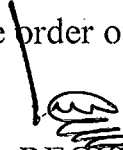


FORM OF ORDER SHEET

Court of _____

Case No.- 1699/2022


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/11/2022	<p>The appeal of Mr. Muhammad Yasir resubmitted today by Mr. Shahid Naseem Khan Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Notices be issued to appellant and his counsel for the date fixed.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Mr. Muhammad Yasir Ex-Constable No. 5350 FRP Kohat received today i.e. on 05.10.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- ① Memorandum of appeal may be got signed by the appellant.
- 2- Appeal has not been flagged/marked with annexures marks.
- 3- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 4- Copy of departmental appeal and revision petition mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- ✓ 5- Chamber/email address and contact number of the counsel is not mentioned on the index/wakalat nama.
- ⑥ Appellant is the employee of the police department but he arrayed I.G. Prisons as a party the same may be rectified.

No. 2769 /S.T,

Dt. 07/10 /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Shahid Naseem Khan Chamkani Adv.
Peshawar.

file after scrutiny received
late today. The date my graceably
be extended as counsel for the
appellant was sitting.


Submitted for
favourable action.



28/11/22



Objection are removed
file is re-submitted.


29-11-2022.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1699 /2022

Muhammad Yasir. **APPELLANT**

VERSUS

Govt. of Khyber Pakhtunkhwa & others. . . . **RESPONDENTS**

I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Service Appeal		1-9
2.	Affidavit		10
3.	Addresses of the Parties		11
4.	Order dated 18.01.2022	A	12
5.	Order dated 16.06.2022	B	13
6.	Order dated 18.08.2022	C	14
7.	Statement of Allegations	D	15
8.	Show Cause Notice	E	16
9.	Charge Sheet	F	17
10.	Reply to Charge Sheet	G	18
11.	Review against Order	H	19-26
12.	Appeal	I	27-34
13.	Wakalatnama		35

Appellant

Through



**Shahid Naseem Khan
Chamkani**

Advocate High Court

Cell: 0300-5732222

T.P 49-50 Deans trade center

Peshawar. Cantt.

Dated: 29.09.2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 1699 /2022

Muhammad Yasir

Ex-Constable No.5350,

Platoon No.117, FRP, Kohat.

R/o Bannu Road, Village Tapi, Kohat. **APPELLANT**

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary, Home & Tribal Affairs Department, Civil Secretariat, Peshawar.
2. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
3. Commandant, Frontier Reserve Police Force, Khyber Pakhtunkhwa, Peshawar.
4. Superintendent of Police, Frontier Reserve Police, Kohat Region, Kohat. **RESPONDENTS**

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 16.06.2022, OF RESPONDENT NO.3, WHEREBY APPEAL OF THE APPELLANT AGAINST ORDER DATED 18.01.2022 OF RESPONDENT NO.4 WAS DISMISSED.

Respectfully Sheweth:

1. That appellatant joined the respondents' Department as a Constable in the year 2007 at the Kohat Police strength.

2. That since his enrollment in the respondents' department, the appellant performed his official work with honesty, dedication and zeal and zest.
3. That with the performance of the appellant, his officers were also satisfied and never preferred any complaint against the appellant.
4. That in the year 2019, the appellant was transferred to the Frontier Reserve Police (FRP Kohat).
5. That in the FRP too, the appellant continued his merit based official performance and whole hearted selfless service to the department.
6. That in the FRP too, officers were extremely satisfied from the official performance of the appellant.
7. That unfortunately while serving in the FRP, the appellant fell sick. His sickness was so severe that he could not move nor he was able to perform his official functions.
8. That the appellant for his medical treatment applied for long leave. The authority concerned was pleased to allow 45 days long leave and as such vide Daily Diary No.19 dated 01.07.2021, the appellant proceeded to avail his long leave.
9. That in the meantime, at the back of the appellant departmental proceedings on the ground of absence from duty were initiated against the appellant.
10. That the appellant accordingly submitted reply to the show cause notice No.203/PA dated 16.07.2021

and charge sheet No.233/PA dated 13.08.2021 wherein, the appellant mentioned about his sickness and also intimated to the authority that the appellant has been sanctioned 45 days Long Leave for his medical treatment.

11. That at the back of the appellant, enquiry was conducted. The appellant was not associated with the proceedings of the enquiry and ultimately, the competent authority treated leave of the appellant as leave without pay and also compulsorily retired the appellant from service with immediate effect.
12. That regarding the impugned order the appellant was not informed by the office of the competent authority either at his home address or some other source of intimation.
13. That the appellant was not called to office for announcement of order in presence of the appellant.
14. That on 20.04.2022, when the appellant was fully recovered, went to the office of respondent No.4 (Superintendent of Police FRP Kohat Region Kohat) for resuming his service, but the appellant was informed by the staff of the office that he had already been compulsorily retired from service beside and his absence was treated as leave without pay. (Copy of Order dated 18.01.2022 is annexed).
15. That being aggrieved, the appellant has filed a departmental appeal before the respondent No.4, which was rejected on 16.06.2022. (Copy of Order dated 16.06.2022 is annexed).

16. That appellant also filed a revision, which was also turned down on 18.08.2022. (Copy of Order dated 18.08.2022 is annexed).
17. That the appellant feeling aggrieved and having no other adequate available remedy approached this Hon'ble Tribunal, on the following amongst other grounds;

GROUND S:

- A. That the impugned order of the compulsory retirement of the appellant is not in accordance with law, rules and the principles of natural justice, hence it is liable to be set aside.
- B. That between the charge sheet and the impugned order of punishment, there are material contradictions which have made the entire inquiry suspicious and doubtful. In the charge sheet only 16 days absence has been mentioned while in the following paragraph, absence of the appellant in the roll call till date has been mentioned but period of the alleged absence has not been highlighted. Conversely in the impugned order, different periods totaling to 149 days of the alleged absence of the appellant has been mentioned, hence both the charge sheet and the impugned order are poles apart. Thus, the impugned order is based on surmises and conjectures, doubts, and suspicions, hence no punishment can be based upon such a flimsy and uncertain charge sheet.

- C. That legally speaking, order issued by the competent authority shall be in line with the charge sheet and the statement of allegations because these are the material instruments / documents upon which entire proceedings are conducted, evidence is collected in accordance with these documents, defaulter official prepares his defence in light with these documents and the enquiry officer as well as, the competent authority form their opinion on the basis of these documents. Since the charge sheet and the impugned order are not in lying with each other while on the other hand it is not known that from which source the competent authority has collected the details of alleged absence of appellant stretched to 149 days, therefore, the order has prejudiced the appellant because these periods were not mentioned in the charge sheet and due to the improvement in the impugned order the appellant was deprived of his defence. Hence such a flimsy and doubtful order is of no legal consequence and no punishment what-so-ever can be awarded upon such a suspected enquiry and the doubtful impugned order.
- D. That the situation has become more grim, complicated and doubtful because in the Show Cause Notice only 16 days of the alleged absence of the appellant has been mentioned, while nothing is mentioned about absence of the appellant in Roll call for the Election Duty. Moreover, alleged absence of the appellant for 149 days has also not been mentioned in the show cause notice. Hence, it has

come to the light that charge sheet, show cause notice and the impugned order of punishment are not in line with one another, all the three documents are contradictory and not in accordance with this facts on record. Hence order of punishment based on such documents is not sustainable in the eyes of law.

E. That from the impugned order of the Worthy SP FRP Kohat Range Kohat it appears that he has not seen the entire record himself nor applied his independent judicial mind because in the impugned order it has been written that the appellant has not replied to the show cause notice and the charge sheet while in fact the appellant has accordingly furnished reply to the show cause notice and the charge sheet combinely. If the respectable competent authority would scan the enquiry record himself, he would not have mentioned such thing because the appellant has already submitted replies to the show cause notice and the charge sheet combinely. From the stated fact one can form an opinion that whatever lower subordinates submitted before the competent authority he without any verification or satisfaction impressed his signature on the impugned order which has made the impugned order legally defective and of no legal consequence, resultantly, it is not operative on the service rights of the appellant.

F. That the competent authority had approved/sanctioned 45 days leave to the appellant. The appellant vide Daily Diary No.9 dated 01.07.2021

- proceeded to avail his sanctioned leave and during this period on the basis of mala-fide, the alleged departmental inquiry was initiated at the back of the appellant. Malafide can be gauged from the fact that in the impugned order nothing has been mentioned about the approved sanctioned long leave for 45 days to the appellant. In fact it appears that the concerned have tried to conceal such an important fact so that to make ground for punishment of the appellant. Orders made on the basis of malafide are no orders, void-ab-initio and therefore, not operative on the rights of the defaulter officers.
- G. That the enquiry was conducted at the back of the appellant. The enquiry officer failed to associate the appellant with the enquiry proceedings.
- H. That the appellant was not provided opportunity to defend himself nor was he afforded opportunity to cross examine the witnesses. Hence enquiry is one sided, unilateral and legally defective and on the basis of such enquiry no punishment can be awarded.
- I. That due to process of law has not been followed which is mandatory in the eyes of law.
- J. That the order is also in violation of Article 10-A of the constitution, the said provision has envisaged that trial/inquiry shall be transparent and independent but unfortunately the alleged enquiry against the appellant is neither independent nor transparent. Hence the fundamental right of the appellant was violated which alone has made the

enquiry and the impugned order legally questionable and of not legal consequences upon the rights of the appellant.

K. That the impugned order is also illegal on the two counts. First that under the law, for an offence only one punishment is to be awarded and secondly Article 12 & 13 of the constitution of Pakistan have laid down that no retrospective and double punishment for an offence can be awarded. If the impugned order is perused it will transpire that for the default of absence the appellant was awarded punishments on two counts i.e. the absence period was treated as leave without pay and punishment of compulsory retirement was also awarded, hence the impugned order is in violation and derogation of the well-established principle of law and justice and as well the constitution of Pakistan, hence the order of punishment is legally not sound and has got no legal impact on the rights of the appellant.

L. That the appeal against the impugned order has strong probability to succeed on merits, however, the worthy respondent office may take the shield of some technicalities like limitation but it is an admitted legal fact that when case or appeal is fit to be accepted on merits then technicalities should not come in their way and they should be ignored and decision is to be delivered on merit. Same principle is applicable on the case/ appeal of the appellant. In this regard the Honourable Supreme Court of Pakistan has decided the matter in affirmative.

- M. That 15 years service of the appellant was forced to come to an end with a stroke of pen without any justification.
- N. That the appellant has completely recovered and he is fit to serve the Police Department with more enthusiasm and dedication.
- O. That any other ground with the permission of this Hon'ble Tribunal, will be raised at the time of arguments.

It is humbly prayed that on acceptance of the instant appeal, the impugned Orders of the respondents No.3 & 4 may kindly be set aside in the great interest of law and justice and the appellant may kindly be reinstated in service with all back benefits.

Any other relief deems fit and appropriate in the circumstances of the case may also be granted.

Through


Appellant


Shahid Naseem Khan
Chamkani

&


Asghar Shah
Advocates Peshawar

Dated: 29.09.2022

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2022

Muhammad Yasir. **APPELLANT**

VERSUS

Govt. of Khyber Pakhtunkhwa & others. . . . **RESPONDENTS**

AFFIDAVIT

I, Muhammad Yasir, Ex-Constable No.5350, Platoon No.117, FRP, Kohat R/o Bannu Road, Village Tapii, Kohat, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2022

Muhammad Yasir. **APPELLANT**

VERSUS

Govt. of Khyber Pakhtunkhwa & others. . . . **RESPONDENTS**

ADDRESSES OF THE PARTIES

APPELLANT:

Muhammad Yasir
Ex-Constable No.5350,
Platoon No.117, FRP, Kohat.
R/o Bannu Road, Village Tapi, Kohat.

RESPONDENTS:

1. Govt. of Khyber Pakhtunkhwa through Secretary, Home & Tribal Affairs Department, Civil Secretariat, Peshawar.
2. Inspector General of Prisons, Khyber Pakhtunkhwa, Peshawar.
3. Commandant, Frontier Reserve Police Force, Khyber Pakhtunkhwa, Peshawar.
4. Superintendent of Police, Frontier Reserve Police, Kohat Region, Kohat.

Through Appellant



Shahid Naseem Khan
Chamkani
Advocate High Court

Dated: 29.09.2022

K

Amex A

PA order-2022

12

ORDER

By this order will dispose off departmental inquiry conducted against Constable Yasir Khan No. 2304-19, under Khyber Pakhtunkhwa Police Disciplinary Rules 1975 (Amended in 2014).

The allegations against him as reported vide DD No. 07 dated 29.06.2021 are that he had absented himself from duty on various dates i.e. w.e.f 28.05.2021 to 08.06.2021, 21.06.2021 to 24.06.2021 and 28.06.2021 to 29.06.2021 (total 16 days). Moreover, a court case was held at District Police Court Kohat in connection with Azad Kashmir Election duty wherein he was found absent from duty w.e.f 20.07.2021 to 23.08.2021, 05.09.2021 to 21.09.2021, 23.09.2021 to 04.10.2021 and 17.10.2021 to 16.11.2021, 16.11.2021 to 25.11.2021 and 01.05.2021 to 24.05.2021 (total absence period is 149 days). In this regard, a show cause notice No. 207/PA dated 28.07.2021 was issued to him but he failed to submit reply within stipulated period in response to which he was properly charge sheeted vide this office No. 233/PA dated 13.08.2021. Proper departmental enquiry was conducted against him through E.O FRP Kohat who, in his finding, found him guilty of the charges leveled against him. He was called in OR and heard in person but his contention was not found satisfactory. Thereafter, final show cause notice vide this office No. 261/PA dated 15.09.2021 was issued to him in response to which he submitted reply alongwith medical papers from unauthorized private Doctor, which was not found satisfactory.

His Service Record perused which revealed that he was enlisted as Constable on 06.06.2007. He has also been dismissed from service vide DPO Kohat OB No. 656 dated 03.05.2019 for his absence of (02) months and allegedly being notorious drug smuggler and arms seller. Later on, he was re-instated in service with the warning to be careful in future by Regional Police Officer Kohat vide order Endst: No. 8848/EC dated 03.06.2019. There are 13 bad entries against him with no good entry in his credit. In such circumstances, I have come to the conclusion that the said constable is habitual absentee and has failed to mend his trend. He proved to be less interested in his duty. Keeping in view his blemished service record there is no hope of his becoming a good Police officer in future.

Therefore, I, Aman Ullah Khan, SP FRP Kohat Range, Kohat in exercise of powers vested in me under Rule 5(5), of Khyber Pakhtunkhwa Police Rules-1975 (Amended in 2014), treat his absence period i.e. 149 days as absence from duty i.e. without pay and award him a major punishment of "Compulsory retirement from service" with immediate effect.

OB No. 323

Superintendent of Police, FRP,
Kohat Range, Kohat.

Dated 18/01/2022

OFFICE OF THE SUPERINTENDENT OF POLICE, FRP, KOHAT RANGE, KOHAT

NO. 29-30 /PA DATED KOHAT THE 18/01/2022

Copy of the above is submitted for favour of information please to:-

- 1. The Commandant FRP Khyber Pakhtunkhwa Peshawar.
 - 2. The Deputy Commandant FRP Khyber Pakhtunkhwa Peshawar
 - 3. Pay Officer
 - 4. Reader
 - 5. OHC
 - 6. SRC
- } for further necessary action

Superintendent of Police, FRP,
Kohat Range, Kohat

ORDER

12-A

My this order will dispose off departmental inquiry conducted against Constable Yasir Khan No.5350/FRP, under Khyber Pakhtunkhwa Police Disciplinary Rules 1975 (Amended in 2014).

The allegations against him as reported vide DD No. 07 dated 29.06.2021 are that he had absented himself from duty on various dates i.e. w.e.f 28.05.2021 to 08.06.2021, 23.06.2021 to 24.06.2021 and 28.06.2021 to 29.06.2021 (total 16 days). Moreover a roll call was held at District Police Kohat in connection with Azad Kashmir Election duty wherein he was found absent from duty w.e.f. 20.07.2021 to 23.08.2021, 25.08.2021 to 21.09.2021, 23.09.2021 to 04.10.2021 and 17.10.2021 to 16.11.2021, 16.11.2021 to 25.11.2021 and 01.05.2021 to 24.05.2021 (total absence period is 149 days). In this regard, a show cause notice No. 207/PA dated 28.07.2021 was issued to him but he failed to submit reply within stipulated period in response to which he was properly charge sheeted vide this office No. 233/PA dated 13.08.2021. Proper departmental enquiry was conducted against him through E.O FRP Kohat who, in his finding, found him guilty of the charges leveled against him. He was called in OR and heard in person but his contention was not found satisfactory. Thereafter, final show cause notice vide this office No. 281/PA dated 15.9.2021 was issued to him in response to which he submitted reply alongwith medical papers from unauthorized private Doctor, which was not found satisfactory.

His Service Record perused which revealed that he was enlisted as Constable on 06.06.2007. He has also been dismissed from service vide DPO Kohat OB No. 656 dated 03.06.2019 for his absence of (02) months and allegedly being notorious drug smuggler and arms seller. Later on, he was re-instated in service with the warning to be careful in future by Regional Police Officer Kohat vide order Endst: No. 8848/EC dated 08.10.2019. There are 13 bad entries against him with no good entry in his credit. In such circumstances, I have come to the conclusion that the said constable is habitual absentee and has failed to mend his trend. He proved to be less interested to his duty. Keeping in view his blemished service record there is no hope of his becoming a good Police officer in future.

Therefore, I Aman Ullah Khan, SP FRP Kohat Range, Kohat in exercise of powers vested in me under Rule 5(6) of Khyber Pakhtunkhwa Police Rules-1975 (Amended in 2014), treat his absence period i.e. 149 days as absence from duty i.e. without pay and award him a major punishment of "Compulsory retirement from service" with immediate effect.

OB No.823

Superintendent of Police, FRP,
Kohat Range, Kohat

Dated 18/01/2022

OFFICE OF THE SUPERINTENDENT OF POLICE, FRP, KOHAT RANGE, KOHAT

NO.29-30/PA DATED KOHAT THE 18/01/2022

Copy of the above is submitted for favour of information please to:-

1. The Commandant FRP Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Commissioner FRP Khyber Pakhtunkhwa Peshawar.
3. Pay Officer
4. Reader
5. OHC
6. SRC

for further necessary action

Sd/-
Superintendent of Police, FRP,
Kohat Range, Kohat

ORDER

This order will dispose of the departmental appeal preferred by ex-constable Yasir Khan No. 5350 of FRP Kohat Range, against the order of SP FRP Kohat Range, Kohat, issued vide OB No. 823, dated 18.01.2022, wherein he was awarded major punishment of compulsory retirement from service. The applicant was proceeded against on the allegations that a roll call was held at District Police Kohat in connection with Azad Kashmir Election duty, wherein he was found absent from lawful duty with effect from 20.07.2021 to 23.08.2021, 25.08.2021 to 21.09.2021, 23.09.2021 to 04.10.2021, 17.10.2021 to 25.11.2021 and 01.05.2021 to 24.05.2021 for total period of (145) days, without any leave or prior permission of the competent authority.

13
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B

In this regard, a Show Cause Notice vide No. 207/PA, dated 28.07.2021, was issued and served upon him, but he failed to submit his reply. Subsequently proper departmental enquiry was initiated against him as he was issued Charge Sheet vide office order No. 233/PA, dated 13.08.2021 and Enquiry Officer was nominated to conduct proper enquiry against him. After completion of enquiry the Enquiry Officer submitted his finding report, wherein the delinquent constable was found guilty of the charges leveled against him.

Upon the finding of Enquiry Officer, he was served with Final Show Cause Notice vide office No. 281/PA, dated 15.09.2021, to which he replied, wherein he taken the plea of his illness and in support of which he produced medical papers with his reply from a private doctor, which was not found satisfactory. Besides, he was called in orderly room and heard in person, but his contention was not found satisfactory by the competent authority.

Keeping in view the above narrated facts and other material available on record, he was awarded major punishment of compulsory retired from service vide OB No. 823, dated 18.01.2022.

Feeling aggrieved against the impugned order of SP FRP Kohat Range, Kohat, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 09.06.2022.

During the course of personal hearing, the applicant failed to present any justification regarding to his innocence. From perusal of enquiry file it has been found that the allegations were fully established against him during the course of enquiry. Thus the applicant has been found to be an irresponsible person in utter disregard the discipline of the force. It is settled proposition of law that law helps the diligent and not indolent. Therefore any leniency or complacency would further embolden the accused officer and impinge upon adversely on the overall discipline and conduct of the force. There doesn't seem any infirmity in the order passed by the competent authority, herefore no ground exist to interfere in same.

Based on the findings narrated above, I, Commandant FRP, Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found no substance in the appeal, therefore, the same is rejected and filed being time barred and mentless.

Order Announced.

**Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar**

461-62/PA, dated Peshawar the 16/06/2022

Copy of above is forwarded for information and necessary

B.- SP FRP Kohat Range, Kohat. His service record alongwith D file sent.
Ex-constable Yasir Khan No. 5350, FRP Kohat Range, S/o Niaz Mulla
Mohallah Ali Sher, Tappel, Police Station Saddar, Tehsil & District Kohat

B-27

ORDER

This order will dispose off departmental appeal preferred by ex-Constable Yasir Khan No.5350 of FRP Kohat Range, against the order of SP FRP Kohat Range Kohat, issued vide OB No.823, dated 18.01.2022, wherein he was proceeded against on the allegations that a roll call was held at District Police Kohat in connection with Azad Kashmir Election duty, wherein he was found absent from duty with effect from 20.07.2021 to 23.08.2021, 25.08.2021 to 21.09.2021, 23.09.2021 to 04.10.2021 and 17.10.2021 to 25.11.2021 and 01.05.2021 to 24.05.2021 for total period of (149) days, without any leave or prior permission of the competent authority.

In this regard, a Show Cause Notice No. 207/PA dated 28.07.2021 was issued and served upon him, but he failed to submit his reply. Subsequently proper departmental enquiry was initiated against him as he was issued Charge Sheet vide office No. 233/PA, dated 13.08.2021 and Enquiry Officer was nominated to conduct proper enquiry report against him. After completion of enquiry, Enquiry Officer submitted his finding report, wherein the delinquent constable was found guilty of the charges leveled against him.

Upon the finding of Enquiry Officer, he was served with Final Show Cause Notice vide office No. 281/PA, dated 15.9.2021, to which he replied, wherein he taken the plea of his illness and in support of which e produced medical papers with his reply from a private doctor, which was not found satisfactory. Besides, he was called in orderly room and heard in person, but his contention was not found satisfactory by the competent authority.

Keeping in view the above narrated facts and other material available on record, he was awarded major punishment of compulsory retired from service vide OB No .823, dated 18.01.2022.

Feeling aggrieved against the impugned order of SP FRP Kohat Range, Kohat, the appellant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 09.06.2022.

During the course of personal hearing, the applicant failed to present any justification regarding to his innocence. From perusal of enquiry file it has been found that the allegations were fully established against him during the course of enquiry. Thus the applicant has been found to be an irresponsible person in utter disregard the discipline of the force. It is settled proposition of law that law helps the diligent and not indolent. Therefore any leniency or complacency would further embolden the accused officer and impinge upon adversely on the overall discipline and conduct of the force. There doesn't seem any infirmity in the order passed by the competent authority, therefore, no ground exist to interfere in same.

Based on the findings narrated above, I, **Commandant FRP**, Khyber Pakhtunkhwa, Peshawar, being the competent authority, has found to substance in the appeal, therefore, the same is rejected and filed being time barred and meritless.

Order Announced.

Sd/-

Commandant

Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No.461-62/PA, dated Peshawar the 16/06/2022

Copy of above is forwarded for information and necessary action to the:-

SP FRP Kohat Range, Kohat. His service record alongwith D file sent to the Ex-constable Yasir Khan No. 5350 FRP Kohat Range, S/o Niaz Muhammad R/o Mohallah Ali Sher, Tappi, Police Station Saddar, Tehsil & District Kohat.



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA

Central Police Office, Peshawar.

No. S/ 1874 /22, dated Peshawar the 18/8 /2022

19

To : The Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

Office of the Addl. Insp. Gen. of Police,
Khyber Pakhtunkhwa, Peshawar.

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C

Subject:- REVISION PETITION.

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Yasir Khan No. 5350 of FRP Kohat against the punishment of compulsory retirement from service awarded by Superintendent of Police, FRP Kohat Range vide OB No. 823, dated 18.01.2022, being time barred.

The applicant may please be informed accordingly.

S/ Legal

A. Farid
(AFSAR JAN)
Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

[Handwritten signature]

OFFICE OF THE COMMANDANT, FRP, KHYBER PAKHTUNKHWA, PESHAWAR

No. 63/187 ST Legal, dated Peshawar the 24/08/2022

copy of the above is forwarded to the SI FRP Kohat Range, Kohat for information & further necessary action with direction to inform the applicant accordingly.

For Commandant FRP Kohat

BETTER COPY

14-A
OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE, PESHAWAR.
No.S/1894/22, dated Peshawar the 18/08/2022

To : The Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

Subject:- REVISION PETITION

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Yasir Khan No. 5350 of FRP Kohat against the punishment of compulsory retirement from service awarded by Superintendent of Police, FRP Kohat Range vide OB No. 823, dated 18.01.2022, being time barred.

The applicant may please be informed accordingly.

Sd/-
(AFSAR JAN)
Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

OFFICE OF THE COMMANDANT FRP, KHYBER PAKHTUNKHWA, PESHAWAR
No. 6787 SI Legal, dated Peshawar the 24/08/2022. Copy of the above is forwarded to the SP FRP Kohat Range, Kohat for information & further necessary action with direction to inform the applicant accordingly.

Sd/-
For Commandant FRP KP

وکالت نامہ

(35)

بعدالت
مقدمہ پراسر بنام
سر سید شہباز حسین شاہ

علت: مورخہ
مقام: منجانب

جرم: /
مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام
کیلئے

شاہد نسیم خان چکنی ایڈووکیٹ ہائی کورٹ پشاور کو بدیں شرط وکیل مقرر کیا ہے میں ہر پیشی پر
خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا اور بروقت پکارے جانے مقدمہ جانے مقدمہ وکیل
صاحب موصوف کو اطلاع دے کر حاضر عدالت کرونگا، اگر پیشی پر من مظهر حاضر نہ ہوا اور مقدمہ میری غیر
حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے، نیز
وکیل صاحب موصوف صدر مقام کچہری سے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے پاچھپے یا بروز
تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے، اگر مقدمہ علاوہ صدر کچہری کے کسی اور جگہ ساعت ہونے یا بروز
تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کی ذمہ دار یا اس کے
واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار ہونگے، مجھ کو کل
ساختہ پرواختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ و جواب
دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی
اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے
اور ہر قسم کے بیان دینے اور سپرد تالی و راضی نامہ کو فیصلہ پر خلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا
اور بصورت اپیل برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم اتنا ہی یا قرتی یا گرفتاری قبل از اجراء
ڈگری بھی موصوف کو بشرط ادا ہوگی علیحدہ مختار نامہ پیروی کا اختیار ہوگا اور بصورت ضرورت صاحب موصوف کو
بھی اختیار ہوگا، یا مقدمہ مذکورہ یا اس کے کسی جزو کی کارروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی
دوسرے وکیل یا بیزنس کو بجائے اپنے یا پانے ہمزہ مقرر کریں اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی
اختیارات حاصل ہونگے جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التواء
پڑے گا وہ صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ
بھی صاحب موصوف کے برخلاف نہیں ہوگا، لہذا یہ مختار نامہ لکھ دیا تاکہ سند رہے۔

مورخہ 30/9/20
مضمون مختار نامہ من لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

[Handwritten Signature]

العبد
شاہد نسیم خان چکنی ایڈووکیٹ ہائی کورٹ پشاور
آفس: دفتر نمبر TF49-50 قہر زنگور، ڈیزیز ٹریڈسٹر پشاور صدر
ملک: نئیاب الرحمان 0300-5886819


[Handwritten Signature]


DISCIPLINARY ACTION

I, Nasir Khan, SP FRP Kohat as competent authority, am of the opinion that you Constable Yasir No. 5350 of FRP Platoon No. 117 District Kohat, have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.

STATEMENT OF ALLEGATION

1. (a). That as reported vide DD No. 07 dated 29.06.2021, you have absented yourself from duty on various dates i.e. 28.05.2021 to 08.06.2021, 22.06.2021 to 24.06.2021 and 26.06.2021 to 29.06.2021 (total absence period is 16 days).
(b). That as reported vide DD No. 07 dated 20.07.2021, a roll call was held at District Police Lines Kohat in connection with "General Election at Azad Jammu Kashmir wherein you was found deliberate absent and have not reported back till date. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975".
2. For the purpose of scrutinize the conduct of said Constable with reference to the above allegations, Inspector Dost Muhammad, E.O FRP Karak is appointed as enquiry officer.
3. The inquiry officer shall conduct proceeding in accordance with provision of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record it is finding and make with twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused official.
4. The delinquent official shall join the proceeding on the date, time and place fixed by the officer.


SUPERINTENDENT OF POLICE, FRP
KOHAT RANGE, KOHAT

Attested


No. 26 /PA/FRP

Dated 16 / 07 /2021

OFFICE OF THE SUPERINTENDENT OF POLICE FRP KOHAT
SHOW CAUSE NOTICE

(Under Rule 5(3)(b) KP Police Rules 1975)

- i) Whereas you Constable Yasir No. 5350 of FRP Platoon No. 117 District Kohat, have rendered yourself liable to be proceeded under Rule 5(3)(b) of the Khyber Pakhtunkhwa Police Rules 1975 for the following misconduct,
 - a) That as reported vide DD No.07 dated 29.06.2021, you have absented yourself from duty on various dates i.e w.e.f 28.05.2021 to 08.06.2021, 22.06.2021 to 24.06.2021 and 26.06.2021 to 29.06.2021 (total absence period is 16 days), without any leave or prior permission of the competent authority, which shows your negligence, inefficiency and is a misconduct on your part.
- ii) That the misconduct on your part is prejudicial to good order of discipline in the Police Force.
- iii) That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rule proposed stern action against you by awarding one or more of the punishments as provided in Rule 4.
- iv) You are, therefore, called upon to show cause as to why you should not be dealt with in accordance with the KP Police Rules 1975 for the misconduct referred to above.
- v) You should 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.
- vi) You are further directed to inform the undersigned as to whether you wish to be heard in person or not.

Received By _____
Dated _____ /2021

[Signature]
Superintendent of Police, FRP
Kohat Region Kohat


Arrested
[Signature]

No. 238 /PA/FRPDated 23 / 08 /2021

17

CHARGE SHEET

- I) I, Nasir Khan, SP FRP Kohat as competent authority, am of the opinion that you Constable Yasir No. 5350 of FRP Platoon No. 117 District Kohat, have committed the following acts/omission as defined in Rule 2 (iii) of Police Rules 1975.
- (a). That as reported vide DD No. 07 dated 29.06.2021, you have absented yourself from duty on various dates i.e 28.05.2021 to 08.06.2021, 22.06.2021 to 24.06.2021 and 26.06.2021 to 29.06.2021 (total absence period is 16 days).
- (b). That as reported vide DD No. 07 dated 20.07.2021, a roll call was held at District Police Lines Kohat in connection with General Election at Azad Jammu Kashmir wherein you was found deliberate absent and have not reported back till date. Thus you have committed a gross "Misconduct" as defined in Rule 2 (iii) of Police Rules 1975".
- II). By reason of the above, you seem to be guilty as sufficient materials is placed before the undersigned, therefore it is decided to proceed against you in general police proceeding.
- III). You are, therefore, required to submit your written reply within 07 days of the receipt of this charge sheet to the Enquiry Officer.
- IV). Your written reply, if any, should reach the Enquiry Officer within specific period, failing which it shall be presumed that you have no defense to offer and in case, ex-parte action shall follow against you.
- V). Intimate as to whether you desire to be heard in person or not?
- VI). A statement of allegation is enclosed.


 SUPERINTENDENT OF POLICE, FRP
 KOHAT RANGE, KOHAT

Attested


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THE HONOURABLE INSPECTOR GENERAL POLICE
PAKHTUNKHWA PESHAWAR

REVIEW PETITIONER UNDER RULE 11 OF THE POLICE RULES
1975 (AMENDED 2014) AGAINST ORDER OF THE WORTHY
COMMANDANT FRONTIER RESERVE POLICE KPK DT:16-6-
2022 RECEIVED ON 29-6-2022 VIDE WHICH MAJOR
PUNISHMENT OF COMPULSORY RETIREMENT FROM SERVICE
AWARDED BY THE WORTHY SP FRP KOHAT RANGE WAS
UPHELD WITHOUT ANY LAWFUL JUSTIFICATION.

Respected Sir,

With great respect and veneration, the petitioner may kindly be allowed to submit the following for your kind and sympathetic consideration;

Facts of the Case:

1. That petitioner joined the Police Department as constable in the year 2007 at the Kohat Police Strength.
2. That since his enrollment in the Police Deptt., the petitioner performed his official work with honesty, dedication and zeal and zest.
3. That with the performance of the petitioner, his officers were also satisfied and never preferred any complaint against the petitioner.
4. That in the year 2019, the petitioner was transferred to the Frontier Reserve Police (FRP Kohat)
5. That in the FRP too, the petitioner continued his merit based official performance and whole hearted selfless service to the deptt.
6. That in the FRP too, officers were extremely satisfied from the official performance of the petitioner.

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7. That unfortunately while serving in the FRP, the petitioner fell sick. His sickness was so severe that he could not move nor he was able to perform his official functions.
8. That the petitioner for his medical treatment applied for long leave. The authority concerned was pleased to allow 45 days long leave and as such vide Daily Diary No.19 dt:01-7-2021, the petitioner proceeded to avail his long leave. (Copy of the Daily Diary is enclosed as Annexure-A).
9. That in the meantime, at the back of the petitioner departmental proceedings on the ground of absence from duty were initiated against the petitioner.
10. That the petitioner accordingly submitted reply to the Show Cause Notice No.203/PA dt:16-7-2021 and charge sheet No.233/PA dt:13-8-2021 wherein, the petitioner mentioned about his sickness and also intimated to the authority that the petitioner has been sanctioned 45 days Long Leave for his medical treatment. (Copies of the show cause Notice is enclosed as annexure B, charge sheet as annexure C and reply of the petitioner are enclosed as annexure D).
11. That at the back of the petitioner, enquiry was conducted. The petitioner was not associated with the proceedings of the enquiry and ultimately, the competent authority treated leave of the petitioner as leave without pay and also compulsorily retired the petitioner from service with immediate effect. (Copy of the impugned order is enclosed as annexure E).
12. That regarding the impugned order of the competent authority, the petitioner was not informed by the office of the competent authority either at his home address or some other source of intimation.

Attended
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13. That the police of the FRP Kohat did not take trouble to call the petitioner to his office for announcement of the punishment order in presence of the petitioner. Moreover, the punishment order issued by the SP FRP Kohat also does not contain direction to inform the petitioner about the punishment at his home address.
14. That aim and object of the above exercise was to keep the petitioner in dark so that period of appeal shall expire and to deprive the petitioner from his legal and moral right of appeal.
15. That on 20-4-2022 when he was fully recovered, the petitioner went to the office of the worthy superintendent of Police FRP Kohat Range Kohat for resuming his duty however, the petitioner was informed by staff present over there that the petitioner has already been compulsorily retired from service besides his absence was directed to be treated as leave without pay.
16. That at this time too, the petitioner was not informed about the fate of his appeal inspite of the direction in the appellate order. However, the petitioner came to know about dismissal of his appeal on 29-6-2022 through his own sources.
17. That after receipt of information of the dismissal of the appeal the petitioner immediately collected copy of order from the worthy Commandant FRP office Peshawar.
18. That perusal of the impugned order of the Worthy Commandant FRP KPK reveals that the Worthy Commandant FRP did not go through contents of the appeal and inspite of writing lucid and self-explanatory order covering all legal and factual grounds raised in the appeal, he preferred to issue a cyclostyle and mechanical order without applying his judicial legal mind, hence most of the questions being unattended are made part of the instant review petition.

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- 19. That for just, fair and transparent decision, answer to the questions raised in the appeal were necessary however, by not answering such objections, the ends of justice were not satisfied and once again the petitioner became victim of injustice.
- 20. That the petitioner has strong conviction and hope, that by knocking the door of your goodself and by ringing the bell of justice installed by your goodself, I hope the petitioner will be provided relief and remedy as requested in the prayer.
- 21. That following are some grounds of review which may kindly be considered sympathetically in the interest of law and justice.

Grounds of Review:

- A. That the impugned order of the compulsory retirement of the petitioner and the dismissal of Appeal by the appellate forum is not in accordance with law, rules and the principles of natural justice, hence there are liable to be set aside.
- B. That between the charge sheet and the impugned order of punishment, there are material contradictions which have made the entire inquiry suspicious and doubtful.

In the charge sheet only 16 days absence has been mentioned while in the following paragraph, absence of the petitioner in the roll call till date has been mentioned but period of the alleged absence has not been highlighted. Conversely in the impugned order, different periods totaling to 149 days of the alleged absence of the petitioner has been mentioned, hence both the charge sheet and the impugned order are poles apart. Thus, the impugned order is based on surmises and conjectures, doubts, and suspicions, hence no punishment can be based upon such a flimsy and uncertain charge sheet.

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C. That legally speaking, order issued by the competent authority shall be in line with the charge sheet and the statement of allegations because these are the material instruments / documents upon which entire proceedings are conducted, evidence is collected in accordance with these documents, defaulter official prepares his defence in light with these documents and the enquiry officer as well as, the competent authority form their opinion on the basis of these documents.

Since the charge sheet and the impugned order are not in lying with each other while on the other hand it is not known that from which source the competent authority has collected the details of alleged absence of petitioner stretched to 149 days, therefore, the order has prejudiced the petitioner because these periods were not mentioned in the charge sheet and due to the improvement in the impugned order the petitioner was deprived of his defence. Hence such a flimsy and doubtful order is of no legal consequence and no punishment what-so-ever can be awarded upon such a suspected enquiry and the doubtful impugned order. (Copies of the charge sheet and the impugned order are already enclosed)

D. That the situation has become more grim, complicated and doubtful because in the Show Cause Notice only 16 days of the alleged absence of the petitioner has been mentioned, while nothing is mentioned about absence of the petitioner in Roll call for the Election Duty. Moreover, alleged absence of the petitioner for 149 days has also not been mentioned in the show cause notice. Hence, it has come to the light that charge sheet, show cause notice and the impugned order of punishment are not in line with one another, all the three documents are contradictory and not in accordance with this facts on record. Hence order of punishment

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based on such documents is not sustainable in the eyes of law.

(Copy of the show cause notice is already enclosed).

E. That from the impugned order of the Worthy SP FRP Kohat Range Kohat it appears that he has not seen the entire record himself nor applied his independent judicial mind because in the impugner order it has been written that the petitioner has not replied to the show cause notice and the charge sheet while in fact the petitioner has accordingly furnished reply to the show cause notice and the charge sheet combinedly. If the respectable competent authority would scanned the enquiry record himself, he would not have mentioned such thing because the petitioner has already submitted replies to the show cause notice and the charge sheet combinedly. (Copy of reply is already enclosed as annexure D). From the stated fact one can form an opinion that whatever lower subordinates submitted before the competent authority he without any verification or satisfaction impressed his signature on the impugned order which has made the impugned order legally defective and of no legal consequence, resultantly, it is not operative on the service rights of the petitioner.

F. That the competent authority had approved / sanctioned 45 days leave to the petitioner. The petitioner vide Daily Diary No.9 dt:01-7-2021 proceeded to avail his sanctioned leave and during this period on the basis of mala-fide, the alleged departmental enquiry was initiated at the back of the petitioner. Mala-fide can be gauged from the fact that in the impugned order nothing has been mentioned about the approved sanctioned long leave for 45 days to the petitioner. In fact it appears that the concerned have tried to conceal such an important fact so that to make ground for punishment of the petitioner. Orders made on the basis of mala-

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fide are no orders ab-initio and therefore, not operative on the rights of the defaulter officers.

- G. That the enquiry was conducted at the back of the petitioner. The enquiry officer failed to associate the petitioner with the enquiry proceedings.
- H. That the petitioner was not provided opportunity to defend himself nor he was afforded opportunity to cross examine the witnesses. Hence enquiry is one sided, unilateral and legally defective and on the basis of such enquiry no punishment can be awarded.
- I. That due to process of law has not been followed which is mandatory in the eyes of law.
- J. That the order is also in violation of Article 10-A of the constitution, the said provision has envisaged that trial / enquiry shall be transparent and independent but unfortunately the alleged enquiry against the petitioner is neither independent nor transparent. Hence the fundamental right of the petitioner was violated which alone has made the enquiry and the impugned order legally questionable and of not legal consequences upon the rights of the petitioner.
- K. That the impugned order is also illegal on the two counts. First that under the law, for an offence only one punishment is to be awarded and secondly Art. 12 & 13 of the constitution of Pakistan have laid down that no retrospective and double punishment for an offence can be awarded.

If the impugned order is perused it will transpire that for the default of absence the petitioner was awarded punishments on two counts i.e. the absence period was treated as leave without pay and punishment of compulsory retirement was also awarded, hence the impugned order is in violation and derogation of the well

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established principle of law and justice and as well the constitution of Pakistan, hence the order of punishment is legally not sound and has got no legal impact on the rights of the petitioner. (Copy of the Article of the constitution is enclosed as annexure F)

- L. That the appeal against the impugned order has strong probability to succeed on merits, however, the worthy respondent office may take the shield of some technicalities like limitation but it is an admitted legal fact that when case or appeal is fit to be accepted on merits then technicalities should not come in their way and they should be ignored and decision is to be delivered on merit. Same principle is applicable on the case/ appeal of the petitioner. In this regard the Honourable Supreme Court of Pakistan has decided the matter in affirmative. (Copy of the decision of the Honourable Supreme Court is enclosed as annexure G).
- M. That 15 years service of the petitioner was forced to come to an end with a stroke of pen without any justification.
- N. That the appellate authority did not consider any point raised by the petitioner in his appeal.
- O. That the Appellate Authority did not apply his judicial mind while deciding appeal of the petitioner.
- P. That the appellate authority followed the competent authority without any verification.
- Q. That the appellate order does not satisfy the ends of justice, hence it is liable to be set aside.
- R. That no point mentioned in appeal by the petitioner was discussed / replied or considered by the appellate authority in his order hence the petitioner has once again become victim of injustice and high handedness.

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THE HONOURABLE COMMANDANT FRONTIER RESERVE
POLICE FORCE KHYBER PAKHTUNKHWA PESHAWAR

APPEAL UNDER RULE 11 OF THE POLICE RULES 1975
(AMENDED 2014) AGAINST ORDER OF THE
SUPERINTENDENT OF POLICE FRP KOHAT REGION KOHAT
VIDE WHICH THE APPEAL WAS AWARDED PUNISHMENT OF
LEAVE WITHOUT PAY FOR THE ALLEGED ABSENCE FROM
DUTY AND COMPULSORY RETIREMENT FROM SERVICE
WITHOUT ANY LAWFUL JUSTIFICATION.

Respected Sir,

With great respect and veneration, the appellant may kindly be allowed to submit the following for your kind and sympathetic consideration;

Facts of the Case:

1. That appellant joined the Police Department as constable in the year 2007 at the Kohat Police Strength.
2. That since his enrollment in the Police Deptt., the appellant performed his official work with honesty, dedication and zeal and zest.
3. That with the performance of the appellant, his officers were also satisfied and never preferred any complaint against the appellant.
4. That in the year 2019, the appellant was transferred to the Frontier Reserve Police (FRP Kohat)
5. That in the FRP too, the appellant continued his merit based official performance and whole hearted selfless service to the deptt.
6. That in the FRP too, officers were extremely satisfied from the official performance of the appellant.

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7. That unfortunately while serving in the FRP, the appellant fell sick. His sickness was so severe that he could not move nor he was able to perform his official functions.
8. That the appellant for his medical treatment applied for long leave. The authority concerned was pleased to allow 45 days long leave and as such vide Daily Diary No.19 dt:01-7-2021, the appellant proceeded to avail his long leave. (Copy of the Daily Diary is enclosed as Annexure-A).
9. That in the meantime, at the back of the appellant departmental proceedings on the ground of absence from duty were initiated against the appellant.
10. That the appellant accordingly submitted reply to the Show Cause Notice No.203/PA dt:16-7-2021 and charge sheet No.233/PA dt:13-8-2021 wherein, the appellant mentioned about his sickness and also intimated to the authority that the appellant has been sanctioned 45 days Long Leave for his medical treatment. (Copies of the show cause Notice is enclosed as annexure B, charge sheet as annexure C and reply of the appellant are enclosed as annexure D).
11. That at the back of the appellant, enquiry was conducted. The appellant was not associated with the proceedings of the enquiry and ultimately, the competent authority treated leave of the appellant as leave without pay and also compulsorily retired the appellant from service with immediate effect. (Copy of the impugned order is enclosed as annexure E).
12. That regarding the impugned order the appellant was not informed by the office of the competent authority either at his home address or some other source of intimation.

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- 13. That the appellant was not called to office for announcement of order in presence of the appellant.
- 14. That on 20-4-2022 when he was fully recovered, went to the office of the Worthy Superintendent of Police FRP Kohat Region Kohat for resuming his service, the appellant was informed by the staff present over there that the appellant had already been compulsorily retired from service beside, his absence was treated as leave without pay.
- 15. That since the impugned order consists of number inconsistencies, legal and factual lacunas, contradictions and loop holes, therefore, the appellant in exercise of this legal right has filed the instant appeal, which has the following grounds, which may kindly be considered sympathetically and on humanitarian grounds:

Grounds of Appeal:

- A. That the impugned order of the compulsory retirement of the appellant is not in accordance with law, rules and the principles of natural justice, hence it is liable to be set aside.
- B. That between the charge sheet and the impugned order of punishment, there are material contradictions which have made the entire inquiry suspicious and doubtful.

In the charge sheet only 16 days absence has been mentioned while in the following paragraph, absence of the appellant in the roll call till date has been mentioned but period of the alleged absence has not been highlighted. Conversely in the impugned order, different periods totaling to 149 days of the alleged absence of the appellant has been mentioned, hence both the charge sheet and the impugned order are poles apart. Thus, the impugned order is based

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on surmises and conjectures, doubts, and suspicions, hence no punishment can be based upon such a flimsy and uncertain charge sheet.

- C. That legally speaking, order issued by the competent authority shall be in line with the charge sheet and the statement of allegations because these are the material instruments / documents upon which entire proceedings are conducted, evidence is collected in accordance with these documents, defaulter official prepares his defence in light with these documents and the enquiry officer as well as, the competent authority form their opinion on the basis of these documents.

Since the charge sheet and the impugned order are not in lying with each other while on the other hand it is not known that from which source the competent authority has collected the details of alleged absence of appellant stretched to 149 days, therefore, the order has prejudiced the appellant because these periods were not mentioned in the charge sheet and due to the improvement in the impugned order the appellant was deprived of his defence. Hence such a flimsy and doubtful order is of no legal consequence and no punishment what-so-ever can be awarded upon such a suspected enquiry and the doubtful impugned order. (Copies of the charge sheet and the impugned order are already enclosed)

- D. That the situation has become more grim, complicated and doubtful because in the Show Cause Notice only 16 days of the alleged absence of the appellant has been mentioned, while nothing is mentioned about absence of the appellant in Roll call for the Election Duty. Moreover, alleged absence of the appellant for 149 days has also not been mentioned in the show cause notice. Hence, it has come to the light that charge sheet, show cause

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notice and the impugned order of punishment are not in line with one another, all the three documents are contradictory and not in accordance with this facts on record. Hence order of punishment based on such documents is not sustainable in the eyes of law. (Copy of the show cause notice is already enclosed).

E. That from the impugned order of the Worthy SP FRP Kohat Range Kohat it appears that he has not seen the entire record himself nor applied his independent judicial mind because in the impugned order it has been written that the appellant has not replied to the show cause notice and the charge sheet while in fact the appellant has accordingly furnished reply to the show cause notice and the charge sheet combinedly. If the respectable competent authority would scanned the enquiry record himself, he would not have mentioned such thing because the appellant has already submitted replies to the show cause notice and the charge sheet combinedly. (Copy of reply is already enclosed as annexure D). From the stated fact one can form an opinion that whatever lower subordinates submitted before the competent authority he without any verification or satisfaction impressed his signature on the impugned order which has made the impugned order legally defective and of no legal consequence; resultantly, it is not operative on the service rights of the appellant.

F. That the competent authority had approved / sanctioned 45 days leave to the appellant. The appellant vide Daily Diary No.9 dt:01-7-2021 proceeded to avail his sanctioned leave and during this period on the basis of mala-fide, the alleged departmental enquiry was initiated at the back of the appellant. Mala-fide can be gauged from the fact that in the impugned order nothing has been mentioned about the approved sanctioned long leave for 45 days to the

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appellant. In fact it appears that the concerned have tried to conceal such an important fact so that to make ground for punishment of the appellant. Orders made on the basis of mala-fide are no orders ab-initio and therefore, not operative on the rights of the defaulter officers.

- G. That the enquiry was conducted at the back of the appellant. The enquiry officer failed to associate the appellant with the enquiry proceedings.
- H. That the appellant was not provided opportunity to defend himself nor he was afforded opportunity to cross examine the witnesses. Hence enquiry is one sided, unilateral and legally defective and on the basis of such enquiry no punishment can be awarded.
- I. That due to process of law has not been followed which is mandatory in the eyes of law.
- J. That the order is also in violation of Article 10-A of the constitution, the said provision has envisaged that trial / enquiry shall be transparent and independent but unfortunately the alleged enquiry against the appellant is neither independent nor transparent. Hence the fundamental right of the appellant was violated which alone has made the enquiry and the impugned order legally questionable and of not legal consequences upon the rights of the appellant.
- K. That the impugned order is also illegal on the two counts. First that under the law, for an offence only one punishment is to be awarded and secondly Art. 12 & 13 of the constitution of Pakistan have laid down that no retrospective and double punishment for an offence can be awarded.
- If the impugned order is perused it will transpire that for the default of absence the appellant was awarded punishments on two

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counts i.e. the absence period was treated as leave without pay and punishment of compulsory retirement was also awarded, hence the impugned order is in violation and derogation of the well established principle of law and justice and as well the constitution of Pakistan, hence the order of punishment is legally not sound and has got no legal impact on the rights of the appellant. (Copy of the Article of the constitution is enclosed as annexure F)

L. That the appeal against the impugned order has strong probability to succeed on merits, however, the worthy respondent office may take the shield of some technicalities like limitation but it is an admitted legal fact that when case or appeal is fit to be accepted on merits then technicalities should not come in their way and they should be ignored and decision is to be delivered on merit. Same principle is applicable on the case/ appeal of the appellant. In this regard the Honourable Supreme Court of Pakistan has decided the matter in affirmative. (Copy of the decision of the Honourable Supreme Court is enclosed as annexure G).

M. That 15 years service of the appellant was forced to come to an end with a stroke of pen without any justification.

N. That the appellant belongs to a respectable family, he has never remained habitual absentee he has large family and except pay of the appellant there is no other sources of income. If the order continues it is likely that family of the appellant will land in starvation and the appellant ALLAH forbid may face irreparable loss.

O. That the appellant has completely recovered and he is fit to serve the Police Deptt: with more enthusiasm and dedication.

P. That if deemed proper the appellant may kindly be heard in person.

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Prayer:

It is humbly prayed that since the impugner Oder of the Worthy Superintendent of Police FRP Kohat Range Kohat is one sided, arbitrary, unilateral, against the law, rules and constitution inconsistent, contradictory, contains an number of discrepancies, failed to follow due process of law, based on whims, failure of the Worthy competent authority to apply his judicial mind, therefore, the impugned order of compulsory retirement and treating the absence period as leave without pay may kindly be set aside in the great interest of law and justice. The appellant may kindly be reinstated in service with all back benefits. The appellant and his family will pray for your long life and prosperity throughout their lives.

Thanking you in anticipation.

Yours Obediently,

Dated: 16-05-2022.



Ex-Constable
MUHAMMAD YASIR
R/o Bannu Road village Tappi,
Kohat.
No.5350 Platoon 117
FRP Kohat
Cell No. 0334-8292274

Attested


وکالت نامہ

بعدالت
 سر سز شری سہولت نامہ
 محمد یاسر بنام گورنمنٹ کالج کراچی

علت: مورخہ:
 منجانب: محمد یاسر

جرم:
 مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے پیروی و جوابدہی بمقام
 کیلئے

شاہد نسیم خان چکنی ایڈووکیٹ ہائی کورٹ پشاور کو بدین شرط وکیل مقرر کیا ہے میں ہر پیشی پر

خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا اور بروقت پکارے جانے مقدمہ جانے مقدمہ وکیل

صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا، اگر پیشی پر من مظهر حاضر نہ ہوا اور مقدمہ میری غیر

حاضری کی وجہ سے کسی طور پر میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے، نیز

وکیل صاحب موصوف صدر مقام کچہری سے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز

تعطیل پیروی کرنے کے ذمہ دار نہ ہوں گے، اگر مقدمہ علاوہ صدر کچہری کے کسی اور جگہ سماعت ہونے یا بروز

تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کی ذمہ داری اس کے

واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار ہوں گے، مجھ کو کل

ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ و جواب

دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی

اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کارروائی وصول کرنے اور رسید دینے اور داخل کرنے

اور ہر قسم کے بیان دینے اور سپرد ثالثی و راضی نامہ کو فیصلہ پر خلاف کرنے، اقبال دعویٰ دینے کا بھی اختیار ہوگا

اور بصورت اپیل برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از اجراء

ڈگری بھی موصوف کو بشرط ادا ایگی علیحدہ مختار نامہ پیروی کا اختیار ہوگا اور بصورت ضرورت صاحب موصوف کو

بھی اختیار ہوگا، یا مقدمہ مذکورہ یا اس کے کسی جزو کی کارروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی

دوسرے وکیل یا پیر سٹر کو بجائے اپنے یا پانے ہمراہ مقرر کریں اور ایسے مشیر قانون کو ہر امر میں وہی اور ویسے ہی

اختیارات حاصل ہوں گے جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التواء

پڑے گا وہ صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ

یہی صاحب موصوف کے برخلاف نہیں ہوگا، لہذا یہ مختار نامہ لکھ دیا تاکہ سند رہے۔

مورخہ: 30/9/20 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

(Signature)

العبد
 شاہد نسیم خان چکنی ایڈووکیٹ ہائی کورٹ پشاور

آفس: دفتر نمبر 50-49 TF تھرو فلور، ڈیزیز ٹریٹمنٹ ہسپتال پشاور صدر

فون: ضیاء الرحمان 0300-5886819

(Signature)