

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

**Service Appeal No. 7438/2021**

**BEFORE:** SALAH UD DIN --- MEMBER(J)  
MIAN MUHAMMAD --- MEMBER(E)

Muhammad Shakir Ex-Constable No. 1612 Mardan Police,  
District Mardan..... (*Appellant*)

**VERSUS**

1. The Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan Region, Mardan.
3. The District Police Officer, District Mardan..... (*Respondents*)

-----  
**Present:**

MUHAMMAD AMIN,  
Advocate

--- For Appellant.

MUHAMMAD RIAZ KHAN PAINDAKHEL,  
Assistant Advocate General

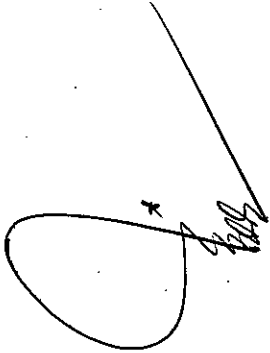
--- For respondents.  
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Date of Institution.....17.08.2021  
Date of Hearing.....18.10.2022  
Date of Decision.....18.10.2022

**JUDGEMENT.**

**MIAN MUHAMMAD, MEMBER(E):-** The service appeal has been instituted with the prayer that “on acceptance of instant appeal the impugned original order dated 06.02.2013 passed by respondent No. 3 and the impugned appellate order dated 20.11.2020 passed by respondent No. 2 and the impugned revisional order dated 29.06.2021 passed by respondent No. 1 communicated on 09.08.2021 may graciously be set aside and appellant be reinstated into service with all back benefits”.

02. Brief facts of the case as averred in the memorandum of service appeal, are that the appellant was appointed as Constable in the Police department on 09.05.2009. The appellant while posted at Police Post Garo Shah (PS Saro Shah) was proceeded against on the allegation of absence from duty w.e.f 11.09.2012 and imposed upon him the major penalty of dismissal from service vide impugned order dated 06.02.2013. Feeling aggrieved, the appellant filed departmental appeal on 10.10.2020 which was rejected on 20.11.2020. Thereafter the appellant filed revision petition under Rule 11-A of the Khyber Pakhtunkhwa Police Rules, 1975 which was also rejected on 29.06.2021 hence the service appeal filed in the Service Tribunal on 17.08.2021.



03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant vehemently contended that the appellant was appointed as Constable in the Police department on 09.05.2009 and was dismissed from service on the allegation of absence from duty w.e.f. 11.09.2012, but his absence was owing to his family enmity and registration of FIR No. 74 under Section 302/34 PPC Police Station Hoti Mardan dated 27.01.2010 which was in the knowledge of respondents.

Learned counsel for the appellant referred to the judgement of Additional Session Judge-II Mardan dated 19.07.2011 whereby the brother of appellant was acquitted by the competent court of justice. He further argued that neither any charge sheet/statement of allegations was issued to the appellant nor any Show Cause Notice served on the appellant. No proper and regular enquiry was conducted into the matter and he had not been afforded opportunity of personal hearing, therefore, the appellant was condemned unheard. Moreover, the impugned order was passed with retrospective effect, therefore, the same is void ab-initio and no limitation runs against the void order. Learned counsel for the appellant relied on 2016 SCMR 460, 2020 SCMR 1245 and judgement of this Tribunal dated 28.01.2022 rendered in service appeal No. 742/2015 titled "Syed Chan Badshah Versus Provisional Police Officer, Khyber Pakhtunkhwa, Peshawar and others".

05. Learned Assistant Advocate General controverted the arguments of learned counsel for the appellant and asserted that the appellant remained absent from duty without any leave or permission of the competent authority. He further argued that proper notice was sent to Police Station Hoti, Mardan for serving the same on the appellant but the same was returned back with the remarks that the appellant alongwith all family members had left the village. He further contended that the impugned order was passed on 06.02.2013 against which the appellant filed

departmental appeal on 10.10.2020 which was rejected vide order dated 20.11.2020 being badly time barred. Thereafter, the appellant filed revision petition which was also rejected on 29.06.2021, therefore, the instant service is not maintainable and the same may be dismissed with costs; he concluded.

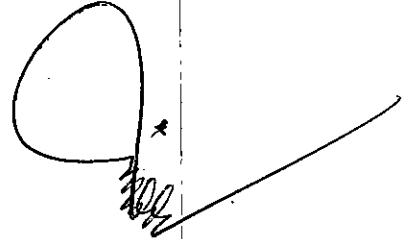
06. From perusal of the record it is evident that the appellant was dismissed from service on the ground of absence from duty w.e.f. 11.09.2012 till the passing of impugned order dated 06.02.2013. The appellant challenged it before the appellate authority through departmental appeal on 10.10.2020 which was rejected vide order dated 20.11.2020. The appellant then filed revision petition which was also rejected vide order dated 29.06.2021. The appellant thereafter filed the instant service appeal on 17.08.2021. The departmental appeal of the appellant as well as his service appeal are badly time barred. The settled proposition of law dictates that when an appeal of the civil servant is time barred before the appellate authority, then the appeal before the service Tribunal is also not competent and maintainable. Reliance is placed on PLD 1990 Supreme Court 951, 2006 SCMR 453 and 2007 SCMR 513. This Tribunal can take merits of the case only when the appeal is within time. August Supreme Court of Pakistan in its judgement reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on the ground of limitation then its merits need not to be discussed.

07. As a sequel to the foregoing discussion, the instant service appeal is badly time barred and is not maintainable hence stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 18<sup>th</sup> day of October, 2022.*



(SALAH UD DIN)  
MEMBER (J)



(MIAN MUHAMMAD)  
MEMBER (E)

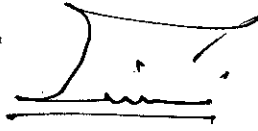
**ORDER**

18.10.2022

Mr. Muhammad Amin Ayub, Advocate for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgement of today separately placed on file containing (05) pages, the instant service appeal is badly time barred and is not maintainable hence stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 18<sup>th</sup> day of October, 2022.*



(SALAH UD DIN)  
MEMBER (J)



(MIAN MUHAMMAD)  
MEMBER (E)

SA 7438/2022

18<sup>th</sup> April, 2022

Counsel for the appellant and Nasirud Din Shah,  
AAG for the respondents present and heard.

The appeal is admitted for full hearing. The appellant is directed to deposit security and process fee within 10 days. Reply already received. To come up for arguments on 07.06.2022 before the D.B.



Chairman

07.06.2022

Clerk of learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of lawyers. Adjourned. To come up for arguments on 10.08.2022 before the D.B.



(Fareeha Paul)  
Member (E)



(Salah-ud-Din)  
Member (J)

10-8-2022

Proper DB not available the case is  
adjourned to 18-10-2022

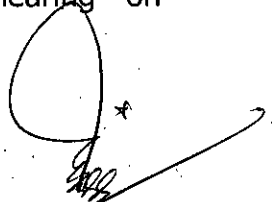


Reader

25.01.2022

Clerk of counsel for the ~~appellant~~ present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Sher Muhammad, Inspector for respondents present.

Written reply not submitted. Representative of the respondents seeks time to submit the same on the next date. Adjourned. To come up for reply/preliminary hearing on 24.03.2022 before S.B.

  
(Mian Muhammad)  
Member(E)

24.03.2022

Counsel for the appellant Mr, Kabir Ullah Khattak, Addl. AG alongwith Inspector, Atta-Ur-Rehman present.

Written reply submitted, which is placed on file. To come up for arguments before the D.B on 18.04.2022.

  
Chairman





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

**K.W.F. Province  
Service Tribunal**

Diary No. 771

Dated 5-7-2015

Appeal No. 742/2015

Syed Chan. Badshah, Ex- Constable No.2281 District Police  
Peshawar.

(Appellant)

**VERSUS**

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, Headquarters, Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 07-11.2014, whereby the appellant has been awarded the major punishment of dismissal from service against which the Departmental Appeal of the appellant has not been responded despite the lapse of 90 days statutory period.


Prayer in Appeal: -

On acceptance of this appeal the orders dated 07.11.2014, may please be set-aside and the appellant may be re-instated in service with full back wages and benefits of service.

Respectfully Submitted:

1. That the appellant was initially enlisted as constable in the respondents department in the year 2008. Ever since his enlistment the appellant had performed his duties as assigned with zeal and devotion and there was no complaint what so ever regarding his performance.

**ATTESTED**

  
**Registrar**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Registrar

6/7/15

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 742/2015

Date of Institution ... 06.07.2015

Date of Decision ... 28.01.2022



Syed Chan Badshah, Ex-Constable No. 2281 District Police Peshawar.  
... (Appellant)

**VERSUS**

The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.  
... (Respondents)

Rashid Rauf Swati,  
Advocate ... For Appellant

Asif Masood Ali Shah,  
Deputy District Attorney ... For respondents

**AHMAD SULTAN TAREEN** ... **CHAIRMAN**  
**ATIQU-UR-REHMAN WAZIR** ... **MEMBER (EXECUTIVE)**

**JUDGMENT**


**ATIQU-UR-REHMAN WAZIR MEMBER (E):-**

Brief facts of the

case are that the appellant while serving as Constable in Police Department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 07-11-2014 and his absence period was treated as leave without pay. Feeling aggrieved, the appellant filed departmental appeal dated 03-03-2015, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 07-11-2014 may be set aside and the appellant may be re-instated in service with all back benefits.

**ATTESTED**

02. Learned counsel for the appellant has contended that that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that no proper procedure has been followed

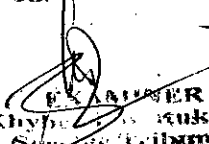
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

before imposition of major penalty of dismissal from service, as neither the appellant has been served with charge sheet/statement of allegation nor the appellant was associated with proceedings of the departmental inquiry and the whole proceedings were conducted ex-parte, thus the appellant was deprived of the opportunity to defend his cause; that the appellant was not afforded any opportunity of personal hearing, thus the appellant was condemned unheard; that absence of the appellant was treated as leave without pay, hence there remains no ground to maintain such penalty; that the charges leveled against the appellant were never proved against him and the inquiry officer relied on surmises and conjunctures; that the appellant never committed an act or omission which could be termed as misconduct, the absence of the appellant was not willful albeit he was penalized; that the appellant has more than five years spotless service at his credit and the penalty, so imposed is harsh, which does not commensurate with gravity of the guilt.

03. Learned Deputy District Attorney for the respondents has contended that the appellant absented himself from lawful duty with effect from 13-01-2013 to 07-02-2013 without permission of the competent authority; that the appellant was served with charge sheet/statement of allegation on the charges of willful absence and proper inquiry to this effect was conducted and the inquiry officer found him guilty of misconduct and recommended him for award of major punishment; the appellant was also issued showcause notice and was called repeatedly to appear before the inquiry officer but the appellant failed to join the inquiry proceedings, hence ex-parte action was taken against the appellant.

04. We have heard learned counsel for the appellant and have perused the record.

**ATTESTED**

  
 KHALID  
 Khyber Pakhtunkhwa  
 Secretariat  
 Peshawar

05. The impugned order would suggest that the appellant was proceeded against on the ground of absence for the mentioned period, however the authority has treated the mentioned period as leave without pay, as such the very

ground, on the basis of which the appellant was proceeded against, has vanished away and on this score alone, the impugned order is liable to be set aside. Wisdom in this respect derived from the judgment of the august supreme court of Pakistan, reported as 2006 SCMR 434 and 2012 TD (Services) 348.

06. Record reveals that the appellant was dismissed from service on the allegation of absence from duty. The appellant filed departmental appeal, which was also rejected. The appellant has taken the stance that while traveling to PTC Hangu alongwith other staff members, the appellant alongwith 30 other constables were kidnapped by Taliban, who were released after a month on oath that they will quit police job. After release from the captivity of Taliban, the appellant resumed his duty but were again threatened by Taliban of dire consequences, if they did not quit the job and due to such reason the appellant went in hiding for some time and upon return, it was known to him that he has been proceeded against and dismissed from service. Such stance of the appellant has not been commented by the respondents, which can be presumed that stance of the appellant is based on fact, as such stance of the appellant has not been denied by the respondents. Record would suggest that the appellant was proceeded against in absentia and nothing is available on record to suggest that charge sheet/statement of allegation was served upon the appellant. Similarly, no regular inquiry was conducted against the appellant; hence, the appellant was kept deprived of the opportunity to defend his cause. Even otherwise, regular inquiry is must before imposition of major penalty of dismissal from service, which however was not done in case of the appellant. The Supreme Court of Pakistan in its judgment reported as 2008 SCMR 1369 have held that in case of imposing major penalty, the principles of natural justice required that a regular inquiry was to be conducted in the matter and opportunity of defense and personal hearing was to be provided to the civil servant proceeded against, otherwise civil servant would be condemned unheard and major penalty of dismissal from service would

ATTESTED

EXAMINED  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

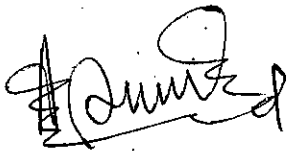



be imposed upon him without adopting the required mandatory procedure, resulting in manifest injustice.

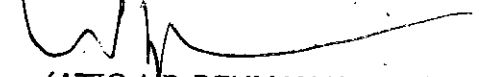
07. The appellant was not guilty of charges of gross misconduct or corruption, therefore extreme penalty of dismissal from service for the charge of absence is on higher side, hence, quantum of the punishment needs to be reduced. Reliance is placed on 2006 SCMR 1120. Careless portrayed by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60.

08. We have observed that charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. The appellant has admitted his absence but such absence was not willful, which does not constitute gross misconduct entailing major penalty of removal from service. In view of the foregoing discussion, the instant appeal is partially accepted. The penalty of removal from service is converted into minor penalty of stoppage of increment for one year and the intervening period is treated as leave without pay. Respondents however, are at liberty to conduct inquiry, if they so desire. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
28.01.2022

  
(AHMAD SULTAN TAREEN)  
CHAIRMAN

*Certified to be true copy*  
  
MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

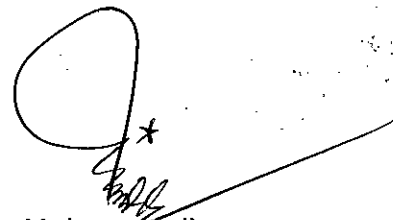
  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)

Date of Presentation of Application 18/04/22  
Number of Words 2000  
Copying Fee 22/-  
Urgent 4/-  
Total 26/-  
Name of Copyist \_\_\_\_\_  
Date of Completion of Copy 18/04/22  
Date of Delivery of Copy 18/04/22

15.11.2021

Counsel for the appellant present. Preliminary arguments have been heard.

According to learned counsel for the appellant, the appellant is aggrieved of the impugned order dated 06.02.2013 whereby he was awarded major penalty of "dismissal from service". His departmental appeal dated 10.10.2020 as well as revision petition were rejected vide order dated 20.11.2020 and 29.06.2021 respectively on the sole ground of "being badly time barred". Learned counsel for the appellant further contended that the appellant was absent from duty w.e.f 11.09.2012 owing to family enmity and FIR No.74 (under Section 302) dated 27.01.2010. He referred to the judgment of Additional Session Judge-II Mardan dated 19.07.2011, whereby the accused Muhammad Zakir Son of Abdur Rauf (Reportedly real brother of the appellant) was acquitted by the competent court of justice. Absence of the appellant was forcefully attributed to the family enmity and the situation/circumstances are claimed to have been in the knowledge of respondents. Moreover, the impugned order dated 06.02.2013 is a void order because no charge sheet/statement of allegations, show cause have ever been issued to the appellant. No proper and regular inquiry was conducted and no opportunity of personal hearing was afforded to the appellant. To strengthen his arguments, learned counsel for the appellant relied on 2003 SCMR 1126, 2007 SCMR 262, 2009 SCMR 339, 2021 PLC (C.S) 936 and service Tribunal judgement dated 14.01.2009 in service appeal No. 34/2015 titled Mst Bibi Safina EX-PST Vs Elementary & Secondary Education Department. The impugned order has been passed 8 years back i.e. on 06.02.2013 and his departmental appeal as well as revision petition have been dismissed on the ground of "being time barred". There are several judgements of the superior courts emphasizing on time limitation to be taken seriously even in cases against void orders. It deems appropriate to issue pre-admission notice to respondents to submit reply/parawise comments and assist the Tribunal. To come up for preliminary hearing on 25.01.2021 before S.B.



(Mian Muhammad)  
Member(E)

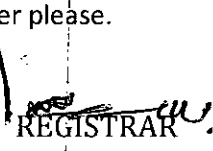



Form- A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No.- 7438 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/09/2021	<p>The appeal of Mr. Muhammad Shakir resubmitted today by Mr. Muhammad Amin Ayub Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>15/11/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Muhammad Shakir Ex-Constable no. 1612 Mardan Police received today i.e. on 17.08.2021 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- ①- Copy of revision petition mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Check list is not attached with the appeal.
- 3- Certificate be given to the effect that the appellatant has not been filed any service appeal earlier on the subject matter before this Tribunal.
- 4- Appeal may be supported with by an affidavit duly attested by the Oath Commissioner.
- ⑤- Annexure-B of the appeal is illegible which may be replaced by legible/better one.

No. 1638 /S.T,

Dt. 20/08 /2021

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. M.Amin Ayub Adv. Pesh.

- Copy of revision petition order is rightly attached.
- Certificate of appellatant can be found at the end of service appeal on Page 7.
- All objections removed.
- Annexure "B" is readable.



# KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

## CHECK LIST

Case Title: \_\_\_\_\_

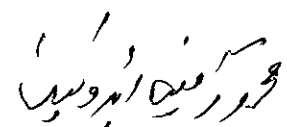
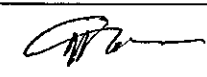
S#	CONTENTS	YES	NO
1	This Appeal has been presented by:		
2	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	✓	
17	Whether list of books has been provided at the end of the appeal?	✓	
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On _____	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____	✓	
26	Whether copies of comments/reply/rejoinder submitted? On _____	✓	
27	Whether copies of comments/reply/rejoinder provided to opposite party? On _____	✓	

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

  
 \_\_\_\_\_  
  
 \_\_\_\_\_  
 22-09-2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. \_\_\_\_\_/2021

Muhammad Shakir ..... Appellant

Versus

The IGP and another..... Respondents

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3.	Impugned original order	06.02.2013	B	23
4.	Departmental Appeal	10.10.2020	C	24-25
5.	Impugned appellate order	20.11.2020	D	26
6.	Impugned revisional order	29.06.2021	E	27
7.	Wakalat Nama			28

Through

Appellant

Muhammad Amin Ayyb  
Advocate, High Court

&

Muhammad Ghazanfar Ali  
Advocate, High Court

4-B, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458  
Cell # 0313-9040434

Dated: 16/08/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2438/2021

Muhammad Shakir

Ex-Constable No.1612

Mardan Police, District Mardan.....Appellant

VERSUS

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 7452

Dated 17-8-2021

1. The Inspector General of Police

Khyber Pakhtunkhwa, Peshawar.

2. The Regional Police Officer,

Mardan Region, Mardan.

3. The District Police Officer,

District Mardan .....Respondents

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORIGINAL IMPUGNED ORDER DATED 06.02.2013 WHEREBY APPELLANT WAS AWARDED MAJOR PUNISHMENT OF DISMISSAL FROM SERVICE AGAINST WHICH HE PREFERRED DEPARTMENTAL APPEAL BUT THE SAME WAS REJECTED VIDE IMPUGNED APPELLATE ORDER DATED 20.11.2020 AGAINST WHICH REVISION WAS FILED UNDER RULE 11-A OF THE KHYBER PAKHTUNKHWA POLICE RULES-1975 BUT THE SAME WAS UNLAWFULLY FILED ON 29.06.2021 COMMUNICATED TO APPELLANT ON 09.08.2021.

PRAYER:

On acceptance of the instant appeal, the impugned original order dated 06.02.2013 passed by Respondent No.3 and the impugned appellate order dated 20.11.2020 passed by Respondent No.2 and the impugned Revisional order dated 29.06.2021 passed by Respondent No.1 communicated on 09.08.2021 may graciously be set aside and appellant be re-instated into service with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

Filed to-day  
Registrar  
17/8/2021

Re-submitted to-day  
and filed.  
Registrar 22/9/2021

1. **That** the appellant was enlisted as Constable in the Police Force on 09.05.2009 and thereafter started performing his duties to the entire satisfaction of high-ups. He rendered 04 years unblemished service during which period no complaint whatsoever has ever been filed against him.
2. That misfortunately in 2010 the family of appellant suddenly was gripped in a serious enmity with some strong hardened Criminals after a murder took place and the brother of the appellant was charged in case F.I.R No.74 dated 27.01.2010 U/S 302/34 PPC Police Station Hoti Mardan. The appellant and his entire family landed in dire trouble as the opponents made series of attacks on appellant and his other family members who took shelters around all along. Meanwhile the criminal trial of the case also started wherein after long the judgment of acquittal was finally passed on 19.07.2011 (*Annex:-A*).
3. **That** due to the enmity towards the Complainant, the life of the appellant alongwith his family faced to imminent danger because the compromise was not effected between the parties after so many efforts of Ilaqa elders. It is pertinent to mention here that during the year 2012, appellant remained posted at PS Saro Shah and owing to the chronic situation of enmity, the family of appellant shifted to Peshawar.
4. **That** it is necessary to elaborate here that appellant tried his best to get leave/permission from the concerned SHO. He pointed out the critical condition but no heed was paid. Appellant alongwith his family having no other option but to shift unknown/safe location. It is further submitted that appellant was marked absent from duty vide DD No.28 dated 11.09.2012.
5. That appellant was residing alongwith his family at unknown place and was unable to disclose his location due to the chronic situation of enmity. It is valuable to aver here that without serving the Charge Sheet and Statement Allegations, Final Show Cause Notice and without conducting an inquiry an ex-parte action was taken against appellant by inflicting upon major punishment of dismissal from service vide impugned original order dated 06.02.2013 (*Annex:-B*). As already expounded hereinabove that owing to the enmity appellant submitted series of applications by incorporating

the above facts but to no avail. Although the brother of the appellant was acquitted but compromise could not be made with the Complainant and for that reason appellant alongwith his family is roaming at different places.

6. That appellant, soon after the knowledge of impugned original order dated 06.02.2013, preferred Departmental Appeal on 10.10.2020 (*Annex:-C*) but the same was unlawfully rejected vide impugned appellate order dated 20.11.2020 (*Annex:-D*). Appellant further availed the remedy of Rule 11-A of the Khyber Pakhtunkhwa Police Rules-1975 by filing Revision Petition which was filed on 29.06.2021 (*Annex:-E*) communicated to appellant on 09.08.2021, hence this appeal inter-alia on the following grounds:-

**Grounds:**

- A. **That** Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned orders, which are unjust, unfair and hence not sustainable in the eye of law.
- B. **That** a procedure in case of willful absence has been set forth in Rule-9 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules-2011 that *in case of willful absence from duty by a Government servant for seven or more days, a Notice shall be issued by the Competent authority through registered acknowledgment of his home address directing him to resume duty within fifteen days of issuance of the Notice. If same is received back as undelivered or no response is received from the absentee within stipulated time, a Notice shall be published in at least two leading Newspapers directing him to resume duty within fifteen days of the publication of that Notice.* It is important to contend here that the Khyber Pakhtunkhwa Police Rules-1975 are outright silent about taking ex-parte action against the delinquent Police official, thus Rule *ibid*, is to be followed. therefore, Respondents were supposed to comply with the mandatory provisions of the Rule *ibid*, hence the impugned orders are not tenable in the eye of law.
- C. **That** the absence of the appellant was not willful but as stated above due to the unavoidable circumstances appellant could not process his case. Moreover, appellant tried his level best for his leave from the concerned SHO, however,

the same produced no fruitful result. The impugned appellate order dated 20.11.2020 will reveal the fact that appellant was out of the locality owing to enmity which is as under:-

*“He was issued Show Cause Notice which was sent to his local Police Station, Hoti for serving the same on the appellant but the same was returned back un-served as the delinquent Officer had shifted with his entire family to some unknown destination.”*

Therefore, Respondents were required to publish the Show Cause Notice in the Daily Newspaper but they have failed to do so, therefore, the impugned order is liable to be brushed aside.

- D. **That** the impugned appellate order dated 20.11.2020 will further reveal that the Respondent No.2 was satisfied that the allegations levelled against the appellant were found without any shadow of doubt. In this backdrop of the matter, it is mentioned that an ex-parte action was taken against the appellant by the Respondents and that too in case of major punishment of dismissal from service. Thus the question arises that from where the authority was satisfied regarding proving the allegations against the appellant. The Apex Supreme Court of Pakistan has taken a view in 2020 SCMR 1245 which is as under:-

*Reinstatement in service ..... No specific allegation through evidence ..... orders of the competent authority as well as Departmental Appeal were on the basis that they agreed with the recommendations of Inquiry Officer, they have not scrutinized the evidence available on the file themselves, but awarded major penalty of dismissal from service by relying upon the recommendation of the Inquiry Officer and ignored the fact that no specific allegation through evidence was proved against the Respondent civil servant.... Prosecution was duty bound to prove the allegations for which the Respondent was charge sheeted ... Service Tribunal has rightly reinstated the Respondent in service... Appeal was dismissed.*

The bare perusal of the judgment ibid disclosed that the competent authority was required to have applied his judicial mind upon the Inquiry Report and he is not supposed to agree upon the recommendations of the Inquiry Officer, therefore, even inquiry has not been conducted by the Respondents while the Respondent No.2 has reached to the conclusion that the allegations were find to be proved against the appellant. Thus the impugned orders are not only contrary



to the set procedure but also against the principles of natural justice which are not sustainable in the eye of law and liable to be set aside.

E. That Rule-3(iii) of the Khyber Pakhtunkhwa Police Rules-1975 contends that:-

*“Misconduct. Means conduct prejudicial to good order of discipline in the Police Force, or contrary to the Government Servants (Conduct) Rules or unbecoming a Police Officer and a gentleman, any commission or omission which violated any of the provisions of law and Rules regulating the function and duty of Police Officer to bring or attempt to bring political or other outside influence, directly or indirectly to bear on the Government or any Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of a Police Officer.*

The careful reading of the ibid Rules reveals that the allegations for which appellant was proceeded against departmentally and inflicted major punishment of dismissal from service, does not meet the requirement thus the impugned orders are void ab-initio. The Apex Court time and again held that no limitation shall run against vide order, as held in **SCMR 2016 460**, which is reproduced herein below for ready reference:-

**“--- vide Notification --- Not enforceable.  
--- vide order/Notification --- No limitation was prescribed to competently and successfully challenge such an order/Notification.”**

Furthermore PLD 2003 SC 724, the august Supreme Court of Pakistan has maintained that:-

*“Administration of justice --- Decision of the cases on merits always to be encouraged instead of non-suiting the litigants for technical reasons including on limitation”*

F. That as per Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appeal), Rules-1986 limitation shall start from the date of communication of the impugned order. Rule-5(2) of the Appeal Rules-1986 ibid, also indicates that it is the duty of the competent authority against whose order an appeal is preferred under these Rules shall give effect to any order made by the appellate authority and shall cause the order so passed to be communicated to the appellant without

undue delay, therefore, Respondent No.2 has not only discarded the prescribed procedure for departmental proceedings but has also deviated from the provisions of Appeal Rules-1986, thus the who proceedings are not sustainable.

- G. **That** the absence of appellant was neither deliberate nor intentional but was due to the unavoidable circumstances beyond the control of appellant as he was receiving severe life threats from the his opponents who was also his co-villagers.
- H. **That** an ex-parte action was taken without conducting an inquiry because appellant had brought into the notice of high-ups the fact of the enmity which was very much corroborated by the Respondent No.2 while passing the impugned appellate order dated 20.11.2020 and without any evidence the conclusion was jumped upon suddenly on the basis mere surmises and conjectures declaring charges as proved in utter deviation of the procedure and Rules on the subject which has resulted into serious miscarriage of justice.
- I. **That** it is a settled legal principle that where major penalty is proposed then only a regular enquiry is to be conducted wherein the accused must be associated with all stages of the enquiry including the collecting of oral and documentary evidence in his presence and he must be confronted to the same and must be afforded an opportunity of cross-examining the witnesses. Thus the impugned orders are nullity in the eye of law and hence liable to be set aside.
- J. **That** no opportunity of personal hearing was afforded to the appellant neither by the competent authority, nor by the Enquiry Officer nor even by the appellate authority which are the mandatory requirements of law. Reliance is placed on 2003 SCMR 1126 which states that:-

*“where the civil servant was not afforded a chance of personal hearing before passing of termination order, such order would be void ab-initio.”*

Further reliance is placed on PLD 2008 SC 412 which states as under:-

*“Natural Justice, principles of --- Opportunity of hearing --- Scope --- order adverse to interest of a person cannot be passed without providing him an opportunity of hearing --- Departure from such rule may render such order illegal.”*

Thus appellant was condemned unheard as the action has been taken at the back of the appellant which is against the principle of natural justice.

- K. **That** the appellant has served the Department for more than 4 years and has consumed his precious life in the service and keeping in view his unblemished service the imposition of the major penalty in peculiar facts and circumstances of the case is harsh, excessive and does not commensurate with the guilt of the appellant.
- L. **That** appellant would like to offer some other additional grounds during the course of arguments when the stance of the Respondents is known to the appellant.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.



Appellant

Through



Muhammad Amin Ayub  
Advocate, High Court

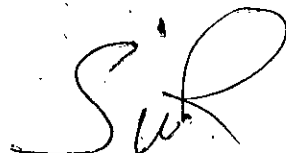
&



Muhammad Ghazanfar Ali  
Advocate, High Court

7. Dated: 16/08/2021

*Certificate:- That contents of the petition are true.  
that appellant has never filed  
any service appeal on the concerned  
subject before this honorable court/Tribunal.*



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. \_\_\_\_\_/2021

Muhammad Shakir ..... Appellant

Versus

The IGP and another ..... Respondents

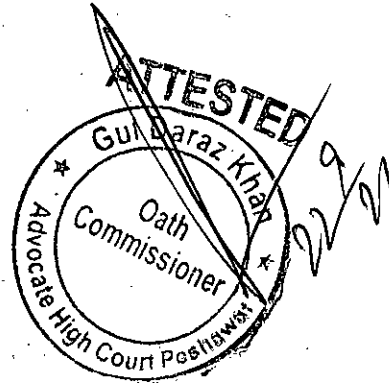
**Affidavit**

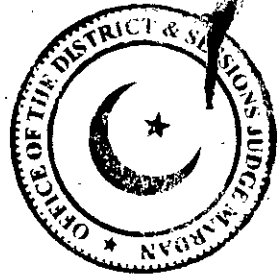
I, Muhammad Shakir, Ex-Constable No.1612, Mardan Police, District Mardan, do hereby solemnly affirm and declare on oath that the contents of this Appeal are true and correct to the best of my knowledge, and nothing has been concealed from this Hon'ble Tribunal.

*Sikr*  
Deponent

Identified by

*Muhammad Amin Ayub*  
Advocate, Peshawar





8-8  
Annex A

**IN THE COURT OF FARID KHAN ALIZAI,**  
Additional Sessions Judge-II, Mardan.

Case File No. ----- 73/SC of 2010

631  
||

State

Versus

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1. Muhammad Ilyas alias Ilyas son of Sharif Muhammad resident of Muhallah Pir Shah Said, Mardan.
2. Muhammad Zakir son of Abdur Rauf resident of Muhallah Delhi, Mardan.

FIR No. 74 dated 27.01.2010  
Charged under Sections 302/34 PPC  
Of Police Station Hoti, Mardan.



Date of original institution: 06.07.2010.  
Date of institution in this court: 06.07.2010.  
Date of decision: 19.07.2011.

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*Nasir* - 16-8-11

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JUDGMENT.

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Accused named above was sent up before this court to face trail on the allegations of committing Qatl-e-Amd of deceased Zahir Muhammad by way of firing at him.

2. Prosecution story in brief is to the effect that on 27.01.2010 at 10:20 hours complainant Fawad brought the dead body of his deceased brother Zahir Muhammad to Casualty DHQ Hospital, Mardan and reported that his deceased brother Zahir Muhammad was working with Ihsan Bacha in

A

his medical shop; that on 26.01.2010 his deceased brother went for work in the morning and did not returned and lateron they received information that the dead body of his brother is lying in the graveyard of Said Jalali Bukhari Baba; that he came there and found his brother murdered with firearms; that they have no enmity with anyone and will charge the accused on his satisfaction.

3. Lateron on 14.02.2010 complainant Fawad recorded his statement before the Magistrate under Section 164 Cr.P.C, wherein he charged accused Muhammad Ilyas and Zakir for murder of his brother. Motive was stated that the deceased was having Rs. 1,00,000/- which the accused snatched from him and murder him.

4. After completion of investigation, complete challan was submitted against him before this Court. Accused when summoned, appeared and when charge sheeted on the fulfillment of codal formalities, they pleaded not their guilt to the charge framed against them and claimed trial. Trial commenced and in order to prove its case against accused, prosecution produced and examined as may as 15 PWs.

4. Brief accounts of the prosecution evidence is as under: -

(i) PW-1, Dr. Amjad Kaka Khail staetd to had conducted autopsy on the dead body of deceased Zahir Muhammad and found the following: -

1. Firearm inlet  $\frac{1}{2}$  inch in size rounded 02 inches below the enferior angle of right scapular.

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2. Firearm exit ½ inch in size on front abdominal wall area near the umbilicus.
3. Firearm inlet ½ inches in size on the back of right shoulder (near the top).
4. Firearm exit 1 ½ inches in size lacerated on front chest wall near the right nipple.
5. Firearm inlet ½ inches in size on the back, left leg.
6. Firearm exit on the front of left leg 04 inches above the ankle.
7. Firearm inlet ½ inches in size on the medial aspect of right forearm below the elbow.
8. Firearm exit on right forearm 1 inch (mid posterior) lateral aspect.

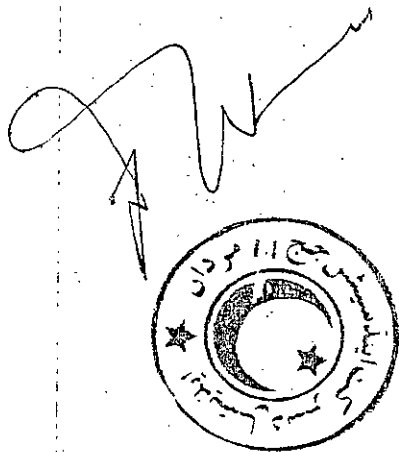
Thorax: Walls, ribs and cartilages injured. Pleurae, right lung and blood vessels injured.

Abdomen: Walls peritoneum, small intestines and their contents injured.

In his opinion the deceased sustained fatal firearms to lung, intestine and blood vessels leading to hemorrhage shock and death. The postmortem report is Ex PM, while injury Sheet Ex PW 1/1 and inquest report Ex PW 1/2 correctly bears his signatures.

(ii) PW-2, Sakhi Sultan, S.I. stated to have reduced the contents of murasila word by word in the shape of FIR Ex PA, which bears his signatures correctly.

(iii) PW-3, Dil Aram, A.S.I. stated to be marginal witness to recovery memo Ex PW 3/1, vide which the I.O.



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took into possession some bloodstained earth from the place of deceased and sealed it into parcel; that he is also marginal witness to recovery memo Ex PW 3/2, vide which the I.O. took into possession one empty of .30 bore Ex P-1 emitting smell of fresh discharge and sealed the same into parcel; that he is also marginal witness to recovery memo Ex PW 3/3, vide which the I.O. took into possession bloodstained clothes of deceased consisting of shirt Ex P-2, Shalwar Ex P-3 and white waste Ex P-4 all bloodstained, which were produced by constable Nauman from Hospital; that all the recovery memos bears his signatures correctly.

- (iv) PW-4, Momin Khan, ASI stated to be marginal witness to recovery memo Ex PW 4/1 vide which the I.O. took into possession one mobile set Nokia 1100 SIM No. 0336-9120894 Ex P-1, which was recovered from side pocket of accused Muhammad Zakir and from Accused Muhammad Ilyas one Mobile Set Sony Ericson SIM NO. 0334-8431921 Ex PW-2 was taken into possession; that he is also marginal witness to recovery memo Ex PW 4/2, vide which the I.O. took into possession one box of mobile Sony Ericson Ex P-3 alongwith receipt bearing NO. 1067585 dated 26.04.2008, on which IMEI NO. 359757010350264 was written produced by complainant Fawad; that he is also marginal witness to recovery memo Ex PW 4/3, vide which one pistol bearing NO. 2070FF Ex P-4 was recovered on the pointation of accused

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Muhammad Ilyas; that all the recovery memos correctly bears his signatures.

(v) PW-5, Ismail son of Mehmood Khan stated that he was arrested by the local Police for making aerial firing in the marriage ceremony of his brother-in-law; that a case under Section 13-A.O. was registered against him, in which he pleaded guilty and was fine to Rs. 300/-.

(vi) PW-6, Sartaj No. 1111 stated to be marginal witness to recovery memo Ex PW 6/1, vide which the I.O. took into possession one thousand rupees consisting of two notes of Rs. 500/- denomination produced by Zakir as shown the said money was snatched by him from the deceased after the occurrence, which bears his signatures correctly.

(vii) PW-7, Gulzar Khan, A.S.I. stated that he was posted as Muharrir at Police Station Hoti, Mardan; that he had handed over the weapon of offence i.e. pistol to the I.O. already recovered in case FIR No. 82 dated 04.02.2010 under Section 13-A.O/3/4 A.F, which was taken into possession by the I.O. through recovery memo already exhibited as Ex PW 4/3.

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(viii) PW-8, Ajmal Ex-Nazim Union Council Mardan Khas stated to had correctly identified the dead body of deceased Zahir Muhammad before the Doctor in the Hospital and before the Police.

(ix) PW-9, Zahir Shah Khan, A.S.I. stated that on 27.01.2010 at about 10:20 hours one Fawad son of khushdil brought the dead body of his brother

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deceased Zahir Muhammad and reported the matter to him, which he recorded in the shape of murasila Ex PA/\*1; that he prepared the injury sheet Ex PW 9/1 and inquest report Ex PW 9/2 of the deceased and sent it for autopsy under the supervision of Riaz F.C No. 1230 to the Doctor.

- (x) PW-10, Muhammad Jalal Khan stated to be marginal witness to recovery memo Ex PW 10/1, vide which accused Muhammad Ilyas pointed out a wooden Almeria in his shop and on his pointation Rs. 20,000/- were recovered, which bears his signatures correctly.
- (xi) PW-11, Siraj Khan, S.I. stated to be well acquainted with the handwriting and signatures of SHO Mazhar Shah, who has been martyred; that he on 04.03.2010 submitted complete challan against the accused in the instant case, which bears his signatures correctly.
- (xii) PW-12, Fawad complainant almost narrated the same story as mentioned above in para 03 of this judgment.
- (xiii) PW-13, Shahid Muhammad stated that on the night of occurrence he was present with his friends when in the mean time Muhammad Zakir accused made a call to him and told him that Muhammad Ilyas accused was present with him and was demanding the mobile phone number/SIM number of the deceased Zahir Muhammad; that he sent the number of the deceased through a message to them.
- (xiv) PW-14, Khaista Wahab SI visited the spot prepared the site plan Exh.PB at the instance of complainant

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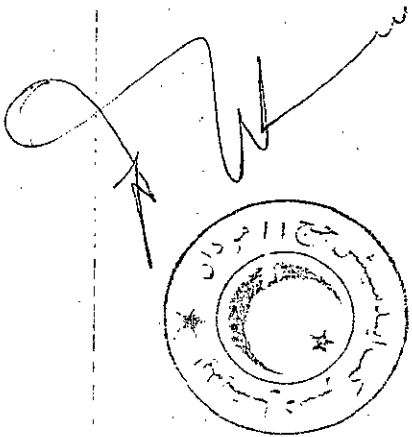
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Fawad. During spot inspection he took into possession one empty of 30-bore pistol Exh.P1 vide recovery memo already Exh.PW3/2. He also took into possession bloodstained earth vide recovery memo already Exh.PW3/2. Similarly he also took into possession bloodstained clothes of deceased consisting of Qamees, Shalwar and banyan Exh.P2 to Exh.P4 brought by constable Numan No.1787 vide recovery memo already Exh.PW3/3. Vide application Exh.PW14/1 he produced complainant Fawad before Judicial Magistrate for recording statement under section 164 Cr.P.C wherein he charged accused Ilyas and Zakir. Thereafter he made search for the accused and on 14.02.2010 he arrested accused Ilyas and Zakir and issued their card of arrest as Exh.PW14/2. After the arrest of accused Ilyas and Zakir during their body search he recovered a cellular phone set 1100 alongwith Sim bearing No.0336-91120894 from the possession of Muhammad Zakir and from the body search of Muhammad Ilyas he recovered from side pocket a mobile set trademark Sony Ericson and a sim bearing No.0334-8431921 these have already been exhibited as Exh.P1 and Exh.P2 respectively and to this effect I had prepared recovery memo already exhibited as Exh.PW4/1. On 15.02.2010 complainant Fawad came to the police station and produced a box of Mobile Set Sony Ericson Exh.P3 and a receipt regarding purchase of said mobile issued by Gulf Oases Electronic

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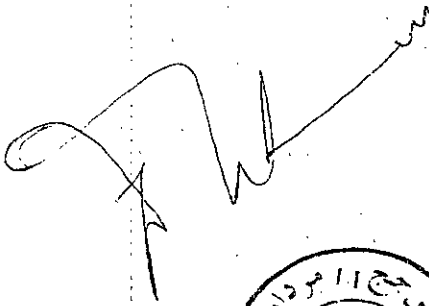


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Company Abu Dhabi bearing No.1067585 dated 26.04.2008 Exh.P4 and a booklet of the said Mobile which is Exh.P5. The IME No.359757010350264 was also inscribed on the box Exh.P3. To this effect he prepared recovery memo Exh.PW4/2. On 15.02.2010 he produced both the accused before Judicial Magistrate for custody, which was allowed for two days, the application is Exh.PW14/3. During interrogation accused Ilyas led the police party to the spot where from Rs:20,000/- Exh.P11 vide recovery memo already Exh.PW10/1. He also prepared the sketch of the shop from where recovery of Rs:20,000/- was effected on the pointation of accused Ilyas. The said sketch is Exh.PB/1. On 16.02.2010 during interrogation accused Muhammad Zakir disclosed that his co-accused Ilyas had taken out Rss:1000/- denomination of Rs:500/- two notes from the pocket of the deceased which were given to him by Ilyas, hence he recovered two currency notes of denomination of Rs:500/- which are Exh.P12 and to this effect a recovery memo was prepared already Exh.PW6/1. On 16.02.2010 Ilyas accused during interrogation disclosed that the pistol was purchased by him from one Gul Rehman and that pistol was against handed over to the said Gul Rehman and Gul Rehman had given the said pistol to one Ismail r/o Mir Jaffar Muhallah Deli and the local police had taken into possession the said pistol being unlicensed from his possession and a separate case under




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section 13 A.O was registered against him and the pistol was with the Muharrir ASI P.S Hoti and this pistol was the weapon of offence also in the present case so he took the same pistol 30-bore No.2070 FF from the police Mall Khana of the P.S sealed it in to parcel and to this effect recovery memo already Exh.PW4/1 was prepared. The pistol is Exh.P4. He also recorded the statements of the concerned PWs. I had also sent empty recovered from the spot and the pistol to the expert vide my application Exh.PW14/3 and received the result in positively which is Exh.PZ. He had also sent the bloodstained earth recovered from the spot and the bloodstained clothes of the deceased vide application Exh.PW14/4 and received its result Exh.PZ/1. After expiry of police custody the accused were lodged in judicial lockup on the orders of Judicial Magistrate. vide application Exh.PW14/5 had obtained date of Sim No.03449470593 and 03439166433, the data was obtained which is Exh.PW14/6 consisting of 18 sheets. According to which the number in possession of Muhammad Zakir accused, PW Shahid was connected who gave number of the deceased to him, which was given and through that number the accused summoned the deceased to the spot. He produced PW Shahid before the Court where his statement u/s 164 Cr.P.C was recorded on 03.03.2010 wherein he admitted that the sim number of the deceased was taken from him by Muhammad

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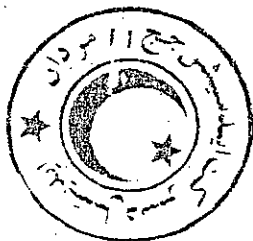
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Ilyas accused and on the following day he came to know that the deceased was murdered. He recorded the statement of PW Gul Rehman. He also placed on file the copy of the FIR Exh.PW14/7 which was registered against Muhammad Ismail under section 13 A.O, 3/4 Aerial Firing vide FIR No.82 dated 14.02.2010 at P.S Hoti. He forwarded the case file to the then S.H.O Mazhar Shah for submission of challan against the accused facing trial. He had also prepared pointation memo at the instance of accused dated 16.02.2010 vide which they had pointed out the spot to us in presence of PWs Muhammad Ziad and Salah ud Din. The said memo is Exh.PW14/8.

- (xv) PW-15, Muhammad Ziad had endorsed the report of complainant Fawad in DHQ Hospital Mardan. He had also identified the dead body of deceased before the police and before the doctor at the time of postmortem examination. He is also marginal witness to pointation memo Exh.PW15/1 vide which accused Zakir and Muhammad Ilyas led the police party and pointed out the spot turn by turn where they have murdered deceased Zahir Muhammad.



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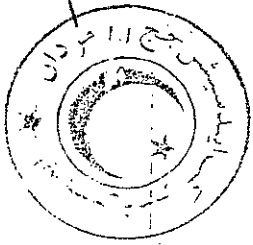
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Thereafter, the prosecution closed its case by getting abandoned rest of the PWs mentioned in the calendar of the PWs and statement of accused was recorded under section 342 Cr.P.C. wherein he while admitting not his guilt, professed his innocence and alleged false implication. He also termed the PWs to be highly interested, partisan,

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procured, planted and disowned the different recoveries. He neither wished to be examined on oath nor to produce evidence in his defence.

6. Learned DPP for the State assisted by private counsel for the complainant submitted that the accused facing trial were not nominated in the FIR, however, when the complainant was fully satisfied regarding their involvement in the instant case, he charged them for commission of the offence; that recovery of one empty of .30 bore from the place of occurrence, recovery of bloodstained garments of the deceased further corroborate the prosecution case; that after arrest of the accused additional points were shown in the site plan at the pointation of accused Muhammad Ilyas; that one mobile set Nokia 1100 was recovered from possession of accused Zakir having SIM No. 0336-9120894 while one Mobile Set Sony Ericson containing SIM No. 0334-8431921 was recovered from possession of accused Muhammad Ilyas; that data of the said SIMs collected from the concerned companies reveals that both the accused had contacted the deceased on the day of occurrence; that the weapon of offence i.e. .30 bore pistol was also recovered on pointation of accused Muhammad Ilyas; that the pistol and the empty recovered from the spot was sent to the FSL for firearms expert report, according to which the empty and the pistol matched with each other; that the bloodstained earth taken from the spot and the bloodstained garments of the deceased were sent to the FSL for chemical examination by the Serologist and the report Ex PZ/1 shows that all the articles were having human blood of the same group; that medicolegal report further strengthens the prosecution story; that the complainant was having no ill will to falsely implicate the accused facing trial in the instant case. It was finally submitted that in the light of available evidence on record, the accused facing trial are duly



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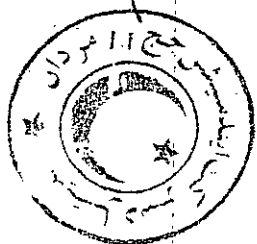
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connected with commission of the offence, hence, they be convicted and sentenced to capital punishment.

7. On the other hand, learned counsel for the accused facing trial submitted that the accused were not directly nominated in the FIR; that the complainant did not disclosed his source of satisfaction regarding involvement of the accused facing trial in commission of the offence; that the occurrence took place at unknown time at night, which was not witnessed by anyone; that recoveries of bloodstained earth and bloodstained garments do not connect the accused facing trial with commission of the offence; that the pistol was not recovered from direct possession of anyone of the accused nor the same was proved to be ownership of anyone of them, as such, matching of the pistol with the empty clearly shows that the recovery was falsely foisted against them to strengthen the prosecution story; that medical evidence in the shape of postmortem report also does not connect the accused facing trial with commission of the offence, hence, the same is of no help to the prosecution; that addition of points allegedly added in the site plan at pointation of accused Muhammad Ilyas is not admissible in evidence being a statement before the Police which was not supported by any other independent evidence; that there is no direct evidence showing involvement of the accused facing trial in commission of the offence, hence, the prosecution has miserably failed to prove its case against the accused facing trial. It was finally submitted that both the accused be acquitted of the charges leveled against them.

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Examiners Branch  
Session Court Mardan

8. I have heard the arguments of the learned counsel for the parties and have gone through the available record with their valuable assistance.

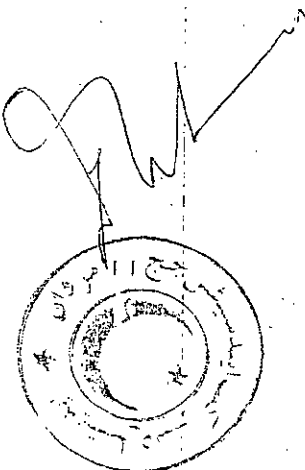


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9. Perusal of record reveals that the occurrence took place at some unknown time at the intervening night of 26.01.2010 and 27.01.2010, which was not witnessed by anyone. The complainant lodged his report regarding murder of his brother against unknown persons and stated in his report that they did not have any enmity or ill will against anyone. Later on after lapse of about 21 days the complainant recorded his statement under Section 164 Cr.P.C. and charged the accused facing trial on the basis of data collected from Mobile companies. The data of mobile companies produced by the prosecution reveals that on 26.01.2010 from 17:26 hours to 18:06 hours some calls were made from mobile number of the deceased to mobile No. 0336-9120894 but there is nothing on record that the SIM bearing No. 0336-9120894 was registered in the name of anyone of the accused facing trial nor the time of alleged calls correspond to the time of occurrence of the instant case, hence, the mobile calls data produced by the prosecution is not sufficient to connect the accused facing trial with commission of the offence.

59

10. The prosecution alleged that the .30 bore pistol was recovered at pointation of accused Muhammad Ilyas, which matched with the empty recovered from the spot, however, neither the pistol was recovered from direct possession of the accused nor the same was proved to be his ownership. The empty recovered from the spot was kept in Police custody and was not dispatched to the FSL till alleged recovery of the pistol, as such, report of the firearms expert regarding matching of the empty which was sent to the FSL after recovery of the pistol cannot be safely relied upon for conviction of the accused facing trial.



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08 OCT 2020

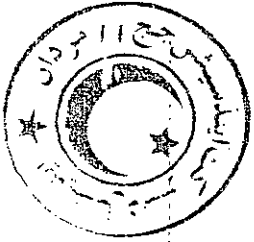
Examiner Copying Branch  
Session Court Mardan

- 21

11. As far as recovery of currency notes at the pointation of accused Muhammad Ilyas is concerned, that also does not advance the prosecution case because the complainant did not disclosed in his initial report or in his statement recorded under Section 164 Cr.P.C. that the deceased was having money in his possession at the time of occurrence nor any denomination of the currency notes was mentioned. In the given circumstances, it cannot be held with certainty that the currency notes recovered from shop of accused Muhammad Ilyas were taken by him from the deceased.

12. As there is no direct or reliable circumstantial evidence connecting the accused facing trial with commission of the offence, therefore, recoveries of bloodstained earth and bloodstained garments of the deceased are of no help to the prosecution to show involvement of the accused facing trial in the instant case. Similarly, the postmortem report suggests that the deceased was murdered with firearm but the same is not sufficient to believe that the murder was committed by the accused facing trial. The prosecution also contended that accused Muhammad Ilyas had pointed out the place of occurrence to the I.O. during the investigation, as such, certain points were added in the site plan with red ink. The additions in the site plan on pointation of the accused are not supported by any independent evidence, therefore, the same being a weak piece of evidence is not sufficient to bring home conviction of the accused.

60



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SC 13.

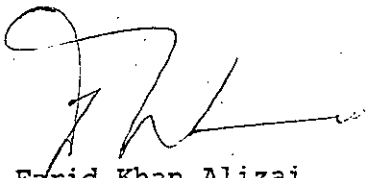
08 OCT 2020

Examiner Copying Branch  
Session Court Mardan

13. In the light of what has been discussed above, the prosecution has failed to prove its case against the accused facing trial beyond reasonable shadow of doubt, as such, benefit of doubt is extended in favour of the accused facing trial and they are acquitted of the

charges leveled against them in the instant case. Accused Zakir is on bail, his bail bonds stand cancelled and his sureties are absolved from the liabilities towards the bail bonds. Accused Muhammad Ilyas is in custody, he be released forthwith if not required in any other case of law. Case property, i.e. Rs. 20,000/- be return to accused Muhammad Ilyas and remaining case property, if any, be dispose of according to law after laps of limitation period provided for an appeal/revision. File be consigned to the record room after its necessary completion and compilation.

**ANNOUNCED**  
**19.07.2011.**

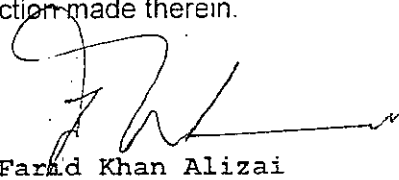
  
Farid Khan Alizai  
ADDL: Sessions JUDGE-II,  
Mardan.



**CERTIFICATE**

Certified that this judgment consists of 15 pages and each page has been signed by me after necessary correction made therein.

Dated. 19.07.2011.

  
Farid Khan Alizai  
ADDL: Sessions JUDGE-II,  
Mardan.



Certified To Be True Copy

  
08 OCT 2020

Examiner Copying Branch  
Session Court Mardan

ملفوظات لاکھ پورہ - ۱۴ - ۱۰ - ۲۰۲۰

Name of Applicant	
Application No.	15800
Date of Filing	07-10-20
Date on which	08-10-20
Date on which	08-10-20
No. of copies	
Court Fee	P-56
Urgent fee	5
Signed of Copying	
Date of the copy	08-10-20

**DISMISSAL ORDER**

- 23

Amir B<sup>n</sup>

Constable Muhammad Shakir No. 1612, while posted at Police Post Gara Shah (PS Saro Shah) remained absent from duty without any leave/permission of the competent authority vide DD report No. 28 dated 11.09.2012 till date.

In this connection, he was issued a proper Show Cause Notice under NWFP Police Rules 1975, issued vide this office No. 1063/PA, SCN/R dated 31.12.2012 and sent to Hoti Police for delivery purpose upon which, but the same was returned back to this office with the reasons that the alleged Constable with his whole family members left their village for some unknown place.

Besides the Hoti Police, the in-charge DSB Mardan also conducted a search enquiry for his tracing out, but he also reiterated the version of Hoti Police.

Being a member of Police Force, he was bound to inform his senior officers, before shifting any where from his village, but he didn't do. Besides, the Moharrar staff of PS Saro Shah have tried their best to contact him on his Cell No. 0347-3220692, but his Mobile is still powered off since his absence, indicating his negligence and inefficiency on his part.

Keeping in view his continuously absence since 11.09.2012 and leaving his native village for some unknown place without the notice of his competent authority, I am of the considered opinion that Constable Muhammad Shakir No. 1612 of Police Station Saro Shah is not interested in Police Service and is a burden on the department, therefore ex-parte action is taken against him by awarding major punishment of dismissal from Police Force with effect from 11.09.2012 with immediate effect, in exercise of the power vested in me under NWFP Police Rules 1975.

Order announced

O B No.

1063

2013

(Danishwar Khan)  
District Police Officer,  
Mardan.

No. 23/PA dated Mardan the 23/12/2013.

Copy for information and necessary action to:-

1. The S.P/HQs Mardan.
2. The SHO Saro Shah.
3. The Pay Officer (DPO) Mardan.
4. The I.C. (DPO) Mardan.
5. The OASE (DPO) Mardan with enclosure.

**ATTESTED**

B

3 24  
Amal C

BEFORE THE DEPUTY INSPECTOR GENERAL OF POLICE MARDAN REGION -1  
MARDAN

Subject: **APPEAL AGAINST THE ORDER OF DISTRICT POLICE OFFICER MARDAN ISSUED VIDE O.B NO. 358 DATED 06-02-2013, WHERE BY THE APPELLANT WAS AWARDED MAJOR PUNISHMENT OF "DISMISSAL FROM SERVICE".**

Respected Sir,

The appellatant submits as under:-

1. That appellatant was enlisted as constable in District Police Mardan on 09-05-2009.
2. That on 27-01-2010, complainant Fawad Khan s/o Khushdil r/o Mohallah Dheri Mardan reported to Police Station Hoti that his brother namely Zahir Muhammad was murdered in the limits of graveyard Said Jalalay Bukhari Baba. Initially no one was charged for the offence. Later on the complainant charged accused Muhammad Zakir s/o Abdul Rauf r/o Mohallah Dheri Mardan and Muhammad Ilyas s/o Sharif Muhammad r/o Mohallah Pir Shah Said Mardan. Accused Muhammad Zakir is the real brother of the appellatant. Due to this enmity and untowards situation was developed and the life of the appellatant faced to imminent danger. The accused including the brother of the appellatant were arrested in the case and sent to the judicial lock up. A proper case vide FIR No.74 dated 27-01-2010 U/S 302/34 PPC PS Hoti Mardan. **(Copy of FIR NO.74 is enclosed)**
3. That during the year 2012, the appellatant remained posted at PS Saro Shah. Due to the chronic situation of enmity, the family of the appellatant shifted to Peshawar. The appellatant tried his best to get leave/ permission from the SHO of the Police Station but his request was turned down. The appellatant by finding no other way went into hiding. Resultantly the appellatant was marked absent from the Police Station vide DD No. 28 dated 11-9-2012.
4. The appellatant was residing along with his family at unknown places and was unable to show his place of stay due to the chronic situation of the enmity. During this period some showcause notice was issued by DPO Mardan in respect of the appellatant which according to local Police was returned with the report that the appellatant and his whole family members had left their village for some unknown place. This fact has been categorically mentioned in the dismissal order of the appellatant.
5. That no departmental enquiry was conducted against the appellatant. Neither any charge sheet / Show cause notice was served upon the appellatant nor the appellatant was informed regarding any enquiry proceedings. An ex-parte action was taken against the appellatant and was dismissed from service vide OB No.358 dated 6-2-2013. **Hence the present appeal. (Copy of OB NO.358 dated 06-02-2013 is enclosed)**
6. That though the criminal case has been decided by the court. Accused had been acquitted but the chronic enmity between the two families is still exist. The appellatant alongwith his family is roaming at different places due to the enmity.

That there is no doubt that the appeal is time-barred but this was not deliberately done rather it was due to the mental agony of the appellatant faced to him by the chronic enmity. However, the appellatant would like to state that it is well settled principle of law that procedural technicalities should not be allowed on dispensation of substantial justice. Procedural laws are meant to advance the cause of justice and not to thwart it. The supreme court of

RECEIVED  
MARDAN  
POLICE STATION  
HOTI

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Pakistan in **criminal original petition No. 90/2009** has further emphasized that while deciding a case principles of natural justice "**audi alteram partem**" and other fundamental rights should be observed which guarantee the right of appellant.

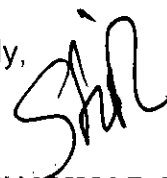
8. That the appellant is married with old parents and belongs to a poor family .

**GROUND OF APPEAL:**

- a). The period of absence was not intentional but was due to the chronic enmity of the appellant with the opponents developed in the light of case FIR NO.74 dated 27-1-10 u/s 302/34 PPC PS Hoti Mardan. Moreover ,reference to the Supreme Court verdict mentioned above the delay in the instant appeal is condonable.
- b). No departmental enquiry was conducted against the appellant .Neither any charge sheet/showcause notice was served upon the appellant nor the appellant was informed to produce self defence in this regard.
- c). All the proceedings have been conducted against the law and contrary to the principles that "**No one should be condemned unheard**".
- d). Neither any final show cause notice was issued to the appellant nor he was given an opportunity of personal hearing. Hence an unlawful order was passed against him in the absentia by DPO Mardan which is against the norms of justice.
- e) The appellant has served in the Police department for 04 years. During this period the appellant was neither dealt departmentally nor punished. This fact is evident from the shining service record of the appellant.
- f). That the proceedings of dismissal from service by DPO Mardan is tyotally against the law of the land. An ex-parte action was taken against the appellant which has ruined the fundamental rights of the appellant.

Keeping in view the above mentioned facts and circumstances, it is humbly prayed in your honour that the Appeal of Appellant may kindly be accepted on humanitarian grounds and the impugned Order passed by DPO Mardan may please be set aside by re-instatement in service from the date of dismissal, please.

Yours Obediently,



(Ex. CONSTABLE MUHAMMAD SHAKIR)  
No.1612  
District Police Mardan  
(Now dismissed from service)

Dated: 10 October, 2020.

Copy to:

The Provincial Police Officer, KPK with the request to intervene in the matter just on humanitarian basis. For kind consideration, please.

**ATTESTED**

O.R.D.E.R.

26

Amir D

This order will dispose-off the departmental appeal preferred by Ex-Constable Muhammad Shakir No. 1612 of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded major punishment of dismissal from service vide OB No. 358 dated 06.02.2013. The appellant was proceeded against departmentally on the allegations that he while posted at Police Post Garo Shah (Police Station Saro Shah) absented himself from his lawful duty with effect from 11.09.2012 till date of date of dismissal i.e 06.02.2013, without any leave/prior permission of the competent authority.

He was issued Show Cause Notice which was sent to his local Police Station, Hoti for serving the same on the appellant. But the same was returned back un-served as the delinquent Officer had shifted with his entire family to some unknown destination. Besides, the appellant was also searched through District Security Branch, Mardan but the District Security Branch supported the same report. Moreover, in order to procure his attendance, the appellant was also contacted time and again through his Cell No. 0347-3220692 but each time his Cell Number was found switched off. Therefore, ex-parte action was taken and the appellant was dismissed from service vide OB No. 358 dated 06.02.2013.

Feeling aggrieved from the order of District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned but failed to appear in person in Orderly Room held in this office on 17.11.2020.

From the perusal of service record of the appellant, it has been found that the allegations leveled against the appellant have been proved beyond any shadow of doubt. Moreover, the appellant approached this forum at a belated stage without advancing any cogent reason regarding such delay. Hence, order passed by the competent authority does not warrant any interference.

Keeping in view the above, I, Sher Akbar, PSP S.St Regional Police Officer, Mardan, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being badly time barred.

Order Announced.

Regional Police Officer,  
Mardan.

Dated Mardan the 20 - 11 - /2020.

Copy forwarded to District Police Officer, Mardan for information and necessary action w/r to his office Memo No. 316/LB dated 26.10.2020. His

D

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

21, dated Peshawar the 26/06/2021.

No. S. 2021/11

The Senior Police Officer  
Mardan

-27

Annex E

1490  
29-6-21

Subject

REVISION PETITION

The Competent Authority has examined and filed the revision petition submitted by Mr. Muhammad Shaker No. 161 P of Mardan district against the punishment of 10 months service awarded by District Police Officer, Mardan vide O.P. No. 158, dated 06.06.2021.

The applicant may please be informed accordingly

(NOORUZZAMAN)  
Registrar,

For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar

22/6

13/08/21  
09-08-2021

EC/DP, Mardan  
For information of  
the applicant

25/7/21

ATTESTED

No -- 33  
Dt -- 29-5-2021

E



Amir E  
27  
**BETTER COPY NO.**

**OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA**

Central Police Office, Peshawar

No.2764/21, dated Peshawar the 24.06.2021

To,

**The Regional Police Officer,  
Mardan**

Subject:- **REVISION PETITION**

The Competent Authority has examined and filed the revision petition submitted by Ex.FC Muhammad Shakir No.1612 of Mardan district against the punishment of dismissal from service awarded by District Police Officer, Mardan vide OB No.358 dated 06.02.2013 being badly time barred.

The applicant may please be informed accordingly.

**(NOOR AFGHAN)**  
Registrar,  
For Inspector General of Police  
Khyber Pakhtunkhwa, Peshawar



WAKALAT NAMA

IN THE COURT OF Service Tribunal Peshawar

MUHAMMAD SHAKIR Appellant(s)/Petitioner(s)

VERSUS

Govt

Respondent(s)

I/We \_\_\_\_\_ do hereby appoint **Mr. Muhammad Amin Ayub & Mr. Muhammad Ghazanfar Ali**, Advocates High Court in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

**AND hereby agree:-**

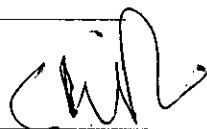
- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this \_\_\_\_\_

Attested & Accepted by



**Muhammad Amin Ayub**  
Advocate, High Court



Signature of Executants

&



**Muhammad Ghazanfar Ali**  
Advocate, High Court

4-B, Haroon Mansion  
Khyber Bazar, Peshawar  
Off: Tel: 091-2592458

C

①

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

**Service Appeal No. 7438/2021**

Muhammad Shakir Ex-Constable No. 1612 Mardan Police, District Mardan  
.....Appellant

**VERSUS**

The Inspector General of Police , Khyber Pakhtunkhwa, Peshawar and others  
.....Respondents

**Para-wise comments on behalf of respondents:-**

**Respectfully Sheweth,**

**PRELIMINARY OBJECTIONS**

1. That the appellant has not approached this Hon'ble Tribunal with clean hands.
2. That the appellant has concealed the actual facts from this Hon'ble Tribunal.
3. That the appellant has got no cause of action or locus standi to file the instant appeal.
4. That the appellant is estopped by his own conduct to file the instant Service Appeal.
5. That the appeal is unjustifiable, baseless, false, flawless and vexatious and the same is liable to be dismissed with special compensatory cost in favour of respondents.
6. That the appeal is barred by law & limitation.

**REPLY ON FACTS**

1. Para to the extent of enlistment in Police Department of appellant pertains to record needs no comments. while rest of para is incorrect because every Police Officer is under obligation to perform his duty upto the entire satisfaction of his superiors. Moreover, the perusal of service record of the appellant revealed that due to his lethargic attitude his entire service record is tainted with bad entries. Besides, non receipt of complaint against the appellant does not mean a clean chit for the future wrong deeds (**Copy of list of bad entries is attached as Annexure "A"**).
2. Para pertains to personal information of the appellant needs no comments. But being a member of a disciplined force he was supposed to submit application for leave but he failed to do so.
3. Para pertains to personal information of the appellant needs no comments.
4. Incorrect. Stance taken by the appellant is not plausible, because being a member of discipline force he was supposed to submit application for leave but failed to do so and remained absent from duty without any leave/permission of the competent authority.
5. Incorrect. Stance taken by the appellant is totally false and baseless, because he was issued a proper Show Cause Notice and sent to Police

Station Hoti for serving upon him, but the same was returned back with the reasons that the appellant with his whole family members left their village for some unknown place. Besides, Incharge DSB Mardan also conducted a secret enquiry for tracing out the appellant, but he also reiterated the version of Hoti Police. Moreover, the Moharrar staff of PS Saro Shah tried their best to contact him on his cell No. 0347-3220692, but the Mobile remained powered off since his absence, indicating his negligence and inefficiency on his part, hence ex-parte action was taken against him by awarding major punishment of dismissal from Police Force, which does commensurate with the gravity of misconduct of the appellant **(Copy of Show Cause Notice is annexed as annexure "B")**.

6. Correct to the extent that the appellant preferred departmental appeal as well as revision petition which were also decided on merit because the appellant was provided full-fledged opportunity of defending himself before the appellate authorities but he bitterly failed to produce any cogent reasons in his defense. Therefore, the same were rejected being devoid of any merit and badly time barred. Moreover, appeal of the appellant is liable to be dismissed on the following grounds amongst the others.

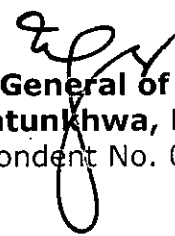
**REPLY ON GROUNDS:**

- A. Incorrect the appellant has been treated in accordance with law, rules, policy and the respondents did not violate any Article of the Constitution of Islamic Republic of Pakistan and orders passed by the competent authority as well as appellate authority are legal, lawful hence, liable to be maintained.
- B. Incorrect. Stance taken by the appellant is totally false and baseless, because he was issued a proper Show Cause Notice and sent to Police Station Hoti for delivery purpose upon him, but the same was returned back with the reasons that the appellant with his whole family members left their village for some unknown place. Besides, Incharge DSB Mardan also conducted a secret enquiry for tracing out the appellant, but he also reiterated the version of Hoti Police. Moreover, the Moharrar staff of PS Saro Shah tried their best to contact him on his cell No. 0347-3220692, but the Mobile was found powered off since his absence, indicating his negligence and inefficiency on his part, hence ex-parte action is taken against him by awarding major punishment of dismissal from Police Force, which does commensurate with the gravity of misconduct of the appellant. Orders passed by the competent as well appellate authority is liable to be maintained.
- C. Incorrect. Stance taken by the appellant is not plausible, because being member of disciplined force he was supposed to submit application for leave but failed to do so and remained absent from duty without any leave/permission of the competent authority.


- D. Incorrect. The appellant preferred departmental appeal which was also decided on merit because the appellant was provided full-fledged opportunity of defending himself before the appellate authority but he bitterly failed to produce any cogent reasons in his defense. Therefore, the same was rejected being devoid of any merit and badly time barred.
- E. Incorrect. Plea taken by the appellant is totally devoid of merit because willful absence does come within the purview of Rule 03 as well as a police officer when willfully absents himself from his lawful duty his this act is also unbecoming of a disciplined police officer.
- F. Incorrect. Plea taken by the appellant is a tailored one so as to avoid the issue of limitation.
- G. Incorrect. Para already explained, needs no comments.
- H. Incorrect. Stance taken by the appellant is totally false and baseless, because he was issued a proper Show Cause Notice and sent to Police Station Hoti for service upon him, but the same was returned back with the reasons that the appellant with his whole family members had left their village for some unknown place. Besides, Incharge DSB Mardan also conducted a secret enquiry for tracing out the appellant, but he also reiterated the version of Hoti Police. Moreover, the Moharrar staff of PS Saro Shah tried their best to contact him on his cell No. 0347-3220692, but the Mobile was found powered off since his absence, indicating his negligence and inefficiency on his part, hence ex-parte action was taken against him by awarding major punishment of dismissal from Police Force and Respondent No. 02 has also decided appeal of the appellant on merit by providing full-fledged opportunity of defence to the appellant before the appellate authority but he bitterly failed to produce any cogent reasons in his defense. Therefore, the same was rejected being devoid of any merit and badly time barred.
- I. Incorrect. Para already explained needs no comments.
- J. Incorrect. The appellant left his village to unknown place and he was contacted on his cell No. 0347-3220692, but the Mobile was found powered off since his absence and he was also summoned & heard in person on 17.11.2020 by Respondent No. 02 but he bitterly failed to produce any cogent reasons in his defense **(Copy of Order is attached as annexure "C")**.
- K. Incorrect. Stance taken by the appellant is not plausible, because every Police Officer is under obligation to perform his duty upto the entire satisfaction of his superiors. Moreover, the perusal of service record of the appellant revealed that due to his lethargic attitude his entire service record is tainted with bad entries. Besides, unblemished service of appellant does not mean a clean chit for the future wrong deeds.
- L. That the respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

**PRAYER:-**

Keeping in view the above narrated facts, it is most humbly prayed that the appeal of the appellant being badly barred by law and limitation, may kindly be dismissed with costs please.

  
**Inspector General of Police ,  
Khyber Pakhtunkhwa, Peshawar**  
(Respondent No. 01)

  
**Regional Police Officer,  
Mardan**  
(Respondent No. 02)

  
**District Police Officer,  
Mardan.**  
(Respondent No. 03)

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

**Service Appeal No. 7438/2021**

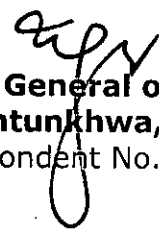
Muhammad Shakir Ex-Constable No. 1612 Mardan Police, District  
Mardan.....Appellant


**VERSUS**

The Inspector General of Police , Khyber Pakhtunkhwa, Peshawar and others.  
.....Respondents

**COUNTER AFFIDAVIT**

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.

  
**Inspector General of Police ,  
Khyber Pakhtunkhwa, Peshawar**  
(Respondent No. 01)

  
**Regional Police Officer,  
Mardan**  
(Respondent No. 02)

  
**District Police Officer,  
Mardan.**  
(Respondent No. 03)

## CHARACTER ROLL OF

Serial No.

## 14. COMMENDATORY ENTRIES

ORDER

the in accordance with  
 Punishment of dismissal w.e.f 11-9-12  
 with immediate effect in exercise of the  
 Power vested in me under NUTP Police  
 Rules 1975

(C) BNE 3528

(D) 8.2.13

*[Signature]*

ORDER

The appeal is rejected vide DIG  
 Mardan order endit 7248/ES, dt  
 20/11/2020

DPO MARDAN



7

(Continued)

16. LEAVE, ABSENCE AND IN SERVICE

All periods not counting "approved service" to entered in red ink.

1		2			3	4
DATE		EXTENT			No. of District Order	Description of leave i.e. Privilege, hospital, sick leave, or furlough, or of absence, or forfeiture of approved service.  All entries to be initialed, by Superintendent of Police.
	To	Years	Months	Days		
				7	1264 24-5-10	Leave with pay (initials)
				16	2288 28-7-10	DPD/MIR (initials)
				1	4270 20-12-11	do - DPD/MIR (initials)

3 ✓

(2) (8)

**OFFICE OF THE DISTRICT POLICE OFFICER MARDAN**

No. 1063 /PA/SCN/R

Date 31-12 -2012

**SHOW CAUSE NOTICE UNDER NWFP POLICE RULES 1975**

Whereas, you **Constable Muhammad Shakir No. 1612**, while posted at PS Saro Shah (PP Garo Shah), remained absent from duty without any leave/permission of the competent authority vide DD report No. 28 dated 11.09.2012 **till-date**.

You are therefore, found guilty of misconduct, as defined in section 2 (iii) of NWFP Police Rules 1975 and as such are liable to action under section 3 of the said Rules.

Based on the above facts, I am satisfied that no enquiry is needed in this case as contained in section 5. 3 clauses (a) & (c) under the said Rules.

Now, therefore you Constable Muhammad Shakir are called upon under section 4 (1) of the NWFP Police Rules 1975, to show cause within 15 days of the issuance of this notice, as to why one or more penalties including major penalty of dismissal from service should not be imposed upon you.

**NOTE.**

Take note that if you failed to submit reply in compliance of this show cause notice within the stipulated time, it will be presumed that you have nothing to offer in your defense and in that case, an **ex-parte action shall straightaway be taken against you without any further notice.**

*(Danishwar Khan)*  
**District Police Officer,**  
*Mardan*

Copy to SHO/Hoti, (**Attention Moharrar**) with the directions to deliver this notice upon Constable Muhammad Shakir s/o Abdur Rauf r/o Daili and the receipt thereof should be returned to this office within (05) days positively.

[Faint stamp and signature area]

1

Announced

9

**ORDER.**

This order will dispose-off the departmental appeal preferred by Ex-Constable Muhammad Shakir No. 1612 of Mardan District Police against the order of District Police Officer, Mardan, whereby he was awarded major punishment of dismissal from service vide OB No. 358 dated 06.02.2013. The appellant was proceeded against departmentally on the allegations that he while posted at Police Post Garo Shah (Police Station Saro Shah) absented himself from his lawful duty with effect from 11.09.2012 till date of date of dismissal i.e 06.02.2013, without any leave/prior permission of the competent authority.

He was issued Show Cause Notice which was sent to his local Police Station, Hoti for serving the same on the appellant. But the same was returned back un-served as the delinquent Officer had shifted with his entire family to some unknown destination. Besides, the appellant was also searched through District Security Branch, Mardan but the District Security Branch supported the same report. Moreover, in order to procure his attendance, the appellant was also contacted time and again through his Cell No. 0347-3220092 but each time his Cell Number was found switched off. Therefore, ex-parte action was taken and the appellant was dismissed from service vide OB: No. 358 dated 06.02.2013.

Feeling aggrieved from the order of District Police Officer, Mardan, the appellant preferred the instant appeal. He was summoned but failed to appear in person in Orderly Room held in this office on 17.11.2020.

From the perusal of service record of the appellant, it has been found that the allegations leveled against the appellant have been proved beyond any shadow of doubt. Moreover, the appellant approached this forum at a belated stage without advancing any cogent reason regarding such delay. Hence, order passed by the competent authority does not warrant any interference.

Keeping in view the above, J, Sher Akbar, PSP S.St Regional Police Officer, Mardan, being the appellate authority, find no substance in the appeal, therefore, the same is rejected and filed, being badly time barred.

Order Announced.

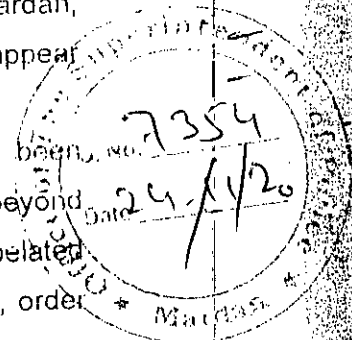
*[Signature]*

Regional Police Officer,  
Mardan.

No. 7248 /ES, Dated Mardan the 20 - 11 - /2020.

Copy forwarded to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 316/LB dated 26.10.2020. His Service Record is returned herewith.

(\*\*\*\*\*)



*DSP Light,  
BCV  
// For Information*

*DPO Mardan  
23/11/20*

تفاسر 31 روز تا 1/2

31

رپورٹ مختصر فیوچر فان Asi وقت 6:30 بجے لولہ 2/13  
 درج سکیم شریل محمد قنار 16/12 تمامہ حد میں  
 عذیر عافز کو رٹنا حال عذیر عافز پر 11/12 9 سے  
 کے کھالی ہو بائیل سم ایئر 3220692-0347 م بار بار  
 صدر دفتر کو بائیل سم ایئر 2 جو وقت  
 پورسور بندہ کر کے رپورٹ دن روز تا 1/2  
 بفرض مناسب کاروائی اختیار لا ضرورت میں ارسال کر کے  
 مہا علی  
 تفاسر و تفسیر

MANASSAS  
 1-2-2013

**DISMISSAL ORDER**

Constable Muhammad Shakir No. 1612, while posted at Police Post Garo Shah (PS Saro Shah), remained absent from duty without any leave/permission of the competent authority vide DD report No. 28 dated 11.09.2012 till-date.

In this connection, he was issued a proper Show Cause Notice under NWFP Police Rules 1975, issued vide this office No. 1063/PA/SCN/R dated 31.12.2012 and sent to Hoti Police for delivery purpose upon him, but the same was returned back to this office with the reasons that the alleged Constable with his whole family members left their village for some unknown place.

Besides the Hoti Police, the In-charge DSB Mardan also conducted a secret enquiry for his tracing out, but he also reiterated the version of Hoti Police.

Being a member of Police Force, he was bound to inform his senior officers before shifting any where from his village, but he didn't do. Besides, the Moharrar staff of PS Saro Shah have tried their best to contact him on his Cell No. 0347-3220692, but the Mobile is still powered off since his absence, indicating his negligence and inefficiency on his part.

Keeping in view his continuously absence since 11.09.2012 and leaving his native village for some unknown place without the notice of his competent authority, I am of the considered opinion that Constable Muhammad Shakir No. 1612 of Police Station Saro Shah is not interested in Police Service and is a burden on the department, therefore ex-parte action is taken against him by awarding major punishment of dismissal from Police Force with effect from 11.09.2012 with immediate effect, in exercise of the power vested in me under NWFP Police Rules 1975.

**Order announced**

O.B No. \_\_\_\_\_

Dated \_\_\_\_\_/2013

(Danishwar Khan)  
District Police Officer,  
Mardan.

No. 818-22 /PA dated Mardan the 8/12/2013.

Copy for information and necessary action to:-

1. The S.P/HQrs Mardan.
2. The SHO Saro Shah.
3. The Pay Officer (DPO) Mardan.
4. The E.C (DPO) Mardan.
5. The OASI (DPO) Mardan with (8) enclosures.

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

12

**Service Appeal No. 7438/2021**

Muhammad Shakir Ex-Constable No. 1612 Mardan Police, District

Mardan.....Appellant

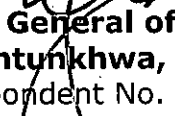
**VERSUS**

The Inspector General of Police , Khyber Pakhtunkhwa, Peshawar and others.

.....Respondents

**AUTHORITY LETTER.**

Mr. Abdul Baseer Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

  
**Inspector General of Police ,**  
**Khyber Pakhtunkhwa, Peshawar**  
(Respondent No. 01)

  
**Regional Police Officer,**  
**Mardan**  
(Respondent No. 02)

  
**District Police Officer,**  
**Mardan.**  
(Respondent No. 03)