

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

Service Appeal No. 1192/2018

Date of Institution ... 26.09.2018
Date of Decision ... 10.11.2022

Badshah Khan S/o Hathi Khan R/o Dargai Hakim Khan, Lakki Marwat, Ex-
Constable No. 6546, FRP, PP-Dara Tang, Lakki Marwat

... (Appellant)

VERSUS

1. SP, FRP, D.I.Khan.
2. Commandant, FRP, Khyber Pakhtunkhwa, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.

... (Respondents)

Arbab Saiful Kamal,
Advocate

... For appellant.

Kabir Ullah Khattak,
Additional Advocate General

... For respondents.

Mrs. Rozina Rehman
Miss. Fareeha Paul

... Member (J)
... Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER: The appellant has invoked the
jurisdiction of this Tribunal through above titled appeal with the prayer as
copied below:

**“That on acceptance of the appeal, orders dated 15.08.2001
and 31.10.2007 of the respondents be set aside and appellant
be reinstated in service with all back benefits.”**



2. Brief facts of the case are that appellant was appointed as constable in the year 1987. An FIR was lodged against him on 06.04.2001 and due to the fear of local police and enemies, the appellant decamped from the scene and shifted to Lakki Marwat. Later on, he surrendered before the local police, remained in jail and patched up the matter with the complainant party and was acquitted on 22.07.2004. After getting acquittal he submitted representation before respondent No. 3 for reinstatement in service which was rejected; hence the present service appeal.

3. We have heard Arbab Saiful Kamal, Advocate learned counsel for the appellant and Kabir Ullah Khattak, learned Additional Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Arbab Saiful Kamal Advocate, learned counsel for appellant contended that the appellant never absented from duty willfully rather he was implicated in baseless criminal case which resulted into his disappearance due to fear of the local police. Learned counsel contended with vehemence that the impugned orders were illegal and vide ab-initio as the appellant was not treated according to law and rules. It was further submitted that the appellant was discriminated and given step-motherly treatment as he was condemned unheard; that no charge sheet alongwith statement of allegations and show cause notices were ever communicated to him. He submitted that the appellant was not provided any opportunity of personal hearing, therefore, requested for acceptance of present service appeal.



5. Conversely, learned Additional Advocate General argued that the appellant being member of disciplined force involved himself in heinous criminal case vide FIR No. 38 dated 06.04.2001 registered at PS Dadiwala, District Lakki Marwat under sections 302, 324, 148, 149 PPC and that after involvement in criminal case, he deliberately disappeared from the locality and remained absconder for a long period. He was arrested by the local police whereafter he arranged compromise and was acquitted. He further contended that departmental appeal was submitted by the appellant on 17.07.2007 which was thoroughly examined and rejected being badly time barred and that after fulfillment of all codal formalities he was punished according to law.

6. From the record it is evident that the appellant was directly charged in case FIR No. 38 dated 06.04.2001 registered at PS Dadiwala, District Lakki Marwat under sections 302, 324, 148, 149 PPC. Accordingly he was suspended being involved in criminal case vide Diary No.375/FRP, dated 05.05.2001 and lastly, he was dismissed from service vide Diary No. 760/FRP dated 21.08.2001. He was acquitted in the criminal case on the strength of compromise on 23.07.2004 by learned Additional Sessions Judge Lakki Marwat. It merits to mention here that he was dismissed on 21.08.2001 and he was acquitted on 23.07.2004, but he submitted representation before the Inspector General of Police on 17.07.2017 which was badly time barred. It was not explained as to why he kept mum after earning acquittal from the competent court of law and opted to submit representation after 13 years of earning acquittal.



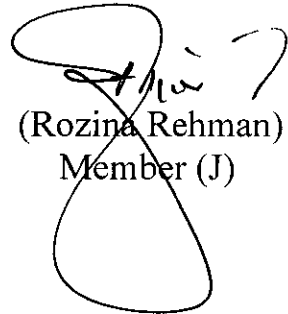
7. It is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwarul Haq v. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

8. Having considered the matter from all angles in the light of material available on file, we do not find any merit in the instant service appeal which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

10.11.2022


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

ORDER

10.11.2022

Arbab Saiful Kamal, Advocate for appellant present.

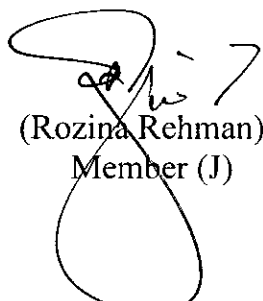
Kabir Ullah Khattak, learned Additional Advocate General
for respondents present.

Vide our detailed judgment of today, containing 04 pages,
having considered the matter from all angles in the light of material
available on file, we do not find any merit in the instant service
appeal which is hereby dismissed. Parties are left to bear their own
costs. File be consigned to the record room.

ANNOUNCED.

10.11.2022

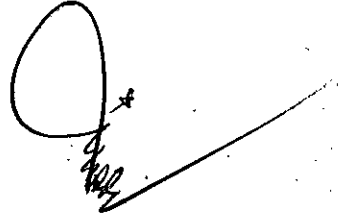

(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

31.03.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents and present.

Written reply/comments on behalf of respondents not submitted. Notices be issued to the respondents for submission of written reply/comments. Adjourned. To come up for written reply/comments on 17.06.2022 before S.B.



(MIAN MUHAMMAD)
MEMBER(E)

17th June 2022

Appellant present in person. Mr. Kabirullah Khattak, Addl. AG alongwith Ihsanullah ASI for the respondents present.

The respondents have submitted written reply/comment which is placed on file. To come up for arguments on 31.08.2022 before D.B.



(Kalim Arshad Khan)
Chairman

31.08.2022

Clerk of learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned Member (Judicial) Ms. Rozina Rehman is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments on 10.11.2022 before the D.B.



(Salah-ud-Din)
Member (Judicial)

Stipulated period passed reply not submitted.


15.09.2021


Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


Chairman

11.2021

Mr. Saad Ullah Khan Marwat, Advocate, for the appellant present. Mr. Noor Zaman Khattak, District Attorney for the respondents present and sought time for submission of reply/comments. Adjourned. To come up for submission of reply/comments as well as arguments on 31.01.2022 before the D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)



(Salah-Ud-Din)
Member (J)

2

31.01.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for respondents present.

Reply/comments on behalf of respondents are still awaited. Learned Additional Advocate General sought time for submission of reply/comments. Granted. To come up for reply/comments before the S.B on 31.03.2022.


(Atiq-Ur-Rehman Wazir)
Member (E)

17.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 29.06.2021.


Reader

29.06.2021

Counsel for the appellant present. Preliminary arguments heard.

As far as the order of dismissal of the appellant from service is concerned, its reproduction herein below is necessary for ready reference:-

"Dismissed from service w.e.from the commission of offence, the period he remained under suspension is counted as leave without pay vide S.P Lakki Marwat O.B No. 452, dated 15.08.2001 and this office diary No. 760/FRP dated 21.08.2001."

If the order is same as copied above, it is not possible to ascertain on its face that which of the service laws have been resorted to, to invoke the jurisdiction for passing such an order of dismissal. Let the respondents come up with written reply/comments for validity of the proceedings culminating into impugned order. Therefore, the appeal is admitted for regular hearing, subject to all legal objections, including limitation. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices positively. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 11.11.2021 before the D.B.

Appellant Deposited
Security & Process Fee


7/7/21


Chairman

01.07.2020

Counsel for appellant present and seeks adjournment. Adjourned to 23.09.2020 before S.B in order to avail the outcome of cases pending before the Larger Bench of this Tribunal, regarding retrospective punishment.

Member (J)

23.09.2020

Counsel for the appellant present.

On the last date of hearing instant matter was adjourned to avail the outcome of cases pending before the Larger Bench and having similar nature. The Larger Bench has not yet concluded the proceedings before it, therefore, instant matter is adjourned to 02.12.2020 before S.B.

Chairman

02.12.2020

Counsel for appellant is present.

Learned counsel requests for adjournment to a date after the decision of proposition regarding retrospective punishment by a Larger Bench of this Tribunal. Adjourned to 17.02.2021 before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

1192/2018

22.01.2020

Junior to counsel for the appellant present.

Requests for adjournment due to general strike of the Bar. Adjourned to 21.02.2020 in order to avail the outcome of case(s) pending before the Larger Bench regarding retrospective punishment.



Chairman

21.02.2020

Appellant in person present and seeks adjournment as his counsel is not available. Adjourn. To come up for preliminary hearing on 07.04.2020 before S.B.



Member

07.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 01.07.2020 for the same. To come up for the same as before S.B.



Reader

01.07.2020

Counsel for appellant present and seeks adjournment. Adjourned to 23.09.2020 before S.B in order to avail the outcome of cases pending before the Larger Bench of this Tribunal, regarding retrospective punishment.

Member (J)

11.07.2019

Mr. Amjad Nawaz, Advocate for learned counsel for the appellant present.

Learned senior counsel for the appellant is engaged before the Honourable High Court, therefore, a request for adjournment is once again made.

Adjourned to ~~04.09~~ 2019 for hearing before S.B.

Chairman 

04.09.2019

Counsel for the appellant present.

Learned counsel states that appeals involving proposition regarding award of punishment with retrospective effect are pending disposal before a Larger Bench of this Tribunal and are fixed for hearing on 14.11.2019. In order to avail the outcome of the referred appeals instant matter be adjourned to a date thereafter.

Adjourned to 25.11.2019 for preliminary hearing before S.B.

Chairman 

25.11.2019

Junior to counsel for the appellant present.

Requests for adjournment on account of general strike of the Bar. Adjourned to 22.01.2020 before S.B.

Chairman 

26.02.2019

Mr. Amjad Anwaz Advocate for appellant present.

Requests for adjournment in order to further prepare the brief. Adjourned to 21.03.2019 before the S.B.


Chairman

21.03.2019

Nemo for the appellant. Due to general strike of the bar, the case is adjourned. To come up for preliminary hearing on 23.04.2019 before S.B.


Member

23.04.2019

Appellant in person present. Due to general strike of the bar, the case is adjourned. Case to come up for preliminary hearing on 12.06.2019 before S.B.


(Ahmad Hassan)
Member

12.06.2019

Learned counsel for the appellant present and once again request for adjournment in order to further prepare the brief.

Adjourned to 11.07.2019 before S.B. As a last chance.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1192/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/09/2018	<p>The appeal of Mr. Badshah Khan presented today by Mr. Saadullah Khan Marwat 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;"><i>[Signature]</i> REGISTRAR 26/9/18</p>
2-	27-9-2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25-10-2018</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
	25.10.2018	<p>Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 12.12.2018.</p> <p style="text-align: right;"><i>[Signature]</i> Reader</p>
	12.12.2018	<p>Counsel for the appellant present and requested for adjournment. Adjourned. To come up for preliminary hearing on 22.01.2019 before S.B.</p> <p style="text-align: right;"><i>[Signature]</i> Muhammad Amin Khan Kundi Member</p>

22.01.2019 Appellant absent. Learned counsel for the appellant absent.
Adjourn. To come up for preliminary hearing on 26.02.2019
before S.B.

Member

26.02.2019

Mr. Anjad Anwar Advocate for appellant
present.

Requests for adjournment in order to further
prepare the brief. Adjourned to 21.03.2019 before the
S.B.

Member

Chairman

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No. 1192 /2018


Bad Shah Khan versus S.P. & Others

I N D E X

S.#	Description of Documents	Anne	Page
1.	Memo of Appeal		1-3
2.	Copy of FIR dated 06-04-2001	"A"	4-5
3.	Dismissal from service dated 15-08-2001	"B"	6
4.	Acquittal order dated 23-07-2004	"C"	7-8
5.	Representation dated 20-08-2004	"D"	9-10
6.	Rejection order dated 31-10-2017	"E"	11
7.	Application for supply of documents dated 06-09-2018	"F"	12

Appellant

Through



Saadullah Khan Marwat
Advocate
21-A Nasir Mansion,
Shoba Bazaar, Peshawar.

Ph: 0300-5872676
0311-9266609

Dated: 22-09-2018

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWARS.A No. 1192/2018

Bad Shah Khan S/O Hathi Khan,
R/o Dargi Hakim Khan, Lakki Marwat,
Ex-Constable No. 6546, FRP,
PP-Dara Tang, Kakki Marwat

Khyber Pakhtukhwa
Service TribunalDiary No. 1473Dated 26/9/2018
Appellant

VERSUS

1. SP, FRP, D. I. Khan.
2. Commandant, FRP, KP,
Peshawar.
3. Provincial Police Officer,
KP, Peshawar. Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,
1974 AGAINST OFFICE ORDER NO. 450 DATED 15-
08-2001 OF R. NO. 1 WHEREBY APPELLANT WAS
DISMISSED FROM SERVICE AND PERIOD OF
SUSPENSION WAS TREATED AS LEAVE WITHOUT
PAY OR OFFICE ORDER NO. S / 7154 / 17 DATED
31-10-2017 WHEREBY APPEAL OF APPELLANT
WAS REJECTED FOR NO LEGAL REASON:**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

Respectfully Sheweth:

Short facts giving rise to the present appeal are as under:-

1. That appellant was appointed as Constable in the year 1987 and served the department to the best of his ability and with devotion.

Filed to-day

Registrar

26/9/18

2. That on 06-04-2001, FIR was lodged by complainant party implicating appellant with others in Criminal case U/S 302, 324, 148, 149 PPC. (Copy as Annex "A")
3. That due to the fear of local police and enemies, appellant decamped from the scene and shifted with family to village Samand, Lakki Marwat.
4. That appellant surrendered before the local police and remained in Jail for about 01 year, yet the matter was patched up with the complainant party and as a result, he was acquitted from the charges vide order dated 22-07-2004. (Copy as annex "B")
5. That after getting acquittal from the baseless charges, appellant submitted representation before R. No. 03 on 20-08-2004 for reinstatement in service which was rejected on 31-10-2017. (Copies as annex "C" & "D")
6. That the aforesaid rejection order was never remitted to appellant, so he submitted application before R. No. 01 on 06-09-2018 for supply of the documents along with rejection order which was handed over to him on 10-09-2018. (Copies as annex "E" & "F")

Hence this appeal, inter alia, on the following grounds:-

GROUND S

- a. That appellant never absented from duty willfully but he was implicated in baseless Criminal case which was resulted into his disappearance due to the fear of local police and enemies.
- b. That appellant was neither served with any Notice, Charge Sheet, Final Show Cause Notice, so he was condemned unheard.
- c. That neither any enquiry was conducted nor any statement was recorded in presence of appellant nor he was afforded opportunity of cross-examination.

- d. That the impugned order was passed with retrospective effect while on the other hand, no such order could be passed in the aforesaid manner.
- e. That the impugned order is illegal and ab-initio void, so the same was effected retrospectively, so no limitation runs against void order.
- f. That after gaining acquittal from the baseless charges, there exists no reason with the respondents to not reinstate appellants in service.
- g. That absence, if any, and that too not willful, does not constitute misconduct. The impugned orders are not per the mandate of Law, so are based on malafide and requires interference.

It is, therefore, most humbly prayed that on acceptance of the appeal, orders dated 15-08-2001 and 31-10-2007 of the respondents be set aside and appellants be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.

بادشاہ

Appellant

Through



Saadullah Khan Marwat



Amjad Nawaz
Advocates,

Dated 22--09-2018

کروٹیشن نمبر ۱۵۳/۲۰۰۱/۱۲۲۱/۱۲۲۱
 (1) ۵ - ۲۰۰۱

پٹر جنرل پولیس ہنگوہر سرحد قلم نمبر ۷۳

ابتدائی اطلاعی رپورٹ

(فائینا) ابتدائی اطلاع نسبت بھرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۳ مجموعہ ضابطہ فوجداری

تاریخ وقت رپورٹ	۲۰۰۱	۱۰	۱۰
نام و سکونت اطلاع دہندہ - تحقیث	دورس جان ولد محمود جان ڈاک بنگلہ سہیل برنی شہر	۱۰	۱۰
مختصر کیفیت بھرم (معدہ دفعہ) حال اگر کچھ لیا گیا ہو	معدہ دفعہ ۱۵۳	۱۰	۱۰
جانے وقوعہ فاصلہ تھانہ سے اور سمت	۱۷۹ - ۱۱۸۵	۱۰	۱۰
نام و سکونت ملزم	دادا مادشاہ صاحب اوریا نام	۱۰	۱۰
کارروائی پولیس کے تعلق کی گئی اگر اطلاع درج کرنے میں تاخیر کی گئی اور اس کی وجہ	میلوں میں تاخیر کی گئی اور اس کی وجہ	۱۰	۱۰
تھانہ سے روانگی کی تاریخ و وقت		۱۰	۱۰

ابتدائی اطلاع نیچے درج کرو

ہمایوت لکھنؤ اللہ جان ASI تھانہ سہیل برنی شہر سے اطلاع دی کہ اس کی بیوی شہریت اللہ جان سے
 کر سدرج دیل ہے۔ دیواروں دوروں میں دو دو تھوڑے تھوڑے توک بنگلوں کے سہیل برنی شہر کے
 دور/۲۶ سال ۱۲ مہر بھگت کوٹھ دیو ۱۷ سے سولے سینالی تھوڑے میں دیواروں کے ساتھ
 دور/الدراک محمود جان دلورہاوی شہر بر اللہ جان ، حاجی شہر بر اللہ جان دلورہاوی
 فصل جیسا گھاٹ بندہ در دفعہ دیڑھہ بندھا خیر من تھانہ لڑا ہے ہے۔ یہ تھوڑے تھوڑے
 کر کے والیں اور اس اطلاع وہ تھوڑے تھوڑے والدراک دیڑھہ کے آسے میں تھوڑے تھوڑے
 سے دادا مادشاہ صاحب اوریا نام لکھنؤ، تھانہ سہیل برنی شہر مادشاہ جان سہیل
 جان ، محمود برنی جان ، عالی جان ، مادشاہ صاحب لکھنؤ شہر ان ستارا جان سہیل
 جان ، محمود برنی جان ، مادشاہ صاحب لکھنؤ شہر لکھنؤ شہر حاجی شہر برنی جان سہیل
 ملکہ تھوڑے تھوڑے تھوڑے اور آسے ہی مادشاہ جان ، شہر برنی جان کے والدراک
 مادشاہ صاحب کی۔ تھوڑے تھوڑے تھوڑے تھوڑے تھوڑے تھوڑے تھوڑے تھوڑے
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Approved as to copy
 Date of the District & Sessions
 Judge A-421

Atarab

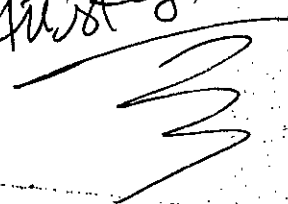
اہل سنت اور اہل تشیع کے مابین جو کئی صحیح دلیلوں اور حقائق کے ساتھ
 2002-2004 میں کی گئی تھیں۔ اصل و اصل کے ساتھ ان کے ساتھ
 198-199 میں اہل سنت کے لئے حضرت اللہ کے فیوض و نعمات کے ساتھ
 2001 میں اہل تشیع کے لئے حضرت اللہ کے فیوض و نعمات کے ساتھ
 2001 میں اہل تشیع کے لئے حضرت اللہ کے فیوض و نعمات کے ساتھ
 2001 میں اہل تشیع کے لئے حضرت اللہ کے فیوض و نعمات کے ساتھ
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 2001 میں اہل تشیع کے لئے حضرت اللہ کے فیوض و نعمات کے ساتھ

H.C. D. w. cler
 6.4.2001

proved to be True Copy
 Examiner,
 Office of the District & Sessions
 Judge, Lahore

دستخط _____

اطلاع کے لیے اطلاع دہندہ کا دستخط ہو گا۔ اس کی مہر یا نشان لگایا جائے گا۔ اور افسر تحریر کنندہ ابتدائی اطلاع کا دستخط اور تصدیق ہو گا۔
 اگرچہ روشتانی سے بالقابل نام پر ایک لازم یا شہر علی الترتیب واسطے باشندگان علاقہ غیر یا وسط ایشیا افغانستان جہاں موزوں ہوں۔

ATTEST


B

B

10

15-8-01

CHARACTER ROLL OF

(Co)

15-CENSURES AND PUNISHMENTS--contd.

Social No.

ORDER

Suspended with immediate effect, involved
in a Criminal Case vide Fir No. 45 dt 6-4-2001 O/S 302/
324/148/149 P/C P/s Dadiwala, vide S/P LAKKI Masawat
dt NO. 216 dt 27-4-2001 and this office dt NO.
375/FPP dt 5-5-2001.

No. 38 ?

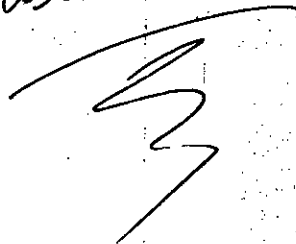
ORDER

↓
S/P Masawat

Dismissal from service w/e from the Commission of
offence, the period he remained under suspension is
counted as leave with out pay, vide S/P LAKKI Masawat
dt NO. 452 dt 15-8-2001 and this office dt NO. 760/FPP
dt 27-8-2001

↓
S/P Masawat

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23/7/04 19/1/03 14/5/04

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Os.....20.

23.7.2004.

SPP for the state present. Accused
Hati Khan and Javed Khan
Bad Shah Khan/in custody whereas accused Zubair and
Mohammad Kamal on bail with counsel present. Supplementary
challan against the accused Mohammad Kamal Khan received
and placed on file.

Accused facing trial and absconding coaccused
Abdur Rehman were charged vide FIR No.45 dated: 4.4.2001
U/S 302/324/14B/149,IPC of P.S Dadiwala and the allegation
against the accused are that they committed the Qatia-B-
of Mehmoed Khan and also ineffective fired upon the
complainant Rezi Khan and Haji Azizullah.

On 22.7.2004 accused alleged compromise and
they produced the complainant & victim Azizullah Khan a
legal heirs of the deceased Mehmoed Khan. They submitted
compromise affidavit Ex. PA, compromise Proforma Ex. PB as
application for permission of compromise as Ex. P-C. Their
Joint statement also recorded, wherein they stated that
have effected compromise with the accused facing trial
and have pardoned them in the name of Almighty Allah by
waiving of their rights of Qisas and Diyat. And they ha
get no objection if all the accused are acquitted from
charges levelled against them in the instant case.

The accused party have also deposited the

Handwritten signature and date 23/7/2004.

Assistant to the Court Clerk
Deputy
Magistrate
Judge, Bahawalpur

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D 9

20-7-04

To: The Inspector General of Police
Khyber Pakhtunkhwa
Peshawar

Subject: REPRESENTATION

With profound regards, appellant submits representation based on the following facts and grounds against the Order bearing OB No. 452 dated 15.08.2001 dated of Superintendent of Police D.I.Khan vide which appellant was dismissed from service.

FACIS:-

1. That appellant had joined Police department as Constable in the year 1987 and was performing duties to the entire satisfaction of Senior officers.
2. That in the year 2001, appellant while posted in District Lakki Marwat was falsely implicated in Murder case FIR No. 45 dated 06.04.2001 under Section 302, 324, 148, 149 PPC Police Station Dadi Wala by his opponents.
3. That appellant surrender arrest and remained in judicial lockup for a period of about 01 year and later on the complainant party realized that they have falsely charged appellant therefore, affected compromise with appellant accordingly appellant was acquitted of the charges vide order of Trial Court dated 23.07.2004.
4. That on acquittal from the criminal charges, appellant suffered from brain hemorrhage and remained under treatment for long period.
5. That on recovery, appellant approached office of SP FRP of D.I.khan and was told that appellant has been dismissed from service vide above referred order therefore, appellant submits representation but to no avail hence this representation on the following grounds..

GROUND:-

- A) That the impugned order has wrongly been passed, appellant was behind the bar in judicial Lockup and was marked absent from duty. No chance of defense was provided to appellant and the entire proceedings were carried out at the back of appellant.
- B) That appellant remained under detention for long period and later on suffered from chronic disease which did not allow appellant to join the

Attest


duties. The impugned order was based on ex-parte proceedings without taking into account ground realities.

- C) That there was long unblemished service on the record of appellant but the authority did not consider the past service of appellant and passed the impugned order.
- D) That the whole departmental file has been prepared in violation of law and rules therefore, the very foundation of the impugned order is baseless and groundless.
- E) That appellant belongs to poor family and faced trial in murder case and high expenses incurred on treatment which have forced the appellant for starvation.

It is therefore, requested that the appellant may please be reinstated in service with all back benefits.

Yours obediently

Badshah Khan

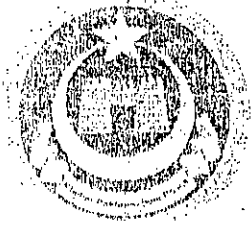
Badshah Khan
Ex-Constable old SPL No. 6546
Cell No. 0306-8566017

Badshah Khan

E

11

31-10-17



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE,
PESHAWAR.

No. SI 7154 / 117, dated Peshawar the 31/10/2017.

To : The Commandant,
FRP Khyber Pakhtunkhwa,
Peshawar.

Subject: APPEAL (EX-FC BADSHAH KHAN NO. 6546)

Memo

Please refer to your office memo: No. 7909 / SI Legal, dated 20.10.2017.

The appeal of Ex-FC Badshah Khan No. 6546 of FRP Dikhan Range for reinstatement into service has been processed / examined at Central Police Office, Peshawar and filed by the competent authority being time barred for about 16 years.

The applicant may please be informed accordingly.

His Service Record is also returned herewith for your office record please.

Encl: Service Roll

(ARIF SHAHBAZ KHAN),
AIG Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

Received from office
on application on 10.9.18

Uroo Khan,
10-9-2018

مخدمت حساب ایس پی صاحب ایف آر پی ڈی آئی خان

درخواست نمبر ادعا بٹگی نقول

حساب عالی

(۳) سائل کو ذیل نقولات کی اشد ضرورت ہے جس کے بغیر سائل اپنی قدامت کو آگے بڑھانے سے قاصر ہے۔

(1) ڈسپل آرڈر مورخہ 15-08-2001 نو ایس پی ایف آر پی ڈی آئی خان

(2) محکمہ ایس پی ڈی ایس کمانڈنٹ / کمانڈنٹ ایف آر پی کے پی پشاور

(3) نظر ثانی درخواست نو آئی جی پی

(4) حکم مورخہ 17-10-31 جاری کردہ آئی جی پی صاحب

(5) انکوائری رپورٹ

استدعا ہے کہ سائل کو مذکورہ بالا نقولات مورخہ طور
عطا کر کے حکم صادر فرمائیں۔

شکریہ

سائل: بارشاہ خان

بارشاہ خان ولد ہاتھی خان

سنانہ کنستبل نمبر 6546

ایف آر پی ڈی آئی خان

رابطہ نمبر: 866017-8606

المنہجیوم: 18-09-06

محمد شاہ

یعدالت جناب سرسٹریٹریٹ صوبہ سندھ پشاور

متجانب اسلٹ

محکمہ لویس

بنام

مادر ماضی

دعویٰ اپیل

باعضرت شریک ایٹک

© ————— ©

مستند مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹیم سٹینڈ انڈسٹری خان سرورتنے ایڈوکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے رضی نامہ و تقرر ثالث و فیصلہ بر علف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور رضی دعویٰ اور درخواست ہر قسم کی تعدد یعنی اور اس پر دستخط کرانے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری یک طرفہ یا اپیل کی برآمدگی اور مستثنیٰ نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مندر کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا اور اس پر مقرر شاہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام رورہ پر ہو یا مدت سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔ لہذا نکالت نامہ رکھ دیا کہ سند ہے۔

المترجم

العبد العبد العبد

بارہ سالہ
سیدہ امینہ خان مرقت
ایڈوکیٹ
ارباب سید انکال
ایڈوکیٹ
من رویتہ تار
ایڈوکیٹ
ایڈوکیٹ

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1192/2018.

**Bad Sha Khan S/O Hathi Khan, R/o Dargi Hakim Khan, Lakki Marwat, Ex-constable
No. 6546, FRP, PP-Dara Tang, Lakki Marwat.....Appellant.**

VERSUS

**Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar &
others.....Respondents.**

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Total			06

RESPONDENTS

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 1192/2018.****Bad Sha Khan S/O Hathi Khan, R/o Dargi Hakim Khan, Lakki Marwat, Ex-constable
No. 6546, FRP, PP-Dara Tang, Lakki Marwat.....Appellant.****VERSUS****Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar &
others.....Respondents.****PARAWISE REPLY BY RESPONDENTS.****RESPECTFULLY SHEWETH.****PRELIMINARY OBJECTIONS****Khyber Pakhtunkhwa
Service Tribunal****Diary No. 322****Dated 17/06/2022**

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
3. That the appellant has no cause of action and locus stands to file the instant appeal.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant is trying to conceal the material facts from this Honorable Tribunal.

FACTS:-

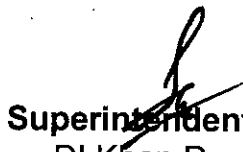
1. Pertains to the appellant record. However, the appellant was found an insufficient Police officer in the line of official duty.
2. The appellant being a member of discipline force involved himself in heinous criminal case vide FIR No. 38 dated 06.04.2001 U/S 302, 324, 148, 149 PPC Police Station Dadiwala District Lakki Marwat.
3. Incorrect. After involved in criminal case the appellant was deliberately disappeared from locality and absconder from lawful arrest.
4. Incorrect. Subsequently, the appellant was arrested by the local police and after arrest in criminal case, he arranged compromise with the complainant party, thus he was not honorably acquitted from the said criminal case.
5. Incorrect. It is a material of facts that departmental appeal submitted by the appellant on 17.07.2017, vide Diary No. 2301/17, which was thoroughly examined and rejected on the grounds of badly time barred. (Copy of his departmental appeal is attached herewith as annexure "A").
6. Incorrect. The appellant was informed by the respondent No. 1 accordingly. Moreover, the appellant has not submitted any application before the respondents for obtaining of relevant record.


GROUNDS:-

- a. Incorrect. The appellant willful absented himself from lawful duty without any leave or prior permission of his seniors. Subsequently, he was found involved himself in heinous case of murder, and he avoided his legal arrest at the hand of local police.
- b. Incorrect. Being involved in criminal case as well as absented himself from lawful duty the appellant was proceeded against proper departmentally, as he was issued Charge Sheet alongwith Summary of Allegations and Enquiry Officer was nominated. The appellant deliberately failed to submit his reply of Charge Sheet or to appear before the Enquiry Officer. Besides, he was called for personal hearing in Orderly Room, by the competent authority, time and again, but he did not turn up.
- c. Incorrect. The appellant was absolutely treated in accordance with law/rules within the meaning of article 4 of the constitution by giving him sufficient and proper opportunity at every level of defense and that the entire proceedings were carried out in accordance with existing law/rules.
- d. Incorrect. The appellant was found guilty of the charges leveled against him during the course of enquiry and after fulfillment of all codal formalities, the impugned order was passed as per law/rules.
- e. Incorrect. The impugned order dated 15.08.2001 passed by the competent authority is legally justified and in accordance with law/rules.
- f. Incorrect. The appellant was not honorably acquitted from criminal case, while due to compromise, which he pay the cash amount as DIYAT to the legal heirs of the deceased. However, the criminal case of the appellant was disposed of in the year 2004 and after lapse of more than 19 years now he desired for reinstatement in service. It is settled proposition of the law of limitation that the law helps the diligent and not the indolent.
- g. Incorrect. The appellant willfully remained absent from his lawful duty which is a gross misconduct on his part. The order passed by the competent authority is legally justified and in accordance with law/rules.

PRAYERS:-

Keeping in view the above facts and circumstances, it is most humbly prayed that the instant service appeal being not maintainable, may kindly be dismissed with costs please.


Superintendent of Police FRP,
 DI Khan Range, DI Khan
 (Respondent No. 01)


Commandant FRP,
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No. 02)


Provincial Police Officer,
 Khyber Pakhtunkhwa, Peshawar
 (Respondent No. 03)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1192/2018.

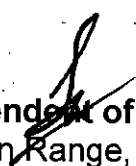
Bad Sha Khan S/O Hathi Khan, R/o Dargi Hakim Khan, Lakki Marwat, Ex-constable No. 6546, FRP, PP-Dara Tang, Lakki Marwat.....Appellant.

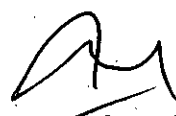
VERSUS


Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.

AFFIDAVIT

We respondents No. 1 to 3 do hereby solemnly affirm and declare on oath that the contents of the accompanying Para-wise Comments is correct to the best of our knowledge and belief that nothing has been concealed from this Honorable Court.


Superintendent of Police FRP,
DI Khan Range, DI Khan
(Respondent No. 01)


Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 03)

ATTESTED



17-6-22

To: The Inspector General of Police.
Khyber Pakhtunkhwa
Peshawar

Subject: REPRESENTATION

With profound regards, appellant submits representation based on the following facts and grounds against the Order bearing OB No. 452 dated 15.08.2001 dated of Superintendent of Police D.I.Khan vide which appellant was dismissed from service.

FACTS:-

1. That appellant had joined Police department as Constable in the year 1987 and was performing duties to the entire satisfaction of Senior officers.
2. That in the year 2001, appellant while posted in District Lakki Marwat was falsely implicated in Murder case FIR No. 45 dated 06.04.2001 under Section 302, 324, 148, 149 PPC Police Station Dadi Wala by his opponents.
3. That appellant surrender arrest and remained in judicial lockup for a period of about 01 year and later on the complainant party realized that they have falsely charged appellant therefore, affected compromise with appellant accordingly appellant was acquitted of the charges vide order of Trial Court dated 23.07.2004.
4. That on acquittal from the criminal charges, appellant suffered from brain hemorrhage and remained under treatment for long period.
5. That on recovery, appellant approached office of SP FRP of D.I.khan and was told that appellant has been dismissed from service vide above referred order therefore, appellant submits representation but to no avail hence this representation on the following grounds..

GROUND:-

- A) That the impugned order has wrongly been passed, appellant was behind the bar in judicial Lockup and was marked absent from duty. No chance of defense was provided to appellant and the entire proceedings were carried out at the back of appellant.
- B) That appellant remained under detention for long period and later on suffered from chronic disease which did not allow appellant to join the

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"A/2"

duties. The impugned order was based on ex-parte proceedings without taking into account ground realities.

- C) That there was long unblemished service on the record of appellant but the authority did not consider the past service of appellant and passed the impugned order.
- D) That the whole departmental file has been prepared in violation of law and rules therefore, the very foundation of the impugned order is baseless and groundless.
- E) That appellant belongs to poor family and faced trial in murder case and high expenses incurred on treatment which have forced the appellant for starvation.

It is therefore, requested that the appellant may please be reinstated in service with all back benefits.

Yours obediently

Handwritten signature

Badshah Khan
Ex-Constable old SPL No. 6546
Cell No. 0306-8566017

SS

*Call the record
and comments
of SP FRD Dikhan*

*SP
17/07/2017*

Office of the PPO KPK, Peshawar
()
23/07/17
17-7-17

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1192/2018.

Bad Sha Khan S/O Hathi Khan, R/o Dargi Hakim Khan, Lakki Marwat, Ex-constable No. 6546, FRP, PP-Dara Tang, Lakki Marwat.....Appellant.

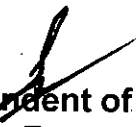
VERSUS


Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.


AUTHORITY LETTER

Respectfully Sheweth:-

We respondents No. 1 to 3 do hereby solemnly authorize Mr. Ghassan Ullah ASI FRP HQrs to attend the Honorable Tribunal and submit affidavit/Para-wise comments required for the defense of above Service Appeal on our behalf.


Superintendent of Police FRP,
DI Khan Range, DI Khan
(Respondent No. 01)


Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 03)

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

S.A No. 1192/2018

Bad Shah Khan

versus

S.P & Others

REJOINDER**Respectfully Sheweth,****Preliminary Objections:**

All the 06 preliminary objections are illegal and incorrect. No reason in support of the same was ever given as to why the appeal is time barred, bad for mis and non joinder of necessary parties, has no cause of action / locus standi, unclean hands, estoppel and trying to conceal the material facts.

ON FACTS

1. Not rebutted by the respondents. Rest of the assertion is not known regarding insufficient Police Officer.
2. Not correct. Lodging of FIR against appellant was the discretion of complainant party to lodge the same against anyone.
3. Not correct. The respondents never made deliberate disappearance and normal absence.
4. Not correct. Appellant surrendered in the case before the court after patching the matter between the parties on account of compromise and was then acquitted from the baseless charges.
5. Not correct. After acquittal, appellant submitted appeal before the authority regarding the judgments of the apex courts, so the appeal was never time barred as is held in plethora judgments of the Supreme Court of Pakistan.
6. Not correct. The para of the reply is without proof regarding information. The para of the appeal is supported by documentary proof regarding submission of application before the authority for supply of documents mentioned therein.

GROUNDS:

All the grounds of the appeal are legal and correct, while that of the reply are incorrect and illegal. The same are reaffirmed once again.

It is, therefore, most humbly requested that the Appeal be accepted as prayed for.

[Handwritten Signature]
Appellant

Through

[Handwritten Signature]
Saadullah Khan Marwat
Advocate

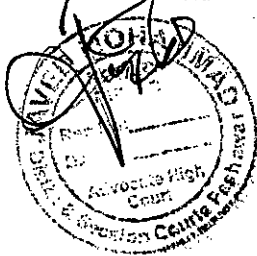
Dated: 30-08-2022

AFFIDAVIT

I, Bad Shah Khan S/O Hathi Khan R/O Dargi Hakim Khan, Lakki Marwat (Appellant) do hereby solemnly affirm and declare that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief.

[Handwritten Signature]
DEPONENT

ATTESTED



31 AUG 2022