

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR.**

Service Appeal No. 1401/2019

Date of Institution ... 23.10.2019

Date of Decision ... 21.06.2022

Mushtaq Ahmad No. 324 Ex-Constable. R/O Gul Pur Kalay Toru  
Mera Tehsil and District Mardan.

... (Appellant)

**VERSUS**

Commandant, CPC, University Campus, Peshawar and two others.

... (Respondents)

-----  
MR. DARIS KHAN,  
Advocate

--- For appellant.

MR. RIAZ AHMED PAINDAKHEL,  
Assistant Advocate General

--- For respondents.

MR. SALAH-UD-DIN  
MS. FAREEHA PAUL

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

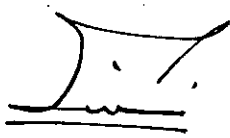
**JUDGMENT:**

SALAH-UD-DIN, MEMBER:- Shortly stated the facts necessary for disposal of the instant service appeal are that the appellant while posted at Campus Police Lines, was proceeded against departmentally on the allegations of absence from duty. On conclusion of the inquiry, the appellant was awarded major penalty of dismissal from service vide impugned order dated 04.06.2018. The departmental appeal of the appellant was rejected on 25.09.2019, hence the instant service appeal.

2. Respondents contested the appeal by way of submitting reply, wherein they controverted the stance taken by the appellant in his appeal.

3. Learned counsel for the appellant has contended that due to death of father of the appellant, he went into depression and

remained under treatment of psychiatrist, therefore, he was unable to attend his duty; that the absence of the appellant from duty was on account of illness, which could not be considered as willful absence; that throughout his service career, the appellant has performed his duty with devotion and has remained punctual; that no charge sheet or statement of allegations were issued to the appellant and whole of the proceedings were conducted at his back, without affording him an opportunity of personal hearing or self defense; that no regular inquiry has been conducted in the matter, therefore, the impugned order of dismissal of the appellant is not sustainable in the eye of law; that the departmental appeal of the appellant was dismissed in a cursory manner without making any probe into the stance of illness of the appellant. Reliance was placed on 2008 SCMR 214 as well as unreported judgment of this Tribunal dated 13.10.2020 titled "Shujahat Ali Versus Provincial Police Officer Khyber Pakhtunkhwa Peshawar and three others".



4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant had remained absent from duty without sanctioned leave or permission of the competent Authority, which amounts to misconduct; that regular inquiry was conducted in the matter by issuing charge sheet and summery of allegations to the appellant but he intentionally avoided joining of inquiry proceedings; that final show-cause notice was issued to the appellant through publication in newspaper but even then the appellant did not turn up for attending duty, therefore, he has rightly been dismissed from service.


5. We have heard the arguments of learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have perused the record.


6. Keeping in view the respective arguments of both the sides, a perusal of the record would show that the appellant had remained absent with effect from 15.02.2018 till 04.06.2018 without obtaining any leave or permission from the competent Authority. Charge sheet as well as statement of allegations were issued to the appellant but he remained absent and did not

bother to attend his duty even on issuing of final show-cause notice to him. The appellant has taken the plea that due to death of his father, the appellant suffered mental illness and remained under treatment of psychiatrist. In this respect, the appellant has annexed certain documents with his appeal. Moreover, according to copy of service record of the appellant annexed with appeal in hand, the appellant is having 413 days leave at his credit and has not been awarded any minor or major punishment except the present one. The absence of the appellant from duty though amounts to misconduct, however the same was not so grave in nature to entail major penalty of dismissal from service. Keeping in view facts and circumstances of the case in hand, we are of the view that major penalty of dismissal from service is too harsh and does not commensurate with the nature of charge leveled against the appellant.

7. In view of the above discussion, the appeal in hand is partially allowed and the impugned penalty of dismissal from service is converted into stoppage of three annual increments for three years. The absence as well as intervening period may be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
21.06.2022

  
(FAREEHA PAUL)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

ORDER  
21.06.2022

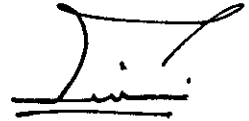
Learned counsel for the appellant present. Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand is partially allowed and the impugned penalty of dismissal from service is converted into stoppage of three annual increments for three years. The absence as well as intervening period may be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
21.06.2022



(Fareeha Paul)  
Member (Executive)



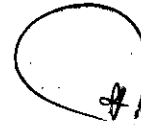
(Salah-Ud-Din)  
Member (Judicial)

25.11.2021

Appellant in person present.

Mr. Kabirullah Khattak, Additional Advocate General  
alongwith Mr. Sher Bahadar S.I (Legal) for respondents present.

Learned Member Executive (Mr. Atiq-ur-Rehman Wazir), is  
on leave, therefore, case is adjourned. To come up for arguments  
on ~~17.02~~ 27.02.2022 before D.B.



(Rozina Rehman)  
Member (J)

17.03.2022

Due to retirement of the Worthy Chairman, the  
Tribunal is defunct, therefore, case is adjourned to  
21.06.2022 for the same as before.



Reader.

25.01.2021

Appellant is present in person. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Muhammad Raziq, Reader for the respondents, are also present.

Representative of the department submitted written reply on behalf of respondents which is placed on record. File come up for rejoinder and arguments on 10.05.2021 before D.B.

(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

10.05.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 30.08.2021 for the same as before.

Reader

30.08.2021

Due to summer vacations, the case is adjourned to 25.11.2021 for the same as before.

READER

1401/2019

03.09.2020

Appellant alongwith counsel present.

Appellant has submitted an application for permission to deposit security and process fee as required on 08.07.2020, on the ground that the same has inadvertently not been deposited within due time.

Application is allowed. The appellant shall deposit security and process fee within three working days from today. Thereafter, notices be issued to the respondents for submission of written reply/comments on 08.10.2020 before S.B.

Appellant Deposited  
Security & Process Fee

03/9/20

  
Chairman

08.10.2020

Counsel for the appellant and Addl. AG alongwith Bahadar Sher, S.I for the respondents present.

Representative of the respondents seeks further time to submit reply/comments. Adjourned to 03.12.2020 on which date the requisite reply/comments shall positively be submitted.

  
Chairman

03.12.2020

Counsel for the appellant and Addl. AG present. No representative on behalf of the respondents is available.

Fresh notices be issued to the respondents for submission of reply/comments positively on 25.01.2021 before S.B.

  
Chairman

25.02.2020

Appellant absent. Learned counsel for the appellant absent. Clerk to counsel for the appellant present and seeks adjournment as counsel for the appellant is not available. Adjourn. To come up for preliminary hearing on 13.04.2020 before S.B. Appellant be put to notice for the date fixed.



Member

13.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 08.07.2020 for the same. To come up for the same as before S.B.



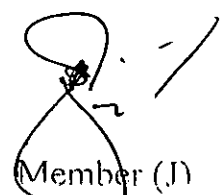
Reader

08.07.2020

Counsel for the appellant present. Arguments heard and record perused.

Contends that appellant was enlisted as Constable in the year 2009. He was mentally disturbed after his father's death, therefore, consulted psychiatrist. He remained absent during this period, therefore, he was charge sheeted and dismissed from service which order is now impugned before this Tribunal for the reason that he was neither charge sheeted nor statement of allegation was served upon him and he was condemned unheard.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal exceptions. The appellant is directed to deposit security and process fee within 10 days. Notice be issued to the respondents. To come up for written reply/comments on 03.09.2020 before S.B.



Member (J)







Form- A

FORM OF ORDER SHEET

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

Case No.- 1401/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge  |
|-------|---------------------------|---|
| 1     | 2                         | 3   |
| 1-    | 23/10/2019                | <p>The appeal of Mr. Mushtaq Ahmad presented today by Mr. Daris Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p><br/>REGISTRAR 23/10/19</p> |
| 2-    | 24/10/19.                 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>09/12/19.</u></p> <p><br/>CHAIRMAN</p>   |
|       | 09.12.2019                | <p>Appellant present in person.</p> <p>Requests for adjournment due to general strike of the Bar today. Adjourned to 14.01.2020 for preliminary hearing before S.B.</p> <p><br/>Chairman</p>                         |
|       | 14.01.2020                | <p>Junior to counsel for the appellant present.</p> <p>Requests for adjournment due to general strike of the Bar. Adjourned to 25.02.2020 before S.B:</p> <p><br/>Chairman</p>                                       |

Ann D

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR

S.A NO 1401 /2019

Mushtaq Ahmad.....Appellant

**VERSUS**

Commandant, CPC, University Campus, Peshawar  
and others .....Respondents

**I N D E X**

| S.No. | Description of documents.                           | Annexure | Pages. |
|-------|---|----------|--------|
| 1.    | Memo of appeal with affidavit.                      |          | 1-3    |
| 2.    | Copy of enlistment order.                           | A        | 4      |
| 3.    | Copy of Death certificate of the appellant's father | B        | 5      |
| 4.    | Copy of medical report/ record of the appellant     | C        | 7-9    |
| 5.    | Copy of order dated 04.07.2019,                     | D        | 10     |
| 6.    | Copy of representation                              | E        | 11     |
| 7.    | Copy order dated 25.09.2019                         | F        | 12     |
| 8.    | Wakalatnama   |          | 13     |

Dated: 22.10.2019

مشرف احمد  
Appellant

Through

  
**Daris Khan**  
Advocate, Peshawar

①

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL, PESHAWAR

Service Appeal No 1401 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1486

Dated 23/10/19

Mushtaq Ahmad S/O No.324 Ex.constable  
R/O Gul Pur Kalay Toru Mera  
Tehsil and District Mardan.....Appellant

**VERSUS**

1. Commandant, CPC, University Campus, Peshawar
2. Capital City Police Officer, Peshawar.
3. Provincial Police Officer, Khyber Pakhtunkhwa, Police Lines Peshawar.

.....Respondents

APPEAL UNDER SECTION 4 OF THE KPK  
SERVICE TRIBUNAL ACT 1974 AGAINST  
THE ORDER NO.1307-09/ PA DATED  
PESHAWAR THE 25.09.2019 PASSED BY  
RESPONDENT NO.2 WHEREBY THE  
DEPARTMENTAL APPEAL OF THE  
APPELLANT FOR REINSTATEMENT WAS  
REJECTED AND UPHELD THE ORDER O.B  
NO.205 DATED 04.06.2018 THROUGH  
WHICH MAJOR PUNISHMENT OF  
DISMISSAL FROM SERVICE WAS  
AWARDED TO THE APPELLANT.

Filed to-day  
Registrar  
23/10/19

**Respectfully Sheweth:**

- 1) That the appellant was enlisted as Constable on 07.10.2009 with effect from 05.09.2009 and since then he performed his official duties upto the mark. (Copy of enlistment order is attached as Annexure "A").
- 2) That after the death of the appellant's father, he was suffered mentally and even then he used to come for duty but not properly. (Copies of Death certificate of the appellant's father and medical report/ record of the appellant are Annexure "B & C")

2

- 3) That thereafter the appellant visited psychiatric and after proper treatment improved mentally/ physically.
- 4) That neither appellant was charge sheeted nor statement of allegation was served upon him.
- 5) That when appellant came to know about dismissal from service, filed departmental appeal on 04.07.2019 which was rejected on 25.09.2019 by respondent No.2. (Copies of order dated 04.07.2019, representation and order dated 25.09.2019 are attached as Annexure "D, E & F" respectively).

Hence the instant appeal on the following grounds amongst others;

#### GROUNDS


- a) That impugned orders are illegal, unlawful and against law rules and policy.
- b) That appellant has unblemished service record since his appointment i.e 2009.
- c) That neither appellant was charge sheeted nor statement of allegation was served upon him.
- d) That appellant has no knowledge of disciplinary proceeding and dismissed from service, therefore the respondents have infringed the fundamental right guaranteed by the Article 10A of the constitution 1973.
- e) That no opportunity of defence was given to the appellant, therefore the respondents have violated the principles of natural justice.
- f) That appellant had left his village and then the death of his father had further perverse him mentally due which he could not managed properly to perform his duties, after proper treatment when the appellant was recovered, reported for duty, the impugned order was then supplied/ handed over to him.

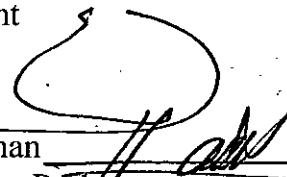
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- g) That proper enquiry was not conducted as per mandate of law therefore, the impugned orders are not sustainable in the eyes of law and prescribed rules.
- h) That neither any statement of any witness was recorded in presence of appellant nor he was afforded any opportunity of cross examination, therefore, impugned orders are of no legal effect.
- i) That the impugned orders are illegal, whimsical, and void, therefore liable to be set aside.
- j) That absence does not constitute misconduct which was not willful.

It is, therefore, humbly prayed that on acceptance of this appeal, the impugned orders dated 25.09.2019 and 04.06.2018 of respondent No.1&2 be set aside and reinstate/ restore the appellant in service with all back benefits.

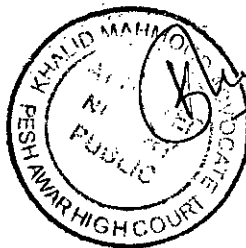
Any other relief which this honorable Tribunal deems appropriate in the circumstances of the case, not specifically asked for, may also be granted.

  
Appellant  
Through

  
Daris Khan  
Advocate, Peshawar

#### AFFIDAVIT

I, Mushtaq Ahmad (appellant) do hereby affirm and declare on oath that the contents of the **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



  
Deponent

*Mushtaq Ahmad* <sup>Amir A</sup>

ENLISTMENT ORDER

(4)

r/o Tor Khan Name Mushtaq Ahmad  
r/o Gul Por Kali  
PS Toru District Mardan is hereby enlisted as constable time  
scale on three years probation with effect from: 5-9-09  
and allotted constabulary NO. 2865

Height 5-8 1/2

Chest 33 x 34 1/2

Education 10th

Date of birth 8.1.1987

O.B NO 2025

Dated 7/10/09

*See*  
District Police Officer,  
Mardan

**ATTESTED**  
*[Signature]*



حکومت خیبر پختونخواہ  
Govt of Khyber Pakhtunkhwa



اندرراج وفات سرٹیفکیٹ

Annexure B<sup>a</sup>

Form No: W10801742

Tracking No: 9510011102  
CRMS No: D500695-19-10327  
OLD/M REG #:

Death Registration Certificate

5

دفتر اندراج: غلہ ڈھیر

Deceased Person's Details

متوفی کے کوائف

|                           |                 |                          |                 |
|---------------------------|-----------------|--------------------------|-----------------|
| Name:                     | TOR KHAN        | نام:                     | طور خان         |
| Nationality:              | Pakistani       | قومیت:                   | پاکستانی        |
| CNIC No:                  | 16101-1262550-9 | شناختی کارڈ نمبر:        | 16101-1262550-9 |
| Date of Birth:            | 12-May-1958     | تاریخ پیدائش:            | 12-May-1958     |
| Gender:                   | Male            | جنس:                     | مرد             |
| Religion:                 | ISLAM           | مذہب:                    | اسلام           |
| Sickness Period:          |                 | مدت علالت:               |                 |
| Date of Death:            | 17-January-2018 | تاریخ وفات:              | 17-January-2018 |
| Date of Burial/Last rite: | 17-January-2018 | تاریخ تدفین آخری رسومات: | 17-January-2018 |
| Place of Death:           | PESHAWAR        | جائے وفات:               | پشاور           |
| Reason of Death:          | Natural         | دور وفات:                | طبعی            |
| Nature of Death:          | Normal          | کیفیت وفات:              | طبیعی           |
| Buried/Last rite at:      | GUL PUR KALI    | جگہ تدفین آخری رسومات:   | گل پور کالی     |

Parental Information

والدین کی معلومات

|                |             |                   |           |
|----------------|-------------|-------------------|-----------|
| Father's Name: | AMEER GUL   | والد کا نام:      | امیر گل   |
| CNIC No:       |             | شناختی کارڈ نمبر: |           |
| Mother's Name: | MANAQA BIBI | والدہ کا نام:     | منقولی بی |
| CNIC No:       |             | شناختی کارڈ نمبر: |           |

Address

|           |                                  |        |                              |
|-----------|----------------------------------|--------|------------------------------|
| Address:  | gulpurkali, Village BHAGO BANDA, | پتہ:   | گل پور کالی، گاؤں بھاگو بندا |
| Tehsil:   | MARDAN                           | تھسیل: | مردان                        |
| District: | MARDAN                           | ضلع:   | مردان                        |

Applicant's Details

درخواست گزار کے کوائف

|                         |                 |                   |                 |
|-------------------------|-----------------|-------------------|-----------------|
| Name:                   | MUKHTYAR AHMAD  | نام:              | مختیار احمد     |
| CNIC No:                | 16101-9180709-7 | شناختی کارڈ نمبر: | 16101-9180709-7 |
| Relation with Deceased: | SON             | متوفی سے رشتہ:    | بیٹا            |

Information of Burial/Last rite by

تدفین آخری رسومات کنندہ کی معلومات

|                         |                 |                   |                 |
|-------------------------|-----------------|-------------------|-----------------|
| Name:                   | MUKHTYAR AHMAD  | نام:              | مختیار احمد     |
| CNIC No:                | 16101-9180709-7 | شناختی کارڈ نمبر: | 16101-9180709-7 |
| Relation with Deceased: | SON             | متوفی سے رشتہ:    | بیٹا            |

Entry Date: 14-October-2019

تاریخ اندراج: 14-October-2019

Issue Date: 14-October-2019

تاریخ اجراء: 14-October-2019

Entry Status: Normal

اندراج اسٹیٹس: نارمل

Additional Information:

اضافی معلومات:

SECRETARY  
VIC Bago Banda  
Tehsil Mardan

14-10-2019  
یکڑی یونین کونسل



ATTESTED

This Certificate can be verified at <https://crms.nadra.gov.pk/verify>


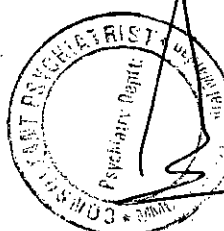


\*W10801742\*

Annex: "e"

6

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|   |  |                                    |
|---|--|------------------------------------|
|  <b>MARDAN MEDICAL COMPLEX</b><br>Teaching Hospital Mardan KPK<br><b>OUT PATIENTS DEPARTMENT</b> |  | RS. 10/-                           |
| Name: <u>Mushtaq</u>  |  | Sex: <u>Male</u>                   |
| Department: <u>Psychiatry</u>   | Address: <u>Mardan</u>   |                                    |
| OPD No. <u>20007503155</u>  | Date: <u>30-Jun-2018</u>   |                                    |
| History   | R/-<br>Subst. Inv.   | WAHIED GUL / 09:04:55 AM<br>R 8/20 |
| <i>low mud</i><br>Clinical Examination  | <i>EC</i>  | <i>CS</i>                          |
| <i>weeps</i><br>Provisional Diagnosis   | <i>CS</i>  | <i>D-Par 25</i>                    |
| Investigations Required   |  |                                    |

**ATTESTED**  
*[Signature]*



7

57

**MARDAN MEDICAL COMPLEX**  
Teaching Hospital Mardan KPK  
**OUT PATIENTS DEPARTMENT**

RS-10

Name: Mushtaq Sex: Male

Department: Psychiatry Address: Mardan

OPD No. 20081571359 Date: 02 April 2018

|                         |                                   |                         |
|-------------------------|-----------------------------------|-------------------------|
| History                 | R/-<br>Entered by: <u>Hadiqar</u> | WALKED IN / 09:04:55 AM |
| <u>death wish</u>       | <u>RC 35</u>                      | <u>X</u>                |
| Clinical Examination    | <u>OSCH</u>                       |                         |
| <u>lack of interest</u> | <u>→ C1</u>                       |                         |
| Provisional Diagnosis   | <u>→ C1</u>                       |                         |
| Investigations Required | <u>Regul-in</u>                   |                         |
| <u>Father death</u>     | <u>→ C1</u>                       |                         |

PSYCHIATRIST \* UPMI (P) 1000  
Psychiatry Dept.  
Mardan Hospital

ATTESTED  
RD



# MARDAN MEDICAL COMPLEX

Teaching Hospital Mardan KPK

**OUTPATIENTS DEPARTMENT**

RS-10

Name: Mushtaq Sex: Male

Department: Psychiatry Address: Mardan  
23801222146 03-Feb-2018

Entered by: WAHEED GUL / 09:37:09 AM  
OPD No. \_\_\_\_\_ Date: \_\_\_\_\_

History

*Swamp*

Clinical Examination

*idant*

Provisional Diagnosis

*refr*

Investigations Required

*Father*

*death*  
MNCU  
منیاتیات  
مردان

R/-  
*Apod ung*  
*—*  
*—*  
*—*  
*—*  
*Rhotoslas*

*2 2 2*

**ATTESTED**  
*R*

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# MARDAN MEDICAL COMPLEX

Teaching Hospital Mardan KPK

**OUT-PATIENTS DEPARTMENT**

RS-10

Name: Mushtaq Sex: Male

Department: Psychiatry Address: Mardan

OPD No. 24901226159 Date: 15-Feb-2018

|                         |                       |                             |
|-------------------------|-----------------------|-----------------------------|
| History                 | Entered by:-          | R/- WAHEED UL / 09:37:09 AM |
|                         | Clinical Examination  | Good 2mg<br>1-0-1           |
|                         | Provisional Diagnosis | Depression<br>1-0-7         |
| Investigations Required |                       | Abim 24                     |

agrew  
Beh

depression  
Beh

دکتر محمد مسلم  
شعبہ نفسیات و روانی امراض MMC  
سابقہ مقرر

**ATTESTED**  
R



# CAMPUS PEACE CORPS

University Campus Peshawar, 091-92121217/Fax: 9221219

Annexure D

## ORDER

Constable Mushtaq No.324 while posted at campus Police Lines absented himself from lawful duty from 15/02/2018 without taking any leave/permission from Competent Authority. He is habitual absentee not taking interest in his legitimate duty and also incorrigible absentee. His act amounts to gross misconduct and against the discipline of the force".

Proper departmental enquiry was initiated against the above named delinquent official and RI-CPC Fazal-e-Rabi Mohmand was appointed as enquiry officer to conduct enquiry under "**Dismissal From Service**" under section u/s 2 (iii) of NWFP (now Khyber Pakhtunkhwa) Police 1975 with amendments 2014. Charge sheet with statement of allegation vides this office order No.195-96/PA, dated 02.04.2018 The enquiry officer submitted his finding wherein E.O recommended that the defaulter constable having no interest in official duty therefore he may be granted major punishment consequent upon which the defaulter constable was issued a final show cause notice with an opportunity to be heard in person.

It is proved beyond any doubt recommendation of Enquiry Officer and other material on record that the accused Constable Mushtaq No.324 committed the offence found guilty in the charge leveled against him therefore, I award him major punishment of "**Dismissal From Service**" with immediate effect.

### Order announced

O.B No. 205  
Dated 04/06/2018.

**ATTESTED**  
*[Signature]*

*[Signature]*  
**(TARIQ SOHAIL MARWAT)**  
Commandant, CPC,  
University Campus, Peshawar

No. 367-72/PA CPC Peshawar dated the 04/06/2018.

Copy to:-

1. The Capital City Police Officer, Peshawar.
2. The DSP CPC Peshawar
3. The ACCOUNTANT CPC Peshawar
4. The RI CPC Peshawar.
5. The LO CPC Peshawar
6. The EC/OHC CPC

No. 17-75/PA, dated Peshawar, the 07/05/2018.

Copy to:-

1. The RI CPC Peshawar.
2. Concerned official.

*[Handwritten notes]*  
w. newspaper  
*[Signature]* 17/5





OFFICE OF THE  
CAPITAL CITY POLICE OFFICER  
PESHAWAR

Phone No. 091-9210989

Fax No. 091-9212597

Amir A

**ORDER.**

This order will dispose of the departmental appeal preferred by Ex-Constable **Mushtaq Ahmad No.324** who was awarded the major punishment of "dismissal from service" under Police Rules-1975 by Commandant CPC Peshawar vide OB No. 205, dated 04-06-2018.

2- The allegations leveled against him were that he while posted at Campus Police Lines absented himself from his lawful duty w.e from 15-02-2018 till the date of dismissal i.e 04-06-2018 without any leave or permission from his seniors for his **total absence of 03 months and 19-days.**

3- He was issued Charge Sheet and Summary of Allegations by Commandant CPC Peshawar under Police Rules 1975 and RI/Campus Mr. Fazle Rabi was appointed as enquiry officer. The enquiry officer after conducting proper departmental enquiry submitted his findings and recommended the delinquent official for major penalty. He was also issued Final Show Cause Notice for which his reply was received and found unsatisfactory; hence the competent authority i.e Commandant CPC awarded him the major punishment of Dismissal from Service under Police Rules 1975.

4- He was heard in person in O.R. The relevant record perused along with his explanation. During personal hearing the appellant contended that he was suffering from psychological problem and was unable to perform duty. He failed to produce any documentary proof before neither the enquiry officer nor the undersigned. Therefore keeping in view the material available on file, **the departmental appeal for reinstatement in service is hereby rejected.**

(MUHAMMAD KARIM KHAN)PSP  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR

No. 1307-09 /PA dated Peshawar the 25/09/ 2019

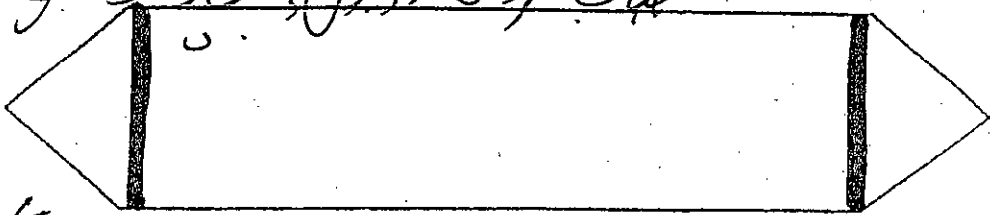
Copies for information and n/a to the:-

1. Commandant CPC University Campus Peshawar.
2. Head Clerk University Campus Police Peshawar alongwith FMC and Service Roll
3. Official Concern.

**ATTESTED**

13

بعد التفتيش سروس کرڈیشنل سپر وینٹری خواہ



سید منجانب سید عبداللہ

بنام

شفاق احمد بک 324

Ex-Constable

Service Appeal No.

17019

باعث تحریر آنکے

کمانڈر کنٹری  
CPC  
مجلس

موزخہ  
مقدمہ  
دعوی  
جرم

کمانڈر کنٹری  
CPC  
مجلس

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کارروائی مستعملہ  
 آن مقام کمانڈر کنٹری کیلئے دائریہ کارروائی کے لئے مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار دیا گیا۔ نیز  
 دیکل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دینے جواب دہی اور اقبال دعوی اور  
 بصورت ڈگری کرنے اجراء اور صولی چیک و روپیہ ارضی دعوی اور درخواست ہر قسم کی تصدیق  
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کیلئے طریقہ یا اپیل کی برآمدگی اور منسوخی  
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
 کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
 ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ  
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو تخریج ہر جانشین التوائے مقدمہ کے سبب سے ہوگا۔  
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حدیث سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
 مذکور کریں۔ لہذا کالت نامہ لکھ دیا کہ سندر ہے۔

ماہ الہیوم 20

المرقوم 21

واہ العبد

شفاق احمد

بمقام

Accepted by  
[Signature]

کے لئے منظور ہے۔

Before the Service Tribunal KP, Kohat

Mushtaq Ahmad vs Comandant etc.

Applications for permitting applicant  
to file diet money in above  
noted case

---

Respectfully Sheweth:

- 1 That above titled appeal is pending before this honorable court which is fixed for today.
- 2 That inadvertently the applicant has not deposited diet money due to illness.

It is therefore humbly requested that the time may kindly be extended for depositing the ~~time~~ diet money to applicant in above titled case.

Applicant/Appellant

Dated. 03-9-20 . Through

  
Darish Khan  
Alee



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

**Service Appeal No.1401/2019.**

Ex- Constable Mushtaq Ahmad No.324 of CPC, Peshawar.....**Appellant.**

**VERSUS.**

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Commandant CPC university of Peshawar.....**Respondents.**

**Reply by Respondents No. 1, 2, &3.**

**Respectfully Sheweth:-**

**PRELIMINARY OBJECTIONS.**

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action and locus standi.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That the appeal is not maintainable being devoid of any merit.

**FACTS:-**

- (1) Correct to the extent that the appellant was appointed as constable in the year 2009 in the respondent department, while rest of para is denied on the ground that the appellant has not a clean service record and contains 03 bad entries on the charges of absence on different occasions in his service. (copy of list as annexure A)
- (2) Incorrect. The appellant while posted at Campus Police Lines Peshawar absented from official and lawful duty w. e. from 15.02.2018 to 04.06.2018 (total 03 months and 19 Days) without prior permission or leave from the competent authority. In this regard he was issued charge sheet with statement of allegations. RI Campus Peshawar was appointed as enquiry officer. During the course of enquiry he was called time and again, but he did not turn up. The enquiry officer finalized the enquiry and submitted findings report wherein allegations were proved against the appellant. After receipt of the finding, Final Show Cause Notice was issued to him and letter regarding publishing advertisement was also issued. After observing all codal formalities, he was awarded major punishment of dismissal from service. (copy of charge, statement of allegations, enquiry report, letter and FSCN are annexure as B,,C,D,E,F)


- (3) Para is totally incorrect. In fact the appellant deliberately absented from his lawful duty without leave or permission. The plea of his illness did not proved from any medical prescriptions or documents etc.
- (4) Incorrect. The appellant was issued charge sheet with statements of allegations for willful absence from duty but the appellant failed to defend himself.
- (5) Incorrect. After completion of all codal formalities he was awarded the major punishment of dismissal from service. He filed departmental appeal which was also filed /rejected by the appellate authority after due consideration.

**GROUND:-**

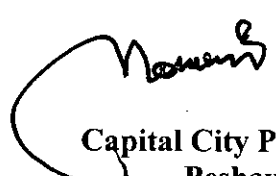
- a) Incorrect. The orders are legal lawful and passed in accordance with facts and law/rules.
- b) Incorrect. The appellant is a habitual absentee and he earned in his service 03 bad entries in his service.
- c) Incorrect. Proper charge sheet with statement of allegations was issued to him, but he failed to appear before the enquiry officer.
- d) Incorrect. Being a member of a disciplined force the appellant well aware about the proceedings. However he deliberately absented from his lawful duty without leave /permission.
- e) Incorrect. The appellant availed the opportunities of defense, but he could not prove himself innocent with plausible grounds.
- f) Incorrect. The appellant willfully absented from duty and enquiry proceedings despite repeated summon/notice and advertisement.
- g) Incorrect. Proper departmental enquiry was conducted against appellant. He was called time and again to appear before the enquiry officer and defend himself but he failed to appear before the enquiry officer. After completion of all codal formalities he was awarded major punishment.
- h) Incorrect. The appellant was provided full opportunity of defense, but he failed to defend himself.
- i) Incorrect. The orders passed by the competent authority are in accordance with law/rules.
- j) Incorrect. The appellant willfully absented from duty without any leave/permission from the competent authority.

**PRAYERS:-**

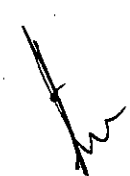
In view of the above, and keeping in view the gravity of slackness, willful negligence and misconduct of appellant, it is prayed that appeal being devoid of merit may kindly be dismissed with cost please.



**Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No. 01)**



**Capital City Police Officer,  
Peshawar.  
(Respondent No. 02)**



**Commandant,  
Campus Peace Corps,  
University of Peshawar.  
(Respondent No. 03)**

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

**Service Appeal No.1401/2019.**


Ex- Constable Mushtaq Ahmad No.324 of CPC, Peshawar.....Appellant.

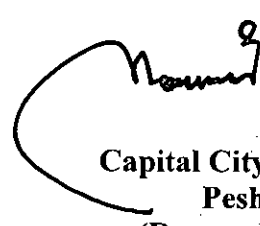
**VERSUS.**


1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Commandant CPC university of Peshawar.....**Respondents.**

**AFFIDAVIT**

We respondents No. 1 ,2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.

  
Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No. 01)

  
Capital City Police Officer,  
Peshawar.  
(Respondent No. 02)

  
Commandant,  
Campus Peace Corps,  
University of Peshawar.  
(Respondent No. 03)

Name of Official : MUSHTAQ AHMAD No.324 S/O TOR KHAN

R/O Gul Pur Kaliy Toru Mardan District Mardan

2. Date of Birth 08.01.1987
3. Date of enlistment 05.09.2009
4. Education FA
5. Courses Passed Recruit
6. Total qualifying service 08 years 08 months & 19 days.
7. Good Entries Nil
8. Punishment (previous)

Bad Entries (L.W.O Pay, E/Drill & Warning)

1. 03 days leave without pay vide OB No.05 dt: 05.01.2016
2. 02 days leave without pay vide OB No. 32 dt: 10.02.2016
3. 03 days leave without pay vide OB No. 78 dt: 10.04.2017

Minor Punishment

Nil

Major Punishment

Nil

09. Punishment (Current)

- Awarded major punishment of dismissed from service on the charge of absence w.e.from 15.02.2018 to 04.06.2018 vide OB No.205 dated 04.06.2018 by Commandant, CPC, University Campus, Peshawar.

10. Leave Account

| <u>Total leave at his credit</u> | <u>Availed leaves</u> | <u>Balance</u> |
|----------------------------------|-----------------------|----------------|
| 413 days                         | Nil                   | 413 Days       |

PA

CRC

22-8-19

W/CCPO

(9) (2)

## CHARGE SHEET

I, **COMMANDANT CAMPUS TARIQ SOHAIL** under 6(1) (A) Police Rules 1975 hereby charge you Constable Mushtaq No. 324 as follows:

"That, you **Constable Mushtaq No. 324** while you remained absent from lawful duty from 15/02/2018 till the date. Being a member of discipline force this is a gross misconduct and shows your lack of interest in official duty.

By reason of the above, you appear to be guilty of misconduct & have rendered yourself liable to all or any of the penalties specified on the Rules ibid.

You are therefore, required to submit your written defense within 07 days of the receipt of this charge sheet to the Enquiry Officer.

Your written defense, if any, should reach the enquiry officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case exparte action shall follow against you.

Intimate whether you desire to be heard in person.

  
(COMMANDANT)  
Campus Peace Corps,  
University Campus, Peshawar

No. 195-96 /PA, dated Peshawar, the 02/04/2018.

Copy to:-

1. The RI CPC Peshawar.
2. Concerned official.


8

# DISCIPLINARY ACTION

I, **Commandant/CPC Tariq Sohail**, University Campus Peshawar as competent authority, charge you of CPC is prima facie guilty of the following acts to be dealt with u/s 5 (3) of the NWFP, (now Khyber Pakhtunkhwa) Police Rules, 1975.

## STATEMENT OF ALLEGATION

1. **WHEREAS**, you **Constable Mushtaq No. 324** while you remained absent from lawful duty from 15/02/2018 till the date. This shows your lack of interest in official duty & made a mockery of official duty.
2. For the purpose of scrutinizing the conduct of the said defaulter with reference to the allegations, **RI /CAMPUS Fazle Rabi** is hereby appointed to conduct enquiry as per rules.
3. The enquiry officer shall in accordance with the provisions of the Rules, provide reasonable opportunity of hearing to the defaulter, record its findings & make within 07 Days of the receipt of this order, recommendations as to punishments or the appropriate action against the defaulter.

  
(Commandant)  
Campus Peace Corps,  
University Campus, Peshawar

Received on  
3-4-18  
R. R. P. P.

(S)

(S)

**ENQUIRY REPORT**

Reference:

**Charge Sheet issued vide No. 195-96/PA, dated 02/05/2018 by the Competent Authority.**

It is submitted that the undersigned was appointed as Enquiry Officer for the subject Enquiry against **Constable Mushtaq No. 324** of this unit on account of his continues absence from Lawful Duty. He was absented vide DD Report No. 39, dated 15/02/2018.

**Findings:**

1. The defaulter Constable was contacted several times but he did not responded to any of call from this office. DFC was sent to his home address but failed to contact him on 07/04/2018.
2. It is learned that the defaulter constable is not willing to appear before the undersigned and face the Departmental Enquiry which shows his lack of interest and behavior towards official duty and falls in gross misconduct being a member of a discipline force.
3. It is therefore, the defaulter constable is recommended for major punishment.

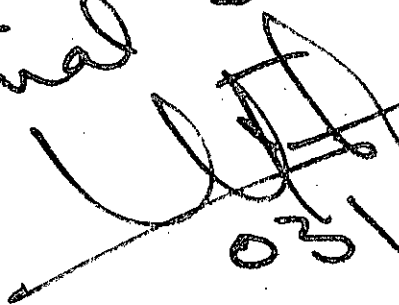
Submitted, please.

  
**FAZAL-E-RABBI MOHMAND,  
RESERVE INSPECTOR/CPC LINES**

2-5-18.

ISSUE

Final Show Cause

  
03/5/18



2

①

From The Commandant,  
Campus Peace Corps,  
University Campus, Peshawar.


To The Director,  
Information, KP, Peshawar.

No. 312 /PA-CPC, dated Peshawar, the 17/05/2018.

Subject **ADVERTISEMENT**

Memo

Enclosed please find herewith herewith (7) copies of  
"NOTICE" for publication as Govt: policy regarding absence of Constable  
Mushtaq No. 324 of this unit from lawful duty.

  
**COMMANDANT,  
Campus Peace Corps,  
University Campus, Peshawar.**

Copy to:

1. Accountant CPC, Peshawar.

No. 274-75 /PA, dated Peshawar, the 17/05/2018.

Copy to:-

1. The RI CPC Peshawar.
2. Concerned official.

*Handwritten notes and signatures at the bottom right of the page.*

(10) 97

## SHOW CAUSE NOTICE

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- 1) **WHEREAS**, you **Constable Mushtaq No.324** while you remained absent from lawful duty from 15/02/2018 till the date without any prior permission. Being a member of discipline force this is a gross misconduct and shows your lack of interest in official duty.
- 2) This act on your part reflects your activities and amounts to gross misconduct on your part which cannot be ignored as defined in Police Rules 1975.
- 3) **NOW THEREFORE**, I, **TARIQ SOHAIL MARWAT (SSP)** being the competent authority have tentatively decided to impose upon you, anyone or more penalties including the penalty of "**Dismissal From Service**" under section u/s 2 (iii) of NWFP (now Khyber Pakhtunkhwa) Police 1975.
- 4) **YOU ARE THEREFORE**, required showing cause within 07 days after the receipt of this Show Cause Notice, as to why the aforesaid penalty should not be imposed upon you, failing which it shall be presumed that you have no defense to offer and an expert action shall be taken against you. Meanwhile, also intimate that whether you desire to be heard in person or otherwise.

  
(Commandant)  
Campus Peace Corps,  
University Campus, Peshawar  
OTC

No. 143 /PA, dated Peshawar, the 05/03/2018.

Copy to concerned official.