his office Memo: No. 28/LB, dated 01.01.2018. His Service Record alongwith Fauji Missal / Enquiry File is returned herewith please.

Awal Khan

(AWAL KHAN)
Regional Police Officer,
Kohat Region.

OHC/3Re
for objection.

(25)
3/1/18

[Signature]
[Faint text]

فاتحہ

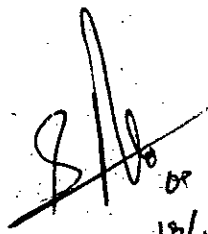
سرورِ مہتاب $\frac{12}{17}$ اور برطانیہ کو
استقامت اور برطانیہ کو
تھوڑے سے ہمارے فرما

$\frac{12}{17}$ 13

میں موجود ہے
1223 اور 20

OHe

ISSUE as per Rules


19/12

POLICE DEPTT:

DISTRICT KOHAT

ORDER

This order is passed on the de-nove enquiry against Ex-Constable Masaud Usman No. 1223 of this District Police under the Khyber Pakhtunkhwa, Police Rules, 1975 Amendment 2014.

Brief facts are that he had absented himself from official duty vide DD No. 18 dated 29.05.2014 till date, which shows his in-efficiency, negligence, irresponsibility and lack of interest in the discharge of government duties.

A denove departmental enquiry was ordered by DIG enquiry vide his letter No. 2903/E-I dated 21.11.2016 and SP Investigation Wing Kohat was appointed as enquiry officer.

The enquiry officer submitted his finding & guilty the constable for the charges leveled against him. He was issued Final Show Cause Notice. The defaulter was also called in OR and heard in person but he did not satisfy the undersigned about his innocence. The allegation leveled against him have been proved.

In view of above I, Javed Iqbal District Police Officer, Kohat in exercise of the powers conferred upon me, hereby award him a major punishment of "**Dismissal from Service**" with immediate effect.

OB No. 1042
Date 13-12-2017


①
DISTRICT POLICE OFFICER,

KOHAT 13/12/17

No 9856-58 PA dated Kohat the 18-12-2017.

Copy of above is forwarded to the Reader, Pay Officer, EC and OHC for necessary action.

(1)

FINAL SHOW CAUSE NOTICE

1. I, **Javed Iqbal, District Police Officer, Kohat** as competent authority under the Khyber Pakhtunkhwa, Police Rule 1975 Amendment 2014, serve you **Ex-Constable Masaud Usman No. 1223** as follow:-

You were absented yourself from official duty vide DD No. 18 dated 29.05.2014 till date, which shows your in-efficiency, negligence, irresponsibility and lack of interest in the discharge of government duties.

2. You have submitted your reply which was found unsatisfactory from the material place before the undersigned, I am satisfied that the charges leveled against are sustainable and you have committed the following acts/omission specified in Police Rule 1975 Amendment 2014.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Khyber Pakhtunkhwa, Police Rule 1975 Amendment 2014.

4. You are, therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

No. 7652/PA

Dated 17-10-2017


**DISTRICT POLICE OFFICER,
KOHAT**

5

FINAL SHOW CAUSE NOTICE

1. I, **Javed Iqbal, District Police Officer, Kohat** as competent authority under the Khyber Pakhtunkhwa, Police Rule 1975 Amendment 2014 serve you **Ex-Constable Masaud Usman No. 1223** as follow:-

You were absented yourself from official duty vide DD No. 18 dated 29.05.2014 till date, which shows your in-efficiency, negligence, irresponsibility and lack of interest in the discharge of government duties.

2. You have submitted your reply which was found unsatisfactory from the material place before the undersigned, I am satisfied that the charges leveled against are sustainable and you have committed the following acts/omission specified in Police Rule 1975 Amendment 2014.

3. As a result thereof I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Khyber Pakhtunkhwa, Police Rule 1975 Amendment 2014.

4. You are, therefore, required to Show Cause as to why the aforesaid penalty should not be imposed upon you, also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven (7) days of its delivery in the normal course of circumstances, it will be considered/presumed that you have no defence to put in and in that case an ex-parte action shall be taken against you.

No. 7652/PA

Dated 17-10-2017


**DISTRICT POLICE OFFICER,
KOHAT**

Phone No: 0922-9260274

Fax No: 0922-9260275

From: **The Superintendent of Police,
Investigation Wing, Kohat**

To: **The District Police Officer, Kohat.**

No. 480/PA Dated Kohat the, 11-08 /2017.

Subject: **DENOVO DEPARTMENTAL ENQUIRY AGAINST EX-FC
MASOOD USMAN NO.1223 DISTRICT KOHAT**

Memo:

Please refer to your office Endst: No. 4650/PA dated 12.6.2017.

It is submitted that in compliance with your above quoted memo: I have gone through the record it has been revealed that the delinquent official was enlisted in Kohat Distt: Police as Constable w.e.from 11.3.2001. He is resident of village Khushalgarh Tehsil & Distt: Kohat. He is son of Mohammad Usman of the same village. He has 16-years four months and 29 days service in his credit.

It is further submitted that according to the record he was posted as Traffic Police Constable in the year, 2014. He has granted 120-days Earned leave w.e.from 28.01.2014 and his arrival report back for duty on 29.5.2014 but he failed to join the duty and remain absented himself from lawful duty without any leave or permission of the competent authority as detail given below :-

“He has absented himself from official duty vide DD No.18 dated 29.5.2014 till to date which shows his in efficiency, negligence, irresponsibility and lack of interest in the discharge of Govt: duties.”


Proper departmental proceeding was initiated against him by the then Distt: Police Officer, Kohat. The defaulting Constable was served with Charge Sheet and Statement of Allegation for his willful absence. DSP/City Kohat was appointed to conduct departmental enquiry against him and to submit finding in stipulated period. On the recommendation of Enquiry Officer he was removed from service vide DPO Kohat OB No.1048 dated 20.8.2014.

The delinquent official filed an appeal in the NWFP (Khyber Pakhtunkhwa) Service Tribunal against the order of removal from service which has been accepted vide Judgement dated 24.12.2014. The directions to conduct Denovo Departmental Enquiry against him. The defaulter Constable was issued Charge Sheet and Statement of Allegation and the undersigned was appointed as Enquiry Officer against him.

During the course of enquiry the defaulter Constable was called to the office heard in person and recorded his statement. He was given full opportunity of cross examination. The defaulter Constable stated in his statement that he has granted 120-days Earned leave w.e. from 28.01.2014 to 28.5.2014 but unfortunately he fell ill and unable to join Police duty. He further stated that he has admitted in DHQ KDA Hospital Kohat for that reason he has not joined the enquiry proceeding. Charge Sheet and Statement of Allegation also served upon his home address. According to the report of DFC PS Gumbat the delinquent official was not found in his home. Even Final Show Cause Notice was served his home address which was received by his brother who disclosed that his brother Masood Usman was ill and under treatment at Hospital. He obtained medical leave 102 days from DHQs: Hospital KDA Kohat.

RECOMMENDATIONS

Keeping in view the grounds facts, available record and long service I am of the opinion that the allegation leveled against the delinquent Constable were proved. therefore he is recommended for major punishment Compulsory retirement from service.


(Sanaullah Khan)
Superintendent of Police,
Investigation Wing, Kohat.


(9)

**DENOVE DEPARTMENTAL ENQUIRY AGAINST EX-CONSTABLE MASAUD
USMAN NO. 1223**

<u>ALLEGATIONS (PUC Flag A)</u>	You had absented yourself from official duty vide DD No. 18 dated 29.05.2014 till date, which shows your in-efficiency, negligence, irresponsibility and lack of interest in the discharge of government duties.
<u>CHARGE SHEET/ STATEMENT OF ALLEGATIONS (Flag B) AND WRITTEN REPLY (Flag C)</u>	A denove departmental enquiry was ordered by DIG enquiry vide his letter No. 2903/E-I dated 21.11.2016 and SP Investigation Kohat Mr. Sana Ullah was appointed as enquiry officer.
<u>FINDING / RECOMMENDATION OF ENQUIRY OFFICER (Flag D)</u>	The Enquiry Officer conducted denove departmental enquiry and submitted his finding report that the absence period i.e 83 days may be treated as leave without pay and recomened for reinstatement into service.
<u>FINAL SHOW CAUSE NOTICE</u>	Nil

Submitted for favoûr of perusal and order please.

W/DPO, KOHAT


PA
22/5

OP
~~Absent~~
C



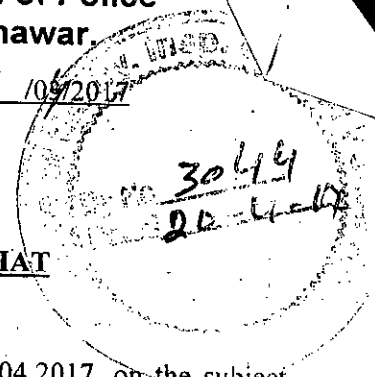
Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

No. /E&I, dated Peshawar the 17 /09/2017

To: The District Police Officer,
Kohat

Subject: **DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC MASAUD USMAN NO. 1223 DISTRICT KOHAT**

Memo:



Please refer to your office letter No.2805/PA dated 06.04.2017, on the subject cited above.

2. On perusal of the findings of the denovo departmental enquiry it has been revealed that a formal enquiry has been conducted as per direction of Service Tribunal.

3. You being competent authority in the instant case may proceed further in the light of recommendations of the enquiry officer, under intimation to this office.

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

No. 664-65 /E&I,
Copy of above is forwarded for information to:-

1. The Regional Police Officer, Kohat.
2. The Incharge CRC, CPO.

No 3549 /EC
21/4/17

EC 2
Pos 19-4-17

DPO Kohat
For necessary action

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

please:

Anwar

PA
for Masaud P

DIG POLICE
KOHAT
21/4/17

Handwritten initials

Handwritten signature

4532
21/4/17



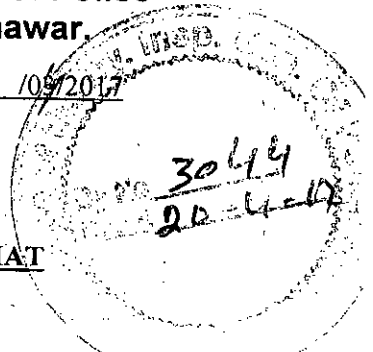
Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

No. /E&I, dated Peshawar the 17/09/2017

To: The District Police Officer,
Kohat

Subject: **DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC MASAUD USMAN NO. 1223 DISTRICT KOHAT**

Memo:



Please refer to your office letter No.2805/PA dated 06.04.2017, on the subject cited above.

2. On perusal of the findings of the denovo departmental enquiry it has been revealed that a formal enquiry has been conducted as per direction of Service Tribunal.

3. You being competent authority in the instant case may proceed further in the light of recommendations of the enquiry officer, under intimation to this office.

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

No. 66465 /E&I,
Copy of above is forwarded for information to:-

1. The Regional Police Officer, Kohat.
2. The Incharge CRC, CPO.

No 3549 /EC
21/4/17

EC 2
Pos 19-4-17

DPO Kohat
For necessary action

please

Anwar

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

PA
for necessary P

DIG POLICE
KOHAT
29/4/17

4532
21/4/17

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Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

No. 663 /E&I, dated Peshawar the 17 /09/2017

To: The District Police Officer,
Kohat

Subject: **DENOVO DEPARTMENTAL ENQUIRY AGAINST
EX-FC MASAUD USMAN NO. 1223 DISTRICT KOHAT**

Memo:

Please refer to your office letter No.2805/PA dated 06.04.2017, on the subject cited above.

2. On perusal of the findings of the denovo departmental enquiry it has been revealed that a formal enquiry has been conducted as per direction of Service Tribunal.

3. You being competent authority in the instant case may proceed further in the light of recommendations of the enquiry officer, under intimation to this office.

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

No. /E&I,
Copy of above is forwarded for information to:-

1. The Regional Police Officer, Kohat.
2. The Incharge CRC, CPO.

(SHAHAB MAZHAR BHALLI)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

From: - The District Police Officer, Kohat.

To: - The Deputy Inspector General of Police,
Enquiry & Inspection,
Khyber Pakhtunkhwa,
Peshawar.

No. 2805/PA, dated Kohat the 06-4/2017.

Subject: - **DE-NOVE DEPARTMENTAL ENQUIRY AGAINST
EX-FC MASAUD USMAN NO. 1223 DISTRICT
KOHAT.**

Memo: -

Kindly refer to your office Memo: No. 2909/E&I
dated 21.11.2016.

It is submitted that in the light of directions of
Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar vide
judgment dated 07.09.2016. A denove proceeding were initiated and
enquiry was conducted by SP Investigation Kohat.

The enquiry officer submitted his finding which is
enclosed for further necessary action and permission for passing
orders please.


DISTRICT POLICE OFFICER,
KOHAT

26/11/17



Office of the Deputy Inspector General of Police
Enquiry & Inspections
Khyber Pakhtunkhwa, Peshawa

No. 120

02nd reminder

E&I, dated Peshawar the 06/04/2017

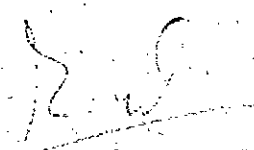
To: The District Police Officer,
Kohat.

Subject: **DENOVO DEPARTMENTAL ENQUIRY AGAINST E
MASOUD USMAN NO. 1223 DISTRICT KOHAT**

Memo:

Please refer to this office Memo; No. 2908/E&I dated 16/04/2017 and reminder No. 149/E&I dated 25.01.2017, on the subject cited above.

2. Reply into the subject matter is still awaited from your office. Kindly may please be sent to this office for the perusal of Worthy IGP at the earliest.


Deputy Inspector General of
Enquiry & Inspection
Khyber Pakhtunkhwa, Pesh

Phone No: 0922-9260274

Fax No: 0922-9260275

14

From: **The Superintendent of Police,
Investigation Wing, Kohat**

To: **The District Police Officer, Kohat.**


No. 195 /PA Dated Kohat the, 03-4 /2017.

Subject: **DENOVO DEPARTMENTAL ENQUIRY AGAINST EX-FC
MASUD USMAN NO.1223 DISTRICT KOHAT**

Memo:

Please refer to your office Endst: No. 983 dated 24.11.2016

It is submitted that the departmental enquiry against Ex-FC Masud Usman No.1223 of Kohat district Police conducted by the undersigned containing (98) pages are submitted herewith for favour of perusal please.


(Sanaullah Khan)
Superintendent of Police,
Investigation Wing, Kohat

(15)

**DENOVE DEPARTMENTAL ENQUIRY AGAINST EX-CONSTABLE
MASOOD USMAN NO. 1223.**

Complying with the orders of the W/DIG Enquiry & Inspection, Khyber Pakhtunkhwa Peshawar's Endst: No. 2910-11/E&I dated 21.11.2016, the undersigned has been appointed as Enquiry Officers against Ex-Constable Masood Usman No. 1223 of district police Kohat with the charge as under:

That he has been absented himself from official duty vide daily diary Madd No. 18 dated 29.05.2014 till date, which shows his in-efficiency, negligence and lake of interest in the discharge of Govt: duties.

Ex-Constable Masood Usman No. 1223 while he was posted in Traffic Police Kohat. He has granted 120 days Earned leave and his arrival report back for duty on 29.05.2014 but he failed to join the duty and remain absented himself from the duty without any leave/prior permission of the competent authority.

After detail enquiry he was found guilty of the charges, therefore finally removed from service. On acceptance of appeal, a denove enquiry was ordered by Service Tribunal which is hereby ordered to be initiated.

In order to establish the above allegations, the delinquent official was summoned and his statement got recorded:

EX-CONSTABLE MASOOD USMAN NO. 1223

Owth stated in his statement that he was enlisted in police department as Constable since 2001. On 28.01.2014, he submitted an application for granting 120 days Earned leave w.e. from 28.01.2014 to 28.05.2014 but unfortunately he fell ill and unable to join police duty. He has admitted in DHQrs Hospital KDA Kohat and has not joined the enquiry proceedings. He further stated that charge sheet and summery of allegation served upon on his home addressed. According to the report of DFC Gumbat the delinquent official was not found in

نے ملقب بیان کیا کہ میں سال 2001 میں بحیثیت کانسیبل محکمہ پولیس میں بھرتی ہوا اور کامیابی کے ساتھ ریکورڈ کورس پاس کر کے ضلع کوہاٹ میں اپنی ذمہ داری احسن طریقے سے انجام دیتا رہا۔ مورخہ 28.01.2014 کو میں نے چار مہینے (120 Days) رخصت کلاں کے لئے درخواست پیش کی۔ جو کہ افسران بالا صاحبان نے منظور کر کے میں چھٹی گزارنے کے لئے مورخہ 28.01.2014 سے روانہ ہوا۔ بدوران رخصت بیمار ہوا۔ جس کے میڈیکل کاغذات بطور ثبوت لف ہیں۔ میں نے بدوران ڈیوٹی کسی قسم کی کوتاہی نہیں کی ہے۔ مورخہ 20.08.2014 کو مجھے معلوم ہوا اس سے نوکری سے برخاست کیا گیا ہے میں نے دفتر پولیس پہنچ کر نقولات حاصل کرنے کی درخواست دی اور نقولات حاصل کر کے جناب ڈپٹی انسپکٹر جنرل آف پولیس کوہاٹ ریجن کوہاٹ کو اپیل دائر کی لیکن بد قسمتی سے سائل کی اپیل خارج کر کے ملازمت پر بحال نہیں کیا گیا۔ نتیجہ کے طور پر سائل نے سروس ٹریبونل کا راستہ اختیار کیا جس میں سائل کسی قسم کی کوتاہی شامل نہیں ہے۔ مجھے دوبارہ نوکری بحال کیا جائے تا حیات دعا گور ہوں گا۔ یہ میرا بیان ہے۔

انکوائری آفیسر

سپرٹنڈنٹ آف پولیس انوسٹی گیشن ونگ کوہاٹ

العبد
Emad
سابقہ کانسیبل مسعود عثمان نمبر 1223
موبائل نمبر 0345-9666032
***ہرج منجانب انکوائری آفیسر

- س۔ جب شوکا زونٹس اجارج شیٹ آپ کو گھر کے پتہ پر جاری ہوا جو کہ آپ کے بھائی فراز احمد نے وصول کیا آپ نے خود کیوں وصول نہیں کیا تھا؟
- ج۔ میں بذات خود بیمار تھا بدیں وجہ میرے بھائی نے انکوائری کے کاغذات وصول کئے۔
- س۔ آپ نے انکوائری Proceeding کو کیوں جانینٹ نہیں کیا؟
- ج۔ بیماری کی شدت زیادہ تھی اور باقاعدہ ہسپتال میں زیر علاج تھا جسکی وجہ سے حسب ضابطہ انکوائری طریقہ کار سے غیر حاضر رہا۔
- س۔ کیا یہ درست ہے کہ آپ کی حاضری مورخہ 29.05.2014 کو مقرر تھی اس کے بعد آپ کیوں غیر حاضر رہے؟
- ج۔ میں مورخہ 25.05.2014 کو اچانک بیماری میں مبتلا ہوا اور بیماری کی شدت کی وجہ سے ڈسٹرکٹ ہیڈ کوارٹر ہسپتال KDA میں مورخہ 25.05.2014 تا 14.06.2014 تک داخل ہسپتال رہا۔
- س۔ متعین میڈیکل کے بعد آپ کہاں گئے؟
- ج۔ ڈاکٹر صاحب KDA ہسپتال نے گھر کے لئے مکمل Bed Rest دے کر مورخہ 14.07.2014 کو دوبارہ چیک آپ کے لئے طلب کیا مورخہ 14.07.2014 کے بعد دوبارہ ڈاکٹر نے مورخہ 14.7.2014 تا 24.8.2014 میڈیکل لیوٹیفیکیشن جاری کیا جبکہ اسی دوران مورخہ 20.08.2014 کو نوکری سے برطرف کیا گیا۔

Attested

انکوائری آفیسر

سپرٹنڈنٹ آف پولیس انوسٹی گیشن ونگ کوہاٹ

العبد
Emad
سابقہ کانسیبل مسعود عثمان نمبر 1223
موبائل نمبر 0345-9666032

OFFICE OF THE
MEDICAL SUPERINTENDENT
DHQ HOSPITAL, KDA, KOHAT

No. 354 /F5A

Dated Kohat the 20/02/2017

To
The Superintendent of Police,
Investigation Wing, Kohat

Subject:- VERIFICATION OF MEDICAL LEAVE.

Reference your office letter ,No,04/PA, dated 04.01.2017. and reminder No,46/PA, dated 16.01.2017, on the subject cited above and to state that the medical documents in respect of Ex.Constable Masud Usman No,1223 are returned herewith (in original) duly found correct/verified as per record of this Hospital.

Encl: As Above.

[Signature]
MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
KOHAT

PA.
For n/g.
↓
Superintendent Of Police
Investigation Kohat *[Signature]*

Office of the Suptt. of
Cm. No. 343
Dated 28.2.17
Kohat.

OFFICE OF THE
MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
KDA, KOHAT

No. 2010 /F-5A

Dated Kohat the 24 /12/2016

To
The Superintendent of Police,
Investigation Wing, Kohat.

Subject:- VERIFICATION OF MEDICAL LEAVE.

Memo:

Office of the
By No. 1865
Dated 27-12-06
Kohat

Reference your office letter No.1892/PA, dated 16.12.2016 on the subject cited above and to state that the medical leave in respect of Ex.Constable Masud Usman No,1223 of your department are returned herewith (in photo state) duly found correct/verified as per record of this hospital.

Encl: As Above.

Ad
MEDICAL SUPERINTENDENT
DHQ TEACHING HOSPITAL
KOHAT

PA
for m/s
[Signature]

26/12

check m/s
to Reser
Mansoor
[Signature]

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D.H.Q HOSPITAL
CASUALTY DEPARTMENT
K.D.A KOHAT

Pt. Name Q. U. Khan Sex M OPD No 2591/

25/14

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Advised - 11/11/14
Call - 1/11/14

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1/50
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(24)
Gai.
Tada

(5)

D.H.Q HOSPITAL
CASUALTY DEPARTMENT
K.D.A KOHAT

Pt. Name Chishti Sex M OPD No 2591/5
25/14

Vansh Singh | Diarrhoea
Dr. ...

1. V.
Unl.
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P.
M.
Q.M.

C. ...
R. ...
C. ...
P. ...
H. ...
G. ...
M. ...
H. ...

Admission - ...
Call - ...

7/51
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2

Medical Superintendent
DHQ/Hospital Kohat

1st Nov, dat. 5000

Entamoeba - DS

Samrat - home

Family unit OR

گر کے علاج کے

20/11

DIVISIONAL HEAD QUARTER HOSPITAL
K.D.A KOHAT
DISCHARGE SLIP
MEDICAL "A" UNIT

UNIT INCHARGE
Medical Specialist
Dr. Irshad Noor
F.C.P.S.

Medical Officers
Dr. Wali Muhammad
Dr. Nafesa Batool

Name of Patient Masood Aman

WIS/DIO _____

Age 37 yr Sex Male Adm # 215-14

Address Kohat

Admitted on 25/5 Discharged on 14/6/14

Diagnosis G.I. (Gastro-Enteritis)
& Pub - Severe dehydration

تلفیٹ کی صورت میں برائے شکر اور نمک کی کمی

(7)

Allegiance

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Medical Officer
DEC Hospital Kohat

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2/8

VISIONAL HQ:KDA KOHAT
MEDICAL LEAVE CERTIFICATE

patient Mr. A. K. Yousaf after careful personal examination of the case
by that Mr/Mrs. Maseed Usman Desig: Constable
Usman whose signature is given above is suffering from Ur. Scat. etc.
and I advised rest for Ur. Scat. etc.
4-7-2016 to 24-8-2016 is absolutely necessary for the restoration of his/her

[Signature]
Medical Officer

DHQ: Hospital KDA Kohat
Medical Officer
DHO: Hospital Kohat

[Signature]
Medical Superintendent
HQ / Hospital Kohat

(9)

U¹ 53 11
5/6/14

Backache

U - Rupture 2 1/2 mm

U - 75 - 75 - 75 - 75

U - 75 - 75 - 75 - 75

U - 75 - 75 - 75 - 75

Rest - 04 weeks

Medical Officer
DDQ Hospital Kohat

10

DIVISIONAL HQ:KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signature of patient _____

I, Dr. Mohammad. Farid after careful personal examination of the case

Hereby certify that Mr/Mrs, Masood Hussain Desig: Constable

Deptt. Police whose signature is given above is suffering from Backache

and I advised rest for 04 weeks

w.e.f. 15-6-16 to 14/7/16 is absolutely necessary for the restoration of his/her health.

[Signature]
Medical Superintendent
DHQ / Hospital Kohat

[Signature]
Medical Officer

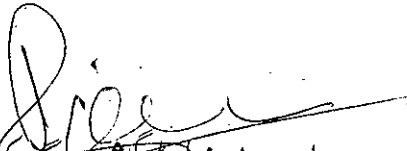
DHQ: Hospital KDA Kohat
Medical Officer
DHQ/ Hospital Kohat











16.12.2016

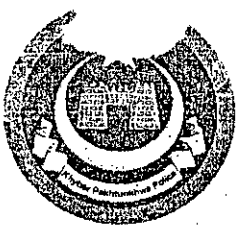
SHO تھانہ گمبٹ

اطلاع برائے حاضری تصور وار کنسٹیبل مسعود عثمان 1223

ہرگاہ آیکو اطلاع دی جاتی ہے۔ کہ برخاست شدہ کنسٹیبل مسعود عثمان نمبر 1223 ضلعی پولیس کوہاٹ بسلسلہ حکمانہ انکواری مورخہ 01.12.2016 کو بوقت 11:00 بجے دفتر جناب ایس پی صاحب انویسٹی گیشن کوہاٹ اپنا بیان ریکارڈ کرنے کے سلسلہ میں حاضر ہوں آپ SHO تھانہ برخاست شدہ کنسٹیبل کو ضرور مطلع کریں کہ وہ مقررہ تاریخ اور وقت پر حاضر ہوں۔


ایس۔ پی انویسٹی گیشن کوہاٹ

S No.	PROCEEDING INDEX
1.	Denove departmental enquiry against Ex-Constable Masud Usman No.1223 of Kohat district received form IGP Khyber Pakhtunkhwa Peshawar through DPO Kohat vide Encls: No. 983 LB dated 24.11.2016.  E. O /SP/Inv: Kohat
2.	On 01-12-2016 the defaulter Ex-Constable Masud Usman No.1223 was contacted on his Cell phone to appear before the undersigned on 02-12-016 for recording his statement regarding departmental enquiry.  E. O /SP/Inv: Kohat
3.	On 02-12-2016 the defaulter Constable is absent and Summoned on 13-12-2016.  E. O /SP/Inv: Kohat
4.	On 13-12-2016 the defaulter Ex-Constable Masud Usman No.1223 is present and his statement got recorded.  E. O /SP/Inv: Kohat
5.	On 16-12-2016 a letter No.1892/PA dated 16-12-016 has been addressed to Medical Supdt: DHQrs: Hospital KDA Kohat in connection with verification of Medical leave.  E. O /SP/Inv: Kohat
6.	On 27-12-2016 letter received from Medical Supdt: DHQ KDA Hospital, Kohat regarding verification of Medical leave granted by Ex-Constable Masud Usman No.1223.  E. O /SP/Inv: Kohat
7.	On 04-01-2017 letter No.04/PA on the same dated again addressed to MS I HQrs: KDA Hospital Kohat regarding verification of Medical leave (all related papers) after proper verification the said papers may be returned to this office through Official DAK.  E. O /SP/Inv: Kohat
8.	Reminder No.46/PA dated 16-01-2017 issued to Medical Supdt: KDA Hospital Kohat to expedite reply.  E. O /SP/Inv: Kohat
9.	Second reminder was issued to Medical Supdt: KDA Hospital Kohat to expedite reply immediately.  E. O /SP/Inv: Kohat
10.	The departmental enquiry along with other connected papers is submitted herewith for favour of perusal and further orders please.  E. O /SP/Inv: Kohat



Office of the Inspector General of Police
Khyber Pakhtunkhwa, Peshawar.

No. 2909 /E&I, dated Peshawar the 27 /11/2016

1747
29-11-16

To: The District Police Officer,
Kohat.

Subject: **DENOVE DEPARTMENTAL ENQUIRY AGAINST EX-FC MA SAUD USMAN NO. 1223 DISTRICT KOHAT**

Memo:

Please refer to your office letter No. 23046/LB dated 08.11.2016, of the subject cited above.

2. Denove departmental enquiry against above named Police official may be conducted through Mr. Sana Ullah/SP Investigation, Kohat and final outcome of the enquiry may be communicated to this office on or before 08.12.2016, for the perusal of Worthy IGP.

9064831

(SYED FIDA HASSAN SHAH)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar

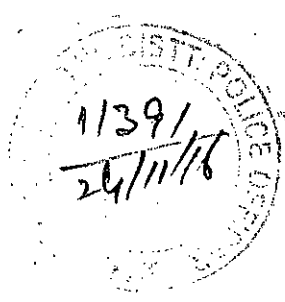
No. /E&I,
Copy of above is forwarded for information to:-

1. Mr. Sana Ullah/SP Investigation, Kohat
2. The Incharge CRC, CPO.

DSP Legal (category 4 Fido)

Fr Motion & report
before due date

(SYED FIDA HASSAN SHAH)PSP
DIG/Enquiry & Inspection
For Inspector General of Police
Khyber Pakhtunkhwa, Peshawar



[Handwritten signature]
29/11

Reader/SPIN Kohat

PA
Fr m/g

For final outcome
report for onward
submission

Office of the D.S.P.
Kohat, Kohat
By: No. 983
Dated: 24-11-16

29/11
Canal
concern

[Handwritten signature]
21/11

Note: 1. The hours of attendance in...
2. Always quote Case No. While making...

①

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 191/2018

Masood Usman S/o Mohammad Usman..... Appellant

Versus

Provincial Police Officer and others..... Respondents

REJOINDER ON BEHALF OF APPELLANT.

Respectfully Sheweth;

Preliminary objection

That the reply/para-wise comment has not been competently filed and nor any affidavit has been filed in accordance with law nor the same has been properly attested, hence the same has no value in the eyes of law.

Rejoinder to Preliminary objection

Preliminary objection raised by respondents are erroneous, frivolous, based on male fide intention and having no factual and legal backing. Respondents have failed to explain as why the appeal is not based on facts; how the appeal is not maintainable in the present form; who are the necessary parties to the appeal; how the appellant is estopped by his conduct; how the appellant is estopped to file the instant appeal and what matter facts has been concealed by the appellant from this Hon'ble Tribunal. No plausible explanation has been given by the respondents. No specific and due objection regarding the controversial question of facts and law involved in the instant service appeal has provided, therefore, appellant is unable to submit proper rejoinder to the preliminary objection raised by the respondents.

Rejoinder to Facts of Reply/ Parawise comments

1. Para No. 1 and 2 of the reply / parawise comments are incorrect hence denied. No opportunity of hearing has been provided to appellant and thus he has been condemned unheard. The appellant due to his sever ill health was unable to perform his duty and accordingly informed hid high ups after regaining health and also provided all the relevant document to the respondents but the same has not been taken into consideration and imposed major punishment which has rightly been set aside by the learned respondent No. 2 and reinstate the appellant into service by treating intervening period is leave without pay. That appellant was hospitalized

due to his illness and respondent were accordingly informed regarding the said fact but the same has not been taken into consideration and he has been allegedly shown in the enquiry report as gone abroad which is not true in the first enquiry report. The Medical documents has now been properly verified by the respondent which fully justified the stance of the appellant. Whereas in the de-novo enquiry report no such allegation have been mentioned that appellant is left abroad which fully justified the stance of appellant. The appellant being a Civil Servant has wrongly been proceeded with under the Police Rules 1975.

2. Para No. 3-6 it is submitted that de-novo enquiry has not been conducted in accordance to law. Respondents were legally bound to carry the enquiry proceeding within one month but the same has been finalized after 11 months of the passing of the judgment of this Hon'ble Tribunal. Thus the finding of the enquiry report and thereafter passing of the impugned order by respondent No. 3 has no value in the eyes of law.

3. Para No. 7 of the reply / parawise comments incorrect. That once the appellant has been reinstated on service. Now the matter of back benefit has to be seen that whether it was the fault of appellant not to work or it was due to the department that he was not allowed to work. The appellant time an again approach respondent for performance of duty after his recovery of health but respondent did not allow him to work, thus the fault is not on the part of appellant but the department who did not allow him to work, therefore, he is fully entitled for all the back benefits. The appellant feeling aggrieved form the impugned orders preferred instant appeal in hand hence he has a valid cause of action to file appeal. In this respect Judgment of the Apex Court of Pakistan Report is 2013 SCMR 752 and Judgment of this Hon'ble Tribunal in Appeal No. 510/2016 tiled Muhammad Noman Constable Vs DPO Kohat etc are very much clear. (Copies of judgments are attached)

Rejoinder to the Grounds of Reply/ Parawise comments

- a) Para No. a- c of the reply / parawise comments are incorrect and that of memo of appeal are correct. No evidence whatsoever has been procured against appellant. It is pertinent to mention here that appellant was felt ill and was hospitalized due to which he did not resume his duty but that aspect of the case has been totally ignored by the respondent. The medical documents has properly been verified by the enquiry officer and thus fully support the stance of the appellant.

b) Para No. d- h of the reply / parawise comments are incorrect hence denied. Detail given in the memo of appeal is correct. The enquiry report is very much clear that no evidence whatsoever were procured by the enquiry officer against appellant which could suggest the willful absence rather the medical documents verified by the enquiry officer fully support the stance of appellant. After regaining health appellant time and again approached respondents for joining duty but he has not been allowed. The stance of the replying respondents in these para is totally in contrast to the de-novo enquiry report. The Judgment attached with re-joinder is very much clear that appellant is entitled for back benefits.

It is therefore, most humbly prayed that by accepting this rejoinder and the ground of main appeal the appellant is entitled for all back benefits.

Appellant

Through

Shahid Qayum Khattak
Advocate, High Court
Peshawar

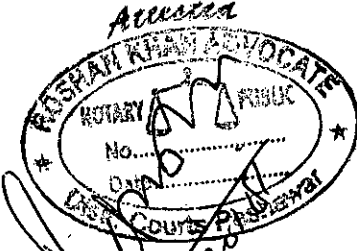


Dated: 03/10/2018

Affidavit

I, do hereby solemnly affirm and declare on Oath that the contents of the above rejoinder are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.


Deponent

Attested

3-10-2018

14301-4081624-5

twice: once for provision and then for rendition of service, the answer was no. When this being the case. The whole exercise sought to be embarked upon appears to be academic.

7. The argument that when petitioner denied from the very inception of the proceeding its status as a franchisee levy of duty thereon was misconceived is also without force when the record, as contended by the learned counsel for the respondent, proves to the contrary. Even if it be as it was contended by the learned counsel for the petitioner, it being a question of fact could not have been raised in a reference before the High Court which always invariably lies only on a question of law. In this view of the matter, we don't think impugned judgment suffers from any infirmity much less legal or jurisdictional so as to justify interference therewith.

8. For the reasons discussed above, this petition being without merit is dismissed and the leave asked for is refused.

MWA/C-3/SC

Petition dismissed

2013 S C M R 752

[Supreme Court of Pakistan]

Present: Nasir-ul-Mulk and Tariq Parvez, JJ

CHAIRMAN, STATE LIFE INSURANCE CORPORATION OF PAKISTAN, KARACHI and others---Appellants

versus

SIDDIQ AKBAR---Respondent

Civil Appeal No.1186 of 2012, decided on 30th January, 2013.

(On appeal from the judgment/order dated 12-9-2012 passed by Lahore High Court, Lahore in W.P. No.7249 of 2012).

(a) Civil service---

---Dismissal from service---Rights of employee on reinstatement in service---Employee reinstated in service after exoneration of the charge--- Right/entitlement of such employee to continuation of service increment in salary and pro forma promotion for the period he remained suspended or dismissed---Scope---Employee (respondent), in the present case, was charge-sheeted for misappropriation and embezzlement on the basis of which he was dismissed from service---Fresh inquiry committee was constituted on the directions of the Supreme Court, which

committee exonerated employee of the charges---Competent authority created period during which employee remained dismissed as extra ordinary leave without pay and he was denied salary for such period on the ground that he physically remained out of service---Competent authority also denied the employee increment of two years during which he remained dismissed from service and also did not consider him for promotion with retrospective effect as he was dismissed from service and his Annual Confidential Reports for such period were not available---High Court allowed constitutional petition filed by employee and ordered that period for which he remained dismissed was to be considered as period spent on duty; that annual increment for the two years during which he remained dismissed were to be granted to him, and that he should also be considered for pro forma promotion with effect from the date when his batchmates were promoted---Validity---Once an employee was reinstated in service after exoneration of the charges levelled against him, the period during which he remained either suspended or dismissed could not be attributed as a fault on his part---Absence of employee, in the present case, during period of his suspension and subsequent dismissal was not voluntary on his part but was due to the order of the employer-Corporation (appellant), which restrained him from attending his job/duty---Exoneration of the charge meant that employee stood restored in service, as if he was never out of service of the employer-Corporation---Period during which employee remained dismissed, therefore, was to be considered as period he remained in service---Since absence/non-attendance of employee at work was not voluntary on his part and it was due to the steps taken by the employer-Corporation, therefore, his service record could neither be adversely affected nor could he be denied any benefit to which he would have been entitled had he not been suspended or dismissed---Appeal was dismissed accordingly. [pp. 758, 759] A & C

(b) Limitation---

---Bar of limitation---Principles---Limitation was a bar against a party pursuing its cause and not a bar regarding assumption of jurisdiction by a court because the court for justified reasons could condone the time limitation. [p. 759] B

Ali Muhammad v. Muhammad Shafi PLD 1996 SC 292 and Chairman, State Life Insurance Corporation v. Hamayun Irfan 2010 SCMR 1495 ref.

Raja M. Ibrahim Satti, Senior Advocate Supreme Court for appellants.

M. Munir Paracha, Advocate Supreme Court for Respondent.

Date of hearing: 30th January, 2013.

TARIQ PARVEZ, J.--Lengthy round of litigation had finally reached to this Court through Civil Petition for Leave to Appeal No.1710 of 2010. The petition came up for hearing on 21-12-2012 and the same was converted into appeal, *inter alia*, on the grounds to consider the following questions as formulated in the leave granting order:--

- (a) whether for the period the respondent remained suspended/dismissed from service, he shall be entitled to annual increment?
- (b) when the department has considered the respondent on extra ordinary leave without pay for the period of 456 days; whether, under the law, he could be held entitled for payment of the salary for these days, treating him to be present on duty?
- (c) whether the period during which the respondent remained suspended/dismissed from service can be considered while determining his seniority?

2. The respondent, while serving as Zonal Head, Sahiwal Zone of State Life Insurance Corporation of Pakistan was charge sheeted on 28-8-1996 and 10-9-1996 on the charges of misappropriation and embezzlement. He was proceeded against departmentally and was dismissed from service on 8-5-1997. The dismissal order was challenged by filing Writ Petition before the Lahore High Court, Multan Bench where dismissal order was suspended on 20-5-1997 and ultimately the said Writ Petition was allowed and dismissal order was quashed by the High Court vide order dated 30-3-1998. The appellant then filed Civil Petition for leave to appeal before this Court, which petition was converted into appeal and allowed and the judgment of the High Court dated 30-3-1998 was set aside with direction to the respondent to seek redressal of his grievance before the competent forum i.e. the Federal Service Tribunal. Consequently, the respondent filed two Service Appeals before the Federal Service Tribunal but both were dismissed on 9-3-1999; the judgment of the Service Tribunal was challenged by the respondent again by two separate Civil Petitions before this Court and this Court on 15-7-1999 allowed and set aside the order of the Service Tribunal with the observation that the disciplinary proceedings before the Department shall be deemed to be pending and shall be decided after after constitution of enquiry committee in accordance with law. The freshly constituted enquiry committee on 2-3-2001 exonerated the respondent from the charges served upon him through the charge sheet mentioned hereinabove. After exoneration the competent authority

decided that the period during which the respondent remained dismissed from service i.e. from 8-5-1997 to 2-3-2001 shall be treated as extra ordinary leave without pay. The above decision of the authority was challenged by the respondent through representations dated 16-1-2001 and 21-4-2002. His representations were not acceded to. However, after about 8/9 years, the respondent filed yet another representation on 1-7-2010 and this time the competent authority vide order dated 27-7-2010 decided that the period from 8-5-1997 to 2-7-1997 (56 days) and from 9-6-1998 to 5-8-1999 (445 days), when the respondent was not in service be treated as extra ordinary leave without pay. This was again challenged by the respondent through Constitution Petition No.1829 of 2010, which was disposed of in the terms that the respondent shall file representation which shall be decided by the department within three months. It appears that since no order was passed on the representation, a fresh Writ Petition was filed by the respondent bearing No.1318 of 2012, which was disposed of on 20-1-2012 with direction that if the appeal of the respondent is pending, the same shall be decided within two weeks.

Upon fresh appeal filed on 6-7-2011, the competent authority vide order dated 15-2-2012 decided the appeal and granted relief to the respondent only to the extent that 56 days i.e. w.e.f. 8-5-1997 to 2-7-1997 be treated as spent on duty whereas rest of the relief was declined.

Being not satisfied, the respondent filed yet another Writ Petition bearing No.7249 of 2012, which was subject matter of instant proceedings and on 12-9-2012, the said Writ Petition was allowed with the following relief given to the respondent:--

- (a) That the period of 456 days as noted above is liable to be considered as a period spent on duty.
- (b) The annual increment for the years 1999 and 2000 may be granted to the petitioner as the same have been granted to other similarly placed employees; and
- (c) The petitioner may be considered for pro forma promotion w.e.f. the date when his batch mate were promoted with due record to the petitioner's right to seniority;

Hence, this appeal by leave of the Court.

The principal contention of the learned counsel for the appellant-Corporation is that no relief as claimed by the respondent could be granted to him and that the learned High Court in Constitutional jurisdiction has acted in a manner as if it was hearing an appeal.

His submission is that as far as awarding relief of considering the respondent to be on duty for the period he remained under suspension or dismissal, is against the law and facts because when the respondent has not attended the office physically nor he was assigned any duty/job, he cannot be held entitled to any remuneration on the principle 'no work, no salary' and thus the respondent has been awarded something which was not his entitlement.

The learned counsel submits that similarly, the relief of awarding two increments for two years i.e. 1999-2000 and 2000-2001 have wrongly been granted to the respondent against the fact that in these two years, he had not provided any services to the appellant and thus is not entitled to increment for the period, he has not worked.

The learned counsel has also challenged the relief of giving pro forma promotion to the respondent on the ground that when in the year 2002, the cases of batch mates of the respondent were placed before the competent authority for consideration for promotion, the respondent could not be promoted because of non-availability of his three previous ACRs, as during such period he was either under suspension or was dismissed by the order of competent authority, as such, according to the learned counsel, he cannot claim pro forma promotion. He has added that, however, when the right of promotion became due to the respondent in the year 2007, he was given promotion but he cannot be given promotion with retrospective effect.

The learned counsel has further argued that on the principle of *laches*, the learned High Court should have dismissed the case of the respondent at preliminary stage because the order of the competent authority fixing his pay, etc. was passed in the year 2001, which for the first time was challenged by the respondent through filing of the Constitution Petition before the High Court, subject matter of instant proceedings, after a lapse of 9/10 years. He submits that if a party approaches the Court after the period of limitation or whose case is barred by *laches*, the Court has no jurisdiction to entertain the claim which has become barred by time. His submission is that in view of above, the respondent was not entitled to equitable relief sought after almost 10 years from the High Court.

In support of his submission regarding limitation that the same could not have been condoned by consent of the parties and the question of filing petition with the delay and to be hit by principle of *laches*, reliance has been placed on Ali Muhammad v. Muhammad Shafi (PLD 1996 SC 292) and Chairman, State Life Insurance Corporation v. Hamayun Irfan (2010 SCMR 1495).

4. On the other hand, learned counsel appearing for the respondent submits that the question of *laches* cannot be raised by the appellant for more than one reason because it was never the case of the appellant before the learned Judge in Chambers of the High Court nor in the memo of the appeal as the same has been raised before this Court for the first time.

He submits that the respondent remained vigilant in pursuing his grievance though by making repeated representation both against his suspension/dismissal and later on, after his reinstatement regarding fixation of his emoluments, etc. He states that the respondent filed Constitution Petition No. 18629 of 2010 before the High Court, which came up for hearing on 25-3-2010 and it was observed by the learned Single Judge in Chambers of the High Court as under:-

- (2) Both the counsel agree that let the petitioner file a representation to the competent authority in this behalf, who shall examine the same and decide the matter fairly, justly and strictly in accordance with law after affording full opportunity of hearing to the petitioner including the right of producing evidence.
- (3) Disposed of in the above terms with direction that the competent authority shall decide the matter expeditiously within three months of the receipt of such representation."

The learned counsel submits that in view of consent order, the respondent was to file a representation to the competent authority, which was accordingly filed but his representation was not entertained and he was advised by the department itself that he shall file an appeal, as envisaged under Regulation No.33 of the State Life Employees Service Regulations, 1973; thus, according to the learned counsel, no question of limitation or *laches* arises when the department i.e. the appellant itself has been asking the respondent to prefer an appeal pursuant to the consent order referred to hereinabove.

Qua the relief of pro forma promotion given to the respondent after the date when his batch mates were promoted, the learned counsel has argued that same is his right because if the respondent was charged and was removed from service or if in the year 2002, his other colleagues were promoted, but because of deficiency of his ACR, his case was not considered, which fault could not be attributed to the respondent and relief in this regard has rightly been granted to him. He also states that the order of the competent authority dated 2-3-2001 operating the respondent from the charges levelled against him vide charge sheets dated 28-8-1996 and 10-9-1996, is a clear chit in his favour and would be considered as if he was never suspended nor

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dismissed and shall assume the position as was held by him, deeming him to be in service w.e.f. the date when the said two charge sheets were served upon him.

5. We have heard the arguments of the learned counsel for the parties and have also gone through different documents, so brought on record. Undisputed facts are that the respondent was issued two charge sheets mentioned in the preceding paras herein above, on the basis of which he was dismissed from service but was reinstated under the order of this Court with the directions that fresh enquiry should be held against him. In the later enquiry, the respondent was exonerated from the charges, the result of the enquiry was duly communicated to him vide letter dated 12-3-2001. The precise question before this Court is when an employee like the appellant was issued charge sheets, which charges were ultimately not proved and he was exonerated of the charges and that during the period he remained suspended or was dismissed, shall it adversely affect the service record of the respondent, both in terms of continuity of service and in terms of his right to receive pay and salary,

6. Although the competent authority has held that the respondent be treated for 56 days i.e. w.e.f. 8-5-1997 to 2-7-1997 and that the period from 9-6-1998 to 16-9-1999 (456 days) be treated as extraordinary but they have denied him salary for such period because he physically remained out of service and, therefore, he was held not entitled to any pay for having done no work. The competent authority has allowed him two annual increments for the year 1999-2000 and has also denied him increments for the year 1999 and 2000, which became operative from 1-1-2001. He was also refused pro forma promotion because of the inefficiency of his ACR for the year 2003.

7. When an employee is reinstated in service after his exoneration from the charges levelled against him, the period during which he remained suspended or dismissed cannot be attributed as a fault on his part. The period during this period was not voluntary on his part but it was the result of the appellant that he was restrained not to attend his job. On the basis of charge sheets, he was suspended and later reinstated. At the moment, his exoneration from the charges would entitle him to be restored in service, as if he was never out of service. The appellant. If the absence of the respondent or non-attendance of the work was not a volunteer act on the part of the respondent, the appellant, in no manner the service record of the respondent can be adversely affected nor he can be denied any benefit to which he was entitled, if he had not been suspended.

8. So far as the question of *laches* is concerned, apparently the consenting order was passed by the learned Single Judge in Chambers of the High Court on 25-3-2011 where no question of *laches* was raised and subsequent thereto when the representation was filed by the respondent, he was advised by the department itself that he shall instead file an appeal and no question of *laches* was even raised by the departmental authority. Even before this Court except oral arguments in this regard, this question has not been setup specifically in the memo of appeal.

9. Argument of the learned counsel for the appellant that the order of the High Court is without jurisdiction on the ground that the matter was brought before it beyond the limitation and the High Court should have dismissed the petition *in limine*, does not appear to be a valid argument; limitation is a bar against a party in pursuing its cause and not a bar regarding assumption of jurisdiction by a Court because the Court for justified reasons can condone the time limitation. Even otherwise, the question of limitation is not involved in this case except *laches* as raised but since the department has never raised any objection of delay against the respondent in approaching the High Court, it cannot react against the respondent. Even otherwise, perusal of record reveals that the respondent had been pursuing his grievance qua re-fixation of pay and promotion, etc. throughout when he has filed his departmental appeal back in the year 2007 on 20th August.

10. For the above stated reasons, we find no force in this appeal, as much the same is dismissed; however, in para-14 of the impugned judgment it is recorded that "the period of 456 days as noted above is liable to be considered as a period "spent on duty" (emphasis provided); the said sentence is modified in the terms that it shall be read as "the period of 456 days as noted above is liable to be considered as a period "remained in service" (emphasis provided).

MWA/C-2/SC

Petition dismissed.

2013 S C M R 759

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Ejaz Afzal Khan, JJ

AHMED KHAN DEHPAL---Petitioner

versus

GOVERNMENT OF BALOCHISTAN
and others---Respondents

P. No.14-Q of 2013, decided on 23rd January, 2013.

8

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 510/2016

Date of Institution ... 13.05.2016
Date of Decision ... 01.03.2018



Muhammad Noman Constable,
Old belt No.1313 & new Belt No.31, Kohat.

(Appellant)

VERSUS

District Police Officer, Kohat and another.

(Respondents)

MR. KHURSHID AHMAD SHAHAN,
Advocate

For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

CHAIRMAN
MEMBER(Executive)

ATTESTED

CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

JUDGMENT

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

FACTS

The appellant was dismissed from service on certain charges of fake
signatures on 05.01.2012. In the first round of litigation this Tribunal ordered for de-
novo proceedings on 29.05.2015. The department after holding de-novo proceedings
exonerated the appellant on 17.02.2016 but no order for back benefits was passed on
7.02.2016. Thereafter a separate order was passed by the competent authority on
5.04.2016 wherein the period out of service was ordered to be considered as leave
without pay. The appellant then approached this Tribunal against the said order on
3.05.2016.

ARGUMENTS

3. Learned counsel for the appellant argued that this Tribunal in its order dated 29.05.2015 while directing the department to hold de-novo proceedings observed that the issue of back benefits shall be subject to the final outcome of the de-novo proceedings. That the department vide order dated 15.04.2016 instead of granting back benefits to the appellant considered the period out of service as Extra Ordinary Leave. That no fault could be attracted to the appellant not to serve the department and in view of judgment reported as 2013 SCMR 752 entitled "*Chairman, State Life Insurance Corporation of Pakistan, Karachi-vs-Siddiq Akbar*", the appellant shall be considered to be on duty and shall be entitled for the back benefits.

4. On the other hand learned Addl: Advocate General argued that the present appeal was not maintainable for the reasons that the appellant did not file departmental appeal against the order dated 15.04.2016 and in view of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 the service appeal was not maintainable. He further argued that the department had rightly denied the back benefits for the reason that the appellant did not perform any duty. That it was a rule that no work no pay.

AT THEED
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CONCLUSION.

5. This Tribunal is first to decide the maintainability of the present service appeal. This Tribunal in its earlier order had directed the department to decide the issue of back benefits subject to final outcome of the de-novo proceedings. In de-novo proceedings the appellant was exonerated. Thereafter separate order was passed on 15.04.2016 in which the back benefits were denied to the appellant. The appellant did not file the departmental appeal against the said order but the question


would be whether due to non-filing of departmental appeal the appellant would be non-suited. This Tribunal is of the view that this is the matter of financial benefits which cannot be denied to a civil servant and no limitation would be attracted in such cases. If no limitation is attracted then whether non-filing of departmental appeal would be a clog on entertaining the present service appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Since the present service appeal is the continuation of earlier service appeal, the appellant was not bound to challenge the order in departmental appeal and if this opinion is not correct then the appellant cannot be non-suited on this technical ground. And if the arguments of the learned Addl: AG is accepted then this Tribunal would direct the appellant to file departmental appeal afresh and departmental appeal would be in time even today as no limitation would run in order refusing financial benefits. In such a situation the departmental appeal would be competent and appellant would again come to this Tribunal after waiting for 90 days and the result would be the same. So this is the technicality on the basis of which the appellant cannot be non-suited.


6. Coming to the merits of the appeal the judgment relied upon by learned counsel for the appellant is very much clear and the facts of the reported judgment are very nearer to the present appeal. In the reported case the appellant was dismissed for embezzlement and then he was reinstated. The same arguments were advanced before the august Supreme Court of Pakistan that no work no pay. The august Supreme Court of Pakistan decided that it would be seen that it was the fault of the appellant not to work or it was due to the department that he was not allowed to work. The August Supreme Court of Pakistan finally held that it was not the fault of the appellant not to work but he did not work due to dismissal order. And the august Supreme Court of Pakistan finally decided that the appellant shall be

ATTESTED


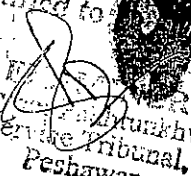

 CHIEF JUSTICE
 KHYBER PAKHTUNKHWA
 SERVICE TRIBUNAL

considered on duty for all purposes and will be held to be entitled for not only back benefits but also for other rights like seniority, promotion etc. This Tribunal therefore, accepts the appeal of the appellant and hold the appellant entitled for the back benefits and it is also ordered that the appellant should not be deprived any right of promotion etc including his training/completion of course for promotion etc if there is no other hindrance except his dismissal. Parties are left to bear their own costs. File be consigned to the record room.


(AHMAD HASSAN)
MEMBER


(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
01.03.2018

Certified to  copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

Date of Presentation of Application 01/03-18
Number of Vols 1600
Copying Fee 10.00
Urgent —
Total 10.00
Name of Applicant AP
Date of Completion of 29-03-18
Date of Disposal of 29-03-18

Before the Court of Service Tribunal, Peshawar

Masood Usman vs Police

Application for
adjournment of case
— x —

Respectfully sheweth,

(1) That the above service appeal
is pending adjudication before the
honble Court and is fixed for
Today i.e. 19/02/2020

(2) That the Senior Council is
busy out station therefore adjourned
the instant appeal kindly.

It is therefore humbly
prayed that acceptance
this application may
please be allowed

Applicant

Date 19/02/2020

Through

- Bida Usman

~~Bida~~ Usman