

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT ABBOTTABAD

Service Appeal No. 10010/2020

Date of Institution ... 02.09.2020

Date of Decision ... 19.04.2022

Maqbool Ahmed, Head Constable No. 18, District Police
Abbottabad.

... (Appellant)

VERSUS

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

... (Respondents)

MR. MUHAMMAD ASLAM TANOLI,
Advocate

---- For appellant.

MR. NOOR ZAMAN KHATTAK,
District Attorney

--- For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts of the instant
service appeal are that departmental action was taken against
the appellant on the allegations reproduced as below:-

"That on the midnight of 16/17.07.2019,
you were patrolling officer on Cantt Mobile-I,
meanwhile a fire incident took place near
Shama Bakery. You were called on wireless by
District Control room but you did not reply the
wireless call, which reflects that you were not
present in the official vehicle. Later on you were
contacted on your cell number by District
Control Room. You misbehaved and used filthy
language with the officer who was on duty in
District Control Room".



On conclusion of the inquiry, District Police Officer Abbottabad imposed minor penalty of withholding of one increment with cumulative effect upon the appellant vide order bearing O.B No. 181 dated 16.08.2019, which was challenged by the appellant through filing of departmental appeal, however the same was also filed vide order dated 03.08.2020, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

3. Learned counsel for the appellant has contended that the appellant was present on duty on the relevant night and had also participated in extinguishing of the fire. He further argued that copy of *Mad* No. 47 dated 17.07.2019 is available on the record, wherein it is clearly mentioned that the appellant had not only performed his duty on the relevant time but had also taken part in extinguishing of the fire. He next contended that no evidence what-so-ever was recorded by the inquiry officer in the matter and the appellant was awarded the impugned penalty merely on surmises and conjectures. He next contended that charge sheet as well as statement of allegations were issued by SDPO, who was not at all the competent Authority, therefore, whole of the proceedings are nullity in the eye of law. He further argued that the impugned orders being wrong and illegal are liable to be set-aside and the appellant is entitled to restoration of the annual increment withheld through the impugned orders.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant had failed to perform his duty and had used filthy language against the police official working in the District Control Room, therefore, proper inquiry was conducted against the appellant and he was found inefficient and guilty of misconduct. He further argued that the appellant was provided opportunity of self defense as well as personal hearing, however he could not put forward any plausible explanation in his defense. He next contended that as the impugned orders are quite

legal, therefore, the same may be kept intact and the appeal in hand may be dismissed with costs.

5. Arguments heard and record perused.

6. A perusal of the record would show that departmental action was taken against the appellant on the allegations that on receipt of information of incident of fire being occurred near Shama Bakery, the appellant was called on wireless by District Control Room but he did not reply the wireless call, which reflected that he was not present in the mobile pickup; that later on he was contacted on his cell number by the District Control Room but he misbehaved and also used filthy language against the officer, who was on duty in the District Control Room. Available on the record is show-cause notice issued to the appellant by the District Police Officer Abbottabad on 24.07.2019, wherein it is mentioned that sufficient material was placed before him, therefore, he had decided to proceed against the appellant in general proceedings without aid of inquiry officer. On the other hand, it is also evident from the record that explanation of the appellant was called by Deputy Superintendent of Police Cantt Abbottabad vide order dated 18.07.2019 in the same matter, who then issued charge sheet as well as statement of allegations to the appellant on 20.08.2019 and appointed Inspector Fazal-ur-Rehman RI Police Line Abbottabad as inquiry officer in the matter. What became the fate of the aforementioned inquiry could not be ascertained as Muhammad Amin DSP (Legal) and Shamraiz Khan ASI (Legal), who are present before us have frankly conceded that record of the said inquiry is not at all available in the office of SRC Abbottabad. It is thus evident from the record that on the same set of allegations, two separate inquiries were initiated against the appellant.

7. The show-cause notice issued to the appellant by the District Police Officer Abbottabad on 24.07.2019 would show that the appellant was proceeded against under Rule-5 (3) (a) (b) as the competent Authority had decided to proceed against the appellant without aid of inquiry officer. The allegations

against the appellant were factual in nature, therefore, it was necessary for the competent Authority to have appointed an inquiry officer for the purpose of reaching a just and right conclusion of the issue in question.

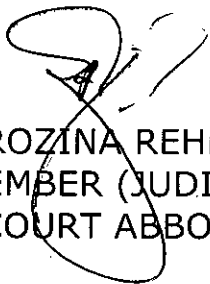
8. The officer, who had contacted the appellant on wireless as well as his cell number was infact a complainant in the matter, however the whole record is silent regarding the name and designation of the said official. On the other hand, the appellant has categorically alleged that on the concerned night, he had arrested an accused namely Saqib Ali alias Kala son of Rehmat Ullah and had brought him to the Police Station Cantt for interrogation, however in the meanwhile he received information of fire taking place near Shama Bakery, therefore, he proceeded to the spot and on reaching there, vehicle of Rescue 112 reached the spot and fire was extinguished. The appellant in support of his stance has annexed copy of *Mad* No. 47 dated 17.07.2019, the contents of which have not been specifically denied by the respondents in their comments.

9. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and one increment of the appellant stands restored with all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.04.2022



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD



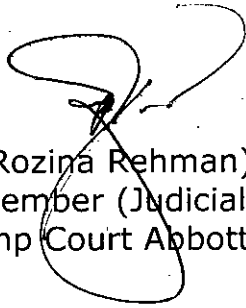
(ROZINA REHMAN)
MEMBER (JUDICIAL)
CAMP COURT ABBOTTABAD

ORDER
19.04.2022

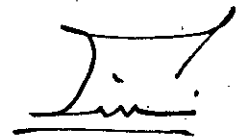
Learned counsel for the appellant present. Mr. Muhammad Amin, DSP (Legal) and Mr. Shamraiz Khan, ASI (Legal) alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is allowed by setting-aside the impugned orders and one increment of the appellant stands restored with all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
19.04.2022



(Rozina Rehman)
Member (Judicial)
Camp Court Abbottabad

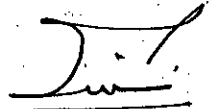


(Salah-Ud-Din)
Member(Judicial)
Camp Court Abbottabad

17.01.2022

Counsel for the appellant present. Mr. Shamraz Khan, ASI alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Para-wise comments on behalf of respondents submitted, which is placed on file and copy of the same is handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments on 18.04.2022 before the D.B at Camp Court Abbottabad.



(Salah-ud-Din)
Member (J)
Camp Court A/Abad

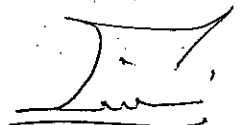
18.04.2022

Learned counsel for the appellant present. Mr. Shamraiz Khan, ASI (Legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for a short adjournment being not feeling well today. Adjourned. To come up for arguments on 19.04.2022 before the D.B at Camp Court Abbottabad.



(Rozina Rehman)
Member (J)
Camp Court Abbottabad



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

2. Learned counsel for the petitioner contends that the respondent had no lawful authority to refuse to accept the resignation without stating any reasons. According to the learned counsel the settled proposition is that an employer is bound to accept the resignation and cannot compel an employee to continue unless and until there are some compelling grounds for the same and there are the pendency or expected commencement of disciplinary proceedings against the employee. Learned Federal Counsel has made his submissions in a very fair and upright manner and has drawn my attention to the judgment of the case Chairman, Pakistan Space and Upper Atmosphere Research Commission (SPARCO), Karachi and another v. Ahmad Mumtaz Mustehsan and another 2000 SCMR 890.

3. I have gone through the file of this case. I find that the resignation was submitted by the petitioner on 1-2-2007 and was forwarded for favourable action. However, the petitioner was simply informed that the competent Authority has not accepted the resignation. I also find that no reasons whatsoever have been stated for refusing to accept the resignation. This writ petition came up on 30-3-2007 when its copy was handed over to the learned Federal Counsel to seek instructions in the matter. The case was admitted to hearing on 8-4-2008 and notice was issued to the respondents. Till date, no reasons have been stated as to why the resignation was not accepted. This being so, the said judgment in the case of Chairman, Pakistan Space and Upper Atmosphere Research Commission (SPARCO), Karachi and another, becomes fully applicable. I deem it appropriate to reproduce the following observations of the Honourable apex Court at page 892 of the said report:

"It may be noted that tendering of resignation is a right of an employee to put an end to his service and the authority competent to accept the resignation is bound to process the same within the stipulated period of notice. It is well-settled that an employee cannot be compelled to serve an organization necessarily. However, his resignation can be refused to be accepted if any disciplinary action is pending against him or he is guilty for the charges of misconduct and to escape from the criminal liabilities he has tendered the resignation. In the general service laws no authority has been conferred upon an employer to refuse to accept the resignation on account of exigency of service of the employees. As in the instant case the petitioner without explaining the details of the exigencies have refused to accept the resignation of the respondent No. 1, therefore, the argument being raised that services of the respondent were required to be utilized in a project involving national interest cannot be entertained in absence of any material. It is also to be

noted that in such-like situation where the services of a skilled person are hired, there is no condition in the appointment letter that until the completion of a particular project the employee cannot resign from his service and if the employee accepts such condition then the employer can show hesitation in accepting the resignation whereas in the case in hand there was no service condition nor any authority has been given to the employer to refuse acceptance of resignation, which cannot be termed to be lawful and sustainable legally."

4. The writ petition accordingly is allowed. The impugned order refusing the acceptance of resignation tendered by the petitioner is declared to be without lawful authority and void. The respondents shall proceed to accept the resignation and pass orders accordingly within seven days from today failing which it shall be deemed that the resignation has been accepted. No orders as to costs.

S.A.K./N-17/L

Petition accepted.

2008 P L C (C.S.) 1161

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J.

Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ

MEMBER (A.C.E. & S.T.), FEDERAL BOARD
OF REVENUE, ISLAMABAD and others

versus

MUHAMMAD ASHRAF and 3 others

Civil Petitions Nos. 332 to 335 of 2008, decided on 28th March, 2008.

(On appeal from the judgment, dated 12-12-2007, of the Federal Service Tribunal, Lahore, passed in Appeals Nos. 223(L)(C.S.), 239(L)(C.S.), 240(L)(C.S.) and 241(L)(C.S.) of 2002).

Government Servants (Efficiency and Discipline) Rules, 1973

---R. 4(1)(b)(i)---Fundamental Rules, R.29---Constitution of Pakistan (1973), Art.212(3)---Supreme Court Rules, 1980, O.XIII, R.1---Reduction to five stages in time scale---Charges of casual and negligent attitude, procedural lapses and violation of instruction of Standing Order---Service Tribunal in appeal modified such penalty reducing same to two stages in time scale for two years---Validity---Petition for leave to appeal was barred by six (6) days---Penalty imposed by departmental

- (4) You failed to initiate/take penal action against the importer because of availability of excess weight in violation of S.R.O.-1374(II)98, dated 18-12-1999.
- (5) You carried out 10% examination of the consignment stated to be done in the presence of examination team but without mentioning the name of the examination team which shows that the examination was done in the absence of the team constituted under Standing Order No.1 of 1999. The examination report endorsed on the bill of entry does not show the presence of the Superintendent (Imports) and Assistant Collector (Imports) at the time of examination.
- (6) You examined the consignment of bill of entry without totally destuffing the container. Thus, you intentionally carried out this examination without observing the requirements of Examination Manual and Standing Order No.1 of 2000 dated 1-4-1999 to help clandestine clearance of cotton jean cloth in the garb of cotton/yarn waste.
- (7) You did not observe the duties as prescribed in the import Examination Manual which led to the clandestine removal of cotton jean cloth in the garb of cotton waste.
- (8) You endorsed examination report on the bill of entry without destuffing the container completely and without carrying out 100% examination of the goods. On account of wrong examination of the consignment on your part due to above factors, cotton jean cloth worth millions of rupees was cleared in the garb of cotton waste.
- (9) You connived with the importer to clear the aforesaid quantity of cotton jean cloth clandestinely under the garb of cotton/yarn waste.

Respondent Muhammad Ashraf

- (1) You failed to detect cotton jean cloth valuing Rs.91,49,866 which was cleared on 28-1-1999 from the Dryport in the garb of cotton/yarn waste vide Bills of Entry Nos.623 and 624 both dated 27-12-1999 and No.610, dated 23-12-1999 and was subsequently seized by Customs Intelligence, Faisalabad.
- (2) You intentionally endorsed 10% examination of three consignments of B/E No.610 dated 23-12-1999 and 623 dated 27-12-1999 and No.621 dated 27-12-1999 despite the fact that the consignments of waste ought to be examined 100%.

- (3) You were required under Standing Order No.1 of 1999 dated 1-4-1999 to examine the above referred consignments along with the other members of the examination team but you intentionally avoided this requirement in violation of the said Standing Order.
- (4) You completed the assessment of these bills of entry and ordered out of charge without pointing out that the requirement of joint examination under Standing Order No.1 of 1999 has not been met. This shows your connivance in this clandestine clearance.
- (5) You failed to initiate/take penal action against the importer because of availability of excess weight in violation of S.R.O.-1374(I)98, dated 18-12-1999.
- (6) You did not observe the duties as prescribed in the Import Examination Manual which led to the clandestine removal of cotton jean cloth in the garb of cotton waste.
- (7) You connived with the importer to clear the aforesaid quantity of cotton jean cloth clandestinely under the garb of cotton/yarn waste.

They submitted their written replies and denied the charges levelled against them. The Inquiry Officer, on the conclusion of inquiry held them guilty of casual and negligent attitude, procedural lapses and violation of instruction of Standing Order No.1 of 1999. In pursuance whereof show-cause notices were issued to respondents, which were also replied. The Authority after going through the report of Inquiry Officer and defence of respondents vide order, dated 24-4-2001 imposed major penalty under section 4(1)(b)(i) of the Government Servants (Efficiency and Discipline) Rules, 1973 to the extent of reduction to five stages in time scale upon respondent Muhammad Ashraf, Superintendent and respondent Dilawar Hussain, Inspector. Whereas respondent Mushtaq Ahmed, Inspector was reverted to Head Clerk and respondent Shahid Mahmood, Deputy Superintendent was reverted to Inspector. Feeling aggrieved, they filed departmental appeals, which were rejected on 28-2-2002. The said orders were assailed in appeal before learned Federal Service Tribunal, Lahore, which were disposed of vide impugned judgment in the following terms:

- (a) The penalty awarded to Mr. Muhammad Ashraf and Mr. Dilawar Hussain was modified and reduced to two stages in time scale for a period of two years.
- (b) The penalty awarded to Mr. Mushtaq Ahmed and Mr. Shahid Mahmood was ordered to be effective only for a period

of two years whereafter they shall stand restored to their original ranks.

3. We have heard Raja Muhammad Bashir, learned Advocate Supreme Court appearing on behalf of petitioners at length and have gone through the record and proceedings of the case in minute particulars.

4. It is mainly contended by learned counsel for the petitioners that learned Tribunal has erred in modifying the penalties imposed upon respondents. According to him, it was established on record that respondents were found guilty of intentional and purposeful dereliction while performing their duties. He further contended that penalties imposed by Authority may be maintained as the same commensurate with the facts and circumstances of the case.

5. These petitions are barred by 6 days for which no plausible explanation has been furnished. However, we have heard learned counsel for the petitioners on merits. It was urged by the respondents that they would not press the appeals on merit but prayed for modification in the penalties as the same were harsh and they had been facing the agony of departmental proceedings for more than seven years, which factor was considered as a mitigating circumstance to lessen the punishment by the learned Tribunal. Much stress was made upon examining the competency of impugned orders of the Authority on the touchstone of Fundamental Rule 29 (applicable to members of service under the rule-making control of the President) wherein it is mentioned that if a Government servant is, on account of misconduct or inefficiency, reduced to a lower grade or post, or to a lower stage in his time-scale, the Authority ordering such reduction shall state the period for which it shall be effective and whether, on restoration, it shall operate to postpone future increments and if so, to what extent. This Court in the case of Auditor General of Pakistan and others v. Muhammad Ali and others 2006 SCMR 60 has held as under:

The element of bad faith and willfulness may bring an act of negligence within the purview of misconduct but lack of proper care and vigilance may not always be wilful to make it a case of grave negligence inviting severe punishment. The philosophy of punishment is based on the concept of retribution, which may be either through the method of deterrence or reformation. The purpose of deterrent punishment is not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society, whereas the concept of minor punishment in the law is to make an attempt to reform the individual wrong doer. In service matters, the extreme penalty for minor acts

depriving a person from right of earning would definitely defeat the reformatory concept of punishment in administration of justice."

Admittedly the penalties imposed by the Authority upon respondents do not specify the length of time and thus, is in clear violation of Fundamental Rule 29. The penalty for indefinite period is not provided in law as such the impugned judgment whereby penalties awarded to the respondents were modified and reduced to time as mentioned above was the proper approach in law. Accordingly, we do not find any illegality or impropriety in the impugned judgment, which is maintained. The petitions being devoid of force are dismissed and leave to appeal refused.

S.A.K./M-33/SC

Leave refused.

2008 PLC (C.S.) 1167

[Federal Service Tribunal]

Before Qazi Muhammad Hussain Siddiqui
and Rashid Ali Mirza, Members

MUHAMMAD SHAHZAD SHOUKAT

versus

SECRETARY, MINISTRY OF DEFENCE,

GOVERNMENT OF PAKISTAN, ISLAMABAD and 2 others

Appeal No.267(K)(C.S.) of 2003, decided on 4th December, 2006.

Removal from Service (Special Powers) Ordinance (XVII of 2000)---

---Ss. 3(1)(a), (b), 5(4) & 10---Service Tribunals Act (LXX of 1973), S.4---Fundamental Rules, F.R.10-A---Removal from service---Appeal---Appellant was removed from service on the basis of unsatisfactory performance and being inefficient worker on the basis of leave of various kinds, already earlier granted to him and also on the basis of his absence from duty---Action of removal from service was taken against appellant mainly on the basis of his taking the leave frequently on medical grounds and otherwise and also leaving the station of duty without prior permission---Leave was granted to appellant earlier six times, but he remained absent without prior approval of leave on two occasions---No action could be taken against appellant on the basis of leave earlier granted to him and so far as the leave for later two periods was concerned, it was sought on medical grounds---No inquiry was ordered into the circumstances of illness of appellant as claimed by him, which was a serious legal lacuna in the disciplinary proceedings against the

15.06.2021

Due to cancellation of tour, Bench is not available. Therefore, case to come up for the same as before on 30.09.2021.


Reader

30.09.2021

Appellant in person and Mr. Muhammad Adeel Butt, Addl. AG alongwith Atif Ali, Law Advisor for the respondents present.

Written reply of the respondents is still awaited. Respondents are directed to furnish reply/comments on the next date positively, failing which their right for submission of written reply/comments shall be deemed as struck off and the appeal will be heard on the basis of available record without reply of the respondents. Case to come up on 17.11.2021 before S.B at camp court, Abbottabad.


Chairman
Camp Court, A/Abad

17.11.2021

Counsel for the appellant and Mr. Muhammad Riaz Khan, Paindakhel, Asstt. AG alongwith Shamraiz Khan, ASI for respondents present.

Representative of the respondents seeks further time to furnish reply/comments. Last opportunity is granted to submit reply//comments on the next date positively, otherwise, their right for submission of written reply/comments shall be deemed as struck off. Case to come up on 17.01.2022 before S.B at camp court, Abbottabad.


Chairman
Camp Court, A/Abad

19.02.2021

Due to COVID-19, the case is adjourned for the same on 19.02.2021.

READER

19.02.2021

Appellant present through counsel.

Preliminary arguments heard. File perused.

Points raised need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for written reply/comments. To come up for written reply/comments on 15.06.2021 before S.B at Camp Court, Abbottabad.

Appellant Deposited Security Process Fee

(Rozina Rehman)
Member(J)
Camp Court, A/Abad

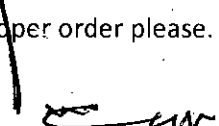

for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter notices be issued to respondents for written reply/comments. To come up for written reply/comments on 15.06.2021 before S.B at Camp Court, Abbottabad.

Camp Court, Abbottabad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No.- 10010 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/09/2020	<p>The appeal of Mr. Maqbool Ahmad presented today by Mr. Muhammad Aslam Khan Tanoli Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>19-01-2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>
2-		

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No.....

Maqbool Ahmed, Head Constable No. 18, District Police
Abbottabad.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Abbottabad.

Respondents

SERVICE APPEAL

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Through

Maqbool Ahmed
Appellant

M. Aslam Tanoli
(Mohammad Aslam Tanoli)
Advocate High Court
at Haripur

Dated: 02-09-2020

①

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Appeal No... 10010

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 9409

Dated 02/9/2020

Maqbool Ahmed, Head Constable No. 18, District Police
Abbottabad.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Abbottabad.

Respondents

**SERVICE APPEAL UNDER SECTION-4 OF KPK SERVICE TRIBUNAL
ACT 1974 AGAINST ORDER OB NO.181 DATED 16-08-2019 OF THE
DISTRICT POLICE OFFICER ABBOTTABAD WHEREBY APPELLANT
HAS BEEN AWARDED PENALTY OF WITHHOLDING OF 01 YEAR
INCREMENT WITH COMULATIVE EFFECT AND ORDER DATED 03-08-
2020 WHEREBY THE REGIONAL POLICE OFFICER HAZARA REGION
ABBOTTABAD HAS FILED HIS DEPARTMENTAL APPEAL.**

**PRAYER: ON ACCEPTANCE OF INSTANT SERVICE APPEAL BOTH
ORDERS DATED 16-08-2019 AND 03-08-2020 MAY GRACIOUSLY
BE SET ASIDE AND APPELLANT BE RESTORED HIS 01 YEAR WITH-
HELD INCREMENT WITH GRANT OF ALL CONSEQUENTIAL SERVICE
BACK BENEFITS.**

Respectfully Sheweth:

1. That while appellant posted as IHC Police Station Cantt
Abbottabad he was served upon with a Charge Sheet
dated 20-08-2019 which was duly replied on 22-08-2019
explaining all facts of the matter in detail and vehemently
denying the allegations incorporated therein being false,
fabricated and against the facts. **(Copies Charge Sheet
dated 20-08-2019 and its reply dated 22-08-2019 are
attached as Annexure-"A & B")**.

Filed to-day

Registrar

02/9/2020

②

2. That the District Police Officer Abbottabad had awarded the appellant with penalty of withholding of 01 increment with cumulative effect vide order OB. No.181 dated 16-08-2019 without any reason. **(Copy of order dated 16-08-2019 is attached as Annexure-"C")**.
3. That between the midnight of 16/17-07-2019 when appellant on patrolling duty brought a suspected to Police Station Cantt Abbottabad where he was informed that a shop near shamma Bakery had caught fire, upon this appellant immediately reached spot. While alongwith other busy in extinguishing fire, he received a call from Operator Control Room asking about whereabouts of the appellant, who was tolled that appellant was busing in extinguishing fire. But he did not spare the appellant and started using filthy language whereupon on return the appellant recorded Daily Dairy No.4 dated 17-07-2019. **(Copy of D.D. No. 4 dated 17-07-2019 is as Annexure-"D")**.
4. That to save his skin, Operator made a false complaint to the District Police Officer Abbottabad and got him misguided through his officers which resulted into illegal, unlawful, without lawful authority, punishment of appellant on the basis influence and misguidance. Otherwise there is nothing correct in the complaint of Operator. Appellant is innocent but he has been penalized without any reason and justification.
5. That nothing could be brought on record against the appellant with regard to allegations leveled in the Charge Sheet. Allegations are still unproved. Appellant has been

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penalized with any proof, justification, reason and rhyme.

6. That no proper departmental inquiry was conducted. No witness was produced before the so-called inquiry, if any, in presence of appellant nor was he provided with a chance to cross examine such witness. Copy of inquiry findings, if any, was also not provided to appellant. No Show Cause Notice was issued. Even opportunity of personal hearing was not provided. Appellant was condemned unheard.
7. That in the light of aforementioned facts and circumstances of the matter, the appellant has wrongly been involved in the instant case and has been awarded with the penalty of "withholding one increment with cumulative effect" without any reason, justification or mistake on his part.
8. That order of the District Police Officer Abbottabad was appealed against on 28-08-2019 before the Regional Police Officer, Hazara Region, Abbottabad, but the same was filed vide order dated 03-08-2020 without consideration. **(Copies of departmental appeal dated 28-08-2019 and appellate order dated 03-08-2020 are attached as Annexure-"E & F")**. Hence instant service appeal, inter alia, on the following amongst others:-

GROUND:

- a) That impugned orders dated 16-08-2019 and dated 03-08-2020 of the respondents are illegal, unlawful against the

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facts, departmental rules and regulations and principle of natural justice hence are liable to be set aside.

- b) That no proper departmental inquiry was conducted. Neither a witness was produced before the so-called inquiry in presence of appellant nor was he provided with a chance to cross examine him. Copy of inquiry findings, if any, was also not provided to appellant. No Show Cause Notice was issued. Even opportunity of personal hearing was provided to the appellant.
- c) That respondents have not treated the appellant in accordance with law, departmental rules & regulations and policy on the subject and have acted in violation of Article-4 of constitution of Islamic Republic of Pakistan 1973 and unlawfully issued the impugned orders, which are unjust, unfair hence not sustainable in the eyes of law.
- d) That appellate authority has also failed to abide by the law and even did not take into consideration the grounds taken by appellant in the memo of appeal and has awarded penalty of withholding of 01 (one) increment with cumulative effect. Thus act of respondent is contrary to the law as laid down in the KPK Police Rules 1934 read with section 24-A of General Clause Act 1897 and Article 10-A of Constitution of Islamic Republic of Pakistan 1973.
- e) That appellant has discharged his assigned duties with devotion, dedication and honesty always fighting against the forces of criminals. He left no stone un-turned in discharge of his official duties and responsibilities.


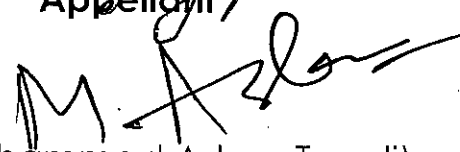
5

- f) That the allegations leveled against appellant in the charge sheet are without any reason, reference, and justification, based on surmises & conjectures which remained un-proved and un-substantiated to this day. Nothing could be brought on record against appellant for which he has been awarded with the punishment.
- g) That instant appeal is well within time and this honorable Service Tribunal has got every jurisdiction to entertain and adjudication upon the same.

PRAYER:

It is, therefore, humbly prayed that on acceptance of instant Service Appeal, the order dated 16-08-2019 and 03-08-2020 of the respondents may graciously be set aside and appellant be restored his 01 (one) withheld increment with all consequential service back benefits. Any other relief which this Honorable Service Tribunal deems fit and proper in circumstances of the case may also be granted.

Through:


Appellant

(Mohammad Aslam Tanoli)
Advocate High Court
At Haripur

Dated 02-09-2020

VERIFICATION

It is verified that the contents of instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed thereof.

Dated 02-09-2020


Appellant

6

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Maqbool Ahmed, Head Constable No. 18, District Police
Abbottabad.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Abbottabad.

Respondents

SERVICE APPEAL

AFFIDAVIT:

I, Maqbool Ahmed appellant do hereby solemnly declare and affirm on oath that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honorable Service Tribunal.

Maqbool Ahmed
Deponent Appellant

Dated: 02-09-2020

Identified By:

M. Aslam
Mohammad Aslam Tanoli
Advocate High Court
At Haripur



Maqbool Ahmed
1-9-2020
Appellant

7

**BEFORE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Maqbool Ahmed, Head Constable No. 18, District Police
Abbottabad.

Appellant

VERSUS

1. Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Abbottabad.

Respondents

SERVICE APPEAL

CERTIFICATE

It is certified that no such Appeal on the subject has ever been
filed in this Honorable Service Tribunal or any other court prior to
instant one.

Maqbool Ahmed
APPELLANT

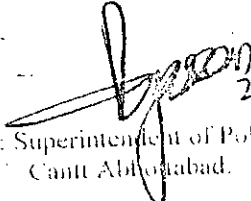
Dated: 02-09-2020

8

Annex-A

CHARGE SHEET

1. I Muhammad Yaseen Janjua SDPO, Cantt, as competent authority hereby charge you HC Maqbool Ahmad No. 18, as explained in the attached statement of allegation.
2. You appear to be guilty of misconduct under Police disciplinary Rules 1975 (amended 2014), and have rendered yourself liable to all or any of the penalties specified in the said Police disciplinary Rules.
3. You are therefore, directed to submit your written defense within seven days on the receipt of this Charge Sheet to the Enquiry officer.
4. Your written defense, if any shall reach the Enquiry Officer within the specified period; failing which it shall be presumed that you have no defense to put in hand in that case Ex-Parte action shall follow against you.
5. Intimate whether you desire to be heard in person or otherwise.
6. A statement of allegations is enclosed.


By: Superintendent of Police
Cantt Abbottabad.

Attested


Better Copy

CHARGE SHEET

1. I Muhammad Yaseen Janjua SDPO Cantt. As Competent Authority hereby charge you HC Maqbool Ahmed No. 18 as explained in the attached statement of allegation.
2. You appear to be guilty of misconduct under Police disciplinary Rules 1975 (amended 2014) and have rendered your self liable to all or any of the penalties specified in the said Police disciplinary Rules.
3. You are therefore, directed to submit your written defense within seven days on the receipt of this Charge Sheet to the Enquiry Officer.
4. Your written defense, if any shall reach the Enquiry Officer with in the specified period, failing which it shall be presumed that you have no defense to put in hand in that case Ex-parte action shall follow against you.
5. Intimate whether you desire to be heard in person or otherwise.
6. A statement of allegations is enclosed.

Sd/-

Dy: Superintendent of Police
Cantt Abbottabad

9

DISCIPLINARY ACTION.

I Muhammad Yaseen Janjua, SDPO, Cantt. as competent authority of the opinion that you HC Maqbool Ahmad No. 18, rendered yourself liable to be proceeded against as you committed the following act/omission within the meaning of Police disciplinary Rules, 1975 (amended 2014).

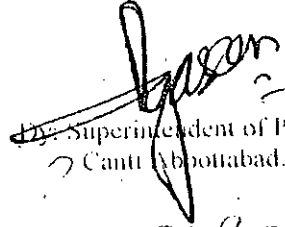
STATEMENT OF ALLEGATIONS.

1. That on the midnight of 16/17.07.2019, you was patrolling officer on Cantt mobile I, meanwhile a fire incident took place near Shama Bakri, you was called on wireless by District Control Room but you did not replied the wireless call, which reflects that you was not present in the official vehicle. Later on you was contacted on your cell number by District Control Room, you misbehaved and used filthy language with the officer who was on duty in District Control Room. Hence this explanation.

2. For the purpose of scrutinizing your conduct with reference to the above allegations, Inspector Fazal-ur-Rehman RI Police Lines, Abbottabad is appointed as Enquiry Officer.

3. The enquiry officer shall in accordance with the provision of this ordinance, provide reasonable opportunity of hearing to the record finding and make of within 25 days of the receipt of this order, recommendation as to punishment of the appropriate action the allegations.

4. You are hereby directed to attend the proceedings on the due date, time and place fixed by the Enquiry Officer.

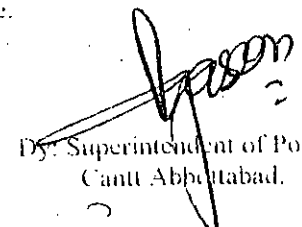

Dy. Superintendent of Police,
Cantt Abbottabad.

No. 1265/E/Steno, Dated; Abbottabad the 20.8.2019.

CC:

1. HC Maqbool Ahmad, with the direction to submit his defense within 07 days of the receipt of this statement of allegation and also to appear before the date, Time and place fixed for the purpose of departmental proceedings.
2. District Police Officer Abbottabad for favor of information please.

Alleshd
Fazal-ur-Rehman


Dy. Superintendent of Police,
Cantt Abbottabad.

Better Copy

DISCIPLINARY ACTION

I, Muhammad Yaseen Janjua, SDPO, Cantt. as competent authority of the opinion that you HC Maqbool Ahmed No.18 rendered yourself liable to the proceeded against as you committed the following act/omission within the meaning of Police disciplinary Rules 1975 (amended 2014).

STATEMENT OF ALLEGATIONS

1. That on the midnight of 16/17.07.2019, you was patrolling officer on Cantt mobile. Meanwhile a fire incident took place near Shama Bakri, you was called on wireless by District Control Room but you did not relied the wireless call, which reflects that you was not present in the official vehicle. Later on you was contacted on your cell number by District Control Room, you misbehaved and used filthy language with the officer who was on duty in District Control Room. Hence this explanation.

2. For the purpose of scrutinizing your conduct with reference to the above allegations, Inspector Fazal-ur-Rehman RI Police Lines Abbottabad is appointed as Enquiry Officer.

3. The enquiry officer shall in accordance with the provision of this ordinance, provide reasonable opportunity of hearing to the record finding and make of within 25 days of the receipt of this order, recommendation as to punishment of the appropriate action the allegations.

4. You are hereby directed to attend the proceedings on the due date, time and place fixed by the Enquiry Officer.

Sd/-

Dy: Superintendent of Police
Cantt Abbottabad

No. Steno, Dated: Abbottabad the /2019

CC:

1. HC Maqbool Ahmed, with the direction to submit his defense within 07 days of the receipt of this statement of allegation and also to appear before the date, Time and place fixed for the purpose of departmental proceedings.
2. District Police Officer Abbottabad for favor of information please.

Sd/-

Dy: Superintendent of Police
Cantt Abbottabad

چارج شیٹ پر حوصلہ خدشتہ حوں۔ جناب والا
 چارج شیٹ میں لگائے گئے الزامات سرسری غلطی بنیاد
 اور جھوٹے ہیں۔ مورخہ 17/7/77 کو جب مجھے اطلاع ملی کہ
 سٹیج پیکری کے قریب کسی دکان کو آٹا لگی ہے
 تو میں اس اطلاع کو پورا فوراً جانے وغیرہ پوچھ گیا
 تھا، وہاں پر پوچھ کر جو گھنٹہ ڈرائیور ورائڈرز الماس
 کے آٹا جانے میں مصروف ہو گیا کہ اسی دوران ٹیول
 روم سے فون آئی جو ایریئرے مجھ سے پوچھا کہ آپ
 کدھر ہو اور سیٹ پر میں گاہیں کر رہا ہوں آیا ہوا
 ہیں دے رہے ہیں جس پر میں نے فونوورہ وائرلس ایڈ
 کو جواب دیا کہ میں اپنے محلہ گیا ہوں آٹا جانے میں
 مصروف ہوں جس پر فونوورہ ~~جیتھو~~ ایریئرے نے
 بدتمیزی شروع کر دی اور انتہائی نازیبا قسم
 کی گالیاں دینا شروع کر دی جو میں لہجہ قتل پر
 لانا میں حاضر فونوورہ ایریئرے نے مجھے جاں پہن کی
 گالیاں دیں اور کہا کہ تم ~~جیتھو~~ دتے لوگ

Attested
 Saad Agwaz

گاز میں جا کر سمجھا جاتا ہے کہ آٹ گیلے سے قبل من
 ۱۱۷۷ ایک مشینہ ڈریے کو دوران نشیمن و بس 30:30
 لائٹ ٹھکانے میں لانا تھا جس کے متعلق اطلاع حاصل
 کی تو نیر علیہ مذکورہ پور چکارا ہے جسکو نشا و گیس
 زنا مقصود تھا من ۱۱۷۷ آٹ کی اطلاع پاکر موقع
 علیہ گیا۔ مذکورہ ایڑے نے اتنی سی بد فہمی کا مظاہرہ
 کیا ہے جس کے متعلق من ۱۱۷۷ نے ایسی واپسی میں
 رپورٹ ہی درج کی ہے۔

بذریعہ درخواست و جواب چارج شیٹ استدرا
 حکیم چارج شیٹ کو داخل دفتر فرمایا جاوے
 عین نواز سن جوئی

الطاف
 سردار مقبول الہ ۱۱۷۷
 منظر جوئی علم و تاد
 22-08-19

Attested
 Saad Javed

12

Annex-C

ORDER

This office order will dispose of the departmental enquiry against IIC Maqbool No. 18 PS Cantt. According to the report of SDPO Cantt that on the midnight of 16/17-07-2019 he was patrolling office on Cantt Mobile-I, meanwhile a fire incident took place near Shama Bakeri, he was called on wireless by District Control Room but he did not reply the wireless call, which reflects that he was not present in the Mobile pickup. Later on he was contacted on his cell number by District Control Room, he misbehaved and used filthy language with the officer who was on duty in District Control Room. His this lethargic and inefficient attitude showed lack of interest in official duty.

He was issued Show Cause Notice. In response to Show Cause Notice, he submitted his reply which was found unsatisfactory. He was summoned to appear in Orderly Room on 09-08-2019. He was given a patient hearing but he had nothing plausible to state in his defence.

Therefore, in exercise of the powers vested in the undersigned under Police Disciplinary Rules-1975 (amended 2014), I, Abbas Majeed Khan Marwat PSP, District Police Officer, Abbottabad as a competent authority, am constrained to award him the punishment of withholding of one increment with cumulative effect with immediate effect

Order announced.

Abbas Majeed Khan
District Police Officer
Abbottabad

CC:

- 1. Establishment Assistant alongwith complete Enquiry File containing 15 pages for completion of record.

OB - NO - 181
16. 8. 19

*Allested
Maqbool*

نظام لیسٹ

ضلع ایبٹ آباد

نقل لیسٹ 47

روزنامہ 17/7/19

رد 47 ویسی صفحہ 111 17.7.19 (19) میں جس میں ایبٹ آباد کے
 رفقہ خواجہ ولد بالا بعد از موت ڈپٹی جوہانیل 1 واپس آیا ہوں
 قضا سے دوران یہو کر سینا ایسٹری جوٹ بہنا ایک جوان الہر
 شکیا مشکوٹ حالت میں ملائی ہے۔ جس نے اپنا نام ناغب علی عرفا
 کمالا ولد رحمت اللہ قوم گجی سکنہ ٹیپال بندلا یا۔ بچکے بارے میں معلومات
 صحتی کہ مذکورہ جوہر بھارہ - 5 - حکو بہراہ ذکار لاکر حوالہ قضا میں
 میں بند کیا حکو اشارہ لکھ کرنا درستی و بنا اسماء دوران اطلالی علی
 کہ شیعہ بیگم کے پاس کہی دوران میں آئی تھی۔ جسے جو اس اللہ
 برحد الماس 579 دائرہ کے حوالے پر ایجا جو جوہانیل سے
 اور کیا کہ اور اس کے دوران اپرٹو نے کیا کہ اب قضا میں
 کیوں نے یہو ایسا قضا میں سے تھے جو میں نے اپرٹو صاحب میں
 کو لایا کہ یہو ایک وقت کے قضا لایا ہوں اور آئی وہی بھارہ
 ہوں میرے ساتھ ساتھ الماس 579 ہے۔ جو مذکورہ اپرٹو کے
 بد فیزی شیعہ بردی جو شیعہ کو لایا 1122 کی گاڑی آئی آئی رہا ہوں
 پایا جو طاقی و طاقی صاحب بھی خود جو جو جو تھے۔ جوہانیل کے
 یہو کہ کیا قضا علی ولد علی زمان سے ماٹوہ دوران میں لکھوان
 کی جوہانیل لکھوان سے جو قریب 35 کی شہادت میں لکھوان سے
 آئی تھی۔ جو مذکورہ کی جوہانیل لکھوان میں آئی جس سے اس
 و طاقی 30/90 ہوا کہ وہی لکھوان سے لکھوان سے کسی شیعہ و
 شیعہ نہ کیا دیگر دوران میں شیعہ لکھوان لکھوان لکھوان

صاحب عالی

ایبٹ آباد لکھوان
 23-7-19

Attest
 J. M. J. J.



Annex-E

صاف عالی!

موردبانہ گزدارش حیدر موزہ 7/19 کو سائل دوسری گزدارش
گفتہ دوئم موبائل 1 برڈریں در موجود تھا کہ کنٹرول موزہ
وڈرلس برڈریں کیسے بنی ہوئی ہیں پورے طور پر تھوڑی جوں جوں
وڈرلس الیمینٹس سائل کو گامی ملوایے گی اور انہیں مالا کو بھی
شکایت لگا دی۔ جن پر DPD مہاں ایٹ آباد سے سائل
کو جواب OB نمبر 181 مورخ 19-8-16 ایٹ اینڈرینڈ بلڈریں
کی سزا دے دی۔ سائل اس تمام داخہ میں بے تباہ ہے حضور

بذریعہ ایٹ اینڈرینڈ سائل کو صاف و صاف کیا جائے
اور سائل کا ایٹرینڈ بنال و صافا جائے۔
سائل آئیے اور آئیے چونکہ سائل کو وہ گام

السائل
حیدر کنٹرول موزہ 18/19 ایٹ اینڈرینڈ
الرحم 8/19 28

Attested
Sami Jangboog



15

Annex-F

OFFICE OF THE REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

☎ 0992-9310021-22

☎ 0992-9310023

✉ r.rpohazara@gmail.com

☎ 0345-9560687

NO: 18252 /PA DATED 03/08 /2020

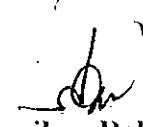
ORDER

This order will dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules, 1975 submitted by Head Constable Maqbool No.18 of District Abbottabad against the punishment order i.e. *Withholding of one increment with cumulative effect* awarded by DPO Abbottabad vide order No.181 dated 16.08.2019.

Brief facts leading to the punishment are that he while posted at PS Cantt, on the midnight of 16/17-07-2019 he was patrolling officer on Cantt Mobile-I, meanwhile a fire incident took place near Shama Bakery, he was called on wireless by District Control Room but he did not reply the wireless call, which reflects that he was not present in the Mobile pickup. Later on he was contacted on cell number by District Control Room, he misbehaved and used filthy language with the officer on duty in District Control Room.

The appellant was issued show cause notice, called in OR and heard in person, however he failed to advance any cogent reason in his defence. Consequently, DPO Abbottabad awarded him minor punishment of withholding of one increment with cumulative effect.

After receiving his appeal, comments of DPO Abbottabad were sought and examined/perused. The Undersigned called the appellant in OR and heard him in person. However he failed to advance any plausible justification in his defence. Therefore, in exercise of the powers conferred upon the Undersigned under Rule 11-4 (a) of Khyber Pakhtunkhwa Police Rules, 1975 instant appeal is hereby filed with immediate effect.

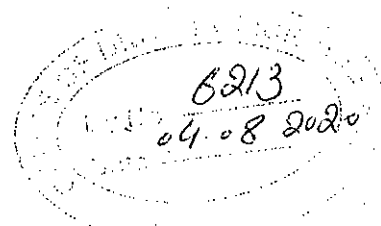

Qazi Jamil ur Rehman (PSP)
REGIONAL POLICE OFFICER
HAZARA REGION, ABBOTTABAD

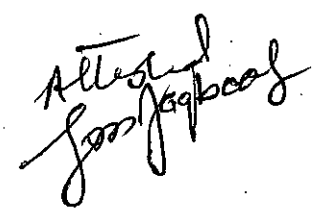
No. 18253 /PA, dated Abbottabad the 03-08 /2020.
CC.

The District Police Officer, Abbottabad for information and necessary action with reference to his office Memo No.6242/Legal dated 06-10-2019. Service Roll and Fuji Missal containing enquiry file of the appellant has already been sent to your office vide Memo No. 11184/PA dated 07-05-2020.

Officer
For information
ccd after 11.

26
DPO
3/8/20


6213
04.08.2020


Attested
Javed Iqbal



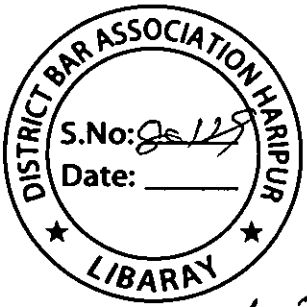
DBA.No: 201
 BC No:

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 Name of Advocate: محمد اسلم منیری

S.No: 80129

وکالت نامہ



بعدالت: جناب جسٹس عزیز گل - سیشن جج ایف ڈی اے سول سروسز ڈسٹرکٹ
 عنوان: مقبول رقم نام: PKR ۱۰۰۰۰۰۰۰ وغیرہ کی رقم
 منجانب: اسلامت مقبول رقم نوعیت مقدمہ: سرواں اسل
 باعث تحریر آنکھ:

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی برائے پیشی یا تصدیق مقدمہ تمام اس کی ایاز میں کیے گئے ہیں۔

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو بروعدالت حاضر ہوتا ہوں گا اور بروقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا۔ اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طور پر ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ کچہری کے علاوہ کسی اور جگہ سماعت ہونے پر یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا محنتانہ کے واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات منظور و مقبول ہوگا اور صاحب موصوف کو عرض دعویٰ یا جواب دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل نگرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور اور کسی حکم یا ڈگری کرانے اور ہر قسم کارروائی وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس کے ثالثی و راضی نامہ و فیصلہ بر حلف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا اور بصورت جانے پیر و نجات از کچہری صدر اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از گرفتاری و اجرائے ڈگری بھی صاحب موصوف کو بشرط ادا سنگی علیحدہ محنتانہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکور یا اس کے کسی جزو کی کارروائی کے یا بصورت اپیل کسی دوسرے وکیل کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے وکیل کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ جو کچھ ہر جانہ التوا پڑے گا وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

Aslam M. Ad
 مورخہ: 02 / 09 / 2020
 دن / ماہ / سال

لہذا وکالت نامہ لکھ دیا ہے کہ سندر ہے۔
 مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

Sam Jabeen
 (صاحبہ)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR CAMP COURT, ABBOTTABAD.**

SERVICE APPEAL NO. 10010/2020

Maqbool Ahmed, Head Constable No. 18, District Police Abbottabad.

.....Appellant.

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Abbottabad.

.....Respondents.

Para wise comments on behalf of Respondents.

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2	Affidavit	-	4
3	Charge sheet & statement of allegations	"A"	5 & 6
4	Copy of Section 5 (a) of Police Rules-1975.	"B"	7
TOTAL		-	07 Pages


DSP Legal, Abbottabad.

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO. 10010/2020

Maqbool Ahmed, Head Constable No. 18, District Police Abbottabad.

.....Appellant.

VERSUS

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Abbottabad.

.....Respondents.

Para-wise comments by respondents.

Respectfully Sheweth

PRELIMINARY OBJECTIONS:-

1. That the instant Service Appeal is not maintainable in the present form.
2. That the appellant is estopped by his own conduct to file the instant appeal.
3. That the appellant has not come to the Hon'ble Tribunal with clean hands.
4. That the appellant has suppressed material facts from the Hon'ble Tribunal.
5. That the instant Service Appeal is not maintainable for non-joinder/miss-joinder of necessary and proper parties.
6. That the instant Service Appeal is time barred.

ON FACTS:-

1. Pertains to record. However, it is pertinent to be mention here that the allegations leveled against the appellant are genuine and proved during inquiry.
2. Pertains to record. However, it is pertinent to be mention here that the punishment awarded to the appellant is legal and with based on solid grounds/reasons.
3. This para needs explanation to the effect that while the appellant was posted at Police Station Cantt, Abbottabad, according to the report, of DSP, Circle Cantt that on midnight of 16/17-07.2019, he was patrolling officer on Cantt Mobile-I, meanwhile, a fire incident took place near Shama Bakery, he was called on wireless by District Control Room but he did not reply the wireless call, which reflects that he was not present in the Mobile Pickup. Later on he was contacted

on his cell number by District Control Room. His this lethargic and inefficient attitude showed lack of interest in official duties. (Copy of charge sheet alongwith statement of allegations is attached as Annexure "A").

- 4. Incorrect. The behavior of the appellant; being a member of discipline force, was filthy and impeachable. The appellant committed gross misconduct, hence, he was proceeded against departmentally in Summary Police Proceedings under Section 5 (a) of Police Rules 1975 amended 2014. (Copy of Section 5 (a) P.R-1975 is attached as Annexure "B").
- 5. As explained in the preceding para.
- 6. Incorrect. The appellant was properly proceeded against departmentally as per section 5 (a) of the Police Rules-1975 amended 2014. Proper opportunity of personal hearing coupled with final showcause notice was issued to the appellant in accordance with law/ rules.
- 7. Incorrect. The punishment awarded to the appellant is legal and commensurate with the charges.
- 8. The respondent No. 02 rightly filed the departmental appeal of the appellant as he did not adduce further grounds of his innocence before the appellate authority.


ON GROUNDS:-


- a. Incorrect. Both the orders of respondent No. 2 & 3 are legal, lawful and in accordance with law/rules, hence, liable to be remain intact.
- b. Incorrect. The inquiry was conducted as per essence of section 5(a) of Police Rules-1975 amended-2014. Keeping in view of golden principle of justice, proper opportunity of personal hearing was provided to the appellant.
- c. Incorrect, the respondents treated the appellant in accordance with law/rules and neither any rule, principal of natural justice nor any article of Constitution of Islamic Republic of Pakistan, 1973 have been violated by the respondents while dealing the appellant departmentally.
- d. Incorrect, the appellate authority rightly filed the departmental appeal as the allegations were established beyond any shadow of doubt.

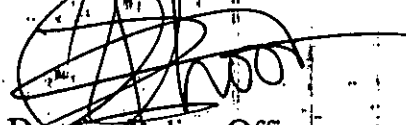
- e. The appellant failed to discharge his duties and deliberately failed to receive the call of the wireless control room which amounts to gross misconduct on the part of the appellant.
- f. Incorrect, the allegations leveled against the appellant are proved and he was awarded with the punishment as per law/ rules.
- i. Incorrect. The appeal is time barred as mentioned in the para No. 06 of preliminary objections.

PRAYER.

In view of above, it is most humbly prayed that the instant service appeal does not hold any legal force which may graciously be dismissed with costs please.


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


 Regional Police Officer,
 Hazara Region, Abbottabad
 (Respondent No.2)


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

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR CAMP COURT, ABBOTTABAD.

SERVICE APPEAL NO. 10010/2020

Maqbool Ahmed, Head Constable No. 18, District Police Abbottabad.

.....Appellant.

VERSUS


1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, Abbottabad.

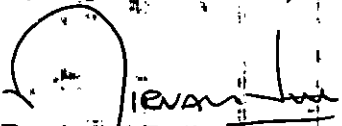
.....Respondents.

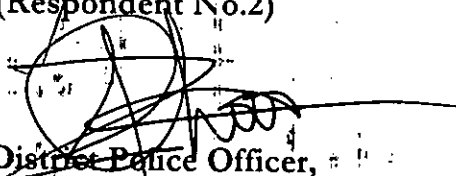
AFFIDAVIT.

We, do hereby affirm on oath that the contents of written reply are true to the best of our knowledge & belief and nothing has been concealed from the honorable Service Tribunal.

Submitted please.


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

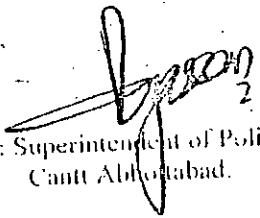

 Regional Police Officer,
 Hazara Region, Abbottabad
 (Respondent No.2)


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

Annexure "A"

CHARGE SHEET

1. I Muhammad Yaseen Janjua SDPO, Cantt, as competent authority hereby charge you HC Maqbool Ahmad No. 18, as explained in the attached statement of allegation.
2. You appear to be guilty of misconduct under Police disciplinary Rules 1975 (amended 2014), and have rendered yourself liable to all or any of the penalties specified in the said Police disciplinary Rules.
3. You are therefore, directed to submit, your written defense within seven days on the receipt of this Charge Sheet to the Enquiry officer.
4. Your written defense, if any shall reach the Enquiry Officer with in the specified period, failing which it shall be presumed that you have no defense to put in hand in that case. Ex-Parte action shall follow against you.
5. Intimate whether you desire to be heard in person or otherwise.
6. A statement of allegations is enclosed.


Dy: Superintendent of Police,
Cantt Abbottabad.

Attested


DISCIPLINARY ACTION.

1. Mohammad Yaseen Janjua, SDPO, Cantt. as competent authority of the opinion that you HC Maqbool Ahmad No. 18, rendered yourself liable to be proceeded against as you committed the following act/omission within the meaning of Police disciplinary Rules 1975 (amended 2014).

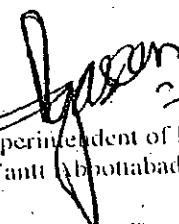
STATEMENT OF ALLEGATIONS.

1. That on the midnight of 16/17.07.2019, you was patrolling officer on Cantt mobile 1, meanwhile a fire incident took place near Shama Bakri, you was called on wireless by District Control Room but you did not replied the wireless call, which reflects that you was not present in the official vehicle. Later on you was contacted on your cell number by District Control Room, you misbehaved and used filthy language with the officer who was on duty in District Control Room. Hence this explanation.

2. For the purpose of scrutinizing your conduct with reference to the above allegations, Inspector Fazal-ur-Rehman RI Police Lines Abbottabad is appointed as Enquiry Officer.

3. The enquiry officer shall in accordance with the provision of this ordinance, provide reasonable opportunity of hearing to the record finding and make of within 25 days of the receipt of this order, recommendation as to punishment of the appropriate action the allegations.

4. You are hereby directed to attend the proceedings on the due date, time and place fixed by the Enquiry Officer.

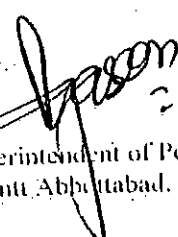

Dy. Superintendent of Police,
Cantt Abbottabad.

No. 1265/E/Steno, Dated; Abbottabad the 20.8.2019.

CC:

1. HC Maqbool Ahmad, with the direction to submit his defense within 07 days of the receipt of this statement of allegation and also to appear before the date, Time and place fixed for the purpose of departmental proceedings.
2. District Police Officer Abbottabad for favor of information please.

*Alleshd
Saeed Jaqueer*


Dy. Superintendent of Police,
Cantt Abbottabad.

3. In this rule, removal or dismissal from service does not include the discharge of a person.
- (a) Appointed on probation, during the period of probation, or in accordance with the probation or training rules applicable to him; or
 - (b) Appointed, otherwise than under a contract, to hold a temporary appointment on the expiration of the period of appointment; or
 - (c) Engaged under a contract, in accordance with the terms of the contract.

4-A.

In case a Police Officer is accused of subversion, corruption or misconduct the Competent Authority may require him to proceed on leave or suspend him.

5. Punishment proceedings.-

The punishment proceedings will be of two kinds. i.e. (a) Summary Police Proceedings and (b) General Police Proceedings and the following procedure shall be observed when a Police Officer is proceeded against under these rules:--

- (1) When information of misconduct or any act of omission or commission on the part of a Police Officer liable for punishment provided in these rules is received by the authority, the authority, shall examine the information and may conduct or cause to be conducted quick brief inquiry if necessary, for proper evaluation of the information and shall decide whether the misconduct or the act of omission or commission referred to above should be dealt with in a Police Summary Proceedings in the Orderly Room or General Police Proceedings.
- (2) In case the authority decides that the misconduct is to be dealt with in Police Summary Proceedings, he shall proceed as under-
 - (i) The accused officer liable to be dealt with in the Police Summary Proceedings shall be brought before the authority in an Orderly room.
 - (ii) He shall be apprised by the authority orally the nature of the alleged misconduct, etc. The substance of his explanation for the same shall be recorded and if the same is found unsatisfactory, he will be awarded one of the minor punishments mentioned in these rules.
 - (iii) The authority conducting the Police Summary Proceedings may, if deemed necessary, adjourn them for a maximum period of 7 days to procure additional information.
- (3) If the authority decides that the misconduct or act of omission or commission referred to above should be dealt with in General Police Proceedings he shall proceed as under-
 - a) The authority shall determine if in the light of facts of the case or in the interests of justice, a departmental inquiry, through an Inquiry Officer if necessary. If he decides that is not necessary; he shall-

18 ✓
ORDER

This office order will dispose of the departmental enquiry against HC Maqbool No. 18 PS Cantt. According to the report of SDPO Cantt that on the midnight of 16/17-07-2019 he was patrolling office on Cantt Mobile-I, meanwhile a fire incident took place near Shama Bakari, he was called on wireless by District Control Room but he did not reply the wireless call, which reflects that he was not present in the Mobile pickup. Later on he was contacted on his cell number by District Control Room. He misbehaved and used filthy language with the officer who was on duty in District Control Room. His this lethargic and inefficient attitude showed lack of interest in official duty.

He was issued Show Cause Notice. In response to Show Cause Notice, he submitted his reply which was found unsatisfactory. He was summoned to appear in Orderly Room on 09-08-2019. He was given a patient hearing but he had nothing plausible to state in his defence.

Therefore, in exercise of the powers vested in the undersigned under Police Disciplinary Rules-1975 (amended 2014), I, Abbas Majeed Khan Marwat PSP, District Police Officer, Abbottabad as a competent authority, am constrained to award him the punishment of withholding of one increment with cumulative effect with immediate effect

Order announced.


District Police Officer
Abbottabad

CC:

1.

Establishment Assistant alongwith complete Enquiry File containing 15 pages for completion of record.

OB. No. 181

16. 8. 19

Name	HC Maqbool IHC PS Cantt	
Place of posting	PS Cantt	
Allegations	<p>According to the report of SDPO Cantt that on the midnight of 16/17-07-2019 he was patrolling office on Cantt Mobile-I, meanwhile a fire incident took place near Shama Bakeri, he was called on wireless by District Control Room but he did not reply the wireless call, which reflects that he was not present in the Mobile pickup. Later on he was contacted on his cell number by District Control Room, he misbehaved and used filthy language with the officer who was on duty in District Control Room. His this lethargic and inefficient attitude shows lack of interest in official duty, which is tantamount to gross misconduct.</p>	
Decision by competent authority	<p style="text-align: center;"><i>withholding</i> <i>incident</i></p> <p style="text-align: center;"><i>w. c. c.</i></p>	

OFFICE OF THE DISTRICT POLICE OFFICER, ABBOTTABAD

No. 176 /PA, Dated Abbottabad, the 24/07/2019

SHOW CAUSE NOTICE
(Unit Rule (3) KPK Police Rules, 1975)

1. That you IIC Maqbool IIC PS Cantt, have rendered yourself liable to be proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct;
 - I. According to the report of SDPO Cantt that on the midnight of 16/17-07-2019 you were patrolling office on Cantt Mobile-I, meanwhile a fire incident took place near Shama Bakeri, you were called on wireless by District Control Room but you did not reply the wireless call, which reflects that you were not present in the Mobile pickup. Later on you were contacted on your cell number by District Control Room, you misbehaved and used filthy language with the officer who was on duty in District Control Room. Your this lethargic and inefficient attitude shows lack of interest in official duty, which is tantamount to gross misconduct.
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 and indisciplined officer in the force.
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 Show Cause as to why you should not be dealt in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred above.
7. You shall submit reply to this 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 whether you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.

618 501
Engel
06-08-19

[Signature]
District Police Officer
Abbottabad

OFFICE OF THE DISTRICT POLICE OFFICER, ABBOTTABAD

No. 176/PA, Dated Abbottabad, the 24/07/2019

GROUND OF ACTION

That you IIC Maqbool IHC PS Cantt, committed following misconduct:-

- I. According to the report of SDPO Cantt that on the midnight of 16/17-07-2019 you were patrolling office on Cantt Mobile-I, meanwhile a fire incident took place near Shama Bakari, you were called on wireless by District Control Room but you did not reply the wireless call, which reflects that you were not present in the Mobile pickup. Later on you were contacted on your cell number by District Control Room, you misbehaved and used filthy language with the officer who was on duty in District Control Room. Your this lethargic and inefficient attitude shows lack of interest in official duty, which is tantamount to gross misconduct.

By reasons of above you have rendered yourself liable to be proceeded under Khyber Pakhtunkhwa Police Rules, 1975, hence these grounds of action.


District Police Officer
Abbottabad

OFFICE OF THE DY: SUPERINTENDENT OF POLICE CANTT
ABBOTTABAD.

To. IHC Maqbool PS Cantt.

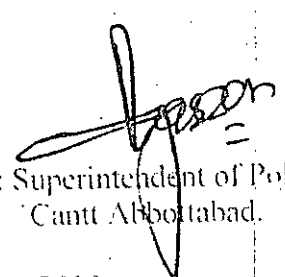
No. 1085-86

dated 18-7 2019.

Subject :- EXPLANATION.

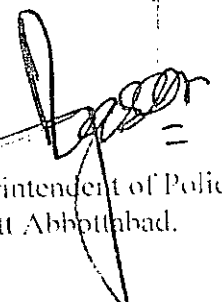
It has come into the notice of undersigned that on the midnight of 16/17.07.2019, you was patrolling officer on Cantt mobile I, meanwhile a fire incident took place near Shama Bakri, you was called on wireless by District Control Room but you did not replied the wireless call, which reflects that you was not present in the official vehicle. Later on you was contacted on your cell number by District Control Room, you misbehaved and used filthy language with the officer who was on duty in District Control Room. Hence this explanation.

You are hereby directed to explain your position as to whether you should not be dealt with departmentally on account of above misconduct. Your written reply must reach this office within 3 days of receipt of this explanation notice, otherwise it shall be presumed that you have nothing to offer, hence you will be dealt as ex-parte. It will be reflected in your ACR.


Dy: Superintendent of Police,
Cantt Abbottabad.

No. _____ /dated Abbottabad the _____ /2019.

Copy submitted to the District Police Officer, Abbottabad for favor of information please.


Dy: Superintendent of Police,
Cantt Abbottabad.

SAs,

Submitted for order please.

WIDPO office

PA 22/7

Issue SCW:

