

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 14054/2020

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

Anser Hussain Ex-Constable/Driver Belt No. 2462 District Police Peshawar..... **(Appellant)**

VERSUS

1. The Inspector General of Police Khyber Pakhtunkhwa, Peshawar.
2. The Capital City Police Officer Peshawar.
3. Superintendent Police Headquarters Peshawar..... **(Respondents)**

Present:

MISS ROEEDA KHAN,
Advocate, --- For Appellant.

MR. ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution ... 05.11.2020
Date of hearing ... 04.07.2022
Date of Decision ... 07.07.2022

JUDGEMENT

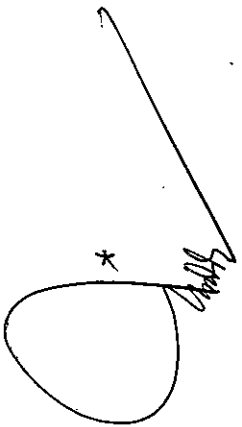
MIAN MUHAMMAD, MEMBER(E):- The instant service appeal has been instituted against the impugned order of respondent No. 3 dated 03.03.2020 whereby the appellant was awarded major penalty of dismissal from service and the appellate order of respondent No. 2 dated 17.08.2020 whereby departmental appeal of the appellant was rejected. Both the orders have been challenged and are under scrutiny before us for adjudication.

02. Brief facts of the case, as per memorandum of appeal, are that the appellant joined the respondent department as Constable/Driver in 2010. While posted at Police Lines Peshawar, he was proceeded against on the ground of absence from duty for 08 months and 22 days during two broken

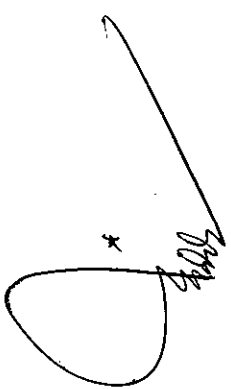
periods. Two enquires were conducted for the two periods of absence against the appellant and major penalty of dismissal from service was imposed on him by the competent authority vide order dated 03.03.2020. The appellant sought relief through departmental appeal which was also rejected by the appellate authority vide order dated 17.08.2020. His revision petition was also filed on 05.10.2020 whereafter he submitted the instant service appeal on 05.11.2020.

03. On admission of the appeal for regular hearing/arguments, respondents were issued notices to submit reply/Parawise comments. They submitted reply/Parawise comments denying and rebutting assertions contained in the appeal. We have heard arguments of the learned counsel for appellant as well as learned Additional Advocate General for the respondents and have gone through the record with their assistance.

04. Learned counsel for the appellant at the outset of his arguments, contended that there is no provision of two enquiries for the same charge under the Khyber Pakhtunkhwa Police Rules, 1975. The appellant had strained relation with his better half due to which he was passing through stress and mental agony. It also caused serious mental torture to the appellant. His disturbed domestic and personal life resulted in absence from duty because he was not in normal frame of mind to perform his duty as he was facing criminal case lodged by his in laws. The appellant, however had submitted application for leave to DSP Headquarter Peshawar, with the request to allow him leave to address and resolve his domestic problem. After the appellant settled down his domestic problem, he visited the department for duty on 15.04.2020 but he came to know about the impugned order dated 03.03.2020. His departmental appeal as well as revision petition



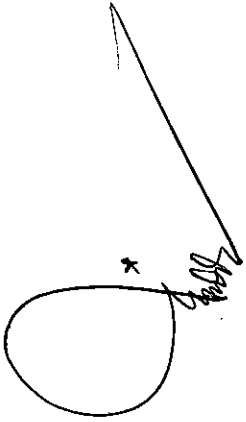
were also rejected. It was further contended that the so called two enquiries had been conducted on the back of appellant. He was not associated with the departmental proceedings. No charge sheet and statement of allegations were communicated to the appellant. No final Show Cause Notice was ever issued to the appellant. The appellant had not been afforded an opportunity of personal hearing and was condemned unheard which is against the principle of natural justice and fundamental rights of the appellant. The penalty does not commensurate to the quantum of guilt, and was therefore harsh and not tenable. In support of her argument, she relied on 2009 SCMR 615, 2008 SCMR 1369, 2009 PLC (C.S) 176, 2008 SCMR 678, 2003 PLC (C.S) 365 and 2008 SCMR 214. The impugned order dated 03.03.2020 being void and ab initio order to have been issued without fulfilling the codal formalities, is therefore not sustainable and liable to be set aside. The appellant might be reinstated in service with all back benefits, she concluded.



05. Learned Deputy District Attorney, on the other hand, controverted arguments of the learned counsel for appellant and contended that the appellant being personnel of a disciplined force absented himself from official and lawful duty without prior permission or sanction of leave from the competent authority w.e.f. 16.05.2019 to 14.10.2019 and from 07.11.2019 to 03.03.2020 (08 months and 24 days). The appellant was issued proper charge sheet with statement of allegations and two separate enquires were conducted against him by SDPO Regi and SDPO Town. The appellant was provided ample opportunity of self defence but he failed to prove his innocence and even did not appear before the enquiry officer in both the enquiries. The charge of willful absence was proved against him in

both the enquires. On conclusion and submission of the enquiry reports, final Show Cause Notice was issued to the appellant on home address through local police but he failed to submit his reply. All codal formalities were completed before imposition of the major penalty of dismissal from service on the appellant. The appellant preferred departmental appeal on 25.06.2020 after inordinate delay of 02 months and 2 days. The appeal being devoid of merit and hit by limitation, might be dismissed with cost, he requested while concluding his arguments.

06. Perusal of the record revealed that the appellant was proceeded against for absence from duty w.e.f. 16.05.2019 to 14.10.2019 and from 07.11.2019 till 03.03.2020 when he was dismissed from service. It is ostensibly evident that between 15.10.2019 to 06.11.2019 he was somehow performing duty otherwise there would have occurred no gap between the two periods and might have been one long period without any break. This aspect has remained unanswered and not even commented upon by the respondents in their reply. Moreover, the two periods have been treated separately when conducted two separate enquiries through different enquiry officer for each period despite the fact that charge against the appellant was that of absence. The first enquiry was conducted against the appellant by SDPO Regi for the period w.e.f. 16.05.2019 who submitted his report on 31.01.2020 whereas the other enquiry was conducted by SDPO Town for the period w.e.f. 07.11.2019 and who submitted his report on 17.02.2020. This fact has been admitted and is established in Para 2 of the impugned order dated 03.03.2020. Therefore, conducting two separate enquiries against the appellant on the basis of same charge, is suffering from legal infirmity as there is no provision available under the Khyber Pakhtunkhwa Police Rules,





1975. Moreover, no evidence is available to establish that charge sheet/statement of allegations as well as final Show Cause Notice were served on the appellant which renders the entire proceedings against the appellant not tenable and the penalty of dismissal so imposed as harsh one, on the face of charge of absence and prevailing circumstances the appellant was passing through.

07. In view of the lacuna and legal infirmity observed in the preceding Para, we are left with no other option except to allow the instant service appeal partially. The appellant is reinstated for the purpose of denovo enquiry to be conducted strictly in accordance with law and rules within 60 days of the receipt of this judgement. The issue of back benefits shall be subject to the outcome of denovo enquiry. 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 07th of July, 2022.




(SALAH-UD-DIN)
MEMBER (J)


(MIAN MUHAMMAD)
MEMBER (E)


ORDER

07.07.2022

Learned counsel for the appellant present: Mr. Asif Masood
Ali Shah, Deputy District Attorney for the respondents present. Arguments
heard and record perused.

02. Vide our detailed judgment of today, separately placed on
file containing of (05) pages, we are left with no other option except to
allow the instant service appeal partially. The appellant is reinstated for
the purpose of denovo enquiry to be conducted strictly in accordance
with law and rules within 60 days of the receipt of this judgement. The
issue of back benefits shall be subject to the outcome of denovo enquiry.
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 07th of July, 2022.



(SALAH-UD-DIN)
MEMBER (J)



(MIAN MUHAMMAD)
MEMBER (E)

27.06.2022

Learned counsel for the appellant present. Mr. Ahmad Jan, S.I (Legal) alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that she has not made preparation for arguments. Adjourned. To come up for arguments on 04.07.2022 before the D.B.

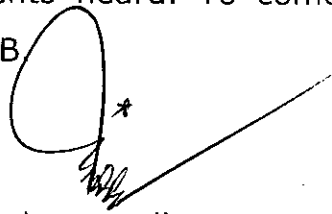

(Rozina Rehman)
Member (J)


(Salah-ud-Din)
Member (J)

04.07.2022

Learned counsel for the appellant present. Mr. Muhammad Raziq, Head Constable alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Arguments heard. To come up for order on 07.07.2022 before the D.B.


(Mian Muhammad)
Member (E)


(Salah-ud-Din)
Member (J)

10.01.2022

~~Learned counsel for the appellant present. Mr. Muhammad Rashid, DDA for respondents present.~~


~~Due to non-availability of Hon'able Member (J), the case could not be heard. Adjourned. To come up for arguments on 25.04.2022 before D.B.~~


(MIAN MUHAMMAD)
MEMBER (E)

25th April, 2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Counsel for the appellant requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments before the D.B on 27.06.2022.



(Fareeha Paul)
Member (E)


Chairman

11.10.2021

Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned Members of the DBA are observing Sogh over the demise of Dr. Abdul Qadeer Khan (Scientist) and in this regard request for adjournment was made; allowed. To come up for arguments on 23.12.2021 before D.B.



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


(Rozina Rehman)
Member (J)

23.12.2021

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for respondents present.

Learned Additional Advocate General requested for adjournment on the ground that he has not gone through the record. Adjourned. To come up for arguments before D.B on 10.01.2022.


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


Chairman

P.S

11.06.2021

Learned Addl. A.G be reminded about the omission and for submission of Reply within extended time of 10 days.

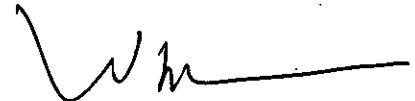

Chairman

29.12.2020

Learned counsel for the appellant present.

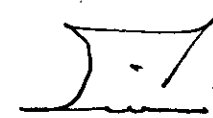
Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing subject to all just exceptions. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 22.03.2021 before S.B.


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

22.03.2021

Nemo for the appellant. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Shah Jehan, ASI (Legal) for the respondents present and sought further time for submission of written reply/comments. Adjourned. File to come up for written reply/comments on 02.06.2021 before S.B. Notice be issued to appellant/counsel for the appellant for attendance for the date fixed.


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

02.06.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Learned AAG is required to contact the respondents for submission of written reply/comments within 10 days. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 11.10.2021 before the D.B.


Chairman

Appellant Deposited
Security & Process Fee

Noted for
counsel


19/5/2021

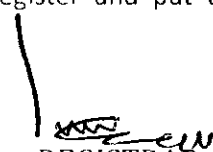

Stipulated time has
passed and reply has
not been submitted.

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. - 14054 /2020

S.No.-	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	09/11/2020	<p>The appeal of Mr. Anser Hussain resubmitted today by Roaeda Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>29/12/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Anser Hussain Ex-Constable/driver no. 2462 District Police Peshawar received today i.e. on 26.10.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

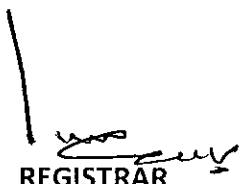
- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Copy of leave application mentioned in para-4 of the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Copies of charge sheet, statement of allegations, Show Cause Notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 4- Annexures of the appeal may be attested.

No. 3781 /S.T.

Dt. 5/11 /2020.



Roeda Khan Adv. Peshawar.



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

objection No 1, 2 & 4 has been
Removed wh^{ch} objection 3
No charge sheet, show cause
notice & enquiry report
been handed over to
the appellant by the
Resp/adv

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/2020

Anser Hussain

VERSUS


1. District Police Officer KPK & others

INDEX

S#	Description of Documents	Annexure	Pages
1.	Grounds of Petition.		1-5
2.	Affidavit.		6
3.	Addresses of parties		7
4.	Condonation of delay		8-9
5.	Copy of report	"A"	(10)
6.	Copy of application	"B"	(11)
7.	Copy of dismissal order	"C"	(12)
8.	Copies of departmental appeal and rejection order.	"D" & "E"	13 To 15
9.	Copies of revision petition and rejection order	"F & G"	16 To 19
10.	Wakalatnama		


APPELLANT

Through


Roeda Khan
Advocate, High Court
Peshawar.

Dated: 05/11/2020

(11)

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. 14053/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 14226

Dated 05/11/2020

Anser Hussain Ex-Constable / Driver Belt
No.2462 District Police Peshawar.

Appellant

VERSUS

1. The Inspector General Police Khyber Pakhtunkhwa Peshawar.
2. The Capital City Police Officer Peshawar.
3. Superintendent Police Headquarters Peshawar.

Respondents

Filed to-day

Registrar

APPEAL U/S-4 OF THE KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL ACT
1974 AGAINST THE ORDER DATED 03/03/2020
WHEREBY THE APPELLANT HAS BEEN
AWARDED MAJOR PUNISHMENT OF
DISMISSAL FROM SERVICE AND AGAINST
WHICH THE APPELLANT FILED
DEPARTMENTAL APPEAL WITHIN ONE
MONTH OF KNOWLEDGE AGAINST THE
ORDERS DATED 03/03/2020 WHICH HAS BEEN
REJECTED ON 17/08/2020 ON NO GOOD
GROUND.

Re-submitted to-day
and filed.

Registrar

Prayer:-

ON ACCEPTANCE OF THIS APPEAL
BOTH THE IMPUGNED ORDERS DATED

2

03/03/2020 & 17/08/2020 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED IN SERVICE ALONG WITH ALL BACK BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT THAT MAY ALSO BE ONWARD TRIBUNAL DEEMS FIT THAT MAY ALSO BE GRANTED IN FAVOUR APPELLANT.

Respectfully Sheweth,

1. That the Appellant has been appointed as Constable/Driver in Police department on 2010.
2. That the appellant performed his duty regularly and with full devotion and no complaint whatsoever has been made against the appellant.
3. That while posted at District Police Office Peshawar, domestic problem has been arises to the appellant in the shape of matrimonial problems and married life of the appellant was disturbed. The family differences were reach up to the separation of spouse due to which the appellant suffered a serious mental torture at the hand of in his in-laws and resultantly the petitioner the appellant felt into a mental disturbances in this regard the wife of the appellant with the investigation of her father lodger a criminal report against the appellant (Copy of report attached as annexure "A").

4. That due to the reason above the appellant was unable to perform his duty with respondent department and submitted an application for leave to the department concerned. **(Copy of application is attached as annexure "B")**.
5. That after settlement of matrimonial disputed the appellant visited to respondent department on 15.04.2020 to mark his attendance for duty where the appellant came to know that the appellant has been dismissed on 03.03.2020 by the respondent department. **(Copy of dismissal order attached as annexure "C")**.
6. That the appellant submitted departmental appeal within one month from the date of knowledge to respondent department which has been rejected on 17.08.2020. **(Copy of departmental appeal and rejection order are attached as annexure "D & E")**.
7. That the appellant submitted revision petition to respondent department within one month of the communication of rejection order dated 17.08.2020 which has been rejected on 05.10.2020. **(Copies of revision petition and rejection order are attached as annexure "F & G")**.
8. That feeling aggrieved the Appellant prefers the instant service appeal before this Hon'ble Tribunal on the following grounds inter alia:-

GROUNDS:-

- A. That the impugned order 03/03/2020 is void and abinitio order because it has been passed without fulfilling codal formalities.

- B. That no charge sheet has been served or communicated to the appellant in this respect the appellant relied upon a judgment reported on 2009 SCMR page:615

- C. That no regular inquiry has been conducted by the Respondent department and no chance of personal hearing has been provided to the appellant in this respect the appellant relied upon the judgment dated 2008 SCMR Page:1369.

- D. That no final show cause notice has been issued and communicated to the appellant by Respondent department before imposing the major penalty in this respect the appellant relied upon a judgment reported on 2009 PLC (CS) 176.

- E. It is a well settled maxim no one can be condemned unheard because it is against the natural justice of law in this respect the appellant relied upon a judgment reported on 2008 SCMR page:678.

- F. That no opportunity of personal hearing has been provided to the appellant. In this respect the appellant relied upon a judgment reported on 2003 PLC CS page:365.

(5)

G. That the punishment has been given by the Respondent department is harsh. In this respect the appellant relied upon a judgment reported on 2008 SCMR page:214


H. That any other ground not raised here may graciously be allowed to be raised at the time full of arguments on the instant service appeal.

It is therefore, most humbly prayed that on acceptance of this appeal both the impugned order dated 03/03/2020 & 17/08/2020 may kindly be set aside and the appellant may kindly be reinstated in service with all back benefits.

Any other relief not specifically asked for may also graciously be extended in favour of the Appellant in the circumstances of the case.


APPELLANT

Through


Roeeda Khan
Advocate, High Court
Peshawar.

Dated: 05/11/2020

NOTE:-

As per information furnished by my client, no such like appeal for the same petitioner, upon the same subject matter has earlier been filed, prior to the instant one, before this Hon'ble Tribunal.


Advocate.

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BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/2020

Anser Hussain

VERSUS

District Police Officer KPK & others

AFFIDAVIT

I, **Anser Hussain Ex-Constable / Driver Belt No.2462 District Police Peshawar**, do hereby solemnly affirm and declare that all the contents of the **instant appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Hon'ble Court.

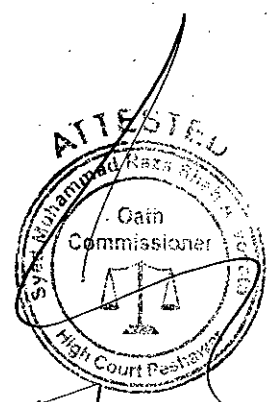


DEPONENT

Identified by:



Roeeza Khan
Advocate High Court
Peshawar.



5/11/20

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BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/2020

Anser Hussain

VERSUS

District Police Officer KPK & others

ADDRESSES OF PARTIES

PETITIONER.


Anser Hussain Ex-Constable / Driver Belt
No.2462 District Police Peshawar.

ADDRESSES OF RESPONDENTS

1. The Inspector General Police Khyber
Pakhtunkhwa Peshawar.
2. The Capital City Police Officer Peshawar.
3. Superintendent Police Headquarters Peshawar.


APPELLANT

Through


Roeda Khan
Advocate, High Court
Peshawar.

Dated: 05/11/2020

8

BEFORE THE HON'BLE SERVICE TRIBUNAL
PESHAWAR

In Re S.A No. _____/2020

Anser Hussain

VERSUS

District Police Officer KPK & others

APPLICATION FOR CONDONATION OF DELAY (if any)

Respectfully Sheweth,

Petitioner submits as under:

1. That the above mentioned appeal is filing before this Hon'ble Tribunal in which no date is fixed for hearing so far.
2. That after settlement of matrimonial disputed the appellant visited to respondent department on 15.04.2020 to mark his attendance for duty where the appellant came to know that the appellant has been dismissed on 03.03.2020 by the respondent department and the dismissal order has been handed over to the appellant and there on many judgment of the superior court that limitation has been counted from the date of receiving of dismissal order in this respect in this respect the appellant relied upon a judgment reported on 2016 PLC (CS) page:682.
3. That the appellant submitted departmental appeal within one month from the date of

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knowledge to respondent department which has been rejected on 17.08.2020. There are many judgment of the superior court that limitation has been counted from the date of communication in this respect the appellant relied upon a judgment reported on 2013 SCMR page:1053.

4. That the appellant submitted revision petition to respondent department within one month of the communication of rejection order dated 17.08.2020 which has been rejected on 05.10.2020.

Grounds:

- A. That the impugned orders are void order and no limitation run against the void orders. It has been passed without the fulfilling the codal formalities.
- B. That the impugned is also void because no opportunity a personal hearing has been provided to the appellant.
- C. That there are number of precedents of the Supreme Court of Pakistan which provides that the cases shall be decided on merits rather than technicalities in this respect the appellant relied upon a judgment reported on 2014 PLC (CS) page:1014, 2003 PLC (CS) Page 769, 2015 YLR Lahore Page 22741

It is, therefore, requested that the limitation period (if any) may kindly be condone in the interest of justice.

Date : 05.11.2020


Appellant

Through

Roeeeda Khan

Advocate, High Court
Peshawar.

6	لجاری	<p>کتابت و تصنیف شد تا این فصل تا تاریخ ۱۹۰۵ بمقام وزارت امور خارجه در وقت ۱۹۰۵ بمقام وزارت امور خارجه در وقت ۱۹۰۶</p>
	سماه کریم	<p>۰۳۱۶- ۹۱۱۹۴۹۱</p>
		<p>۰۳۱۶- ۵۹۵۵۵۳۳</p>
		<p>کتابت و تصنیف شد تا این فصل تا تاریخ ۱۹۰۵ بمقام وزارت امور خارجه در وقت ۱۹۰۵ بمقام وزارت امور خارجه در وقت ۱۹۰۶</p>

Alger
 BY

احقرت جناب DSP میڈیکل کوارٹریٹ اور

درخواست بہمدار چھٹی دینے بابت
پیش بیوز ٹھہریا فیملی مسائل

جناب عالی۔ سائل حسب ذیل عرض رسانا ہے

1) یہ کہ سائل 2010 میں پولیس دیپارٹمنٹ میں بھرتی ہوا ہے

2) یہ کہ بھرتی ہونے کے بعد سائل اپنی ڈیوٹی باقاعدگی اور دیانندگی کے ساتھ انجام دیتے

3) یہ کہ تقریباً 5 دن سے سائل کو ٹھہریوں/فیملی مسائل کا سامنا ہے یہاں تک کہ نوبت علیحدگی تک

آپ کی

4) یہ کہ بوجہ بالا سائل ذہنی اور جسمانی مشکلات کا سامنا ہے اور بوجہ بالا سائل کو فیملی مسائل حل ہونے تک چھٹی عنایت فرمانے کا حکم صادر فرمائے جائے

لہذا استدعا ہے کہ سائل کا درخواست بابت

چھٹی عطا کرنے کا حکم صادر فرمائے جائے

سائل عنقریب

All okay
187
P

181 Ann (6) 20 (C)

ORDER

This is a formal departmental proceeding against Driver Constable Ansar Hussain No. 2462 on the allegations/charges that he while posted at Police Lines, Peshawar absented himself on the following period without taking permission or leave.

S #	From	To	Total
01	16.05.2019	14.10.2019	04-months & 28-days
02	07.11.2019	Till date	03-months & 24-days
Total			08-months & 22-days

In this regard, he was issued charge sheet & summary of allegations. Two separate enquiries were initiated & conducted by SDPO Regi & SDPO Town in different period.

SDPO Regi conducted the enquiry proceedings in the 1st absentee & submitted his report/finding that the defaulter official is habitual absentee. The E.O further recommended major punishment for defaulter official.

SDPO Town conducted the enquiry proceedings in 2nd absence period & submitted his report/finding that did not attend the enquiry proceedings. The E.O further recommended major punishment for defaulter official after issuing of final show cause notice.

Upon the finding of E.Os, he was issued final show cause notice & delivered him on home address through local Police PS Kotwali but he failed to receive the said notice or appear before this office as yet.

Note: The report of MTO Police Lines has also obtained. He reported that the alleged official is still absent from his duty w.e.f 07.11.2019 till date.

From perusal of the findings of E.Os and other material available on record it has been proved beyond any shadow of doubt that the alleged official is guilty of deliberate absence from lawful duty. Therefore, he is hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect. Hence, the period he remained absent from 16.05.2019 to 14.10.2019 & 07.11.2019 till date is treated without pay.

[Signature]
SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

OB. NO. 714 / Dated 31.3 /2020

No. 571-26 /PA/SP/dated Peshawar the 31.3 /2020

Copy of above is forwarded for information & n/action to:

- ✓ The Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office, OASI,
- ✓ CRC & FMC along-with complete departmental file.

AM 8/3/20
By
[Signature]

(13) AM (D)

To,

**The Chief Capital Police Officer
Peshawar City Peshawar.**

Subject:

**DEPARTMENTAL APPEAL AGAINST FINAL
ORDERS OF SUPERINTENDANT OF POLICE
PESHAWAR VIDE OB NO: 714 DATED
03/03/2020.**

Dear Sir!

The petitioner being aggrieved from the order in question prefer to submit present departmental appeal for his redressal.

1. That since the Petitioner was appointed, he discharge his duty with full devotion and professional spirit. The petitioner always keep the best interest of department and render his services with best satisfaction of his high-ups.
2. That during the space of time the matrimonial/ married life was disturbed. The family differences were reach up to the separation of spouse and till date the wife and children of the petitioner are residing in their maternal house with their maternal uncle.
3. That the petitioner suffered a serious mental torture at the hands of his in-laws and resultantly the petitioner felt into a mental disease and became schizophrenic. The petitioner subjected to a mental treatment from LRH Hospital. (Copies of Medical Treatment are attached herewith).
4. That even my wife with the instigation of her father lodged a criminal report wherein the petitioner was dragged and prosecuted.

ALL SK
BY
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141

5. That because of reasons above, the petitioner was unable to pay his attention to his services during those days, while in fact in past, he never remain absent from his services earlier, this was his first time that because of his family issues, he was mentally unable to perform his duty and resultantly he was dismissed.
6. That the absence of Petitioner was not willful rather because of the reason as mentioned above.
7. That as the petitioner was under treatment and remains in the doctor's observation; therefore, he was not available in home during those days. Thus he never been served any show-cause notice and neither he associated with inquiry rather, this whole proceeding was conducted ex-parte and the petitioner condemned unheard.

It is, therefore, respectfully submitted that by acceptance of this departmental appeal, the dismissal order dated 03/03/2020 may kindly be set aside and the petitioner may kindly be reinstated into service with all back benefits.

Petitioner

Anser Hussain
(Constable/ Driver)
Belt No: 2462





Amr (E)
15/1

OFFICE OF THE
CAPITAL CITY POLICE OFFICER
PESHAWAR

Phone No. 091-9210989

Fax No. 091-9212597

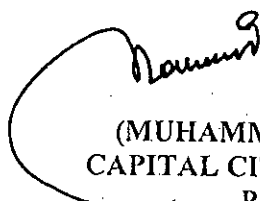
ORDER.

This order will dispose of the departmental appeal preferred by Ex-Driver Constable Ansar Hussain No.2462 who was awarded the major punishment of "Dismissal from service" by SP/HQr: Peshawar vide OB No.714, dated 03-03-2020.

2- The allegations leveled against him were that he while posted at Police Lines Peshawar absented himself from his lawful duty w.e.f 16-05-2019 to 14-10-2019 (04 months and 28 days) and 07-11-2019 till the date of dismissal i.e w.e.f 03-03-2020 (03 months and 24 days) for a total period of 08 months and 22 days.

3- He was served Charge Sheet and Summary of Allegations by SP/HQr: Peshawar and two separate enquiries were conducted against him through DSP Regi and DSP Town to scrutinize the conduct of delinquent official. The enquiry officers after conducting proper enquiries submitted their findings and recommended him for major punishment. The competent authority i.e SP/HQr: Peshawar after perusal of enquiry report issued him Final Show Cause Notice to which he does not reply. Hence was awarded the above major punishment.


4- He was heard in person in O.R. The relevant record along with his explanation perused. During personal hearing the appellant failed to produce any plausible explanation in his defence. Therefore, keeping in view his previous record, his appeal for set asiding the punishment awarded to him by SP/HQr: Peshawar vide OB No.714, dated 03-03-2017, is hereby rejected /dismissed being also time barred for 02 months and 22 days.


(MUHAMMAD ALI KHAN)PSP
CAPITAL CITY POLICE OFFICER
PESHAWAR.

No. 949-54 /PA dated Peshawar the 17-08- 2020

Copies for information and n/a to the:-

1. SP/HQr: Peshawar.
2. Pay Officer/ CRC, OASI
3. FMC along with FM
4. Official concerned.

11/8/21
BY 

Am F

(18)

To,

**The Deputy Inspector General of Police
Peshawar City Peshawar.**

Subject:


**MERCY APPEAL AGAINST ORDER OF CCPO OF
POLICE PESHAWAR VIDE DATED 17/08/2020
WHEREBY HE DISMISSED THE DEPARTMENTAL
APPEAL OF THE APPELLANT.**

Dear Sir!

The petitioner being aggrieved from the order in question prefers to submit present departmental appeal for his redressal.

1. That the appellant was appointed as Constable in Police Department & served as a Driver.
2. That later on, because the Appellant was dismissed from service due to absence of duty vide order dated OB No: 714 dated 03/03/2020.
3. That the appellant was aggrieved from the dismissal order filed departmental appeal which was dismissed vide order dated 17/08/2020.
4. That now the appellant have no other option to redress his grievances, therefore he is constrain to file present Mercy Appeal before your Honor.

Grounds:

Am F
Ry


1. That since the Petitioner was appointed, he discharge his duty with full devotion and professional spirit. The petitioner always keep the best interest of department

AM F

(18)

To,

**The Deputy Inspector General of Police
Peshawar City Peshawar.**

Subject:

**MERCY APPEAL AGAINST ORDER OF CCPO OF
POLICE PESHAWAR VIDE DATED 17/08/2020
WHEREBY HE DISMISSED THE DEPARTMENTAL
APPEAL OF THE APPELLANT.**


Dear Sir!

The petitioner being aggrieved from the order in question prefers to submit present departmental appeal for his redressal.

1. That the appellant was appointed as Constable in Police Department & served as a Driver.
2. That later on, because the Appellant was dismissed from service due to absence of duty vide order dated OB No: 714 dated 03/03/2020.
3. That the appellant was aggrieved from the dismissal order filed departmental appeal which was dismissed vide order dated 17/08/2020.
4. That now the appellant have no other option to redress his grievances, therefore he is constrain to file present Mercy Appeal before your Honor.

Grounds:

1. That since the Petitioner was appointed, he discharge his duty with full devotion and professional spirit. The petitioner always keep the best interest of department

AMR
Ry


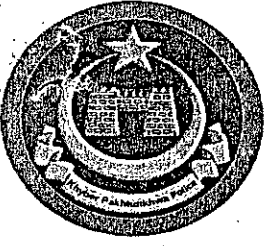
18

7. That as the petitioner was under treatment and remains in the doctor's observation; therefore, he was not available in home during those days. Thus he never been served any show-cause notice and neither he associated with inquiry rather, this whole proceeding was conducted ex-parte and the petitioner condemned unheard.

It is, therefore, respectfully submitted that by acceptance of this Mercy Appeal, the Appellant may kindly be re-instated into service with all back benefits.

Petitioner

Anser Hussain
(Constable/ Driver)
Belt No: 2462



AM/GT 19

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

No. S/ 3854 /20, dated Peshawar the 05/10/2020.

To: The Capital City Police Officer,
Peshawar.

Subject: REVISION PETITION.

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-Driver-FC Ansar Hussain No. 2462 of Peshawar district Police against the punishment of dismissal from service awarded by SP/HQrs: Peshawar vide OB No. 714, dated 03.03.2020, being time barred.

The applicant may please be informed accordingly.


(SYED ANIS-UL-HASSAN)

Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.



AM/GT
R1



50 روپے

65118



ایڈویکٹ:

بار کونسل ایسوسی ایشن نمبر:

رابطہ نمبر: 03330262955

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

 عذر بنام وکیل	دعویٰ:
	علت نمبر:
	مورخہ:
	جرم:
	تھانہ:

باعث تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام کے لیے کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی ہر کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو چیز چاہے ہر جائے التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم:
PESHAWAR BAR ASSOCIATION
KHYBER PAKHTUNKHWA

العبد _____ العبد _____
مقام _____ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Accepted By

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.14054/2020.

Ex- Driver Constable Ansar Hussian No.2462 of CCP, Peshawar.....**Appellant.**

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **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 Driver constable in the year 2010 in the respondent department.
- (2) Incorrect. The appellant is a habitual absentee and not interested in his official duty. He has not a clean service record and contains 09 bad entries and 14 Minor and 01 major punishment on the charges of absence on different occasions in his service. (copy of list as annexure A)
- (3) Incorrect. The appellant while posted at Police Lines Peshawar absented himself from official and lawful duty w. e. from 16.05.2019 to 14.10.2019 and from 07.11.2019 till the date of dismissal from service i.e 03.03.2020 (total 08months and 24 Days) without prior permission or leave from the competent authority. In this regard he was issued charge sheet with statement of allegations. Two separate enquiries were initiated and conducted by SDPO Regi and SDPO Town. The enquiry officers finalized the enquiries and submitted findings report, wherein the allegations of wilful absence were proved against him. After receipt of the findings reports, Final Show Cause Notice was issued to him and sent him on home address through local police station, but the appellant failed to submit his reply. After observing all codal formalities, he was awarded major punishment of dismissal from service.(copy of charge sheet, statement of allegations, enquiry report, FSCN are annexure as B,,C,D,E)



- (4) Incorrect. Infact, the appellant deliberately absented from his lawful duty for long period. The appellant was habitual absentee and not interested in his lawful duty, the appellant have a blemish service record.
- (5) Incorrect. As per record appellant willfully absented himself from lawful duty without any prior permission or leave. The appellant is a habitual absentee and not interested in official duty and enjoying his long absence period without any leave permission.
- (6) Incorrect. The appellant preferred time barred departmental appeal on 25.06.2020 after inordinate delay of about 02 months and 22 days, meaning thereby that he was not interested and his departmental appeal was filed/ rejected on the grounds of facts and limitation.
- (7) Incorrect. The appellant preferred revision petition before the appellate authority, which after due consideration was also filed/rejected being time barred.
- (8) That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

GROUND:-

- A. Incorrect. The competent authority before imposing the major punishment had completed all codal formalities and an ample opportunity of self defense was provided, but appellant being not interested in his official duty remained continuously absented from lawful duty for long period without any leave.
- B. Incorrect. Proper charge sheet with statement of allegations was issued to appellant.
- C. Incorrect. Two separate enquiries were initiated and conducted by SDPO Regi and SDPO Town. The charges of deliberately absence were proved against him. Therefore, the punishment order was passed by competent authority in pursuance of his long absence period which is not tolerable in the disciplined force.
- D. Incorrect. After completion of the enquiry proceedings, the appellant was issued final show cause notice but he failed to submit reply.
- E. Incorrect. The appellant was provided the opportunities of defense, but he willfully avoided. The appellant being not interested in his official duty remained continuously absented from lawful duty for long period without any leave.
- F. Incorrect. The appellant availed the opportunities of defense, but he could not prove himself innocent with plausible grounds.
- G. Incorrect. Being a member of a disciplined force the appellant well was aware about the proceedings and its consequences. However he deliberately absented from his lawful duty without leave /permission. The punishment order passed by the competent authority in accordance with law/rules.
- H. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

Prayers:-

Keeping in view the above stated facts & reasons it is, most humbly prayed that the appeal of the appellant being devoid of merits and limitation, may kindly be dismissed with costs please.


**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**


**Capital City Police Officer,
Peshawar.**


**Superintendent of Police,
HQrs: Peshawar.**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.14054/2020.

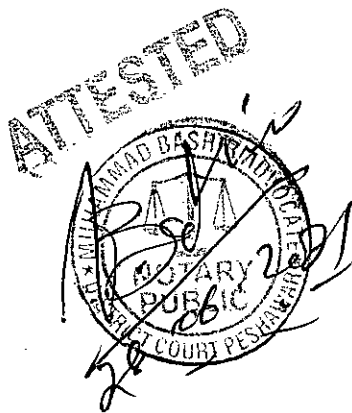
Ex- Driver Constable Ansar Hussian No.2462 of CCP, Peshawar.....Appellant.


VERSUS.

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

AFFIDAVIT.

We respondents 1, 2 and 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.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs, Peshawar.

1. Name of Official **ANSAR HUSSAIN NO.2462 SO NISAR AHMAD**
- R/O Chowk Yadgar Ganj PS Kotwali Distt: Peshawar
2. Date of Birth 01.01.1980
3. Date of enlistment 12.03.2010
4. Education 10th
5. Courses Passed Recruit
6. Total qualifying service 09 years, 08 Month & 26 days.
7. Good Entries Nil

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

1. 05 days leave without pay vide OB No.822 dt: 07.05.2012
2. 04 days leave without pay vide OB No.840 dt: 22.05.2012
3. 01 day leave without pay vide OB No.856 dt: 29.05.2012
4. 01 day leave without pay vide OB No.897 dt: 20.06.2012
5. 01 day leave without pay vide OB No.916 dt: 26.06.2012
6. 02 days leave without pay vide OB No.950 dt: 11.07.2012
7. 01 day leave without pay vide OB No.999 dt: 07.08.2012
8. 06 days leave without pay & Fine Rs.1500/- vide OB No.157 dt: 21.06.2016
9. 01 day leave without pay vide OB No.1386 dt: 25.04.2014

Minor Punishment

1. Cesured and 02 days leave without pay vide OB No.340 dt: 22.12.2015
2. Cesured and last warning vide OB No.49 dt: 17.02.2016
3. Cesured and last warning vide OB No.76 dt: 17.03.2016
4. 02 days Quarter Guard vide OB No.77 dt: 21.03.2016
5. Cesured and last warning vide OB No.88 dt: 04.04.2016
6. Cesured and 10 days leave without pay vide OB No.1514 dt: 22.04.2016
7. Cesured and 02 days leave without pay vide OB No.182 dt: 4.08.2016
8. Cesured and 01 day leave without pay vide OB No.266 dt: 11.11.2016
9. Cesured and 01 day leave without pay vide OB No.193 dt: 15.08.2016
10. Cesured and 01 day leave without pay vide OB No.228 dt: 22.09.2016
11. 02 days E/drill vide OB No.2287 dt: 05.06.2017
12. 01 day E/drill vide OB No.2629 dt: 28.08.2018
13. 01 day E/drill vide OB No.1619 dt: 10.05.2019
14. 01 day E/drill vide OB No.2017 dt: 25.06.2019

08. Major Punishment

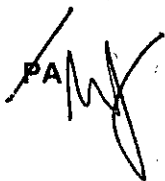
1. Awarded Major punishment dismissed from service vide order No.661-66/PA, dated 14.11.2016 by SSP/Traffic Peshawar & he has been re-instated in his service on compassionate grounds and converted the major punishment to minor punishment stoppage of 02 years annual increments without cumulative effect and no benefit granted for the period in which he remained out of service vide OB No.4316 dated 22.12.2016 by CCP Peshawar.

09. Punishment (Current)

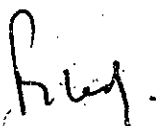
- Awarded the major punishment dismissed from service on the charged of absence total (08 months & 22 days) and absence period is treated as leave without pay vide OB No.714, dated 03.03.2020 by SP/HQr Peshawar.

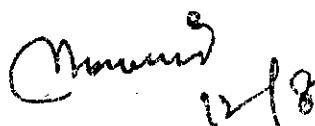
10. Leave Account


<u>Total leave at his credit</u>	<u>Availed leaves</u>	<u>Balance</u>
464 days	Nil	464 Days

PA 

W/CCPO



 12/8

 CRC 29/07

5 B

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Ansar Hussain No.2462 of Capital City Police Peshawar with the following irregularities.

"That you Constable Ansar Hussain No.2462 while posted at MT Police Lines, Peshawar were absent from duty w.e.f 07.11.2019 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee; as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

(u) C

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Ansar Hussain No.2462 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

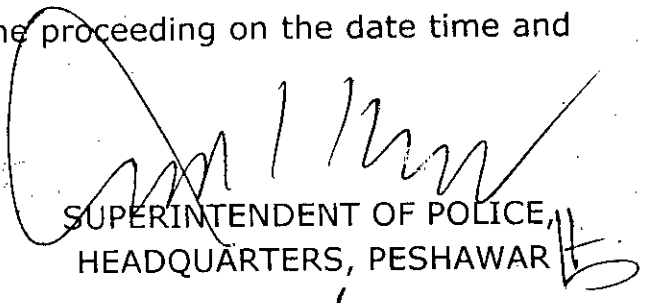
OFFICE OF SDPO
Town Circle Peshawar
Duty No: 11/E
Date: 06-02-20

"That Constable Ansar Hussain No.2462 while posted at MT Police Lines, Peshawar was absent from duty w.e.f 07/11/2019 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPO Twon is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 20 /E/PA, dated Peshawar the 30/01 /2020

1. SDPO Twon is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.
2. Official concerned

PA
Per [Signature]
BY SUPERINTENDENT OF POLICE
1/27/2020

Town Sub-Division

Capi e.

To: - Superintendent of Police,
HQrs, Peshawar.

From: - Deputy: Superintendent of Police,
Town Peshawar.

No. 11-E /PA

Dated. 17 February: 2020

Subject: - Departmental Inquiry against FC Ansar Hussain#2462

Memo:

Reference to departmental enquiry against FC Ansar Hussain#2462, who remained absent from his duty w.e.f 07/11/2019 to till date from MT, Police Lines Peshawar. He was issued charge sheet and summary of allegations. The undersigned was nominated enquiry officer to scrutinize the conducted of the said Constable.

FC Ansar Hussain#2462 was repeatedly summoned to the office. But MASI PS Gulberg reported that the said Constable is still absent from his duty. However, the cell number 0301-8977049 of the said Constable was repeatedly dialed from this office, but he did not attend the call.

From perusal of the record and enquiry conducted, it revealed that as per statement of allegations the said constable remained absent from his duty w.e.f 08/10/2019 to till from MT, Police Lines Peshawar. The said constable did not appear before the undersigned and thus his statement could not be recorded.

In the light of the above circumstances, I, the undersigned as enquiry officer, recommend that Constable Ansar No.2462 may please be awarded with major punishment after issuance of final show cause notice to him.

Encl
(07)

Deputy: Superintendent of Police,
Town Sub-Division Peshawar.

Issue final
show cause
notice,
SP/10

SP/10 15/2/Rizwan/New punishment folder/Charge sheet new
11/21

E

②

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Ansar Hussain No.2462 the final show cause notice.

The Enquiry Officer, SDPO Town, after completion of departmental proceedings, has recommended you for major punishment for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Ansar Hussain No.2462 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.


SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

No. 20/E/PA, SP/HQrs: dated Peshawar the 20/2/2020.

Copy to official concerned

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.14054/2020.

Ex- Driver Constable Ansar Hussian No.2462 of CCP, Peshawar.....**Appellant.**

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others. **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 Driver constable in the year 2010 in the respondent department.
- (2) Incorrect. The appellant is a habitual absentee and not interested in his official duty. He has not a clean service record and contains 09 bad entries and 14 Minor and 01 major punishment on the charges of absence on different occasions in his service. (copy of list as annexure A)
- (3) Incorrect. The appellant while posted at Police Lines Peshawar absented himself from official and lawful duty w. e. from 16.05.2019 to 14.10.2019 and from 07.11.2019 till the date of dismissal from service i.e 03.03.2020 (total 08months and 24 Days) without prior permission or leave from the competent authority. In this regard he was issued charge sheet with statement of allegations. Two separate enquiries were initiated and conducted by SDPO Regi and SDPO Town. The enquiry officers finalized the enquiries and submitted findings report, wherein the allegations of wilful absence were proved against him. After receipt of the findings reports, Final Show Cause Notice was issued to him and sent him on home address through local police station, but the appellant failed to submit his reply. After observing all codal formalities, he was awarded major punishment of dismissal from service.(copy of charge sheet, statement of allegations, enquiry report, FSCN are annexure as B..C.D.E)

- (4) Incorrect. Infact, the appellant deliberately absented from his lawful duty for long period. The appellant was habitual absentee and not interested in his lawful duty, the appellant have a blemish service record.
- (5) Incorrect. As per record appellant willfully absented himself from lawful duty without any prior permission or leave. The appellant is a habitual absentee and not interested in official duty and enjoying his long absence period without any leave permission.
- (6) Incorrect. The appellant preferred time barred departmental appeal on 25.06.2020 after inordinate delay of about 02 months and 22 days, meaning thereby that he was not interested and his departmental appeal was filed/ rejected on the grounds of facts and limitation.
- (7) Incorrect. The appellant preferred revision petition before the appellate authority, which after due consideration was also filed/rejected being time barred.
- (8) That appeal of the appellant being devoid of merits and limitation may be dismissed on the following grounds.

GROUND:-


- A. Incorrect. The competent authority before imposing the major punishment had completed all codal formalities and an ample opportunity of self defense was provided, but appellant being not interested in his official duty remained continuously absented from lawful duty for long period without any leave.
- B. Incorrect. Proper charge sheet with statement of allegations was issued to appellant.
- C. Incorrect. Two separate enquiries were initiated and conducted by SDPO Regi and SDPO Town. The charges of deliberately absence were proved against him. Therefore, the punishment order was passed by competent authority in pursuance of his long absence period which is not tolerable in the disciplined force.
- D. Incorrect. After completion of the enquiry proceedings, the appellant was issued final show cause notice but he failed to submit reply.
- E. Incorrect. The appellant was provided the opportunities of defense, but he willfully avoided. The appellant being not interested in his official duty remained continuously absented from lawful duty for long period without any leave.
- F. Incorrect. The appellant availed the opportunities of defense, but he could not prove himself innocent with plausible grounds.
- G. Incorrect. Being a member of a disciplined force the appellant well was aware about the proceedings and its consequences. However he deliberately absented from his lawful duty without leave /permission. The punishment order passed by the competent authority in accordance with law/rules.
- H. Respondents also seek permission of this Honorable Tribunal to raise additional grounds at the time of arguments.

Prayers:-

Keeping in view the above stated facts & reasons it is, most humbly prayed that the appeal of the appellant being devoid of merits and limitation, may kindly be dismissed with costs please.


**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**


**Capital City Police Officer,
Peshawar.**


**Superintendent of Police,
HQrs: Peshawar.**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.14054/2020.

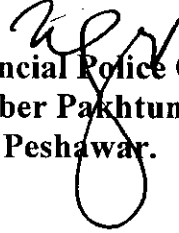
Ex- Driver Constable Ansar Hussian No.2462 of CCP, Peshawar.....**Appellant.**


VERSUS.


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

AFFIDAVIT.

We respondents 1, 2 and 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.**


**Capital City Police Officer,
Peshawar.**


**Superintendent of Police,
HQrs, Peshawar.**

1. **Name of Official** ANSAR HUSSAIN NO.2462 SO NISAR AHMAD
- R/O Chowk Yadgar Ganj PS Kotwali Distt: Peshawar
2. **Date of Birth** 01.01.1980
3. **Date of enlistment** 12.03.2010
4. **Education** 10th
5. **Courses Passed** Recruit
6. **Total qualifying service** 09 years, 08 Month & 26 days.
7. **Good Entries** Nil

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

1. 05 days leave without pay vide OB No.822 dt: 07.05.2012
2. 04 days leave without pay vide OB No.840 dt: 22.05.2012
3. 01 day leave without pay vide OB No.856 dt: 29.05.2012
4. 01 day leave without pay vide OB No.897 dt: 20.06.2012
5. 01 day leave without pay vide OB No.916 dt: 26.06.2012
6. 02 days leave without pay vide OB No.950 dt: 11.07.2012
7. 01 day leave without pay vide OB No.999 dt: 07.08.2012
8. 06 days leave without pay & Fine Rs.1500/- vide OB No.157 dt: 21.06.2016
9. 01 day leave without pay vide OB No.1386 dt: 25.04.2014

Minor Punishment

1. Cesured and 02 days leave without pay vide OB No.340 dt: 22.12.2015
2. Cesured and last warning vide OB No.49 dt: 17.02.2016
3. Cesured and last warning vide OB No.76 dt: 17.03.2016
4. 02 days Quarter Guard vide OB No.77 dt: 21.03.2016
5. Cesured and last warning vide OB No.88 dt: 04.04.2016
6. Cesured and 10 days leave without pay vide OB No.1514 dt: 22.04.2016
7. Cesured and 02 days leave without pay vide OB No.182 dt: 4.08.2016
8. Cesured and 01 day leave without pay vide OB No.266 dt: 11.11.2016
9. Cesured and 01 day leave without pay vide OB No.193 dt: 15.08.2016
10. Cesured and 01 day leave without pay vide OB No.228 dt: 22.09.2016
11. 02 days E/drill vide OB No.2287 dt: 05.06.2017
12. 01 day E/drill vide OB No.2629 dt: 28.08.2018
13. 01 day E/drill vide OB No.1619 dt: 10.05.2019
14. 01 day E/drill vide OB No.2017 dt: 25.06.2019

08. Major Punishment

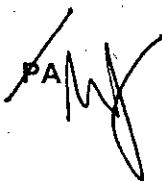
1. Awarded Major punishment dismissed from service vide order No.661-66/PA, dated 14.11.2016 by SSP/Traffic Peshawar & he has been re-instated in his service on compassionate grounds and converted the major punishment to minor punishment stoppage of 02 years annual increments without cumulative effect and no benefit granted for the period in which he remained out of service vide OB No.4316 dated 22.12.2016 by CCP Peshawar.

09. Punishment (Current)

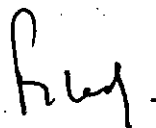
- Awarded the major punishment dismissed from service on the charged of absence total (08 months & 22 days) and absence period is treated as leave without pay vide OB No.714, dated 03.03.2020 by SP/HQr Peshawar.

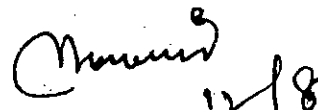
10. Leave Account


<u>Total leave at his credit</u>	<u>Availed leaves</u>	<u>Balance</u>
464 days	Nil	464 Days

PA 

W/CCPO






CRC 28/07

5 B

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Ansar Hussain No.2462 of Capital City Police Peshawar with the following irregularities.

"That you Constable Ansar Hussain No.2462 while posted at MT Police Lines, Peshawar were absent from duty w.e.f 07.11.2019 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

(W) C

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Ansar Hussain No.2462 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

OFFICE OF SDPO
Thana Circle Peshawar
Duty No: 11/E
Dated: 06-02-20

"That Constable Ansar Hussain No.2462 while posted at MT Police Lines, Peshawar was absent from duty w.e.f 17/11/2019 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPO Twon is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.
3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 20 /E/PA, dated Peshawar the 30/01 /2020

1. SDPO Twon is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

DA

For 

OFFICE OF POLICE
1/27/2020

Town Sub-Division

Capi e.

To: - Superintendent of Police,
HQrs, Peshawar.
From: - Deputy: Superintendent of Police,
Town Peshawar.
No. 11-E /PA
Dated.17 February: 2020

Subject: - Departmental Inquiry against FC Ansar Hussain#2462

Memo:

Reference to departmental enquiry against FC Ansar Hussain#2462, who remained absent from his duty w.e.f 07/11/2019 to till date from MT, Police Lines Peshawar. He was issued charge sheet and summary of allegations. The undersigned was nominated enquiry officer to scrutinize the conducted of the said Constable.

FC Ansar Hussain#2462 was repeatedly summoned to the office. But MASI PS Gulberg reported that the said Constable is still absent from his duty. However, the cell number 0301-8977049 of the said Constable was repeatedly dialed from this office, but he did not attend the call.

From perusal of the record and enquiry conducted, it revealed that as per statement of allegations the said constable remained absent from his duty w.e.f 08/10/2019 to till from MT, Police Lines Peshawar. The said constable did not appear before the undersigned and thus his statement could not be recorded.

In the light of the above circumstances, I, the undersigned as enquiry officer, recommend that Constable Ansar No.2462 may please be awarded with major punishment after issuance of final show cause notice to him.

Encl
(07)

Deputy: Superintendent of Police,
Town Sub-Division Peshawar.

Issue final
show cause
notice,
[Signature]

DY: S
[Signature]
SP/10,15/E/R/awar/New punishment folder/Charge sheet new

E

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Ansar Hussain No.2462 the final show cause notice.

The Enquiry Officer, SDPO Town, after completion of departmental proceedings, has recommended you for major punishment for the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Ansar Hussain No.2462 deserve the punishment in the light of the above said enquiry report.

And as competent authority, has decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 20/E/PA, SP/HQrs: dated Peshawar the 25/2 /2020.

Copy to official concerned

99

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Driver Constable Ansar Hussain No.2462 of Capital City Police Peshawar with the following irregularities.

"That you Driver Constable Ansar Hussain No.2462 while posted at Police Lines, Peshawar were absent from duty w.e.f 16.05.2019 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case ex-parte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

(21)

08-ELST
24/06/2019

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Driver Constable Ansar Hussain No.2462 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

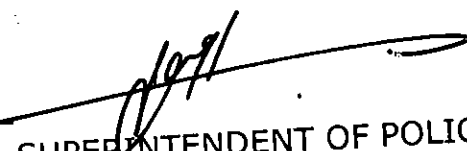
STATEMENT OF ALLEGATION

"That Driver Constable Ansar Hussain No.2462 while posted at Police Lines, Peshawar was absent from duty w.e.f 16.05.2019 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPO Regi is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Police Disciplinary Rules, 1975, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.

3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 121 /E/PA, dated Peshawar the 20/06 /2019

1. SDPO Regi is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.

2. Official concerned

Steno
call the F.C


DSP Regi
24/6/19



OFFICE OF THE
DEPUTY SUPERINTENDENT OF POLICE,
REGI SUB-DIVISION PESHAWAR.

No. 08-E /St Dt 31 / 01 /2020

To The Superintendent of Police,
Hqrs: Peshawar.

Subject DISCIPLINARY ACTION AGAINST DRIVER CONSTABLE ANSAR HUSAIN NO.2462 OF POLICE LINES PESHAWAR.

MEMO:

Please refer to your office Endorsement No.121-E/PA SP Hqrs: Peshawar dated 20.06.2019 on the subject noted above.

The instant enquiry has been initiated against Driver Constable Ansar Hussain No.2462 on the order of SP/Hqrs: Peshawar vide his letter No.121-E/PA dated 20.06.2019 on the charge that while posted at Police Lines Peshawar he absented himself from lawful duty with effect from 16.05.2019 till date vide D.D No.63 dated 16.05.2019 without leave or permission. The under-signed was appointed as Enquiry Officer to scrutinize the conduct of the accused official.

Repeatedly the accused official was called vide this office Summon No.273/St dated 25.06.2019, Summon No.278/St dated 15.07.2019 and last summon No.289/St dated 27.11.2019 for his statement, wherein Moharrar Police Lines given in written that the said official is still absented.

FINDING

The alleged Constable is deliberately not appearing for record of his statement and his chronic absence shows that the defaulter official is habitual absentee; there is no any proof with the under-enquiry official to produce before the enquiry officer. Keeping in view of the above discussion, it is recommended that the name of DFC Ansar Hussain No.2462 is recommended for Major Punishment.

Report is submitted please.

*Issue final
copy to
show*

[Signature]

Deputy Supdt: of Police,
Regi Circle Peshawar.

* 24/6/12

SP/HQ.rs/E/Rizwan/New punishment folder/Charger sheet new
SP/HQ.rs/E/Rizwan/New punishment folder/Charger sheet new