

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1066/2019

Date of Institution ... 20.08.2019

Date of Decision ... 21.01.2022

Shah Miran S/o Nasir Khan, Ex-Constable No. 360 Police Lines Karak.

... (Appellant)

VERSUS

Provincial Police Officer/ Inspector General of Police Khyber Pakhtunkhwa
Peshawar and others. ... (Respondents)

Shahid Qayyum Khattak,
Advocate

... For Appellant

Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

AHMAD SULTAN TAREEN ...
ATIQ-UR-REHMAN WAZIR ...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are

that the appellant while serving as Constable in Police Department, was proceeded against on the charges of absence/registration of FIR against him and was ultimately dismissed from service vide order dated 21-03-2017. Feeling aggrieved, the appellant filed departmental appeal followed by Service Appeal No 367/2017, which was decided vide judgment dated 18-03-2019 and the appellant was re-instated in service, leaving the respondents at liberty to undertake departmental proceedings in accordance with law. Because of de-novo proceedings, the appellant was again dismissed from service vide order dated 31-05-2019. Feeling aggrieved, the appellant filed departmental appeal dated 19-06-2019, which was rejected vide order dated 29-07-2019, hence the instant service

appeal with prayers that the impugned orders dated 29-07-2019 and 31-05-2019 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, therefore not tenable and liable to be set aside; that the appellant has not been treated in accordance with law, hence his rights secured under the Constitution has badly been violated; that the appellant has been dismissed from service on account of registration of FIR against him and now the appellant has been acquitted of the criminal charges vide judgment dated 06-01-2018, hence there remains no ground to maintain the penalty so awarded; that this honorable tribunal had ordered for a regular inquiry in accordance with law, but the appellant was not afforded appropriate opportunity to defend himself, hence he was condemned unheard.

03. Learned Deputy District Attorney for the respondents has contended that the appellant was dismissed from service on the charges of absence as well as registration of FIR against him; that the appellant was a habitual absentee, for which he was penalized in past as well but he did not mend his way and habitually absented himself under various pretext; that the appellant was associated with disciplinary proceedings in de-novo inquiry and was afforded reasonable opportunity of defense but the appellant failed to prove his innocence; that the appellant was acquitted of the criminal charges but it is a well settled legal proposition that criminal and department proceedings can run side by side without affecting each other; that as per departmental proceedings, the appellant was found guilty of misconduct, hence was again awarded with major punishment of dismissal from service.

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

05. Record reveals that the appellant was proceeded against on two counts i.e. absence from duty for some days and registration of FIR against him. Since the appellant has been acquitted of the criminal charges by the competent court of law vide judgment dated 06-01-2018. In a situation, if a civil servant is dismissed from service on account of his involvement in criminal case, then he would have been well within his right to claim re-instatement in service after acquittal from that case. Reliance is placed on 2017 PLC (CS) 1076. In 2012 PLC (CS) 502, it has been held that if a person is acquitted of a charge, the presumption would be that he was innocent. Moreover, after acquittal of the appellant in the criminal case, there was no material available with the authorities to take action and impose major penalty. Reliance is placed on 2003 SCMR 207 and 2002 SCMR 57, 1993 PLC (CS) 460. It is a well-settled legal proposition that criminal and departmental proceedings can run side by side without affecting each other, but in the instant case, we are of the considered opinion that the departmental proceedings were not conducted in accordance with law. The authority and the inquiry officer badly failed to abide by the relevant rules in letter and spirit. The procedure as prescribed had not been adhered to strictly. All the formalities had been completed in a haphazard manner, which depicted somewhat indecent haste.


06. It otherwise, was obligatory upon the respondent that the appellant being involved in a criminal case was required to be suspended from service under section 16:19 of Police Rules, 1934, which specifically provides for cases of the nature. Provisions of Civil Service Regulations-194-A also supports the same stance, hence the respondents were required to wait for the conclusion of the criminal case, but the respondents hastily initiated departmental proceedings against the appellant and dismissed him from service before conclusion of the criminal case. It is a settled law that dismissal of civil servant from service due to pendency of criminal case against him would be bad unless such official was

found guilty by competent court of law. Contents of FIR would remain unsubstantiated allegations, and based on the same, maximum penalty could not be imposed upon a civil servant. Reliance is placed on PLJ 2015 Tr.C. (Services) 197, PLJ 2015 Tr.C. (Services) 208 and PLJ 2015 Tr.C. (Services) 152.

07. As far as absence of the appellant is concerned, we have observed that his absence was not so long, which does not constitute gross misconduct, therefore extreme penalty of dismissal from service for the charge of absence is on higher side, hence, quantum of the punishment needs to be reduced. Reliance is placed on 2006 SCMR 1120. In view of the foregoing discussion, the instant appeal is partially accepted. The impugned order dated 29-07-2019 and 31-05-2019 are set aside and major penalty of dismissal from service is converted into minor penalty of stoppage of increment for one year. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
21.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

ORDER

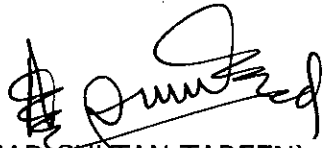
21.01.2022

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

Vide our detailed judgment of today, separately placed on file, the instant appeal is partially accepted. The impugned order dated 29-07-2019 and 31-05-2019 are set aside and major penalty of dismissal from service is converted into minor penalty of stoppage of increment for one year. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

21.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



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

05.07.2021

Appellant present through counsel.

Usman Ghani learned District Attorney alongwith Waqar Ahmad P.A.S.I for respondents present.

Arguments on behalf of appellant have been heard. On turn of the respondents, attention of learned District Attorney was drawn to the statement of allegations at Page-15 of the reply, wherein, it was directed that the inquiry officer Muhammad Ashraf S.D.P.O B.D Shah in accordance with the cited law may provide reasonable opportunity of hearing to the accused official, record his finding and make within 10 days of the receipt of reply, recommendation as to punishment or other appropriate action against the accused. The accused i.e. appellant was also directed to join the proceedings on the date, time and place fixed by the inquiry officer. Having drawn the attention of the learned District Attorney as afore-stated, it is concluded that the copy of findings of inquiry officer if was not annexed with the memorandum of appeal was required to be annexed with the written reply because it was the tool of respondents to justify the impugned order passed against the appellant. He argued that the charge against the appellant is proved because of his admissions in his written reply and contended that though there is no need of production of the inquiry report but for the sake of satisfaction of the Tribunal, he sought time. To come up for furnishing the copy of inquiry report and order, on 29.09.2021 before D.B.



(Rozina Rehman)
Member(J)



Chairman

29-9-21

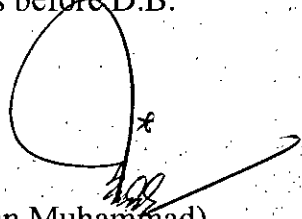
DB is on Tour case to come up
For the same on Dated. 21-1-22
\$
Revised

14.01.2021

Appellant in person present. Addl: AG alongwith Mr. Shahid, PASI for respondents present.

Appellant submitted rejoinder which is placed on file. A copy of the same is also handed over to the learned Addl: AG. Arguments could not be heard due to learned Member(Judicial) is on leave.

Adjourned to 01.04.2021 for arguments before D.B.



(Mian Muhammad)
Member(E)

01.04.2021

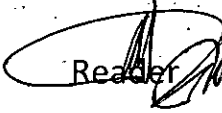
Due to non availability of the concerned D.B, the case is adjourned to 06.07.2021 for the same.



Reader

8-4-2020

Due to COVID19, the case is adjourned to
6/7/2020 for the same as before.


Reader

06.07.2020

Due to COVID19, the case is adjourned to 31.08.2020 for
the same as before.


Reader

31.08.2020

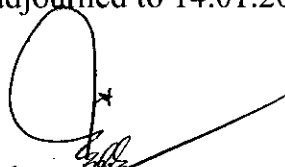
Due to summer vacation, the case is adjourned to
05.11.2020 for the same as before.


Reader

05.11.2020

Junior to counsel for the appellant and Addl: AG for
respondents present.

The Bar is observing general strike, therefore, the
matter is adjourned to 14.01.2021 for hearing before the D.B.


(Mian Muhammad)
Member (E)


Chairman

14.01.2020


Junior to counsel for the appellant and Addl. AG for the respondents present.

Learned AAG seeks time to furnish reply/comments. Adjourned to 24.02.2020 on which date the requisite reply/comments shall positively be furnished.


Chairman

24.02.2020

Appellant in person present. Mr. Kabirullah Khattak, Addl. AG alongwith Amir Hussain, ASI for the respondents present. Representative of the respondents submitted reply/comments which is placed on file. To come up for rejoinder and arguments on 08.04.2020 before the D.B.


(Hussain Shah)
Member

01.10.2019

Counsel for the appellant present.

Contends that despite clear observations contained in judgment dated 18.03.2019 passed by this Tribunal in Appeal No. 367/2017, the appellant was not allowed any opportunity of meaningful participation in the denovo departmental proceedings. Similarly, he was not allowed to cross-examine the witnesses appearing before the enquiry officer. Besides, the incidence of acquittal of appellant from the criminal charge was not considered by the competent authority or the departmental appellate authority.

In view of the available record and arguments 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 02.12.2019 before S.B.

Appellant Deposited
Security & Process Fee

01/10/19


Chairman

02.12.2019

Nemo for appellant. Addl. AG alongwith Amir Hussain, PSI for the respondents present.

Representative of the respondents seeks time to furnish reply/comments. Adjourned to 14.01.2020 on which date the requisite reply/comments shall positively be submitted.

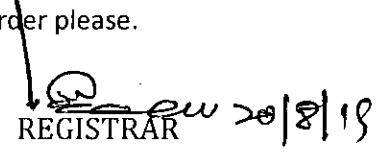


Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1066/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/08/2019	<p>The appeal of Mr. Shah Miran presented today by Mr. Shahid Qayum Khattak 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 20/8/19 </p>
2-	20/08/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/10/2019</u></p> <p style="text-align: right;">  CHAIRMAN </p>

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1066 /2019

Shah Miran Appellant

Versus

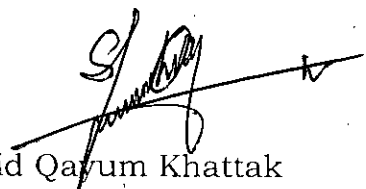
Provincial Police Officer and others Respondents

INDEX

S.No.	Description of Documents	Annex	Pages
1.	Memo of appeal with affidavit		1-5
2.	Address of the parties		6
3.	Order dated 21/02/2017	A	7
4.	Copy of Tribunal Order	B	8-13
5.	Copy of Charge Sheet	C	14-15
6.	Copy of Impugned order dated 31/05/2019	D	16-17
7.	Copy of Departmental Appeal	E	18-20
8.	Copy of impugned order dated 29/07/2019	F	21
9	Copy of other documents		22-28
10.	Wakalat Nama		29

Appellant

Through


Shahid Qayum Khattak
Advocate Supreme Court
of Pakistan
Mob No. 0333-9195776

Dated: /08/2019

①

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. 1066 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1177

Shah Miran S/o Nasir Khan , Ex-Constable No. 360

Dated 20/8/2019

Police Lines Karak Appellant

Versus

1. Provincial Police Officer/ Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
2. Regional Police Officer Kohat Region, Kohat.
3. District Police Officer, Karak
4. Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar

.....Respondents

APPEAL UNDER SECTION 4 OF SERVICE TRIBUNAL ACT, 1974
AGAINST THE ORDER DATED 31/05/2019 ISSUED ON
03/06/2019 PASSED BY RESPONDENT NO. 3 BY WHICH THE
APPELLANT HAS BEEN AWARDED MAJOR PUNISHMENT OF
DISMISSAL FROM SERVICE AND AGAINST THE ORDER DATED
29/07/2019 RECEIVED TO APPELLANT ON 08/08/2019 PASSED
BY RESPONDENT NO. 2 VIDE WHICH THE DEPARTMENTAL
REPRESENTATION/ APPEAL FILED BY APPELLANT HAS BEEN
REJECTED

PRAYER

On accepting this service appeal, the impugned orders dated
31/05/2019 and order dated 29/07/2019 may graciously be
set aside by declaring it illegal, unlawful, without authority,
based on mala fide, void abinitio and thus not sustainable in
the eyes of law and appellant is entitled for reinstatement in
service with all back benefits of pay and service

Respectfully Sheweth;

1. That appellant joined police department and was posted as
constable in Police Line Karak and has rendered satisfactory

Filed to-day

Registrar.

20/8/19

service in the Department and performed his duties with full zeal and enthusiasm.

2. That initially respondent No. 3 initiated disciplinary proceeding against appellant and accordingly he has been dismissed from service vide order dated 21/02/2017.

(Copy attached as Annexure "A")

3. That appellant filed departmental appeal before the worthy respondent No. 2 but the same has also been rejected and thereafter appellant challenges the validity of both the orders before this Hon'ble Tribunal in appeal. This Hon'ble Tribunal vide order dated 18/03/2019 allowed the same appeal and with certain observation. (Copy attached as Annexure "B")

4. That after the remand respondent No. 3 issued a fresh charge sheet to appellant on 26/04/2019. (Copy attached as Annexure "C")

5. That respondent No. 3 with out complying the directions of this Hon'ble Tribunal passed an order bearing OB No. 254 dated 31/05/2019 issued on 03/06/2019 vide which the earlier order of dismissal from service has been confirmed by awarding major punishment of dismissal from service. (Copy of impugned order is attached as Annexure "D")

6. That appellant filed departmental appeal /representation against the impugned order before respondent No. 2 who vide order dated 10/07/2019 issued on 29/07/2019 rejected the same without complying codal formalities . (Copy of appeal and impugned order are attached as Annexure "E" and "F")

7. That now appellant feeling aggrieved from the above orders hence, filling this appeal on the following amongst other grounds inter alia

GROUND:

- a. That both the impugned orders of the respondents are illegal, unlawful, without authority, based on mala fide intention, against the nature justice, violative of the Constitution and Service Law and equally with out jurisdiction, hence the same is liable to be set aside in the best interest of justice.

- b. That both the impugned orders passed by respondent are very much harsh, without any evidence based on surmises & conjectures and is equally against the principle of natural justice.
- c. That respondent No. 2 and 3 are badly fails to appreciate the observation and remarks passed by this Hon'ble Tribunal in its order dated 18/03/2019.
- d. That the order of this Hon'ble Tribunal has been badly violated and ex-parte inquiry proceeding were conducted wherein no opportunity of hearing has been provided to appellant nor he has been associated in the inquiry proceedings nor an opportunity of cross examination has been provided to appellant. Even the copy of the inquiry report has not been provided to appellant.
- e. That the inquiry officer failed to collect any evidence in support of the charges. No one was examined as witness in presence of appellant nor appellant was confronted with any documentary or other kind of evidence on the basis of which the impugned order was passed.
- f. That it is very much evident from the order of this Tribunal and order of the Trial Court that appellant has been acquitted from the charges in Case FIR No. 156 vide order of the trial Court 06/01/2018 but still he has been penalized for the same allegations which is totally illegal against the law and equally against the principle of nature justice.
- g. That appellant is defending the charges leveled against him right from the year 2016 and faced departmental and criminal proceedings and also litigation before this Hon'ble Tribunal for long period but the respondents paid no heed to the acquittal order and judgment passed by this Hon'ble Tribunal and passed an order in a mechanical manner which with due respect is liable to be set aside in the best interest of justice.
- h. That the impugned orders are not speaking order as the alleged absence from duty for a short period was not willful and deliberate but inevitable but the same has not been taken into

consideration specially when the appellant has been acquitted by the competent court from criminal charges.

- i. That the impugned orders has been passed in violation of law and rules of disciplinary proceedings and principles of natural justice. The authority wrongly and malafidly based the impugned orders with out giving any reason whatsoever, therefore the impugned order is bad in law.
- j. That now show cause notice has been issued to the appellant which is mandatory, therefore, both the orders are liable to be set aside on this score alone.
- k. That earlier vide order dated 21/02/2017 the absence period of 55 days has been treated as leave without pay which also gain finality in favor of appellant, but still the same allegation were modified which is totally illegal, as department never challenges the same before any forum. Once the absence period has been regularized then appellant can not be penalized for the same.
- l. That both the impugned orders are contrary to each other and with out the support and backing of any concrete evidence and admissible evidence.
- m. That respondent No. 2 has not decided the departmental appeal / representation in accordance to the rules and regulation which clearly shows mala fide intention thus, has no sanctity in the eyes of law thus the act of respondent No. 2 and 3 is totally based on male fide intention which clearly shows discrimination and undue victimization.

It is, therefore, most humbly prayed that on accepting this service appeal, the impugned orders dated 31/05/2019 and order dated 29/07/2019 may graciously be set aside by declaring it illegal, unlawful, without authority, based on mala fide, void abinitio, against the verdict of this Hon'ble Tribunal and thus not sustainable in the eyes of law and appellant is entitled for reinstatement in service with all back benefits of pay and service

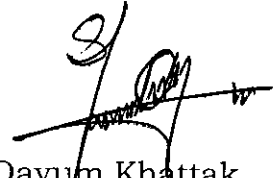
5

Any other relief not specifically prayed for but deem appropriate in the circumstances of the case may also be granted.



Appellant

Through



Shahid Qayum Khattak
Advocate Supreme Court
of Pakistan

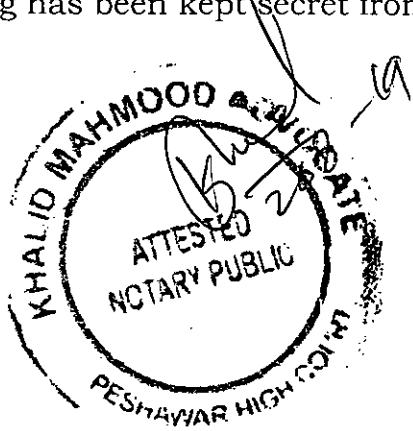
Dated: /08/2019

Certified that as per instruction of my client no such appeal has been filed before this Hon'ble Forum.


Advocate

AFFIDAVIT

I, Shah Miran S/o Nasir Khan , Ex-Constable No. 360 Police Lines Karak, do hereby solemnly affirm and declare on Oath that the contents of the above appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.



Deponent

6

BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR

Service Appeal No. /2019

Shah Miran Appellant

Versus

Provincial Police Officer and others Respondents

ADDRESSES OF THE PARTIES

APPELLANT

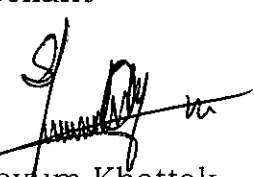
Shah Miran S/o Nasir Khan , Ex-Constable No. 360
Police Lines Karak

RESPONDENTS

1. Provincial Police Officer/ Inspector General of Police
Khyber Pakhtunkhwa, Peshawar
2. Regional Police Officer Kohat Region, Kohat.
3. District Police Officer, Karak
4. Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar

Appellant

Through


Shahid Qayum Khattak
Advocate Supreme Court
of Pakistan

Dated: /08/2019

ORDER

(7)

Annexure

My this Order will disposed off the (02) departmental enquiries against Constable Shah Miran No. 360 of this district Police

Facts are that:-

As per findings of LO Police Lines Karak Constable Shah Miran No. 360 absented himself from lawful duty w.e from 31.05.2016 to 28.06.2016 vide DD No. 33 dated 31.05.2016 Police Lines Karak without any leave or prior permission. Furthermore, his service record shows that he is habitual absentee and did not take interest in official duty.

2 Constable Shah Miran No. 360 have directly been involved / charged in criminal case FIR No. 156, dated 13.04.2016 u/s 3, 6, 7 FSC Police Station Tnah district Hangu.

He was issued Charge Sheets and Statement of allegations. SI Muhammad Idrees, LO Police Lines Karak and Mr. Mehar Ali SDPO, HQrs Karak were appointed to conduct enquiries against him on the allegations mention above respectively.

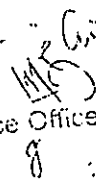
The Enquiry Officer SI Muhammad Idrees, LO Police Lines Karak reported his findings on the departmental enquiry at S.No. 01 that the allegation's leveled against the defaulter Constable has been proved. There are various absence entries in his service record which is evident proof that he is a habitual absentee. He has absented himself for 55 days from his lawful duty during the course of enquiry. Moreover, the Enquiry Officer also reported that he was awarded punishment of 15 times without pay on his habitual absence.

On the allegations mentioned at S.No. 02, the Enquiry Officer Mehar Ali, SDPO, Karak reported that after overt and covert probe, it was established that the defaulter Constable along with his driver is involved in cattle smuggling to Afghanistan via district Hangu and misuse his power by showing his Police Identity Card on interrupting from any security check points on the way. At last, he was caught and handed by the FC personnel and case FIR No. 156 dated 13.04.2016 u/s 3, 6, 7 Food Act PS that was registered against him. The Enquiry Officer recommended for severe action against him.

Final Show Cause Notices were issued and properly served upon him. In response to the Final Show Cause Notices, accused Constable submitted his reply placed on file

He was called and heard in person in the Orderly Room held in this office keeping in view of the available record and facts on file and recommendations of the Enquiry Officers, he is found guilty. He has earned bad name for the Police and his further retention in the department affect the discipline of Police Force. Therefore, in exercise of powers conferred upon me, I Mian Nasib Jan, District Police Officer, Karak hereby imposed major punishment of dismissal from service to him with immediate effect and his absence period of 55 days is treated as leave without pay.

OB NO. 105
DATED 21/02/2017


District Police Officer, Karak

Attested

ORDER

My this Order will disposed off the (02) departmental enquiries against Constable Shah Miran No 360 of district Police

Facts are that:-

1. As per findings of LO Police Lines Karak. Constable Shah Miran No.360 absented himself from lawful duty w/e from 31.05.2016 to 28.06.2016 vide DD No.33 dated 31.05.2016 Police Line Karak without any leave or pricer permission. Futhermore his service record shows that he is habitual absentee and did not take interest in offical duty.
2. Constable Shah Miran No.360 have directy been involved / charged in criminal case FIR No 156 dated 13.04.2016 u/s 3,6,7 FSC Police Station Thali district Hangu.

He was issued Charged Sheets and Statement of allegation . SI Muhammad Idrees,LO Police Lines Karak and Mr. Mehar Ali SDPO,HQrs Karak were appointed to conduct enquiries agaisnt him on the allegations mention above respectively.

The Enquiry Officer SI Muhammad Idrees ,LO Police Lines Karak reported in his findings on the departmental enquiry at S.No 01 that the allegations leveled against the defaulter constabe has been proved. There are various absence entries in his service record which is evident proof that he is a habitual absentes. He has absented himself for 55days from his lawful duty during the coures of enquiry. Moreover, the Enquiry Officer also reported that he was awarded punishment of 15 times without pay on his habitual absence.

On the allegations mentioned at S.No 01,the Enquiry Officer Mehar Ali,SDPO,Karak reported that after avert and covert probe,it was established that the dofaulter constable along with his diver is involed in cattle smuggling to Afghanistan via district Hangu and misuse his power by showing his Police Identity Card on interrupting from any security check points on the way. At last , he was caught red handed by the FC personnel and case FIR No. 156 dated 13.04.2016 u/s 3,6,,7 FoodAct PS,That was registered against him. The Enquiry Officer recommended for server action against him.

Final Show Cause Notices were issued properly served upon him. In response to the Final Cause Notices, accsed Constable submitted his reply placed on file.

He was called and heard in person in the Orderly Room held in this office keepinf in view of the avable record and facts on file and recommendations of the Enquiry Officers,he is found guilty. He has earned bad name for the Police and his further retention in the department affect the discipline of Police Force. Therefore , in exercise of powers conferred upon me, I Main Nasib Jan , District Police officer,Karak ,hereby imposed major punishment of dismissal from, service to him with immediate effect and his absence oeriod of 55 days is treated as leave without pay.

OB NO.105

DATED 021/03/2017

Attested

District Police Officer,Karak

(8)

Annexure '8'
1705/E.1
24/9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 367/2017

Date of Institution ... 18.04.2016

Date of Decision ... 18.03.2019

Shah Miran; Ex-Constable No. 360 Police Lines, Karak. ... (Appellant)



VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and two
others.
(Respondents)

Present.

Miss Uzma Syed,
Advocate.

... For appellant

Mr. Muhammad Riaz Paindakhel,
Asstt. Advocate General,

... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER

ATTESTED

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

Attested

The appeal in hand is directed against the order of dismissal from
service passed against the appellant by respondent No. 1 on 21.02.2017.


The appellant is also aggrieved from order dated 22.03.2017, whereby
respondent No. 2 rejected his departmental appeal.

2. The facts, as gatherable from the memorandum of appeal, are to the
effect that the appellant was performing his duty in Police Lines-Karak at

(9)

the relevant time when he was charged in criminal case recorded through FIR No. 156, dated 13.4.2016 U/Ss 3, 6,7 FSC Police Station Thall, District Hangu. He was consequently charge sheeted and was issued statement of allegations on 18.04.2016. The proceedings were followed by enquiry conducted by Mr. Mehar Ali, SDPO (H.Qs) Karak under the provisions of Khyber Pakhtunkhwa Police Rules, 1975. Where-after, on 14.07.2016, a final show cause notice was issued to the appellant. The said notice was replied to wherein the defence taken by the appellant was in terms that on the relevant day he took lift from a Driver namely Zawar Khan son of Sher Ahmad resident of Munir Abad who was proceeding to Sadda, Kurram Agency and was to return in the evening. The appellant, in order to fetch medicines for his ailing mother from one Hakeem Mula Jan at Toot Kas, availed opportunity and boarded in the pickup alongwith Zawar Khan. Three domesticated cows were already loaded in the vehicle. Upon reaching Thall Bazar they were stopped at F.C Check Post and due to non-availability of any permit for the transportation of animals, were handed over to the local police. The FIR was, therefore, lodged. On 21.02.2017, the impugned order was passed by the District Police Officer Karak, whereby the appellant was awarded punishment of dismissal from service with immediate effect and his absence period of 55 days was treated as leave without pay.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar.

Attested

3. We have heard learned counsel for the appellant, learned Assistant Advocate General on behalf of the respondents and have also gone through the available record.

It was argued on behalf of the appellant that the allegations against him were based on registration of case FIR No. 156 dated 13.4.2016, wherein, the appellant had earned acquittal on 06.01.2018. In the said manner the basis of proceedings against the appellant vanished, therefore, the punishment awarded to him was not sustainable. In the said regard she relied on judgments reported as PLD 2010-Supreme Court-695, 2013-PLC(C.S) 1398 and 2002-SCMR-57. That, the previous conduct of the appellant was also relied upon by the competent authority while awarding the impugned penalty. It was further stated that legal enquiry was not conducted in the matter and the appellant was not provided with an opportunity of personal hearing during the proceedings. The penalty against the appellant could not sustain in the facts and circumstances of the case, it was added.

Attested

ATTESTED

[Signature]
Sd/-
Secretary
Peshawar

On the other hand, learned Asstt. A.G argued that all the codal requirements were fulfilled before awarding penalty to the appellant. It was also stated that in his reply to the show cause notice, the appellant had admitted the factum of accompanying a driver who was transporting animals for the purpose of smuggling. It was stated that there was substantial absence on the part of appellant which commenced even before the occurrence recorded through FIR No. 156 dated 13.04.2016. The

[Signature]

previous departmental punishment awarded to the appellant revealed his conduct in service, therefore too, the impugned order was unexceptionable, it was added.

4. We have carefully examined the available record including the charge sheet and statement of allegations dated 18.04.2016, the final show cause notice dated 14.7.2016, the findings of enquiry officer recorded on 11.7.2016 and the impugned order dated 21.02.2017. It is evident from the said record that in the charge sheet, statement of allegations and the final show cause notice the only allegation was in term that the appellant was directly involved/charged in criminal case recorded through FIR No. 156 dated 13.04.2016 of P.S Thall District Hangu and the said act on his part was against service discipline besides amounting to gross misconduct. Seen in juxtaposition to those documents the enquiry report suggested that the absence of appellant from 11.04.2016 to 17.04.2016 (six days) was also mentioned in addition to the punishments awarded to him on various previous occasions. Similarly, in the impugned order dated 21.02.2017 the absence of appellant from his lawful duties for 55 days was also made basis for the imposition of impugned penalty. However, such absence of appellant was treated as leave without pay in the concluding part of the order.

Attested

Secretary
Kashmir
Services
Department

ATTESTED

5. The record referred to here-in-above clearly suggests that the enquiry, although in reference to the charge sheet No. 172/f.e dated

12

18.04.2016, was not conducted in line with the contents of charge sheet and statement of allegations. Extraneous facts in terms of absence of the appellant and his previous functions were introduced in the enquiry report. Needless to note that the said report was duly relied upon by the competent authority while passing the impugned order. In the said manner, the proceedings taken against the appellant were not in accordance with law and principle of natural justice as before the conclusion of proceedings he was never confronted with the charge regarding absence from duty.

6. It is also a fact that during the enquiry proceedings the statement of Koth Head Constable Mushtaq Ahmd was recorded. Sher Payo incharge Guard Mandar Thana Teri was also required to produce the record relevant to the absence of appellant. Under the law, it was obligatory upon the enquiry officer to have extended the opportunity of cross examination of witnesses to the accused official. It is also, nonetheless, a proposition tilting in favour of the appellant that after acquittal by a court of competent jurisdiction the charge solely based on the incidence of criminal case lost its significance.

Attested

7. For what has been discussed above, we consider it appropriate to allow the appeal in hand which is accordingly allowed. The penalty imposed upon the appellant in terms of dismissal from service is hereby set aside. The respondents shall, however, be at liberty to undertake proper departmental proceedings denovo against the appellant but only in accordance with law and rules. The said exercise, if taken, shall be

(13)

concluded positively within a period of ninety days from the receipt of copy of instant judgment. The issue of back benefits allowable to the appellant under the law shall follow the outcome of denovo proceedings.

Parties are left to bear their respective costs. File be consigned to the record room.

SD/

(HAMID FAROOQ DURRANI)
CHAIRMAN

SD/

(AHMAD HASSAN)
MEMBER

ANNOUNCED
18.03.2019

Date of Presentation of	22-3-19
Number of Bench	2400
C	14
U	2
T	16
Date of Judgment	22-3-19
Date of Filing of Appeal	22-3-19

Certified true copy
[Signature]
Peshawar

Attested

(14)

Annexure 'C'

No. 148 /PA(Enq)

Dated 26.1.4/2019

CHARGE SHEET

I, NAUSHER KHAN, District Police Officer, Karak as a competent authority, hereby charge you Constable Shah Miran No. 360 Police Lines Karak follow:-

1. "As per findings of LO Police Lines Karak, Constable Shah Miran No. 360 absented yourself from lawful duty w.e. from 31.05.2016 to 28.06.2016 vide DD No. 33 dated 31.05.2016 Police Lines Karak without any leave or prior permission. Furthermore, your service record shows that you are habitual absentee and did not take interest in official duty.
2. Constable Shah Miran No. 360 has directly been involved / charged in criminal case FIR No. 156, dated 13.04.2016 u/s 3, 6, 7 FSC Police Station Thall district Hangu.
This act on your part is against the service discipline and amounts to gross misconduct.

1. By the reason of your commission/omission, constitute miss-conduct under Police disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt. of Khyber Pakhtunkhwa, Police Department, you have rendered your-self liable to all or any of the penalties specified in Police Rule-1975 ibid

2. You are, therefore, required to submit your written defense within 07-days of the receipt of this charge sheet to the enquiry Officer Mr. Muhammad Ashraf SDPO B.D.Shah is hereby appointed for the purpose of conducting enquiry.

Your written defense if any should reach to the Enquiry Officer within a stipulated period, failing which shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

3. Intimate whether you desire to be heard in person.
4. A statement of allegation is enclosed.

Attested

District Police Officer, Karak

DISCIPLINARY ACTION

I, NAUSHER KHAN, District Police Officer, Karak as a competent authority, is of the opinion that Constable Shah Miran No. 360 Police Lines Karak has rendered himself liable to be proceeded against on committing the following act/commission within the meaning of Police Disciplinary Rule-1975 (amendment Notification No 3859/Legal, dated 27.08.2014) Govt: of Khyber Pakhtunkhwa, Police Department

STATEMENT OF ALLEGATIONS

- 1. "As per findings of LO Police Lines Karak, Constable Shah Miran No. 360 absented himself from lawful duty w.e.from 31.05.2016 to 28.06.2016 vide DD No. 33 dated 31.05.2016 Police Lines Karak without any leave or prior permission. Furthermore, his service record shows that he is habitual absentee and did not take interest in official duty.
- 2. Constable Shah Miran No. 360 has directly been involved / charged in criminal case FIR No. 156, dated 13.04.2016 u/s 3, 6, 7 FSC Police Station Thall district Hangu.
This act on his part is against the service discipline and amounts to gross misconduct.

1. The enquiry Officers Mr. Muhammad Ashraf SDPO B.D.Shah in accordance with provision of the Police Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt: of Khyber Pakhtunkhwa, Police Department may provide reasonable opportunity of hearing to the accused official, record his finding and make within 10-days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

2. The accused official shall join the proceeding on the date, time and place fixed by the enquiry officer.

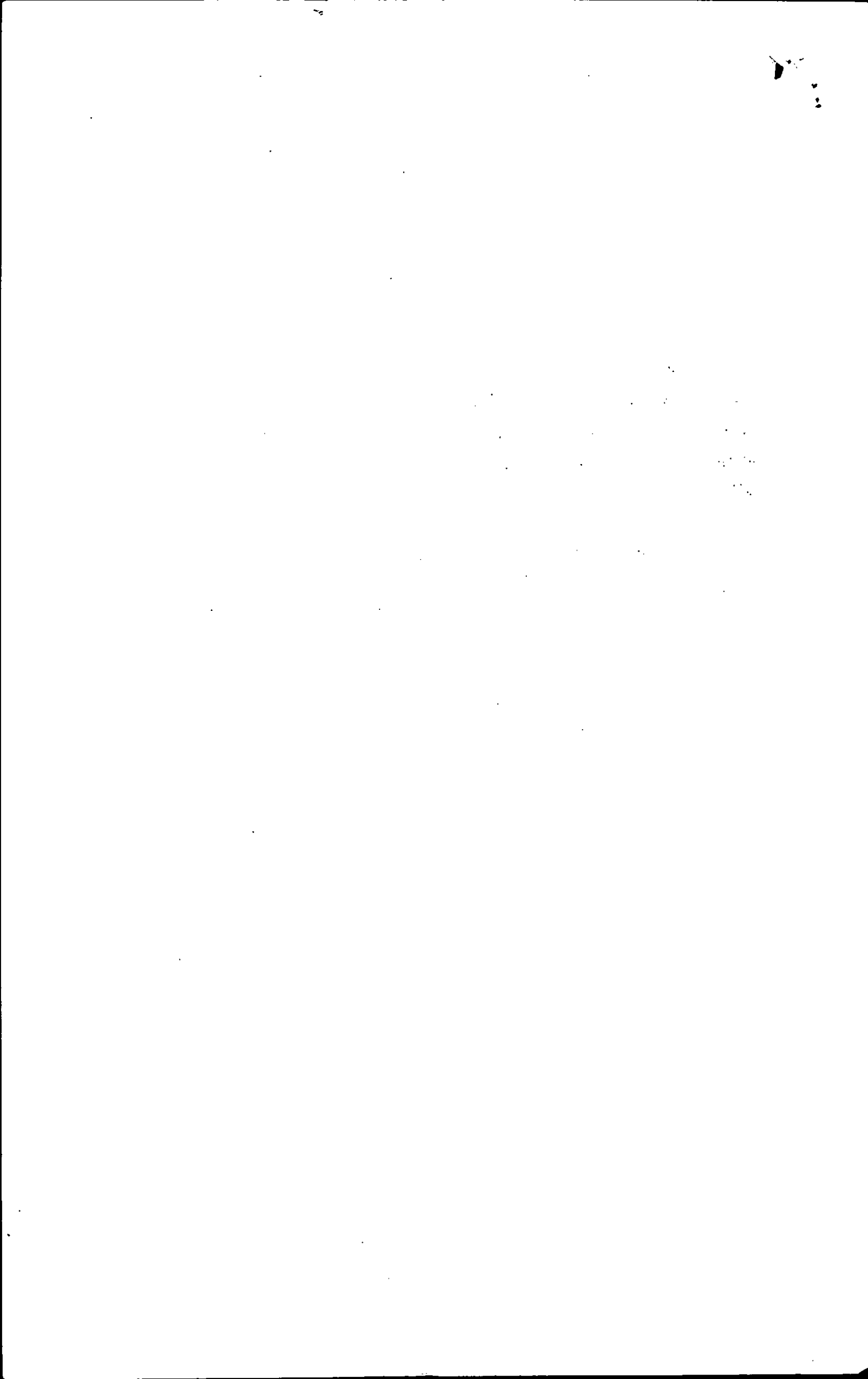
District Police Officer, Karak

No. 149 / PA(Enq), dated 26 / 6 / 2019.

Copy to:-

- 1. The enquiry Officers for initiating proceeding against the accused under the Provision of the Police Disciplinary Rule-1975 (amendment Notification No. 3859/Legal, dated 27.08.2014) Govt: of Khyber Pakhtunkhwa, Police Department.
- 2. Constable Shah Miran No. 360 Police Lines Karak.

Attested



ORDER

Annexure "D"

My this Order will dispose off the denovo departmental enquiry against
Constable Shah Miran No. 318 of this district Police.

Facts are that:-

1. As per findings of LO Police Lines Karak, Constable Shah Miran No. 360 absented himself from lawful duty w.e. from 31.05.2016 to 28.06.2016 vide DD No. 33 dated 31.05.2016 Police Lines Karak without any leave or prior permission. Furthermore, his service record shows that he is habitual absentee and did not take interest in official duty.
2. Constable Shah Miran No. 360 has directly been involved / charged in criminal case FIR No. 156, dated 13.04.2016 u/s 3, 6, 7 FSC Police Station Thall district Hangu.

This act on his part is against the service discipline and amounts to gross misconduct.

The accused official was awarded with major penalty of dismissal from service, upon which he submitted writ petition No. 391/2015 in the Service Tribunal Khyber Pakhtunkhwa Peshawar after the rejection of his appeal by the W/RPO Kohat as well as CPO Peshawar. The Service Tribunal KP, Peshawar vide his order announced dated 18.03.2019 called the case back for de-novo enquiry accordance with law and rules and the issue of back well be subject to the outcome of denovo proceedings.

In compliance with the Service Tribunal Khyber Pakhtunkhwa Peshawar Order quoted above and approval from the W/IGP E&I, IAB KP Peshawar vide his office letter No.1575/CPO/IAB/C&E dated 24.04.2019, he re-instated provisionally in service and he was also issued with fresh Charge Sheet on the same above mentioned allegations for the purpose of denovo enquiry and Mr. Muhammad Ashraf SDPO B.D.Shah was appointed as Enquiry Officer to conduct denovo enquiry against him and to submit his findings in the stipulated period.

The Enquiry Officer reported that from the perusal of his service record carries numerous bad entries, lot of absentees, due to which he was punished several times. He was dismissed vide OB No. 105 dated 21.02.2017. During the course of enquiry, he was acquitted from the court of the Civil Judge/Judicial Magistrate Hangu due to insufficient evidence. According to Police Rules 16-02, if any Police official done repetitive mistakes and his optimization is impossible than he may struck off from service. Due to his blemish service record and time & again mistakes, he is stigma on the Police Force. According to the allegations leveled against him regarding 42 days absence, he was dismissed from service and he was acquitted in the case FIR No. 156 dated 13.04.2016 u/s 3,6,7 FSC PS Thall issued by the Civil Judge/Judicial Magistrate Hangu vide order dated 06.01.2018.

Attested

(17)

Keeping in view of the available record and facts on file and perusal of all the relevant documents, the defaulter Constable has blemish service record, his retention in the Police Force is a stigma for the Police department, although he is acquitted from the criminal case but he is indulged in extra illegal activities. he is found guilty of the charges beyond any shadow of doubt and the punishment awarded to him is found correct, therefore, I, **Nausher Khan Mohmand** District Police Officer, Karak as competent authority under the Police Rules 1975 (amended in 2014), he is awarded major punishment of dismissal from service.

OB No. 254
Dated 31.1.2019


District Police Officer, Karak

OFFICE OF THE DISTRICT POLICE OFFICER, KARAK

No. 7590-91/PA(Enq), Karak the dated 03-06- /2019.

Copy of above is submitted for favour of information to:-

1. The Registrar, Service Tribunal Khyber Pakhtunkhwa Peshawar w/r to his office order dated 18.03.2019 issued in the service appeal No. 367/2017.
2. The Inspector General of Police Enquiry & Inspection, Internal Accountability Branch Khyber Pakhtunkhwa Peshawar w/r to his office 1749/CPO/IAB/C&E dated 09.05.2019.


District Police Officer, Karak

Attested

To,

The Regional Police Officer,
Kohat Region, Kohat

Subject:- Departmental Appeal

Respected Sir,

With due respect, appellant submits departmental appeal against the order of learned district police officer, Karak Dated 31-05-2019 ride which appellant was dismissed from service.

FACTS

- 1) That appellant was serving district Karak Police as constable and was rendered to departmental action on charges of absence from duty and involvement in criminal case vide FIR No 156 dated 13-04-2016 under sections 3,6,7 food staff control Act, Police station Thall District Hangu.
- 2) That appellant submitted plausible reply in response to the charge sheet and enquiry officer furnished ambiguous findings recommendation therein treating of alleged observe period as without pay, decision on charge of involvement in criminal case may be kept pending till decision to trial court and award of harsh punishment
- 3) That learned district police officer, Karak dismissed appellant from service vide order order dated 21-02-2017, and the departmental appeal of appellant was also rejected vide order dated 22-03-2017.

Attested

- 4) That the appellant filed service appeal before Khyber Pakhtunkhwa service Tribunal Peshawar which was accepted vide order dated 18-03-2019 and case was remitted to the department for fresh proceedings.
- 5) That appellant was re instated in service and de-novo proceedings were initiated against appellant which culminated in passing the impugned orders, hence brief representation on the following grounds.

Grounds

- A. That the impugned order has been passed without taking into account the observation and remarks passed by honorable service Tribunal in service appeal of appellant.
- B. That an ex-parte inquiry proceedings were conducted and appellant was not associated in the inquiry proceedings.
- C. That the enquiry officer failed to collect any evidence in support of the charges. No one was examined as witness in my presence and appellant was also not confronted with any documentary or other kind of evidence.
- D. That the Trial court has recorded acquittal order dated 16-01-2018 in the criminal case mentioned above, therefore the second charges of involvement in criminal case was washed away. The defense put forth by the appellant in response to the charges was brushed aside without any reasons and grounds.
- E. That appellant is defending the charges right from the year 2016 and faced departmental and criminal proceedings and litigation before service Tribunal for long period the lower authority paid no heed to the acquittal order

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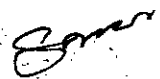
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recorded by Trial court and the judgement of service Tribunal passed in service appeal filed by appellant.

- F. That the alleged absence from duty for a short period was not willful and deliberate but inevitable appellant was acquitted of the criminal charge. Therefor the alleged charge were baseless and ground less.
- G. That appellant belongs to poor family. The monthly salary was the sole source of income and lower authority wrongly awarded harsh penalty of dismissal from service despite the fact the charge was can proved.

It is therefore requested that on acceptance of the appeal the impugned order may be set aside and appellant may also allowed grant of back benefits.

Yours obediently



SHAH MIRAN
Ex-Constable No. 318
District Karak
Cell # 0330-4545546

19-06-2019

Attested

POLICE DEPTT.

KOHAT REGION

ORDER.

This order will dispose of a departmental appeal, moved by Ex-Constable Shah Miran No. 318 of Operation Staff Karak against the punishment order, passed by DPO Karak vide OB No. 254, dated 31.05.2019 whereby he was awarded major punishment of dismissal from service on the allegations of his involvement in a criminal case vide FIR No. 156, dated 13.04.2016 u/s 3, 6, 7 FSC PS Thall, district Hangu and absence from duty as well.

He preferred an appeal to the undersigned, upon which comments were obtained from DPO Karak and his service record was perused. He was also heard in person in Orderly Room, held in this office on 10.07.2019. During hearing, the appellant failed to advance any plausible explanation in his defense.

I have gone through the available record and came to the conclusion that being a member of disciplined force, he is directly charged in FIR. Therefore, the allegations leveled against the appellant are proved beyond any shadow of doubt, hence his appeal being devoid of merits is hereby rejected.

Order Announced
10/07/2019

Attested

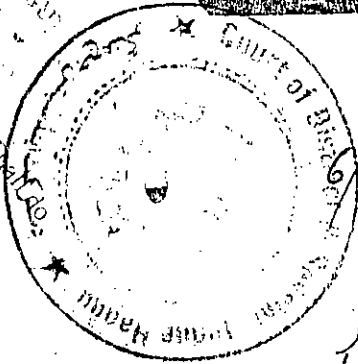

(TAYYAB HAFEEZ CHEEMA) PSP
Region Police Officer
Kohat Region

No. 16784/EC dated Kohat the 29/07 2019

Copy for information and necessary action to the District Police Officer, Karak w/ to his office Memo. No. 8196/LB, dated 28.06.2019. His Service Record & Enquiry File is returned herewith.


(TAYYAB HAFEEZ CHEEMA) PSP
Region Police Officer
Kohat Region

GOVERNMENT
HANGU DISTRICT
Camp Court Thall
Karak and 2.



Handwritten notes in Urdu: *جی ایم سی / لٹریچر - لٹریچر*

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Handwritten notes in Urdu: *ذرا باریک دیکھو*

Handwritten notes in Urdu: *File 34/7 ESCA p 13/4/16 Pr 156 24*

Order No.26
06.01.2018

Handwritten note: *CS-Thall 19/18*

- 1- APP for the State present. Accused Zavar Khan and Shah Meran on bail with learned counsel present.
- 2- Arguments over main case heard. Order announced.
- 3- Vide my detailed judgment consisting of five (5) pages, separately placed on file, it is held that the prosecution has failed to prove the case against the accused facing trial beyond any shadow of doubt. There are serious gaps and dents in the prosecution story which gives rise to reasonable doubt the benefit of which would be extended in favour of the accused, hence, I hereby acquit both the accused facing trial from the charges leveled against them. They are absconding their sureties are discharged from the liabilities of bail bonds. Case properly be dealt with as per law.
- 4- File be consigned to RRG after completion and compilation.

Announced:
06.01.2018

hal
(Syed Mansoor Shah Bukhari)
Judicial Magistrate Thall, Hangu.
Syed Mansoor Shah Bukhari
Civil Judge/L.M Thall

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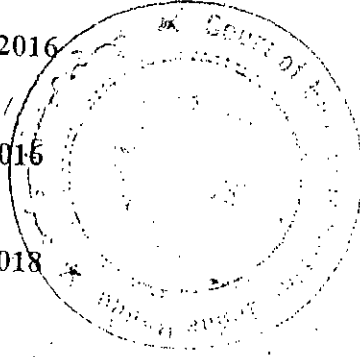
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این مقدمہ نمٹانے کے لئے عدالت میں اس کو اصلوں اور کاپیوں کے ساتھ پیش کیا گیا۔ (الاجراء ب)

IN THE COURT OF SYED MANSOOR SHAH BUKHARI,
JUDICIAL MAGISTRATE 1ST CLASS, THALL, HANGU,
KHYBER PAKHTUNKHWA.

19

Criminal Case No. 10/3 of 2016
Date of institution. 09.06.2016
Date of Decision 06.01.2018



State through Fazal Muhammad, ASI, PS Thall, District Hangu.

---Complainant.

VERSUS

1. Zawar Khan S/o Sher Ahmad R/o Faqir Abad, Karak.
2. Shah Meran S/o Nasir Khan R/o Faqir Abad, Karak.

.....(Accused).

06.01.2018
Syed Mansoor Shah Bukhari
Civil Judge/J.M Thall

F.I.R No. 156
Dated 13.04.2016
Charged U/Sec's 3/6/7 FSCA.
P.S Thall.

Attested

JUDGMENT

1. Concise facts as per FIR are such that on 13.04.2016 the local police of PS Thall have made Nakabandi near Tur Pul, Thall. At about 14:40 hours. a Pick up bearing registration No.J7646/Peshawar approached from Thall side, which was signaled to stop. Upon

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checking three cattle's were found in the body of the said Pickup which were being smuggled to Afghanistan. The driver of the Pickup disclosed his name as Zawar Khan, while, the other disclosed his name as Shah Meran. Both of them failed to produce any permit regarding the transportation of the same. Hence, both were formally arrested and charged for the commission of offence. Hence, the instant FIR.

2. After completion of investigation the prosecution submitted complete challan against the accused. Accused made their appearance before the court. Copies U/sec 241- A Cr.P.C was provided to them on 29.07.2016, whereas, charge against the accused was framed on 07.10.2016 to which they pleaded not guilty and claimed trail.

3- The prosecution in support of its case produced four witnesses out of five, while one PW namely Farhan, Constable No.76 was abandoned by learned APP being unnecessary. Brief summary of prosecution witnesses so far recorded are as follows:

10/16
16.01.2014
Mansoor Shah Engineer
Civil Judge

PW-1 is the statement of Muslim Khan, Constable, who is the marginal witness to the recovery memo Ex.PW-1/1.

PW-2 is the statement of Fazal Muhammad, SHO, who arrested the accused and took into his possession the Pickup alongwith cattle's vide recovery memo Ex.PW-1/1. He scribed the murasila Ex.PW-2/1. He also recorded the statement of witnesses to the recovery memo under section 161 Cr.P.C.

PW-3 is the statement of Umer Farooq, MHC, who upon receipt of murasila chalked out the FIR which is Ex.PW-3/1.

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16.01.2014

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PW-4 is the statement of Amjid Hussain, SHO, who submitted complete challan against the accused which is Ex.PW-4/1.

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5- After closure of prosecution evidence statement of the accused was recorded on 12.12.2017 U/Sec 342 Cr.P.C, wherein, they denied the allegations leveled against them and pleaded innocence. The accused denied to be examined on oath, however, they wished to produce evidence in their defense, accordingly they produced DW-1 and DW-2.

6. Arguments heard and record perused.

7. In a criminal trial the prosecution has to establish the guilt of the accused beyond any shadow of doubt. The fate of the prosecution case is mostly based on the investigation conducted after registration of FIR and the material collected during the said process against the accused. The principal allegation against the accused facing trial is that

they were smuggling three animals in a truck to Afghanistan for the purpose of illegal profit without having any permit/ permission for the said purpose. PW-1 is the statement of witness of recovery memo Ex.PW-1/1, who in his cross examination has deposed that he did not know as to where the cattle in question were carried by the accused. Thus the destination of the accused facing trial was not known to the PW-1, who is the witness of the recovery memo, meaning thereby, that the cattle in question were not carried by the accused to Afghanistan as smuggled goods. PW-2 is the statement of the complainant of the instant case. In his examination in chief PW-2 has stated that the accused failed to produce any permit regarding transportation of the

06.01.2018
Syed Mansoor Shah Bukhari
Civil Judge/1st Class

Attested

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PW-4 is the statement of Amjid Hussain, SHO, who submitted complete challan against the accused which is Ex.PW-4/1.

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5- After closure of prosecution evidence statement of the accused was recorded on 12.12.2017 U/Sec 342 Cr.P.C, wherein, they denied the allegations leveled against them and pleaded innocence. The accused denied to be examined on oath, however, they wished to produce evidence in their defense, accordingly they produced DW-1 and DW-2.

6. Arguments heard and record perused.

7. In a criminal trial the prosecution has to establish the guilt of the accused beyond any shadow of doubt. The fate of the prosecution case is mostly based on the investigation conducted after registration of FIR and the material collected during the said process against the accused. The principal allegation against the accused facing trial is that they were smuggling three animals in a pickup to Afghanistan for the purpose of illegal profit without having any permit/ permission for the said purpose. PW-1 is the statement of witness of recovery memo Ex.PW-1/1, who in his cross examination has deposed that he did not know as to where the cattle in question were carried by the accused. Thus the destination of the accused facing trial was not known to the PW-1, who is the witness of the recovery memo, meaning thereby, that the cattle in question were not carried by the accused to Afghanistan as smuggled goods. PW-2 is the statement of the complainant of the instant case. In his examination in chief PW-2 has stated that the accused failed to produce any permit regarding transportation of the

06.01.2018
Syed Munsoor Saib Bukhari
Civil Judge/1st Class

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cattle. That the accused were trying to smuggle the cattle to Afghanistan, therefore, they were arrested and the cattles & Pickup were taken into possession vide recovery memo Ex.PW-1/1. In his cross examination PW-2 has admitted that the tribal belt lies between the spot and Afghanistan. According to him a permit is necessary for the transportation of cattles from settled area to tribal belt. PW-2 has further deposed that they had no information about the involvement of the accused in such like offences in the past. He has further stated that the accused were entering the tribal belt, therefore, he can surely say that they were transporting the cattles to Afghanistan. It can safely be inferred from the statement of PW-2 that the accused facing trial have been involved in the instant case merely on the basis of suspicion and due to the only reason that the accused were entering the tribal territory. In the considered view of the court, mere entry into tribal territory would not constitute smuggling of cattle against the accused as the tribal territory is also a part of Pakistan. The prosecution has got no independent witnesses against the accused showing that the accused were transporting /smuggling the cattle in question to Afghanistan. Besides the number of the cattle would also suggest that the cattle were not being a smuggled property for the low quantity of the smuggled goods would suggest that the cattle in question were not for smuggling to Afghanistan but were being carried to the tribal belt to its real owners. While holding this, the court is fortified by the statements of DW-1 and DW-2 who have stated that the accused facing trial were transporting the cattle/ cow to their houses situated in Sadda, Kuram

106/01
Civil Judge

Attested

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Agency. It is worth to be noted here, that DW-1 and DW-2 have not been cross examined. It is therefore evident that the cattle in question were the ownership of DW-1 and DW-2, and further that the accused were transporting the said cattle to the tribal belt and their destination was the houses of DW-1 and DW-2.

8. For the foregoing reasons it is held that the prosecution has badly failed to establish the guilt of accused beyond any shadow of doubt. There exist gaps and dents in the prosecution story which gives rise to reasonable doubt the benefit of which would be extended in favour of the accused, hence, I hereby acquit both the accused facing trial from the charges leveled against them. They are on bail, their sureties are discharged from the liability of bail bonds. Case property be dealt with as per law.

Announced:

06.01.2018

[Signature]

(Syed Mansoor Shah Bukhari)
Civil Judge/J.M Thall
Judicial Magistrate Thall, Hangu.

Certificate

Certified that this judgment of mine consists of five (5) pages. Each page has been read-over, corrected and signed by me wherever it was necessary.

Attested

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25/6/18
[Signature]

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[Signature]

(Syed Mansoor Shah Bukhari)
Judicial Magistrate Thall, Hangu.

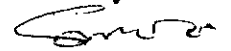
Syed Mansoor Shah Bukhari
Civil Judge/J.M Thall

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Date of presentation of application... 25/6/18
Date on which copy completed... 25/6/18
Date on which copy was attested... 25/6/18
Number of Words... 85
Page No... 8

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جناب عالی!

مشمولہ چارج شیٹ نمبر 148، 26-04-2019 بجاریہ جناب DPO صاحب کرک کے سلسلے میں معروض خدمت ہوں کہ میں مندرگار ڈھیری میں تعینات تھا، نجی کام کے سلسلے میں ٹیری بازار گیا ہوا تھا کہ اس دوران ہمارے گاؤں کے زوار خان ولد شیر احمد خان سکنتہ فقیر آباد نے ڈاٹسن لا کر جس میں تین عدد اس گائے بھی لوڈ تھے میرے ساتھ ڈاٹسن کو کھڑا کیا اور ڈرائیور مذکورہ سے پوچھا کہ آپ کہاں جا رہے ہو، انہوں نے کہا کہ صدہ کرم ایجنسی جا رہا ہوں اور شام تک واپس آؤنگا چونکہ میری والدہ صاحبہ ضعیف العمری کی وجہ سے ہر وقت بیمار رہتی ہے، میں نے سوچا کہ اس کے ساتھ چلا جاؤنگا اور اپنی والدہ صاحبہ کیلئے حکیم مولانا جان جو کہ توت کس میں حکمت کی دکان ہے ان سے دوائی لاؤنگا تو میں ڈرائیور بالا کے ساتھ ڈاٹسن میں بیٹھ کر جب ہم ٹل بازار پہنچے تو وہاں پرائیف سی چیک پوسٹ پر کھڑا کیا تو ڈرائیور سے پرمٹ طلب کر کے ڈرائیور نے کہا کہ یہ گھریلو جانور ہے نہ کہ فروخت کرنے والے ہیں تو FC والوں نے پولیس کو فون کر کے کہا کہ مرٹ نہ ہونے پر ٹل پولیس والوں کو حوالہ کیا کیونکہ میں محکمہ پولیس میں ہوں اور بہت کوششیں کی لیکن وہ میری بات ماننے کو تیار نہیں تھے اور گائے کے مالکان نے آکر انہوں نے پولیس کو منت زاری کر کے لیکن ایک نہ مانا لیکن پولیس والوں نے علت نمبر 156 مورخہ 13/04/2016 جرم 3.6.7 FSC میں FIR چاک کیا لیکن مالکان گائے کی ضمانت عدالت سے کر کے ضمانت پر مالکان کو واپس دی اور ڈرائیور نے اپنی ڈاٹسن کی ضمانت عدالت سے کر کے عدالت نے ڈاٹسن دی گئی چونکہ پولیس والوں نے مجھے مقدمہ میں بے گناہ چارج کیا، میں اپنی والدہ کیلئے حکیم سے دوائی لانے کیلئے گیا تھا، میرے خلاف جھوٹا ایف آئی آر درج کیا گیا تھا، میں نے اپنی بے گناہی عدالت میں ثابت کر دی، اور عدالت کا فیصلہ ہمراہ لف ہے میرا اس قدر بیان ہے کہ جس کو ضبط تحریر میں لا کر پیش خدمت ہے، کسی قسم کی دروغ گوئی سے کام نہیں لیا ہے، حقیقت پر مبنی ہے، چارج شیٹ ہذا بلا مزید کارروائی داخل دفتر کرنے کی استدعا کرتا ہوں۔

شاہ حسین


0330.4545546

Attested

کتابخانه

Accepted by

2019

الاسی

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مقدمت میں - ابتدائی کتابت کے سلسلے میں -
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BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service appeal No. 1066//2019
Ex-Constable Shah Miran No. 360

... Appellant.


VERSUS

Provincial Police Officer,
Khyber Pakhtunkhwa & Others

... Respondents

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5.	Detail of appellant's absence from lawful duty	A	4
6.	Affidavit	-	5


Respondents
Through Representative
District Police Officer
Karak

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1066/2019

Shah Miran ex-constable No. 360

....Appellant

VERSUS

Provincial Police Officer IGP

Khyber Pakhtunkhwa & Other

...Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth: -

Parawise comments on behalf of respondents No. 1,2 and are submitted as under:-

Preliminary Objections:

- a) That the appellant has got no cause of action.
- b) That the appellant has got no locus standi to file the instant appeal.
- c) That the appeal is not maintainable in the present form.
- d) That the appeal is not maintainable for mis-joinder and non-joinder of parties.
- e) That the appellant estopped to file the instant appeal for his own act.
- f) That the appellant his not come with clean hands to his honorable Tribunal.
- g) That the appeal is time barred.

FACTS

1. Recruitment of appellant as constable in District Police, Pertains to record. However, the performance of the appellant during his service remained unsatisfactory. He was a habitual absentee and willfully remained absent from lawful duty on different occasions and awarded different kind of punishment, but the appellant did not mend his way. Besides above, the appellant while posted at Police Lines Karak had willfully absented himself from lawful duty vide daily diary No: 33, Dated 31-05-2016. A detail of appellant's absences from lawful duty is Annexure-"A".
2. Correct, the charges/allegations leveled against the appellant were proved beyond any shadow of doubt. Therefore, a punishment commensurate to the charges was imposed upon the appellant by respondent No: 3.
3. Pertain to record, hence no comments.
4. In compliance with the judgment of this Honorable Tribunal, de-novo departmental proceedings were initiated against the appellant followed by law and rules.
5. Incorrect, the judgment of the Honorable Tribunal passed in earlier service appeal of the appellant was complied with in its true spirit by the respondent No 3 and all codal formalities were fulfilled during the course of de-novo departmental proceedings. The charges / allegations leveled against the

Appellant were proved during the course of de-novo proceedings. Furthermore, service record of the appellant was also found in-different, which speaks of his disinterest in discharge of his lawful duty. In these circumstances, retention of the appellant in a discipline department was a burden on public exchequer as well.


6. The department appeal of the appellant was devoid of merits and rejected by respondent No. 2 after all codal formalities.
7. The appellant is stopped to file the present appeal for his own act.

GROUND:-

- a. Incorrect, the appellant has willfully absented himself from lawful duty and subsequently arrested in a criminal case in district Hangu, while smuggling of cattle. The appellant earned bad name to the Police department. Therefore, the appellant was proceeded with departmentally and the charges / allegations leveled against the appellant were established. After completion of all codal formalities, legal and speaking orders were passed by the respondent No. 3 & 2 in accordance with law & rules.
- b. Incorrect, legal & speaking orders commensurate to the charges established against appellant were passed by respondent No. 2 & 3.
- c. Incorrect, non-compliance with the judgment of Honorable Tribunal passed in service appeal No. 367/2017 was complied with in letter & spirit.
- d. Incorrect, judgment of the Honorable Tribunal was honored by respondent No. 3. The appellant was associated with the inquiry proceedings and afforded opportunity of cross examination.
- e. Incorrect, the inquiry office had examined the concerned official witness i.e. Muharrir concerned and the appellant was afforded opportunity of cross examination as well.
- f. It is well established rules that criminal prosecution and departmental proceedings are distinct in nature and could be taken side by side independent of each other. Therefore, the appellant was rightly proceeded with departmentally under the existing law & rules.
- g. The appellant was a habitual absentee; indulge himself in extra departmental activities and involved in smuggling of cattle. Therefore, the appellant is responsible for his own act.
- h. Incorrect, orders of the respondents No. 2 & 3 are in accordance with law / rules and speaking one.
- i. Incorrect, the orders of respondent No. 2 & 3 are in accordance with the law & rules.
- j. The appellant was proceeded departmentally under the Khyber Pakhtunkhwa, Police Rules 1975 (Amendments 2014), wherein under the relevant rules, there is no need of show cause notice.
- k. Pertains to record, hence no comments.

- l. Incorrect, orders of respondents No. 2 & 3 are speaking and self-explanatory.
- m. Incorrect, the departmental appeal of the appellant was decided by the respondent No. 2 in accordance with rules after fulfilling all codal formalities.

In view of the above, it is prayed that the appeal may graciously be dismissed.



Regional Police Officer,
Kohat, Region
(Respondent No. 2)



Provincial Police Officer/IGP
Khyber Pakhtunkhwa,
(Respondent No.1)



District Police Officer,
Karak
(Respondent No. 3)

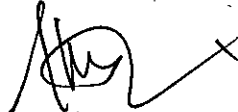
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Annexure-A

DETAIL OF ABSENCE OF EX-CONSTABEL SHAH MIRAN

S.NO	OB NO. WITH DATE	PERIOD OF ABSENCES	PUNISHMENT AWARDED
1.	OB No. 525 dated 15.05.2012	03 Days	Leave without pay
2.	OB No. 546 dated 18.06.2014	01 Hrs & 15 Minutes	Fined Rs. 200/-
3.	OB No. 1032 dated 26.12.2014	02 Hrs	Fined Rs. 300/-
4.	OB No. 45 dated 26.01.2015	01 days	02 days Quarters Guard
5.	OB No. 92 dated 27.02.2015	34 days	Leave without pay
6.	OB No. 996 dated 25.05.2012	06	Leave without pay
7.	OB No. 533 dated 09.07.2013	15 days	Leave without pay
8.	OB No. 549 dated 19.06.2014	02 days	Leave without pay
9.	OB NO. 628 dated 18.07.2014	01 day	Leave without pay
10.	OB No. 356 dated 17.09.2015	02 days	Leave without pay
11.	OB NO. 491 dated 28.12.2015	02 days	Leave without pay
12.	OB No. 65 dated 10.02.2015	01 day	Leave without pay
13.	OB No. 115 dated 24.02.2016	01 day	Leave without pay
14.	OB No.327 dated 12.05.2016	01 day	Leave without pay
15.	OB No. 390 dated 16.06.2016	01 day	Leave without pay

ATTESTED



SRC/OHC Branch
DPO Office Karak

District Police Officer
Karak

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BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service appeal No. 1066//2019
Ex-Constable Shah Miran No. 360

... Appellant

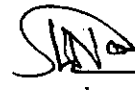
VERSUS

Provincial Police Officer,
Khyber Pakhtunkhwa & Others

... Respondents

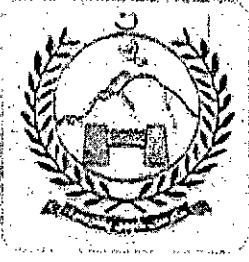
AFFIDAVIT

I, the undersigned respondent No. 03, do hereby solemnly affirm and declare on oath on behalf of respondents, that the contents of Parawise comments are true & correct to the best of our knowledge and belief, and nothing has been concealed from this Honorable Court.



**DISTRICT POLICE OFFICER,
KARAK
(Respondent No. 3)**

*District Police Officer
Karak*



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 877 /ST

Dated: 7-4- /2022

All communications should
addressed to the Registrar of
Service Tribunal and not any office
by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Karak.

Subject: JUDGMENT IN APPEAL NO. 1066/2019, MR. SHAH MIRAN

I am directed to forward herewith a certified copy of Judgement
dated 21.01.2022 passed by this Tribunal on the above subject for strict
compliance.

Encl: As above


REGISTRAR

KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

**BEFORE THE SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA PESHAWAR**

Service Appeal No. 1066/2019

Shah Miran **Appellant**

Versus

Provincial Police Officer and others **Respondents**

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth;

Preliminary objection

That the reply/para-wise comment has not been competently filed and nor any affidavit has been filed in accordance with law nor the same has been properly attested, hence the same has no value in the eyes of law.

Rejoinder to Preliminary objection

Preliminary objection raised by respondents are erroneous, frivolous, based on male fide intention and having no factual and legal backing thus not tenable. Respondents have failed to explain as why the appellant has no cause of action when he has been awarded punishment and filing appeal is his substantive right and he has aggrieved party hence filed this appeal; why the appellant has no locus standi after award of punishment; how the appeal is not maintainable in the present form; that how the appeal is not maintainable for mis-joinder and non-joinder of parties; how the appellant has been estopped to filed the instant appeal; that what material fact has been concealed by the appellant from this Hon'ble Tribunal;; how the appeal is time barred; No plausible explanation has been given by the respondents. No specific and due objection regarding the controversial question of facts and law involved in the instant service appeal has provided, therefore, appellant is unable to submit proper rejoinder to the preliminary objection raised by the respondents. However it is submitted that appellant was

dismissed from service thereof appellant has got every right to file service appeal after exhausting departmental remedy. Appellant was mala fide implicated in Criminal case and the respondent department instead of defending appellant issued the impugned orders of dismissal from service without conducting proper enquiry and waiting for the decision of the trial court. Appellant has filed the service appeal within time before proper and competent forum thus the preliminary objections raised by respondents are un-established and without footing.

Rejoinder to Facts of Reply/ Parawise comments

1. In response to Para No. 1 and 2 of the reply / parawise comments it is submitted that no respondent badly fails to attached any documents regarding the unsatisfactory performance of appellant. Furthermore a person can't be penalized for a one offence twice under the law. That earlier vide order dated 21/02/2017 the absence period of 55 days has been treated as leave without pay which also gain finality in favor of appellant, but still the same allegation were modified which is totally illegal, as department never challenges the same before any forum. Once the absence period has been regularized then appellant cannot be penalized for the same. The departmental enquiry has not been conducted in accordance to law and no witness whatsoever has been examined against accused in his presence nor any evidence except charge in criminal case has been brought on record which clearly show the innocence of appellant after acquittal. The learned Trial court recorded acquittal order in the criminal case therefore, departmental order based on criminal charges will automatically fail. **(Copy of acquittal order is attached)**
2. Para No. 3 needs no reply.
3. In response to Para No. 4 & 5, it is submitted that it is very much evident from the order of this Tribunal and order of the Trial Court that appellant has been acquitted from the charges in Case FIR No. 156 vide order of the trial Court 06/01/2018 but still he has been penalized for the same allegations which is totally illegal against the law and equally against the principle of nature justice.

Furthermore, the order of this Hon'ble Tribunal has been badly violated and ex-parte inquiry proceeding were conducted wherein no opportunity of hearing has been provided to appellant nor he has been associated in the inquiry proceedings nor an opportunity of cross examination has been provided to appellant. Even the copy of the inquiry report has not been provided to appellant.

4. In response to para No. 6 & 7, it is submitted that on mere reading of appellate authority order 10/07/2019 clearly reflect that the same is not a speaking order. It is further submitted that appellant being a Civil Servant has wrongly been proceeded with under the Police Rules 1975 nor adopted proper procedure. Further it submitted that proper procedure for disposal of appeal has not been adopted by respondent No. 2 envisages in the Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986. Hence, appellant left with no other option but to filed the present appeal well with in time and thus fully competent.

Rejoinder to the Grounds of Reply/ Parawise comments

- a) Para No. a- c of the reply / parawise comments are incorrect and that of memo of appeal are correct. The entire departmental file has been prepared in violation of law and rules. Both the orders are illegal, unlawful, without authority, based on mala fide, void abinitio. Appellant was mala fidely arrested and the learned trial stamped and corroborated the stance of appellant correct by recording acquittal order of appellant in the criminal case. No opportunity of defence was provided to appellant. The appellant has been proceeded with the rules and regulation which are not applicable to him nor proper procedure has been adopted by the respondents to determine the guilt of appellant. No evidence whatsoever has been procured against appellant. No statement of any witness recorded by the enquiry officer in presence of appellant. Further the Order dated 18/03/2019 of this Hon'ble Tribunal has not been complied with in its true spirit.
- b) Para No. d- h of the reply / parawise comments are incorrect hence denied. Detail given in the memo of appeal is correct the same has

not been properly replied. The respondents did not adhere to the rules while conducting departmental proceedings. The appellant has been victimized without conviction in a criminal case which were the main allegation against him. Now appellant has been acquitted by the learned Trial Court in the Criminal case therefore, the allegation leveled against appellant is liable to be set aside. Under the law in opportunity of cross examination of witnesses is the unalienable right of appellant but no opportunity of hearing has been provided to him, even then no statement is recorded against appellant which also support his stance. Whether a person can be penalized only on here say evidence and whether this important aspect of the case has been considered by the respondent while awarding punishment to appellant. And whether it is justified under any canon of law that a person has to be penalized on mere charging in criminal case without waiting for his conviction. No evidence whatsoever has been attached against the appellant with the Parawise Comments, which speaks about the veracity of the accusation. The respondents had based the charge sheet and both the orders on criminal case and no other allegation of commission of misconduct were leveled against appellant. Acquittal from criminal charges washed all the allegation against appellant. As far as absent from duty is concerned the same has been regularized by the respondent vide order dated 21/02/2017 which gain finality.

- c) Para No. i- m of the reply / parawise comments are incorrect hence denied. No proper procedure of enquiry or awarding of punishment has been adopted by the respondent. The whole departmental proceeding were not conducted in accordance with rules and regulations. The acquittal from criminal charges washed all the allegation. The appellant being Civil Servant has wrongly been proceeded with. It is the ultimate purpose of law and rights guaranteed by the Constitution that nobody has to be condemned unheard but here the basic right of the appellant has been violated and he has been condemned unheard, hence both the orders are liable to be set aside in the best interest. The Learned respondent No. 2 has not adopted proper procedure as mentioned in the

Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986. The question arises that whether there is any evidence regarding the allegation leveled against appellant and whether the punishment awarded to appellant being a civil servant is in accordance with law, rule and regulation. The procedure adopted by the respondents clearly show male fide intention, discrimination and undue victimization of the appellant and the appellant approaches this Hon'ble Tribunal being the final and highest forum of appeal. It is further submitted that rules and regulation have been blatantly violated.

It is therefore, most humbly prayed that by accepting this rejoinder and the ground of main appeal the order of respondent No. 3 dated 31/05/2019 issued on 03/06/2019 and order 29/07/2019 allegedly announced on 10/07/2019 of Respondent No. 2 may please be set aside and respondent may please be reinstated on service with all back benefits of service and pay.


Appellant

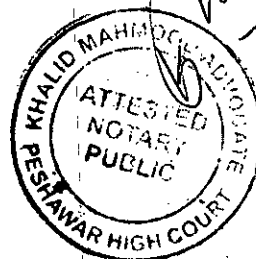
Through


Shahid Qayum Khattak
Advocate Supreme Court

Dated: 14.01.2021

AFFIDAVIT

I, do hereby solemnly affirm and declare on Oath that the contents of the above rejoinder are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Hon'ble Tribunal.




DEPONENT