

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 1418/2018

Date of Institution ... 29.10.2018

Date of Decision ... 17.05.2022

Samin Ullah Son of Shakir Ullah Constable FRP, Built No. 3137,
Peshawar Range Peshawar, Presently R/o Koda Khel, Sardheri
Tehsil & District Charsadda.

... (Appellant)

VERSUS

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

... (Respondents)

MISS. UZMA SYED,
Advocate

For appellant.

MR. RIAZ AHMED PAINDAKHEL,
Assistant Advocate General

For respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN

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


JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts forming the background of the instant service appeal are that the appellant was removed from service on 24.08.2012 on the allegation of absence from duty. The departmental appeal of the appellant was also rejected on 26.04.2013, therefore, the appellant filed Service Appeal No. 529/2014 before this Tribunal, which was allowed vide judgment dated 05.09.2017 and the department was put at liberty to conduct de-novo inquiry in accordance with law. On conclusion of the de-novo inquiry, vide order dated 12.12.2017 passed by Superintendent of Police, FRP



Malakand Range Swat, major punishment of reduction of pay as time scale Constable was awarded to the appellant by treating the intervening period as leave without pay. The same was challenged by the appellant through filing of departmental appeal before Commandant FRP Khyber Pakhtunkhwa Peshawar, which was decided vide order dated 17.04.2018 and the major punishment of reduction in pay as time scale constable was converted into minor punishment of stoppage of two annual increments without cumulative effect. The same was challenged by the appellant by way of filing appeal before Inspector General of Police Khyber Pakhtunkhwa Peshawar, which was rejected vide order dated 16.10.2018, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions made by the appellant in his appeal.



3. Learned counsel for the appellant has argued that the previous inquiry proceedings were conducted against the appellant under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000, which was already repealed, therefore, after his reinstatement in service, the appellant was entitled to all back benefits; that the de-novo inquiry proceedings were conducted in a haphazard manner and the appellant was wrongly and illegally deprived of the back benefits; that the impugned orders are liable to be modified and the appellant is entitled to be granted all financial as well as other back benefits.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant had willfully remained absent without any sanctioned leave or permission of the competent Authority, however his departmental appeal was partially allowed on compassionate grounds and the major penalty awarded to the appellant was converted into minor penalty of stoppage of two annual increments without cumulative

effect; that during the de-novo inquiry proceedings charge sheet as well as statement of allegations were issued to the appellant and a regular inquiry was conducted in the matter by complying all legal and codal formalities; that the appellant has already treated with leniency, therefore, the appeal in hand is liable to be dismissed.

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

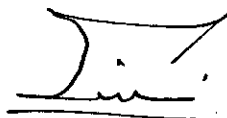
6. A perusal of the record would show that on conclusion of the de-novo inquiry proceedings, Superintendent of Police FRP Malakand at Swat awarded major penalty of reduction of pay as time scale constable to the appellant by treating the period of his absence as well as intervening period as leave without pay, vide order dated 12.12.2017. The same was challenged through filing of departmental appeal before Commandant FRP Khyber Pakhtunkhwa Peshawar, who vide his order dated 17.04.2018, converted the major punishment of reduction in pay as time scale constable into minor punishment of stoppage of two annual increments without cumulative effect. While scanning the aforementioned order dated 17.04.2018, it is evident that the major penalty awarded to the appellant was converted into minor penalty on compassionate ground and not on merit. Moreover, vide order dated 17.04.2018, the appellant was awarded minor penalty of stoppage of two annual increments, however instead of challenging the same before any higher forum, the appellant submitted an application to Commandant FRP Khyber Pakhtunkhwa Peshawar, requesting therein that the arrears of his salary for the period from 28.08.2012 to 12.12.2017 may be paid to him. The appellant then submitted another application to the Inspector General of Police Khyber Pakhtunkhwa Peshawar regarding the aforementioned relief, which was declined vide order dated 16.10.2018. Keeping in view the facts and circumstances



of the case, the request of the appellant for grant of back benefits is not justified.

7. Consequently, the appeal in hand being without any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
17.05.2022



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



(ROZINA REHMAN)
MEMBER (JUDICIAL)

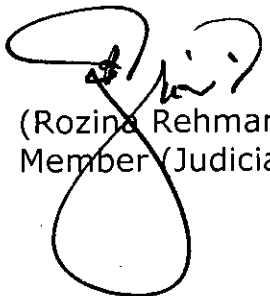
Service Appeal No. 1418/2018

ORDER
17.05.2022

Miss. Uzma Syed, Advocate for the appellant present. Mr. Riaz Ahmed Painsakhel, 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 being without any merit stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
17.05.2022



(Rozina Rehman)
Member (Judicial)



(Salah-Ud-Din)
Member (Judicial)

16.08.2021

Since 16.08.2021 has been declared as Public holiday on account of Moharram, therefore, case is adjourned to 3/12/2021 for the same as before.




Reader

03.12.2021

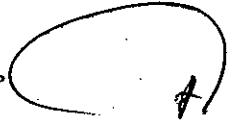
Nemo for appellant.

Muhammad Adeel Butt, learned Additional Advocate General for respondents present.

Notice be issued to appellant/counsel for 30.03.2022 for arguments, before D.B.



(Atiq ur Rehman Wazir)
Member (E)




(Rozina Rehman)
Member (J)

30.03.2022

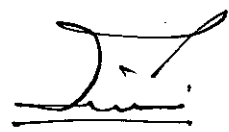
Learned counsel for the appellant present.

Mr. Muhammad Riaz Khan Paindakheil learned Assistant Advocate General 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 17.05.2022 before D.B.



(Rozina Rehman)
Member (J)



(Salah-Ud-Din)
Member (J)

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 1109 /2018

Muhammad Billal Ex-Constable 166
District Karak.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1299

Dated 17/8/18

APPELLANT

VERSUS

1. The District Police Officer karak,
2. The regional police officer, region Kohat.

RESPONDENTS

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 22.06.2018 RECEIVED ON 19.07.2018 WHEREBY ORDER DATED 03.05.2018 HAS BEEN MODIFIED AND THE PENALTY OF THE DISMISSAL FROM SERVICE CONVERTED IN TO THE PENALTY OF STOPPAGE OF ONE ANNUAL INCREMENT WITHOUT ACCUMULATIVE EFFECT HAS BEEN IMPOSED UPON THE APPELLANT AND INTERVENING PERIOD TREATED AS LEAVE WITHOUT PAY.

Filed to-day

[Signature]
17/8/18

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 22.06.2018 MAY BE MODIFIED TO THE EXTENT THAT THE RESPONDENTS MAY BE DIRECTED TO RESTORE THE SAID ONE INCREMENT OF THE APPELLANT AND THE INTERVENING PERIOD MAY BE TREATED WITH ALL PAY AND OTHER SERVICE BACK BENEFITS AS THE DISMISSAL ORDER DATED 03.05.2018 OF THE APPELLANT WAS SET ASIDE BY THE DPO KARAK. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Re-submitted to -day

[Signature]
19/8/18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1109/2018

Date of Institution ... 17.08.2018

Date of Decision ... 01.09.2021

Muhammad Bilal Ex-Constable 166 District Karak.

(Appellant)

VERSUS

District Police Officer Karak, and one other.

(Respondents)

UZMA SYED
Advocate

For Appellant

MUHAMMAD RASHEED
Deputy District Attorney

For Respondents

SALAH-UD-DIN
ATIQU-UR-REHMAN WAZIR

MEMBER (JUDICIAL)
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant was appointed as Constable in police department. During the course of his service, Naib Amir Jumat-e-Islami District Karak submitted a complaint against the appellant, alleging therein that the appellant had used abusive comments on his facebook page against two reputed persons seated with the provincial Amir Jamat-e-Islami on the eve of participatory at *Nari Panos* and misguided the general public. The appellant was departmentally proceeded against on the said complaint and on conclusion of the inquiry he was dismissed from service vide order dated 03.05.2018. Feeling aggrieved, the appellant filed departmental appeal, which was partially accepted and the penalty of dismissal was converted into the penalty of

stoppage of one increment without accumulative effect and the intervening period was treated as leave without pay, against which the appellant filed the instant service appeal with prayers that the order dated 22-06-2018 may be modified to the extent to restore the increment of the appellant and the intervening period may be treated as with all pay and back benefits.

02. Learned counsel for the appellant has contended that the dismissal order dated 03-05-2018 in respect of the appellant was set aside by the appellate authority vide order dated 22-06-2018 and re-instated him into service, but imposition of minor penalty of stoppage of one increment and treating the intervening period as leave without pay is illegal and contrary to the norms of natural justice, as setting aside the dismissal order dated 03-05-2018 means that the appellant was innocent, so treating the period as without pay has no legal backing and is liable to be modified; that while imposing minor penalty of stoppage of increment, no time period has been mentioned, which is violation of FR-29 as well as E&D Rules, 2011; that section-17 of the Civil Servant Act, 1973 provides that where a civil servant has, under an order which is later set aside, been dismissed or removed from service or reduced in rank, he shall, on the setting aside of such order, be entitled to such arrears of pay as the authority setting aside such order may determine; that this Tribunal vide judgments in Service Appeals No. 318/2016, 510/2016 and 1003/2017 has already granted such relief in similar cases; that the apex court vide its judgments reported in 1999 SCMR 1873, 2013 SCMR 752, 2010-PLC (CS) 151 have held that after re-instatement, the respondents shall not deny back benefits to a civil servant.

03. Learned Deputy District Attorney appearing on behalf of respondents has contended that the allegations/charges against the appellant were established by the inquiry officer, hence he was dismissed from service vide order dated 03-05-2018, after observing all the codal formalities; that upon his departmental appeal, the major penalty of dismissal was converted into minor penalty of stoppage of one increment and treating the intervening period as leave without pay, which was

accordingly implemented; that the appellant being member of a disciplined force had committed a gross misconduct which was established against him beyond any shadow of doubt, however, the appellate authority took a lenient view and his major penalty was converted into minor penalty; that the appellant was treated in accordance with law and rule; that the appellant remained out of service for the period from his dismissal until his re-instatement, therefore the appellant is not entitled for the salary for the intervening period on the principle of no work no pay.

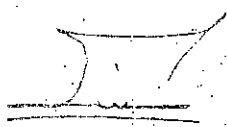
04. We have heard learned counsel for the parties and have perused the record. Record reveals that the appellant was proceeded against on the complaint of a religious leader, who alleged that some inappropriate material was uploaded by the appellant on his facebook page against the said local leader, upon which the competent authority initiated disciplinary proceedings against him and was ultimately dismissed from service vide order dated 03-05-2018. The appellant however, was re-instated into service by the appellate authority vide order dated 22-06-2018 but with stoppage of increment and treating the intervening period (one month and nineteen days) as leave without pay, which was challenged by the appellant in this Tribunal.

05. It has been laid down through judgments of the Apex Courts as well as this Tribunal that grant of back benefits to an employee, who was re-instated by a Court/Tribunal or the department, was a rule and denial of such benefit was an exception. The appellant was held back from the performance of his duty with the respondent department owing to the departmental proceedings against him, which was a circumstance beyond his control, whereas the said proceedings finally were decided in his favor. The only exception justifying to withhold back benefits could be that he accepted some other gainful employment/engaged in profitable business during the intervening period, which is not the case here. The reinstatement of an employee means that there has been no discontinuance in his service and for all intent and purposes, he shall be deemed to have never left his post, therefore, the intervening period from 03-05-2018 to 22-06-2018 shall be considered as on duty

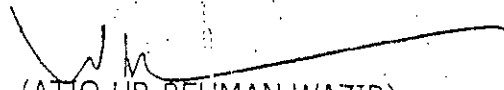
and accordingly the appellant is entitled to such benefits. Reliance is placed on 1999 SCMR 1873, 2010 PLC(CS) 151, 2006 SCMR 421, 2013 SCMR 752. The appellant stated at the bar that the issue of stoppage of increment has already been settled.

05. With the observations herein above, the appeal in hand is accepted and the appellant is held entitled to the benefits for the period from 03-05-2018 to 22-06-2018. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
01.09.2021



(SALAH-UD-DIN)
MEMBER (JUDICIAL)



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

THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 510/2016

Date of Institution ... 13.05.2016

Date of Decision ... 01.03.2018



Muhammad Noman Constable,
Old belt No.1313 & new Belt No.31, Kohat.

(Appellant)

VERSUS

1. District Police Officer, Kohat and another.

(Respondents)

MR. KHURSHID AHMAD SHAHAN,
Advocate

--- For appellant.

MR. KABIRULLAH KHATTAK,
Additional Advocate General

--- For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER (Executive)


JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN:- Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on certain charges of fake signatures on 05.01.2012. In the first round of litigation this Tribunal ordered for de-novo proceedings on 29.05.2015. The department after holding de-novo proceedings exonerated the appellant on 17.02.2016 but no order for back benefits was passed on 17.02.2016. Thereafter a separate order was passed by the competent authority on 15.04.2016 wherein the period out of service was ordered to be considered as leave without pay. The appellant then approached this Tribunal against the said order on 13.05.2016.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.

ARGUMENTS


3. Learned counsel for the appellant argued that this Tribunal in its order dated 29.05.2015 while directing the department to hold de-novo proceedings observed that the issue of back benefits shall be subject to the final outcome of the de-novo proceedings. That the department vide order dated 15.04.2016 instead of granting back benefits to the appellant considered the period out of service as Extra Ordinary Leave. That no fault could be attracted to the appellant not to serve the department and in view of judgment reported as 2013 SCMR 752 entitled "*Chairman, State life Insurance Corporation of Pakistan, Karachi-vs-Siddiq Akbar*", the appellant shall be considered to be on duty and shall be entitled for the back benefits.

4. On the other hand learned Addl: Advocate General argued that the present appeal was not maintainable for the reasons that the appellant did not file departmental appeal against the order dated 15.04.2016 and in view of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 the service appeal was not maintainable. He further argued that the department had rightly denied the back benefits for the reason that the appellant did not perform any duty. That it was a rule that no work no pay.

CONCLUSION.

5. This Tribunal is first to decide the maintainability of the present service appeal. This Tribunal in its earlier order had directed the department to decide the issue of back benefits subject to final outcome of the de-novo proceedings. In de-novo proceedings the appellant was exonerated. Thereafter separate order was passed on 15.04.2016 in which the back benefits were denied to the appellant. The appellant did not file the departmental appeal against the said order but the question

ATTESTED


 ATTESTING OFFICER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Whether due to non-filing of departmental appeal the appellant would be attracted. This Tribunal is of the view that this is the matter of financial benefits which cannot be denied to a civil servant and no limitation would be attracted in such cases. If no limitation is attracted then whether non-filing of departmental appeal would be a clog on entertaining the present service appeal under Section-4 of the Khyber Pakhtunhwa Service Tribunal Act, 1974. Since the present service appeal is the continuation of earlier service appeal, the appellant was not bound to challenge the order in departmental appeal and if this opinion is not correct then the appellant cannot be non-suited on this technical ground. And if the arguments of the learned Addl: AG is accepted then this Tribunal would direct the appellant to file departmental appeal afresh and departmental appeal would be in time even today as no limitation would run in order refusing financial benefits. In such a situation the departmental appeal would be competent and appellant would again come to this Tribunal after waiting for 90 days and the result would be the same. So this is the technicality on the basis of which the appellant cannot be non-suited.

6. Coming to the merits of the appeal the judgment relied upon by learned counsel for the appellant is very much clear and the facts of the reported judgment are very nearer to the present appeal. In the reported case the appellant was dismissed for embezzlement and then he was reinstated. The same arguments were advanced before the august Supreme Court of Pakistan that no work no pay. The august Supreme Court of Pakistan decided that it would be seen that it was the fault of the appellant not to work or it was due to the department that he was not allowed to work. The August Supreme Court of Pakistan finally held that it was not the fault of the appellant not to work but he did not work due to dismissal order. And the august Supreme Court of Pakistan finally decided that the appellant shall be

ATTESTED

EXAMINER
Khyber Pakhtunhwa
Service Tribunal
Peshawar

...dered on duty for all purposes and was held to be entitled for not only back benefits but also for other rights like seniority, promotion etc. This Tribunal therefore, accept the appeal of the appellant and hold the appellant entitled for the back benefits and it is also ordered that the appellant should not be deprived any right of promotion etc including his training/completion of course for promotion etc if there is no other hindrance except his dismissal. Parties are left to bear their own costs. File be consigned to the record room.

Announced
01.03.2018

Edy Niaz Muhammad Khan
Chairman

Edy Ahmad Hassan
Member

Certified to be true copy

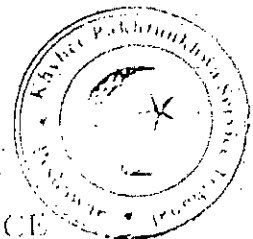
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Appeal	16-4-18
Number of Words	1600
Copying Fee	10/-
Urgent	2/-
Total	12/-
Name of Copyist	WT
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa Service Tribunal

Case No. ASO / 2019

Date: 17/11

Date: 03/12/2019

Muhammad Ayaz Senior clerk Directorate of Veterinary Research Institute NWFP Peshawar.....Appellant

K E R S U S

1. Government of Khyber Pakhtunkhwa through Secretary Agriculture, Livestock, Dairy Development Department Khyber Pakhtunkhwa Peshawar.

2. Director General (Research) Livestock, Dairy Development Department Khyber Pakhtunkhwa Peshawar.

Respondents

Appellant has filed Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order No. DG (R) L&DD / Litigation (87)/CC/2009/7820-27 dated 21.08.2019 vide which though the appellant, after exonerating him from charges initially levelled against him, was reinstated in service in post remand proceedings, however the intervening period i.e. 31.12.2008 to 26.03.2018 has been treated as extra ordinary leave without pay, against which his departmental appeal dated 12.09.2019 has also been rejected vide order dated 28.10.2019 communicated to the appellant on 05.11.2019.

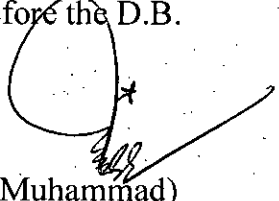
3/12/19

NOTED

09.11.2020

Nemo for the appellant present. Mr. Muhammad Riaz Khan Painsdakhel, Assistant Advocate General for respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 18.01.2021 for hearing before the D.B.


(Mian Muhammad)
Member (E)

18.01.2021

Appellant in person and Addl. AG for the respondents present.

The representative of respondents has submitted written reply on behalf of respondents No. 1 to 5. Same is placed on record.

The appellant, on the other hand, requests for adjournment as his learned counsel has left the Tribunal premises due to some bereavement in his family.

Adjournment to 22.04.2021 for hearing before the D.B. The appellant may furnish rejoinder within one month, if so advised.


(Mian Muhammad)
Member(E)


Chairman

22.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 16.08.2021 for the same as before.


Reader

09-4.2020


Due to COVID19, the case is adjourned to

07/07/2020 for the same as before.


Reader

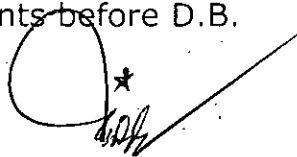
07.07.2020

Due to COVID19, the case is adjourned to 01.09.2020 for the same as before.


Reader

01.09.2020

Learned counsel for the appellant is present. Mr. Muhammad Jan, Deputy District Attorney for the respondents is also present. Learned counsel for the appellant is seeking adjournment that she has not prepared the appeal. Adjourned to 09.11.2020. File to come up for arguments before D.B.



(Mian Muhammad)
Member (Executive)



(Muhammad Jamal Khan)
Member (Judicial)

01.01.2020

No present on behalf of the appellant. Mr. Usman Ghani learned District Attorney alongwith Mr. Ihsan Ullah ASI for the respondents present. Notice be issued to the appellant and his counsel for attendance. Adjourned. To come up arguments on 13.02.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

24-2-2020

The Bench is incomplete
Therefore case is adjourned
to 9-4-2020


Reader

12.09.2019

Appellant in person and Addl. AG on behalf of the respondents present. Appellant submitted Wakalatnama in favour of Mrs. Uzma Syed Advocate which is placed on record.

Learned AAG seeks further time to procure parawise comments from the respondents. Adjourned to 07.10.2019 on which date the requisite reply/comments shall positively be submitted.


Chairman

07.10.2019

Appellant with counsel and Addl. AG alongwith Ihsanuillah, ASI for the respondents present.

Representative of respondents requests for further time. Last opportunity is granted to the respondents for submission of requisite reply/comments on 07.11.2019 before S.B.


Chairman

07.11.2019

Nemo for appellant. Addl. AG alongwith Ihsanullah, H.C for the respondents present.

Respondents have not furnished the requisite reply/comments despite last opportunity. The appeal is posted for arguments before D.B on 01.01.2020.


Chairman

1418/2018

11.06.2019

Counsel for the appellant present.

Learned counsel argued that major penalty of reduction of pay in time scale was awarded to the appellant on the sole ground of absence from duty. On the other hand the period of his absence was treated as leave without pay. By such treatment the respondents had impliedly condoned the absence of appellant, therefore, the impugned penalty could not be imposed upon the appellant. It was further stated that the appellant was treated harshly by the respondents in the facts and circumstances of the case. That, the enquiry conducted against the appellant was in a haphazard manner while regular enquiry was necessary in cases where major penalty was imposed upon an accused civil servant.

In view of arguments of learned counsel, instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 25.07.2019 before S.B.

Appellant Deposited
Security & Process Fee

11/6/19


Chairman

25.07.2019

Appellant in person and Mr. Usman Ghani, District Attorney for the respondents present.

Learned District Attorney requests for further time in order to procure reply from the respondents. To come up for written reply/comments on 12.09.2019 before S.B.

Chairman 

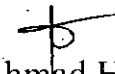
21.03.2019

Appellant in person present. Due to general strike of the bar, the case is adjourned. To come up for preliminary hearing on 23.04.2019 before S.B.


Member

23.04.2019

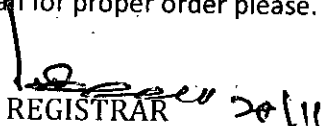


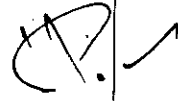
Appellant in person present. Due to general strike of the bar, the case is adjourned. Case to come up for preliminary hearing on 11.06.2019 before S.B.


(Ahmad Hassan)
Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1418/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/11/2018	<p>The appeal of Mr. Samin Ullah resubmitted today by Mr. Asad Khan Muhammadzai 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 20/11/18</p>
2-	<p>22-11-2018</p> <p>08.1.2019</p>	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>8-1-2019</u>.</p> <p>Appellant in person present.</p> <p style="text-align: right;"> CHAIRMAN</p> <p>Due to assassination of an advocate the Local Bar is on general strike. Adjourned to 19.02.2019 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p>
19.02.2019		<p>Appellant in person present and seeks adjournment as his counsel is not in attendance. Adjourn. To come up for preliminary hearing on 04.04.2019 before S.B.</p> <p style="text-align: right;"> Member</p>

The appeal of Mr. Saminullah son of Shakir Ullah constable FRP Built no. 3137 Peshawar received today i.e. on 29.10.2018 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 impugned order dated 12.12.2017 mentioned in para-3 of the memo of appeal is not attached with the appeal which may be placed on it.
- 3- Copy of departmental appeal against the impugned order dated 12.12.2017 which was decided on 17.04.2018 is not attached with the appeal which may be placed on it.
- 4- Annexures of the appeal may be attested.
- 5- Seven more copies/sets of the appeal along with annexures i.e complete in all respect may also be submitted with the appeal.

No. 2170 /S.T,

Dt. 29-10/2018.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Asad Khan Mohammadzai Adv. Pesh.

*I have re-submitted the appeal with
all the documents and copies
and fulfilled all the objections.*


BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1478 of 2018

Samin Ullah Constable FRP, Built No.3137.

... .. Appellant

VERSUS


The Inspector General of Police Khyber Pakhtunkhwa
Peshawar and others


... .. Respondents

Index

S.No.	Description of documents	Annexure	Pages
1.	Memo of appeal along with affidavit		1-7
2.	Copy of reinstated order dated 05/09/2017 of this Hon'ble Tribunal	"A"	8-10
3.	Copy of dated 12/12/2017	"B"	11-12
4.	Copy appeal and order dated 17/04/2018	"C"	13-15
5.	Copy of appeal and order dated 16/10/2018	"D"	16-18
6.	Court fee	In original	
7.	Wakalat Nama	In original	

Dated 21/10/2018

Appellant
Through 
Asad Khan Muhammadzai
Advocate,
High Court Peshawar
Cell # 0312-6907475



13

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1478 of 2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1578

Dated 29-10-2018

Samin Ullah Son of Shakir Ullah Constable FRP, Built
No.3137, Peshawar Range Peshawar, presently R/o
Koda Khel, Sardheri Tehsil & District Charsadda.

... .. Appellant

VERSUS

- 1- The Inspector General of Police Khyber Pakhtunkhwa Peshawar
- 2- The Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 3- The Commandant Frontier Reserve Police Peshawar.
- 4- The Superintendent FRP Peshawar Range Peshawar.
- 5- SP/FRP Malakand Range Swat.

... .. Respondents

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974 R/W SECTION 10 OF THE KHYBER PAKHTUNKHWA REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE, 2000 WHEREBY THE APPELLANT REINSTATED IN SERVICE ON DATED 05/09/2017 BY THIS HON'BLE TRIBUNAL THAT AFTER THE DE-NOVO INQUIRY THE APPELLANT WAS PUNISHED BY THE SP FRP MALAKAND RANGE SWAT VIDE ORDER DATED 12/12/2017,

Filed today
Registrar
29/10/18

Re-submitted to -day and filed.

Registrar
20/11/18

PUNISHMENT OF REDUCTION OF PAY AS TIME SKILL CONSTABLE FROM THE PERIOD OF HIS ABSENCE, AND THE INTERVENING PERIOD WAS TREATED AS LEAVE WITHOUT PAY BY RESPONDENT NO.5 AND THE APPELLANT PREFERRED TO COMMANDANT FRP/ RESPONDENT NO.3 KPK, THE RESPONDENT NO.3 CONVERTED HIS MAJOR PUNISHMENT OF REDUCTION OF PAY AS TIME SCALE CONSTABLE INTO MINOR PUNISHMENT OF STOPPAGE OF TWO ANNUAL INCREMENT WITHOUT CUMULATIVE EFFECT VIDE ORDER DATED 17/04/2018 EFFECT FROM THE ORDER OF RESPONDENT NO.3 THE APPELLANT PREFER AN APPEAL TO THE RESPONDENT NO.1 WHICH WAS ALSO TURNED DOWN BY RESPONDENT NO.1 VIDE ORDER DATED 16/10/2018.

Prayer;

On acceptance of the instant appeal, the impugned order dated 12/12/2017 passed respondent No.5 and order dated 17/04/2018 passed the respondent No.3 similarly the order of the respondent No.1 dated 16/10/2018 may kindly be set aside and the appellant may kindly be granted all back benefits.

Respectfully Sheweth;

Brief facts leading to the instant appeal are as under;

- 1- That the appellant joined the police force as constable FRP in the year 2009 and performed his duty to the satisfaction of this superior and the relevant time he was posted at District Swat.*

2- That the appellant removed from service vide order dated 24/08/2012 and was reinstated by this Hon'ble Tribunal vide judgment dated 05/09/2017 with the direction that de-novo inquiry may be conducted by the department against the present appellant. (Copy of the order dated 05/09/2017 is annexed as Annexure "A").

3- That after the de-novo inquiry the appellant was harshly punished of reduction of pay as time scale constable the period of his absence and intervening period was treated as leave without pay by the respondent No.5 vide order dated 12/12/2017. (Copy of order is annexed as Annexure "B").

4- That the appellant preferred an appeal against the order of respondent No.5 to the respondent No.3 the appellate authority FRP Khyber Pakhtunkhwa converted his major punishment deduction of as time scale constable to minor punishment of stoppage of two annual increment without cumulative effect on dated 17/04/2018. (Copy of appeal and order are annexed as Annexure "C").

5- That the appellant being aggrieved from the impugned order of respondent No.3 and preferred an appeal to respondent No.1 which was also turned down vide order dated 16/10/2018. (Copy of the appeal and order dated 16/10/2018 is annexed as Annexure "D")

6- That the appellant being aggrieved from the impugned orders, the appellant assails the same through this appeal inter-alia on the following grounds:

GROUND:

A- That the respondents have not treated appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan 1973 and unlawfully issued the impugned order, which are unjust, unfair and hence not sustainable in the eye of law.

B- That the appellant is treated harshly by the respondent and the order of the respondents are not according to law and service rules.

C- That the appellant was proceeded against under repealed law and as much as the removal from

(5)

service (Special Power) Ordinance, 2000 was repealed on 16/11/2011 while the charge has allegedly been issued on 01/03/2012 while the impugned original order was passed on 11/09/2012 thus the entire proceeding including the impugned orders are void ab-initio, coram non judice and hence not sustainable, so the de-novo inquiry was also illegal, against the law.

D- That the inquiry was also conduct in a haphazard and fill in the blank manner as is evident from its report, for imposing major penalty regular inquiry is necessary but in the case in hand and irregular, improper inquiry was rushed and conclusion was drawn that the appellant was guilty of willful absence. Since the de-novo inquiry is also illegal and irregular, therefore, the impugned order based upon the same are unlawful and as such not maintainable.

E- That it also a settle law that where factual controversy is involved in a case then the only alternative is to conduct appellant leniently view

(6)

of de-novo inquiry and the all back benefit may also be granted in favour of the appellant.

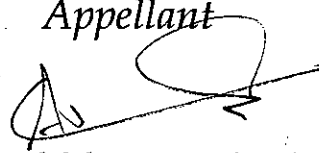
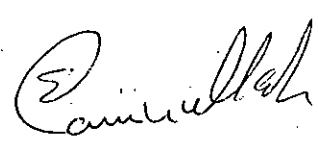
F- That keeping in view the peculiar facts and circumstances of the case after the de-novo inquiry the imposition of the penalty is quite excessive, unreasonable and does not commensurate with the guilt of the appellant. Moreover, on humanitarian appellant deserve leniency because he is the sole bread earner of his big family and he has to shoulder the responsibility of his younger brother and sister including his ailing mother during the removal period the appellant have bored to death and is liable to grant the all back benefits.

G- That the appellant seeks leave of this Hon'ble Tribunal to rely on additional grounds at the time of arguments.

It is, therefore, prayed that on acceptance of the instant appeal, the impugned order dated 12/12/2017 passed respondent No.5 and order dated 17/04/2018 passed the respondent No.3 similarly the order of the respondent No.1 dated 16/10/2018 may kindly be set aside and the appellant may kindly be granted all back benefits.

Any other relief as deem appropriate in the circumstances of case no specifically asked for, may be granted to the appellant.

Dated 21/10/2018

Through  Appellant 
Asad Khan Muhammadzai
Advocate,
High Court Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____ of 2018

Samin Ullah Appellant

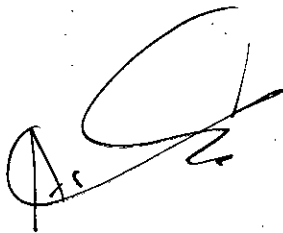
VERSUS

The Inspector General of Police Khyber Pakhtunkhwa
Peshawar and others

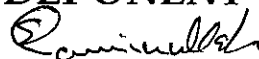
..... Respondents

AFFIDAVIT

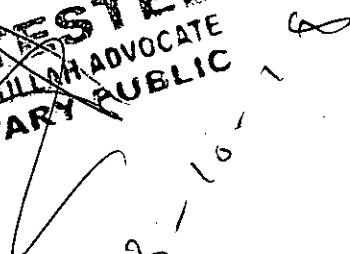
I, Samin Ullah Son of Shakir Ullah
Constable FRP, Built No.3137, Peshawar Range
Peshawar, presently R/o Koda Khel, Sardheri
Tehsil & District Charsadda do hereby solemnly
affirm and state on oath that the accompanied
appeal are true and correct to the best of my
knowledge and belief and nothing has been stated
concealed from this Hon'ble Court.



DEPONENT



ATTESTED
IRFAN ULLAH ADVOCATE
NOTARY PUBLIC



23-10-18

(8)

Annex A

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
CAMP COURT SWAT

Service Appeal No. 529/2014



Date of Institution... 14.04.2014

Date of decision... 05.09.2017

Samiullah, Ex-Constable FRP Platoon No. 77,
Malakand Range, Swat. ... (appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2
others. ... (Respondents)

Mr. Asad Khan Muhamamd Zai, ... For appellant
Advocate

Mr. Muhammad Zubair, ... For respondents.
District Attorney

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. AHMAD HASSAN, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the
learned counsel for the parties heard and record perused.

FACTS

2. The appellant was removed from service on 24.08.2012 due to his
absence from duty against which he filed departmental appeal on 19.09.2012
which was rejected on 26.4.2013 and thereafter, the appellant filed the
present appeal on 14.4.2014.

ARGUMENTS

3. The learned counsel for the appellant argued that the delay in filing of
appeal was for the reason that copies of the required documents were not

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Camp Court, Swat

ATTESTED

provided to the appellant and he then filed an application on 31.3.2014 and on the same very day he was provided the copies and thereafter the present appeal. He also relied upon a judgment reported as 1994-PI.C(C.S)46 by arguing that limitation starts from the knowledge of impugned order.

4. On the other hand, the learned District Attorney argued that the present appeal is hopelessly time barred and no condonation application has been submitted by the appellant, hence no relief can be provided to him.

CONCLUSION

5. Though the appeal is hopelessly time barred and limitation cannot be enlarged on the ground that required copies were not provided to the appellant. The judgment relied upon by the learned counsel for the appellant is not relevant to the present appeal as the circumstances of the present case are different from the reported case. In the reported case, the appellant had no knowledge of the outcome of the appeal whereas in the present appeal the stance of the appellant is that he was not supplied the required copies.

6. This Tribunal however, on her own observed that the charge sheet, statement of allegations, final show cause notice and the final order have been issued under the repealed Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. The period of absence of the appellant is subsequent to the repeal of the said Ordinance. The whole proceedings are therefore, void and no limitation runs against void order.

7. Resultantly, the appeal is accepted and the appellant is reinstated in service. However, the department is at liberty to conduct denovo enquiry in accordance with law and rules within a period of 2 months from the date of receipt of this judgment. The issue of back benefits shall be subject to

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Sindh Court, Sindh
ATTESTED

outcome of denovo proceedings. Parties are left to bear their own costs. File be consigned to the record.

SD/- NIAZ MUHAMMAD KHAN, Chairman
Camp Court, Swat
SD/- Ahmad Hassan, Member.

Announced
05-09-2017

Ali Akbar
AS

Certified to be true copy
[Signature]
EXAMINER
Khyber Education Service Tribunal

Date of Presentation of Application	07-09-17
Number of Words	1200
Copying Fee	8-00
Urgent	2-00
Total	10-00
Name	FAZLE SUBHAN
Date	07-09-17
Date	07-09-17

بخدمت جناب کمانڈنٹ FRP خیر پختون خواہ پشاور

جناب عالی! (درخواست بمزاد ٹائم سکیل کی سزا کی معافی)

گزارش: ایک سائل ایف آر پی ملاکنڈ رینج میں ڈیوٹی سرانجام دے رہا تھا کہ کچھ گھریلو بیماری کی وجہ سے من سائل اپنے ڈیوٹی کرنے سے قاصر رہا۔ جس کی وجہ سے من سائل نوکری سے برخاست کر دیا گیا تھا۔ چونکہ من سائل بے گناہ تھا اس لئے سروس ٹریبونل نے من سائل کو بحال کر دیا۔ لیکن من سائل کو (Denove enquiry) میں ٹائم سکیل کیا گیا۔ سائل ایک غریب گھرانے سے تعلق رکھتا ہے۔ اور گھر کا واحد کفیل ہے۔ اور تنخواہ کے علاوہ دوسرا کوئی ذریعہ معاش نہیں لہذا آپ صاحبان سے بزرگیہ درخواست ہذا التماس ہے۔ کہ من سائل کی ٹائم سکیل سزا کو معاف فرما کر مشکور فرمادیں تاکہ سائل خاندان کی کفالت کر سکے۔

سائل آپ صاحبان کی بلند اقبالی کے لیے دعا گو رہیگا۔

العارض

الرقوم 05.01.2018

العارض

آپکا تابع المحکم کنشیل مشین اللہ نمبر 3815/3986 ایف آر پی ملاکنڈ رینج

Mob;03459094594

Signature
AS

12

Amma "B"

O.B No. 122

Dated 12/12/2017

ORDER.

This order will dispose of the Denove enquiry against Constable Samin Ullah No. 3986/3815 on the score of the allegation against him as he absented himself from lawful duty with effect from 28/04/2012 till to the date of removal i.e. 24/08/2012.

The above named Ex-Constable appealed to the worthy Commandant FRP, Khyber Pukhtoon Khwa. Peshawar for re-instatement in service the appeal of the applicant was rejected by the worthy Commandant FRP, Khyber Pukhtoon Khwa, Peshawar vide his office order. Endst: No. 2616-17/EC, dated 10/04/2013.

He was proffered an appeal in Khyber Pukhtoon Khwa. Service Tribunal which was decided in his favour subject to Denove enquiry vide service Tribunal Peshawar letter No. 1281/ST, dated 18/09/2017 and the said Constable was re-instated in service by the worthy Commandant FRP, Khyber Pukhtoon Khwa, Peshawar order Endst: No. 7198/ST, Legal dated 28/09/2017 and this office O.B No. 102 dated 09/10/2017. The DIG Enquiry and Inspection nominated Mr. Jehan Zeb Khan Superintendent of Police FRP, Peshawar Range Peshawar as enquiry officer to conducted Denove enquiry vide CPO, Peshawar letter No. 1290-91/E&I, dated 03/10/2017 and Superintendent of Police FRP, Peshawar Range Peshawar issued charge sheet to him vide his office charge sheet No. 408/PA, dated 09/10/2017 and issued Final Show Cause Notice vide his office No. 434/PA, dated 12/10/2017.

The enquiry officer Mr. Jehan Zeb Khan Superintendent of Police FRP, Peshawar Range Peshawar recommended the above named Constable for major punishment by reduction of pay as time scale Constable and the period of his absence and the intervening period was treated as leave without pay.

He was called for personal hearing in orderly room by the undersigned but the Constable could not satisfied the undersigned. Therefore, I the undersigned Mr. Haji Imtiaz Ali (competent Authority) agreed with the finding of the enquiry officer and the Major Punishment is hereby awarded to Constable Samin Ullah i.e. by reduction of pay as time scale Constable, the period of his absence and the intervening period treated as leave without pay.

"Order Announced"

Saidu Sharif
Superintendent of Police, FRP,
Malakand Range, Swat.
09/12/2017

Saidu Sharif
No. 1639-91/EC, dated Saidu Sharif the 12/12/2017.

Copy of above is forwarded for favour of information to the:

1. Commandant FRP, Khyber Pukhtoon Khwa, Peshawar vide his office letter No. 18419/ST, Legal dated 06/11/2017 please.
2. Superintendent of Police FRP, Peshawar Range, Peshawar.
3. Pay officer FRP, Swat.

Saidu Sharif
Superintendent of Police, FRP,
Malakand Range, Swat.

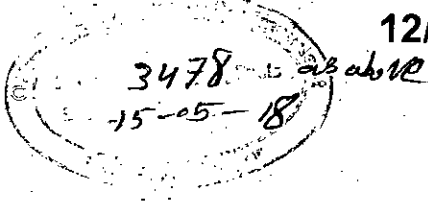
13

بخدمت جناب کمانڈنٹ صاحب ایف آر پی خیبر پختون خوا پشاور

Answer (C)

درخواست بمراء عطا ہوگی / Allowed کرنے سائل کے

بقایا جات تنخواہیں از 28/08/2012 تا 12/12/2017



جناب عالی! سائل حسب ذیل عرض رساں ہے۔

(۱) یہ کہ سپاہی ٹین اللہ بلک نمبری 3137 ایف آر پی پشاور ریج کو عدالت چیئر مین سروس ٹریبونل نے مورخہ 05/09/2017 کو سروس / ملازمت پر بحال کر کے بقایا جات Back Benefits کو Denvo Inquiry کے ساتھ مشروط کر دیا۔
(نقل حکم عدالت سروس ٹریبونل لف ہذا ہے)۔

(۲) یہ کہ Denvo Inquiry کے بعد ایس پی ایف آر پی نے سائل کو major panelty دیکر pay time scale کم کر کے مورخہ 12/12/2017 پر ملازمت پر بحال کر دیا۔

(۳) یہ کہ سائل ایک درخواست جناب کمانڈنٹ صاحب ایف آر پی کے ساتھ گزاری اور اس طرح جناب کمانڈنٹ صاحب نے Major panelty کو Minor panelty میں تبدیل کر کے سائل و Annual انکریمنٹ Stoppage مورخہ 17/04/2018 کو ملازمت پر بحال کر دیا۔

(۴) یہ کہ سائل چونکہ ایک غریب خاندان سے تعلق رکھتا ہے اور سائل کے پانچ سال کیلئے بیروزگار تھا اور سائل اپنے کھمبہ پروری کے اخراجات برداشت کرتا چلا آ رہا ہے۔ اور سائل قرضوں کے بوجھ تلے دب ہوا ہے۔ بدیں وجہ بھی سائل Back Benefit کا حقدار ہے۔

*Si/Agal
for further process*

(۵) یہ کہ عدالت حضور سروس ٹریبونل نے فیصلہ کرتے وقت سائل کے تنخواہوں بقایا جات کو Denvo Inquiry سے مشروط کر دیا تھا لیکن سائل کو تا حال Back benefits

یعنی تنخواہوں کے بقایا جات نہیں مل سکیں۔

(۶) یہ کہ سائل کے نظریں ڈیپارٹمنٹ پر جمی ہوئی تھی کہ سائل کے کیس کا فیصلہ کرتے وقت سائل کو گزشتہ بقایا جات بھی ادا کریگا کیونکہ سائل کو برخاست کرتے وقت غلط قانون کے تحت مزادے کرنو کری سے برخاست کیا تھا اور جس کا خمیازہ سائل کو عرصہ پانچ سال بیروزگاری کی صورت میں اٹھانا پڑا اور اس بنا پر بھی سائل Back Benefits، بقایا جات کا حقدار ہے۔

لہذا استدعا ہے کہ بمنظوری درخواست ہذا سائل کو گزشتہ 28/08/2012 تا 12/12/2017 کے بقایا جات تنخواہوں کی صورت میں Arrof دلوائی جا کر عنایت فرمائی جائے۔

المرقوم 14/05/2018

*Muhammad
D*

Emineullah

سائل نمین اللہ بلٹ نمبر 3137 پشاور رینج۔

موبائل نمبر 0345-9094594-0315-9294152

P - 19

Annexure "C"

ORDER

This order will dispose of the departmental appeal preferred by constable Samin Ullah No. 3986/3815 of FRP Peshawar Range against the order of major punishment by bringing him to lowest stage of constable as time scale passed by SP FRP Malakand Range, Swat vide Order Endst: No. 1689-91/EC, dated 12.12.2017. The applicant was proceeded against on the allegations that he remained absented himself from lawful duty with effect from 28.04.2014 till the dated his removal from service i.e. 24.08.2012 for total period of 03 months and 26 days without prior permission from his seniors.

Feeling aggrieved he preferred departmental appeal for re-instatement in service, which was rejected vide this office order Endst: No. 2616-17/EC, dated 10.04.2013.

He was preferred Service Appeal in the Khyber Pakhtunkhwa, service Tribunal, which was decided in his favour subject to Denovo enquiry vide judgment dated 05.09.2017 and the said constable was re-instated in service by the Worthy Commandant FRP, KP; Peshawar order Endst: No. 7198/SI legal, dated 28.09.2017. In this regard Mr. Jehan Zeb Khan SP FRP, Peshawar Range was deputed as enquiry officer by the DIG Enquiry and Inspection CPO Peshawar to conduct denovo enquiry against him. He was issued Charge Sheet vide No. 408/PA, dated 09.10.2017 and denovo enquiry was conducted against him. After receiving the findings of enquiry officer he was issued Final Show Cause Notice vide office No. 434/PA, dated 12.10.2017.

The Enquiry Officer recommended him for major punishment by reduction in pay as time scale constable and the period of his absence as well as intervening period recommended as leave without pay.

He was called for personal hearing in orderly room by the Competent Authority, but during the course of personal hearing the appellant could not satisfied the Competent Authority. Therefore, he was awarded major punishment by reduction of pay as time scale constable vide Order Endst: No. 1689-91, dated 12.12.2017.

Feeling aggrieved against the impugned order of SP FRP Malakand Range, Swat, the applicant preferred the instant appeal. The applicant was summoned and heard in person in Orderly Room held on 12.04.2018.

During the course of personal hearing, the applicant contended that he belongs to a poor family and a sole bread earner for his whole family.

From perusal of enquiry file and impugned order dated 12.12.2017 it has been found that the applicant has punished harshly.

Based on the findings narrated above I, Muhammad Ijaz Khan, PSP Commandant FRP Khyber Pakhtunkhwa, Peshawar, being the competent authority, taking a lenient view on account of his poor family background, the major punishment of bringing him to lower stage as time scale constable is hereby converted into minor punishment of stoppage of two annual increments, without cumulative effect.

Order Announced.

Commandant

Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.

No. 5718/EC, dated Peshawar the 17/4/2018.

Copy of above is forwarded for information and necessary action to the SP FRP Peshawar Range Peshawar. His service record alongwith D file sent herewith

Noted
DJ

SP/Act/OAS
for naeem

SP/FR/PA
18/4

بخدمت جناب انسپکٹر جنرل آف پولیس خیبر پختون خوا پشاور۔

Amr (D)

درخواست بمراہ عطا یگی / Allowed کرنے سائل کے

بقایا جات تنخواہیں از 28/08/2012 تا 12/12/2017

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

(۱) یہ کہ سپاہی ٹین اللہ بلٹ نمبری 3137 ایف آر پی پشاور ریجن کو عدالت چیئر مین سروس ٹریبونل نے مورخہ 05/09/2017 کو سروس / ملازمت پر بحال کر کے بقایا جات Back Benefits کو Denvo Inquiry کے ساتھ مشروط کر دیا۔
(نقل حکم عدالت سروس ٹریبونل لف ہذا ہے)۔

(۲) یہ کہ Denvo Inquiry کے بعد ایس پی ایف آر پی نے سائل کو major panelty دیکر کم کر کے مورخہ 12/12/2017 پر ملازمت پر بحال کر دیا۔

(۳) یہ کہ سائل ایک درخواست جناب کمانڈنٹ صاحب ایف آر پی کے ساتھ گزاری اور اس طرح جناب کمانڈنٹ صاحب نے Major panelty کو Minor panelty میں تبدیل کر کے سائل و 2 Annual انکریمنٹ Stoppage مورخہ 17/04/2018 کو ملازمت پر بحال کر دیا۔

(۴) یہ کہ سائل چونکہ ایک غریب خاندان سے تعلق رکھتا ہے اور سائل کے پانچ سال کیلئے بیروزگار تھا اور سائل اپنے کھمبہ پروری کے اخراجات برداشت کرتا چلا آ رہا ہے۔ اور سائل قرضوں کے بوجھ تلے دبہ ہوا ہے۔ بدیں وجہ بھی سائل Back Benefit کا حقدار ہے۔

(۵) یہ کہ عدالت حضور سروس ٹریبونل نے فیصلہ کرتے وقت سائل کے تنخواہوں بقایا جات کو Denvo Inquiry سے مشروط کر دیا تھا لیکن سائل کو تا حال Back benefits

17

cc D

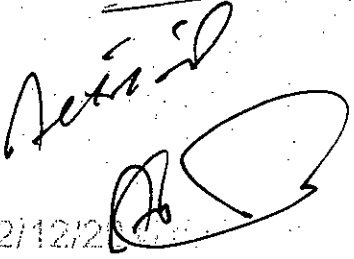
یعنی تنخواہوں کے بقایا جات نہیں مل سکیں۔

(۶) یہ کہ سائل کے نظریں ڈیپارٹمنٹ پر جمی ہوئی تھی کہ سائل کے کیس کا فیصلہ کرتے وقت سائل کو گزشتہ بقایا جات بھی ادا کریگا کیونکہ سائل کو درخواست کرتے وقت غلط قانون کے تحت سزا دے کر نوکری سے درخواست کیا تھا اور جس کا خمیازہ سائل کو عرصہ پانچ سال بیروزگاری کی صورت میں اٹھانا پڑا اور اس بنا پر بھی سائل Back Benefits، بقایا جات کا حقدار ہے۔

لہذا استدعا ہے کہ منظوری درخواست ہذا سائل کو گزشتہ 28/08/2012 تا 12/12/2017 کے

بقایا جات تنخواہوں کی صورت میں Arrog دلوائی جا کر عنایت فرمائی جائے۔

المرقوم 20/06/2018



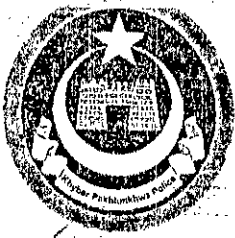
سائل بشین اللہ بلٹ نمبر 3137 پشاور ریج۔

موبائل نمبر 0315-9294152-0345-9094594

12/12/2017

12/12/2017

12/12/2017



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

No. S/ 4027 /18, dated Peshawar the 16/10/2018.

8659

16.10.2018

ORDER

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by **Constable Samin Ullah No. 3137**. The petitioner was removed from service by SP/FRP, Malakand Range Swat vide OB No. 288, dated 24.08.2012 on the charge of absence from duty w.e.f 28.04.2012 till date of removal from service i.e. 24.08.2012 for total period of 03 months and 26 days. The appellate authority i.e. Commandant, FRP, Khyber Pakhtunkhwa, Peshawar rejected his appeal for re-instatement in service vide order Endst: No. 2616-17/EC, dated 10.04.2013.

The appellant preferred service appeal in Khyber Pakhtunkhwa Service Tribunal which was decided in his favour subject to de-novo enquiry vide judgment dated 05.09.2017. De-novo enquiry was conducted against him and he was awarded punishment of reduction of pay as time scale Constable, the period of his absence and the intervening period was treated as leave without pay by SP/FRP, Malakand Range Swat vide order Endst: No. 1689-91/EC, dated 12.12.2017. He preferred appeal to Commandant, FRP, Khyber Pakhtunkhwa, Peshawar. The appellate authority i.e. Commandant, FRP, Khyber Pakhtunkhwa Peshawar converted his major punishment of reduction of pay as time scale Constable into minor punishment of stoppage of two annual increments without cumulative effect vide order Endst: No. 5718/EC, dated 17.04.2018. //

Meeting of Appellate Board was held on 27.09.2018 wherein petitioner was heard in person. During hearing petitioner contended that his absence was not deliberate but he was ill.

The petitioner has already been compensated by the Appellate Authority. Moreover, his petition is also time barred. Therefore, the Board decided that his petition is hereby rejected.

This order is issued with the approval by the Competent Authority.




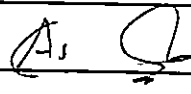
(ZAIB ULLAH KHAN) PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

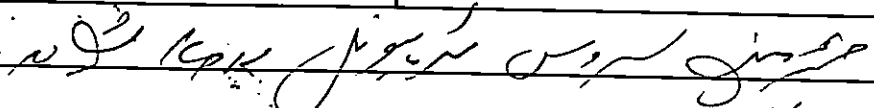
No. S/ 4028-35 /18.

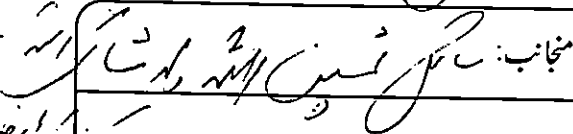
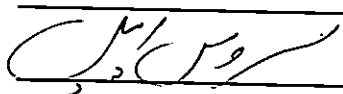
Copy of the above is forwarded to the:

1. Commandant, FRP, Khyber Pakhtunkhwa, Peshawar. Service record alongwith departmental file of the above named Constable received vide your office Memo: No. 9379/SI Legal, dated 13.09.2018 is returned herewith for your office record.
2. SP/FRP, Malakand Range Swat.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
5. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to AIG/Legal, Khyber Pakhtunkhwa, Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

Legal
for reaction

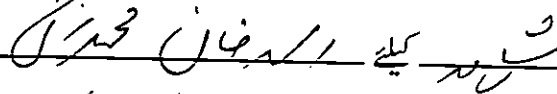
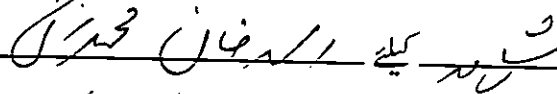
قیمت 50 روپے	50734			
ایڈویکٹ: 		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل ایسوسی ایشن نمبر: BC-11-1550				
رابطہ نمبر: 0312-6907475				

بعدالت جناب: 

مخانب: 	دعویٰ:
تسین اللہ	علت نمبر: 
بینام	مورخہ:
گورنمنٹ KPR دفتر	جرم:
	تھانہ:

بابت تحریر آتکہ



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

آن مقام  کیلئے  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 تقرر ثالث و فیصلہ برحلف 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 کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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

المرقوم:

مقام _____ کے لیے منظور ہے۔

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

VAKALAT NAMA

NO. _____/20

IN THE COURT OF K.P Service Tribunal, Peshawar

Samin Ullah (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt (Respondent)
(Defendant)

I/We, Samin Ullah

Do hereby appoint and constitute **Syed Noman Ali Bukhari and Uzma Syed, Advocates Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 12/9 /20

Samin Ullah
(CLIENT)

ACCEPTED

SYED NOMAN ALI BUKHARI
Advocate, Peshawar.

Uzma Syed
UZMA SYED
Advocate, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1418/2018.

Samin Ullah S/o Shakir Ullah No. 3137 constable FRP, Peshawar Range, Peshawar presently R/o Koda Khel, Sardheri Tehsil & District CharsaddaAppellant.

VERSUS

- 1. Inspector General of Police,**
Khyber Pakhtunkhwa, Peshawar,
- 2. Provincial Police Officer,**
Khyber Pakhtunkhwa, Peshawar,
- 3. Commandant FRP,**
Khyber Pakhtunkhwa, Peshawar.
- 4. The Superintendent of Police,**
FRP Peshawar Range, Peshawar,
- 5. The Superintendent of Police,**
Malakand Range, Swat**Respondents.**

PRELIMINARY OBJECTIONS

1. That the appeal is badly time barred.
2. That the appeal is not maintainable in the present form.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant has no cause of action to file the instant appeal.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
7. That the appellant is trying to conceal material facts from this Honorable Tribunal.

WRITTEN REPLY ON BEHALF OF RESPONDENTS.

RESPECTED SHEWETH.

FACTS:-

1. Para No. 1 is pertains to the appellant record. However, the appellant is a habitual absentee to which he was awarded major punishment of removal from service.
2. Para No. 2 is admitted to the extent that the judgment of this Honorable Tribunal was implemented vide office order Endst; No. 7198/SI Legal, dated 28.09.2017 after fulfillment of due codal formalities and denovo enquiry was conducted against the applicant in accordance to law.
3. In the light of directions of Honorable Tribunal, proper denovo enquiry was conducted against the appellant and he was awarded major punishment of time scale by bringing him in lowest stage of constable, by the competent authority and the period of absence and intervening period was treated as absence from duty without pay. It is pertinent to mention here that the Honorable Tribunal directed vide its judgment that the back benefits shall be subjected to outcome of denovo enquiry.
4. Para No. 4 is admitted to the extent that the major punishment of the appellant has been converted into minor punishment of stoppage of two annual

increments, without cumulative effect on commensurate grounds, by the appellate authority, otherwise, he was legally not entitled for any leniency.

5. Para No. 5 is admitted to the extent that review petition submitted by the appellant was thoroughly examined and rejected by the respondents No. 1 on the grounds of time barred.
6. The appellant has no cause of action to file the instant appeal and the same may kindly be dismissed on the following grounds.


GROUND:-


- A. Incorrect and denied. The appellant was treated in accordance to law as the denovo enquiry has already been conducted under the relevant law, however, during the course of denovo enquiry the appellant has failed to justified his prolong absence. An opportunity of personal hearing has also been offered, which the appellant availed too, but he failed to convince the competent authority regarding to his innocence. Thus the respondents have not violated any Constitution of Islamic Republic of Pakistan in the case of appellant.
- B. Incorrect and denied. The orders passed by the respondents in the case of appellant are legally justified and accordance to law, which is commensurate with the gravity of his gross misconduct.
- C. Incorrect and denied. The Para is not related as the previous proceedings conducted against the appellant was already set aside by the Honorable Tribunal vide judgment dated 05.09.2017, and reinstated the appellant in service and give liberty to the respondents to conduct denovo enquiry in accordance with law/rules. In the light of judgment of Honorable Tribunal proper denovo departmental enquiry was conducted against the appellant as per law, wherein he was found guilty of the charges leveled against him.
- D. Incorrect and denied. Proper departmental enquiry was initiated against the appellant under the relevant special law. He was issued Charge Sheet alongwith Summary of Allegations and Enquiry Officer was nominated to conduct proper enquiry against him. During the course of enquiry the Enquiry Officer found him guilty of the charges leveled against him and recommended for major punishment. Upon the finding of Enquiry Officer, he was issued Final Show Cause Notice to which he replied, but his reply was found unsatisfactory. Besides, an ample opportunity being heard in person has also been provided to the appellant, to which he availed too, but he failed to present any justification regarding his innocence before the competent authority. After fulfillment all the due codal formalities as per law, the impugned order has been passed by the competent authority. (Copies of Charge Sheet and Final Show Cause Notice are attached as annexure "A" & "B").
- E. Incorrect and denied. The appellant is legally not entitled for the back benefits, as he has not performed any government duty during such period. Moreover, it is settled preposition of law that the law helps the diligent and not indolent.


- F. Incorrect and denied. That proper departmental enquiry has already been conducted against the appellant, wherein the allegations were fully established against him and the Enquiry Officer recommended for major punishment. In the light of recommendation of Enquiry Officer and other material available on record, he was awarded major punishment of time scale constable by bringing him in the lowest stage of constable. However, on departmental appeal his major punishment was modified and converted into minor punishment of stoppage of two annual increments without cumulative effect by the appellate authority after taking lenient view, keeping in view his poor family background.
- G. The respondents may also be permitted to create additional grounds at the time of arguments.

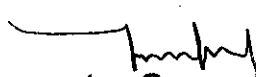
PRAYERS:-

It is therefore, most humbly prayed that in the light of aforesaid facts/submission, the service appeal may kindly be dismissed with cost.


**Superintendent of Police, FRP,
Peshawar Range, Peshawar
(Respondent No. 4)**


**Superintendent of Police FRP,
Malakand Range, Swat
(Respondent No. 5)**


**Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 3)**


**Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 1 & 2)**

A 3

(17)

CHARGE SHEET

I MR. HAZRAT ALI KHAN Supdt: of Police FRP, Malakand Range, Swat as competent authority here by charge you Constable Sameenullah No.3986 of FRP, Malakand Range, Swat , platoon No.77 Police Station Samar Bagh absented yourself with effect from 28-04-2012 up till date vide D.D. report No.09 dated 28-04-2012.Your pay has already been stopped vide this office O.B. No.169 dated 08-06-2012 . Thus issued charge Sheet and Statement of allegation.

1.) By reasons of the above, you appear to be guilty of misconduct under section - 3 of the K.P.K. (removal from service) special powers ordinance 2000, and have rendered yourself liable to all or any of the penalties specified in section - 3 of the ordinance bid.

3.) You are, therefore required to submit your written defense within 07 days of the receipt of this charge sheet to the Enquiry officer / committee, as the case may be.

4.) Your written defense if any should reach the Enquiry Officer /committee within the specified period, failing which it shall be presumed that you have no defence to put in and in the case exparte action shall follow against you.

5.) Intimate whether you desire to be heard in person.

6.) A statement of allegation is enclosed.

No. 76 /EC

Dated: 21-6-2012 Superintendent of Police, FRP
Malakand Range, Swat

Attested

Ali Khan

D

A. 2

1 Mr. Hadrat Ali Khan Supdt: of Police, FRP, MKD Range, as competent authority, is of the opinion that you Constable Sameen Ullah No. 3986 FRP have rendered yourself liable to proceeded against as you have committed the following action/omissions within the meanings of misconduct under section - 3 of the K.P.K. (removal from service) special powers 2000, and have rendered yourself liable to all or any of the penalties specified in section - 3 of the ordinance bid.

18


STATEMENT OF ALLEGATIONS.

You Sameenullah No.3986 of FRP, Malakand Range, Swat , platoon No.77 Police Station Samar Bagh absented yourself with effect from 28-04-2012 up till date vide D.D. report No.09 dated 28-04-2012.Your pay has already been stopped vide this office O.B. No.189 dated 08-06-2012. Hence issued charge Sheet and Statement of allegation.

2) For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an enquiry committee consisting of the following Police Officers is constituted under section - 3 of the K.P.K., (removal from service) special powers 2000, and to render yourself liable to all or any of the penalties specified in section - 3 of the ordinance bid

3) The Enquiry Committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make within twenty five days of the receipt of this Order, recommendations as to punishment or other appropriate action against the accused.

4) The accused and a well conversant representative of the department shall join the proceeding on the date, time and place fixed by the Enquiry committee.


Superintendent of Police FRP,
Malakand Range Swat.

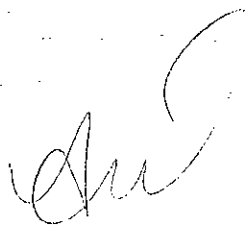
No. _____/EC, Dated Saidu Sharif the _____ 2012.


Copy of above is forwarded to the:-

- | | |
|----------------------------------|---|
| 1. <u>Inspt. Hadrat Ali Khan</u> | } For initiating proceeding against the officers/
official under the provisions section-3of the K.P.K.,
(removal from service) special powers 2000. |
| 2. <u>R.I. Rahmat Ali Khan</u> | |
| 3. <u>Ins. D. D. Lal Khan</u> | |

4. _____

With the direction to appear before the Enquiry Committee on the date time and place fixed by the Committee for the purpose of the proceeding.



Accepted


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3986
 77
 77
 3986

تاریخ برقی	قیمت	سابقہ غیر حاضری	دارتفک	موجودہ غیر حاضری
/	/	/	/	28 ⁰⁶ / ₀₇

28 ⁰⁶/₀₇ سے لے کر 28 ⁰⁶/₀₇ تک

مختصہ

189 ⁰⁶/₀₇ سے 8 ⁰⁶/₀₇ کو اس کی گواہی پر چارج ٹیٹ نمبری 76/EC سے 21 ⁰⁶/₀₇ کو جاری کی گئی ہے۔
 26 ⁰⁶/₀₇ کو غیر حاضر شدہ ملازم کے گھر کے پتے پر جاری ہو کر


26 ⁰⁶/₀₇ سے پرانہ نمبری 68/EC سے 26 ⁰⁶/₀₇ کو غیر حاضر شدہ ملازم کے گھر کے پتے پر جاری ہو کر
 26 ⁰⁶/₀₇ سے پرانہ نمبری 68/EC سے 26 ⁰⁶/₀₇ کو غیر حاضر شدہ ملازم کے گھر کے پتے پر جاری ہو کر
 26 ⁰⁶/₀₇ سے پرانہ نمبری 68/EC سے 26 ⁰⁶/₀₇ کو غیر حاضر شدہ ملازم کے گھر کے پتے پر جاری ہو کر

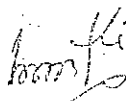
مختصہ

28 ⁰⁴/₀₇ سے بدستور اپنے ڈیوٹی سے بلا ہوا غیر حاضر ہونا چارج ٹیٹ کا جواب نہ دینا اور دیدہ دانستہ پتے
 28 ⁰⁴/₀₇ سے بدستور اپنے ڈیوٹی سے بلا ہوا غیر حاضر ہونا چارج ٹیٹ کا جواب نہ دینا اور دیدہ دانستہ پتے
 28 ⁰⁴/₀₇ سے بدستور اپنے ڈیوٹی سے بلا ہوا غیر حاضر ہونا چارج ٹیٹ کا جواب نہ دینا اور دیدہ دانستہ پتے

کمیٹی منبجوان

FRP


 ڈائریکٹر آفس


 ڈائریکٹر آفس

Issue Final Show
 cause notice

Attended

SP-PRP-MIO

116
 Camp
 20/7/02

C.B./1/3
①
②
20

FINAL SHOW CAUSE NOTICE.

I MR. HAZRAT ALI KHAN Supt.: of Police FRP Malakand Range, Swat is competent authority, under the K.P.K. Act No. 111 of 2010 removal from service (special powers) Repeal Act 2010, as follow:

- 1). That consequent upon the completion of Inquiry which you are given opportunity of hearing.
- 2). On going through the findings and recommendation of the Inquiry Officer, the material on record and other connected paper including your defense the said committee.

I am satisfied that you have committed the following Acts/ misconduct's specified in section -2 (1) of the Act No. 111 of 2010.

You Constable Sameen Ullah No. 3985 of FRP, Malakand Range Swat Platoon NO. 77 Police Station Samar Bagh absented yourself with effect from 28/04/2012 uptill date vide D.O report No. 09 dated 28/04/2012. Your pay has already been stopped vide this office O.B No. 189 dated 08/06/2012 and charge sheeted vide this office Endst: No. 76 dated 21/06/2012 but reply to the charge sheet has not been received to this office in the stipulated period. Thus issued Final Show Cause Notice.

- 3). You are therefore directed to reply to the final show cause notice as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
- 4). If no reply to this notice is received within fifteen days after its delivery in the normal course of circumstances it shall be presumed that you have nothing to offer in your self and in the case, Ex parte action shall follow against you.

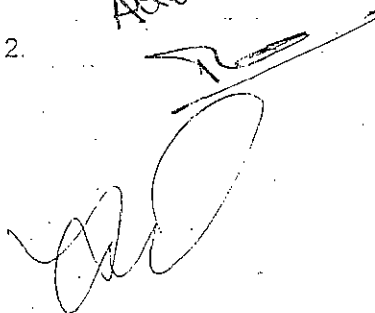
Copy of the finding of the Inquiry Officer is enclosed.

Superintendent of Police FRP,
Malakand Range Swat.

No. 76 A /EC

Dated 26-7- /2012.

Attested



ORDER.

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Recruit F.C. Sameen Ullah NO: 3986 while posted to P.S. Samrahs Bazar has remained absent from lawful duty from 28/4/2012 to date. Vide D.D 169 dated 28/4/2012.

He was proceeded against departmentally under the K.P.K, removal from service (Special Power) Ordinance, 2000 with duly constituted inquiry Committee comprising the following Police Officers.

- 1; Inspector Yousaf Ali Khan FRP, line Swat.
- 2; Inspector Rehmat Ali Kjan, RI FRP lines Swat.
- 3: Inspector Bacha Khan ,LO FRP Line Swat.

The inquiry committee has completed all the requisite codal formalities and submitted the enquiry report, wherein it has been observed that the defaulter Fc Sameen Ullah NO 3986 was enlisted in FRP on _____. The defaulter Fc Sameen Ullah NO 3986 deserted the force and thus demonstrated cowardice in the line of duty, later on he was given the opportunity to join his duty but he failed to do so. In the light guilty of charges and recommended his removal from service.

I, the undersigned, have thoroughly perused the enquiry report and the inquiry papers of the inquiry Committee. The defaulter Fc Sameen Ullah has been provided an ample amount of opportunity for personal hearing but he never availed this Chance. I fully agree with the findings and recommendations of the inquiry Committee. Therefore, the defaulter Fc Sameen Ullah NO 3986 FRP Swat, Malakand Range, is hereby removed from service from the first date of his absence of official duty.

Order announced.

Superintendent of Police, FRP
Malakand Range Swat.

NO _____ /Dated _____ /2012.

Copy to the worthy ADD: IGP/Commandant FRP K.P.K Peshawar, for favour of kind information, please.

Superintendent of Police, FRP
Malakand Range Swat.

Attested.
2012-8-8-2012
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