

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.566/2018

Date of Institution ... 23.04.2018  
Date of Decision ... 14.07.2022

Kashif FC No.447 constable Police Station Lahor District Swabi,  
presently R/O Mohallah Mam Khel, Tehsil Razzar, District Swabi.

... (Appellant)

**VERSUS**

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

... (Respondents)

Mehtab Sikandar,  
Advocate

... For appellant.

Muhammad Riaz Khan Paindakhel,  
Assistant Advocate General

... For respondents.

Salah Ud Din

... Member (J)

Rozina Rehman

... Member (J)

**JUDGMENT**

Rozina Rehman, Member(J): The appellant has invoked the jurisdiction  
of this Tribunal through above titled appeal with the prayer as copied  
below:

**“On acceptance of this appeal the impugned order  
dated 07.08.2017 and final order dated 26.03.2018  
rejecting departmental appeal may graciously be set  
aside and appellant be reinstated in service with full  
back benefits in the interest of justice.”**

2. Brief facts of the case are that appellant was appointed as  
Constable in the Police Force of Khyber Pakhtunkhwa on 19.11.2008.  
At the relevant time, he was performing his duties on the grave of  
Mashal Khan, a victim of Abdul Wali Khan University Mardan. He was

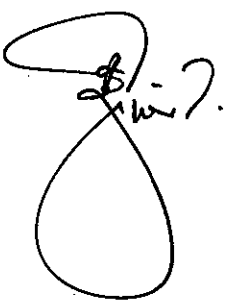


served with a charge sheet alongwith statement of allegations alleging therein that he had committed abetment and conspiracy in a murder case registered vide FIR No.364 dated 15.06.2017 at Police Station Kalu Khan. SDPO Razzar Circle was appointed as Inquiry Officer and the appellant was recommended for major punishment. Final show cause notice was also served upon him and he submitted reply but he was dismissed from service vide order dated 07.08.2017. He filed departmental appeal which was rejected, hence, the present service appeal.

3. We have heard Mehtab Sikandar Advocate, learned counsel for appellant and Muhammad Riaz Khan Paindakhel, learned Assistant Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Mehtab Sikandar Advocate, learned counsel for appellant inter-alia argued that the impugned order is against law, facts and material as the appellant was not treated in accordance with law and rules. It was contended that no proper inquiry was conducted as the appellant was not afforded proper opportunity of defense and that he was not heard as required under the law, therefore, the very proceedings conducted by the Inquiry Officer, his recommendation and subsequent dismissal order are of no legal effect.

5. Conversely, learned AAG submitted that according to the service record of the appellant he was found habitual absentee; that while posted to PS Lahor, he absented himself from lawful duty w.e.f 28.02.2017 till date of dismissal i.e. 07.08.2017 without any leave or permission from authority on account of which he was proceeded against departmentally. During the pendency of inquiry, appellant was



booked in case FIR No.364 dated 15.06.2017 registered at Police Station Kalu Khan U/S 302/120 B 148/149 PPC and FIR No.518 dated 16.07.2017 U/S 4 PO/ 3/4 AF/15 AA on account of which he was also served with show cause notices. SDPO Razzar was appointed as Inquiry Officer and appellant was recommended for punishment. He was then served with final show cause notice and after fulfillment of all codal formalities he was dismissed from service on account of his willful absence and involvement in criminal cases.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that one Amjad Ali registered FIR No.364 on 15.06.2017 at Police Station Kalu Khan District Swabi regarding murder of his son Tanveer by unknown accused, therefore, FIR was registered against unknown culprits. It was on 12.07.2017 when the present appellant was served with show cause notice for allegedly involved in the abetment and conspiracy of a murder in the holy month of Ramazan vide case FIR No.364 dated 15.06.2017. He was also issued show cause notice due to his involvement in case FIR No.518 dated 16.07.2017. Inquiry was also dispensed with. Final show cause notice was issued regarding his absence on 04.07.2017 and DSP Razzar was appointed as Inquiry Officer to conduct proper departmental inquiry. Departmental inquiry is available on file. Vide order dated 07.08.2017, he was dismissed from service from the date of his absence i.e. 28.02.2017. The present appellant Constable Kashif was not only charged for absence but also for his involvement in two different criminal cases. Inquiry was conducted only in respect of his absence. As per record, he while posted to Police Station Lahor, absented himself from



duty w.e.f 28.02.2017 without any leave. SDPO was appointed as inquiry officer but inquiry was not conducted in accordance with law as no witness was examined and the appellant was not associated to the inquiry proceedings. The inquiry officer did not pay heed to the other show cause notices which were issued to the appellant in respect of his involvement in criminal cases. It has not been brought on record as to whether charge sheet alongwith statement of allegations and show cause notices were ever served upon appellant. The impugned order of District Police Office Swabi dated 07.08.2017 is worth mentioning wherein it has been clearly mentioned that appellant was proceeded against departmentally for absence and that after collection of evidence and recording statement of all concerned, appellant was found guilty but no evidence of any witness was ever produced before this Tribunal in order to show the presence of appellant while cross examining the witnesses. Inquiry report is silent in this regard. On the strength of so-called inquiry report and that too regarding absence, he was awarded major punishment of dismissal from service from the date of his absence i.e. 28.02.2017. Three lines were added by the DPO Swabi in his dismissal order which are hereby reproduced for ready reference:

*"Besides above, he also involved himself in criminal case registered vide Nos.364 dated 15.06.2017 U/S 302/120-B/148/149 PPC and No.518 dated 16.07.2017 U/S 3/4 AF/15 AA-13 KPK Police Station Kalu Khan."*

It merits a mention here that for just involvement in cases of criminal nature whether he was proceeded against departmentally in accordance with law? The answer is NO. The order of the appellate authority is available on file which shows that order of the DPO was reproduced by

the appellate authority in shape of order dated 03.11.2017 and his mercy petition in shape of appeal under Rule 11-A also met the same fate. Admittedly, present appellant was acquitted U/S 249-A Cr.PC by the learned Judicial Magistrate-I Swabi in case FIR No.518 dated 16.07.2017. Similarly, the present appellant Kashif alias K-2 was acquitted in case FIR No.364 dated 15.06.2017 vide order of the learned Additional Sessions Judge, Swabi dated 12.06.2021 as the criminal case was full of doubts.

7. It has been held by the superior fora that all acquittals are certainly honorable. There can be no acquittal which may be said to be dishonorable. Involvement of the appellant in criminal case was also a ground on which he had been dismissed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue his service.

8. It is established from the record that charges of his involvement in criminal case ultimately culminated in honorable acquittal of the appellant by the competent court of Law. In this respect we have sought guidance from 1988 PLC (CS) 179, 2003 SCMR 215 and PLD 2010 Supreme Court, 695.

9. So far as his absence is concerned, he was not served with charge sheet and show cause notice. No proper inquiry was conducted and the appellant was never associated to the inquiry proceedings. His medical record was not taken into consideration and he was not given any opportunity of personal hearing.

10. The respondents have very blatantly violated the set norms and rules and conducted the proceedings in an authoritarian manner and




harsh punishment was awarded to the appellant. We have observed that the inquiry conducted by the respondents is not in accordance with law/rules. It is, however, a well-settled legal proposition duly supported by numerous judgments of Apex Court that for imposition of major penalty, regular inquiry is a must.

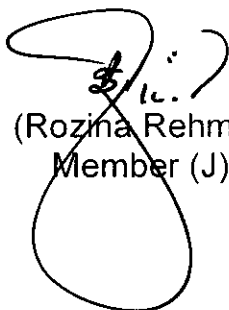
11. For what has been discussed above, this appeal is accepted, the impugned orders are set aside and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

14.07.2022



(Salah Ud Din)  
Member (J)



(Rozina Rehman)  
Member (J)

**ORDER**

14.07.2022

Appellant present through counsel.

Muhammad Riaz Khan Paindakhel learned Assistant Advocate General for respondents present. Arguments heard. Record perused.

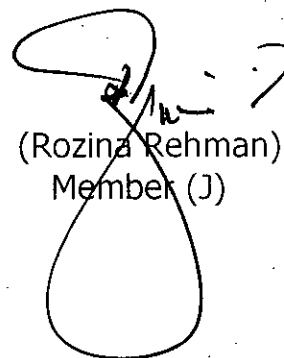
Vide our detailed judgment of today of this Tribunal place on file, instant service appeal is accepted and the impugned orders are set aside and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

14.07.2022



(Salah Ud Din)  
Member (J)

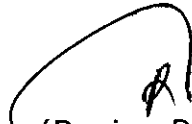


(Rozina Rehman)  
Member (J)

29.06.2022

Appellant alongwith his counsel Mr. Mehtab Sikandar, Advocate, present. Mr. Fazle Subhan, Head Constable alongwith Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Partial arguments heard. To come up for remaining arguments on 30.06.2022 before the D.B.



(Rozina Rehman)  
Member (J)



(Salah-ud-Din)  
Member (J)

30.06.2022

Learned counsel for the appellant present. Mr. Fazal Subhan HC alongwith Mr. Riaz Khan Paindakheil, Assistant Advocate General for the respondents present.

Arguments heard. To come up for order on 14.07.2022 before the D.B.



(Rozina Rehman)  
Member (J)



(Salah Ud Din)  
Member (J)

~~Handwritten notes and signatures, crossed out with a diagonal line.~~

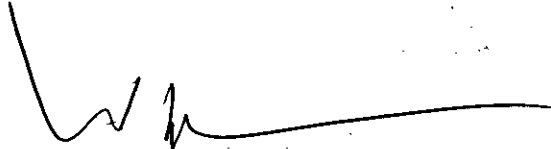


23.11.2021

Counsel for the appellant present.

Mr. Noor Zaman Khattak, District Attorney alongwith Mr. Fazle Suban H.C for the respondents present.

Partial arguments heard. During the arguments learned counsel for the appellant requested for adjournment in order to produced relevant record; allowed. To come up for full arguments on 26.01.2022 before D.B.



(Atiq Ur Rehman Wazir)  
Member (E)



(Rozina Rehman)  
Member (J)

26.01.2022

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

Junior of learned counsel for the appellant sought adjournment on the ground that learned counsel for the appellant is out of station today. Adjourned. To come up for arguments on 11.03.2022 before the D.B.



(Rozina Rehman)  
Member (J)



(Salah-ud-Din)  
Member (J)

11-3-22

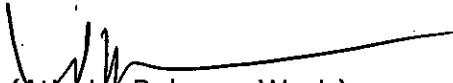
*Due to retirement of the Honble Chairmen the case is adjourned to come up for the same as before on 29-6-22*

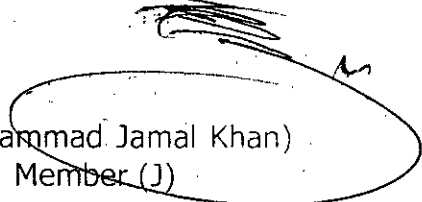
*Rezaul Karim*

01.02.2021

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Fazle Subhan H.C for respondents present.

Learned counsel for the appellant requested for adjournment. The request is acceded to and appeal is adjourned to 06.04.2021 on which to come up for arguments before D.B.

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

  
(Muhammad Jamal Khan)  
Member (J)

06.04.2021

Due to demise of Hon'able Chairman, the Tribunal is defunct, therefore, the case is adjourned to 07.07.2021 for the same.


  
Reader

07.07.2021

Counsel for appellant present.

Muhammad Adeel Butt learned Additional Advocate General for respondents present.

Request for adjournment was made on behalf of appellant; Request is accorded. To come up for arguments on 23.11.2021 before D.B.

  
(Rozina Rehman)  
Member(J)

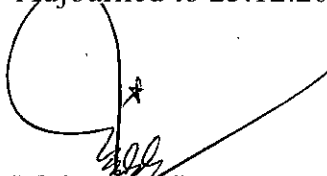
  
Chairman


13.10.2020

Counsel for the appellant is present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents are present.

Learned counsel for the appellant seeks adjournment as he has not prepared the brief.

Adjourned to 23.12.2020 for arguments before D.B.

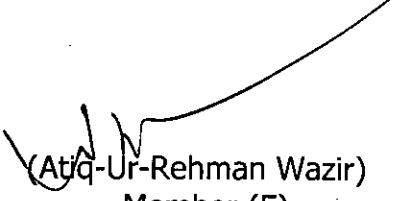
  
(Mian Muhammad)  
Member (E)

  
(Rozina Rehman)  
Member(J)

23.12.2020

Counsel for appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Fazle Subhan H.C for respondents present.

Learned Additional Advocate General requested that the instant appeal was entrusted to the Deputy District Attorney who has been transferred, therefore, requested for adjournment for making arrangement a fresh. The request is genuine and the case is adjourned to 01.02.2020 for arguments before D.B.

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

  
(M. Jamal Khan)  
Member (J)

01.02.2021

Learned counsel for the appellant present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Fazle Subhan H.C for respondents present.

Learned counsel for the appellant requested for adjourned. The request is acceded to and appeal is adjourned to 06.04.2021 on which to come up for arguments before D.B.

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

(Muhammad Jamal Khan)  
Member (J)

17.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 16.07.2020 before D.B.



Reader

16.07.2020

Due to COVID-19, the case is adjourned for the same on ~~28~~ 09.2020 before D.B.



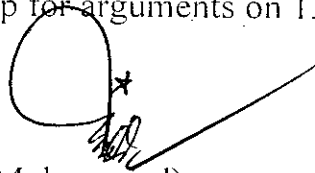
Reader

28.09.2020

Counsel for appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 13.10.2020 before D.B.



(Mian Muhammad)  
Member (E)



(Rozina Rehman)  
Member (J)

13.11.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Fahcem Inspector present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 16.01.2020 before D.B.



Member



Member

16.01.2020

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings/arguments on 26.02.2020 before D.B.

Member



Member

26.02.2020

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment on the ground that one of the matter in issue (retrospectivity) is pending for adjudication before Larger Bench for 14.04.2020. Adjourn. To come up for further proceedings/arguments on 17.04.2020 before D.B.



Member



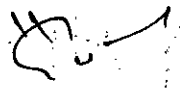
Member

566/18

06.09.2019

Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Learned Deputy District Attorney seeks adjournment to furnish all the relevant documents/record for the just disposal of the present service appeal. Request acceded to. Adjourn. To come up for arguments on 04.10.2019 before D.B. Respondent No. 3 (DPO Swabi) be put to notice with the direction to furnish complete record/all the relevant documents till the next date fixed.

  
(Ahmed Hassan)  
Member

  
(M Hamid Mughal)  
Member

04.10.2019

Learned counsel for the appellant present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General alongwith Rashid Ali H.C present.

Inquiry report is available on file but without the enclosures. Representative is directed to make available complete record of inquiry. Additional documents in relation to criminal case submitted and placed on file. Adjourn. To come up for record/arguments on 13.11.2019 before D.B

  
Member

  
Member

30.04.2019

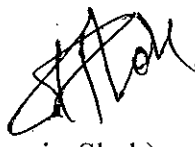
Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Faheem Khan Inspector present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 16.07.2019 before D.B.


  
Member

  
Member

16.07.2019

Learned counsel for the appellant and Mr. Riaz Kahn Paindakhel learned Assistant Advocate General for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 06.09.2019 before D.B

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

~~06.09.2019- Learned counsel for the appellant present. In the court of learned Deputy District Attorney for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 26.10.2019 before D.B.~~

~~(Hussain Shah)  
Member~~

~~(M. Amin Khan Kundi)  
Member~~



26.11.2018

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 10.12.2018 before D.B.

  
Member

  
Member

10.12.2018

Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney for the respondent present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourn. To come up for arguments on 11.02.2019 before D.B


  
Member

  
Member

11.02.2019

Appellant alongwith counsel and Mr. Muhammad Riaz, Painsa Khel, Asstt. AG for the respondents present.

To come up alongwith appeal No. 564/2018 before the D.B on 30-4-2019.

  
Member

  
Chairman

10.07.2018

Mr. Mehtab Sikandar, Advocate, counsel for the appellant present. No representative of the respondents present. However, Mr. Usman Ghani, District Attorney put appearance on their behalf. To come up for written reply/comments on 27.08.2018 before S.B.

  
Chairman

27.08.2018

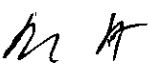
Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Fazle Subhan, Head Constable for the respondents present and submitted written reply. To come up for rejoinder and arguments on 10.10.2018 before D.B.

  
(Ahmad Hassan)  
Member

10.10.2018

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Atta-ur-Rehman, S.I (Legal) for the respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment for arguments. Adjourned. To come up for arguments on 26.11.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Kundi)  
Member

21.05.2018

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department as Constable. He was dismissed from service vide order dated 07.08.2017 on the allegation of his absence from duty and involvement in a murder case vide FIR No. 364 dated 15.06.2017 under sections 302/120-B/148/149/114/177 PPC Police Station Kalo Khan and case FIR No. 518 dated 16.07.2017 under sections 3/4AF/15AA13 Police Station Kalo Khan. It was further contended that the appellant filed departmental appeal on 21.08.2017 which was rejected on 03.11.2017. It was further contended that the appellant filed revision petition before IG in January 2018 which was also rejected vide order dated 26.03.2018 hence the appellant filed the present service appeal on 23.04.2018. It was further contended that the appellant was falsely involved in FIRs. It was further contended that neither charge sheet and statement of allegation was served upon the appellant according to rules and law nor proper inquiry was conducted nor opportunity of cross examination or defence was provided to the appellant therefore, the impugned order is illegal and liable to be set-aside.

The contention raised by the learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days thereafter notice be issued to the respondents for written reply/comments for 10.07.2018 before S.B.

Appellant Deposited  
Security & Process Fee

*MA*  
(Muhammad Amin Khan Kundi)  
Member

Form-A  
FORM OF ORDERSHEET

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

Case No. 566/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23/04/2018	<p>The appeal of Mr. Kashif presented today by Mr. Mehtab Sikandar Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 23/4/18</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>21/05/18.</u></p> <p style="text-align: right;"><i>MA</i> MEMBER</p>
2-	15/05/18.	

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**


Service Appeal No. 566/2018


Kashif F.C No.447 Police Station Lahor, presently r/o Mohallah Mama Khel, Tehsil Razzar, District Swabi.....Appellant.

V E R S U S

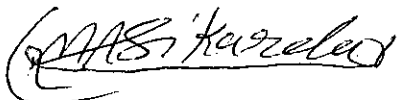
Inspector General of Police, Peshawar and others.....Respondents.

**INDEX**

S.No	Description of Document	Annexure	Pages
1	Appeal		1-3
2	Affidavit		4
3.	Copy of charge sheet and relevant documents		5-18
4.	Copy of inquiry		19-20
5.	Copy of final show cause notice and impugned order dated <u>2/8/17</u> 2017		21-29
6.	Copy of impugned order dated 26.03.2018		30-33
7	Wakalatnama		

Appellant 

Through



Mehtab Sikandar,  
Advocate.

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

Service Appeal No. 566 / 2018

Kashif FC No. 447 Constable Police Station Lahore District Swabi, presently r/o  
Mohallah Mama Khel, Tehsil Razzar, District  
Swabi.....Appellant.

**Khyber Pakhtunkhwa**  
**Service Tribunal**

Diary No. 610

Dated 23-4-2018

V E R S U S

1. Inspector General of Police, Peshawar.
2. Regional Police Officer, Mardan.
3. District Police Officer, Swabi.
4. Sub Divisional <sup>Police</sup> Officer tehsil Razzar. Swabi..... Respondents.

**APPEAL AGAINST THE ORDER DATED <sup>7/8/</sup> 2017 WHEREBY**  
**SERVICES OF THE APPELLANT WAS DISMISSED WHILE**  
**AWARDING MAJOR PUNISHMENT UNDER KHYBER**  
**PAKHTUNKHWA POLICE RULES 1975 AND AGAINST THE FINAL**  
**ORDER DATED <sup>26.03.2018</sup> WHEREBY DEPARTMENTAL APPEAL**  
**FILED BY THE APPELLANT WAS REJECTED.**

**Respectfully Sheweth:-**

1. That the appellant was appointed as Constable in Police Force of the Khyber Pakhtunkhwa on <sup>19/11/</sup> 2008 where after posted at various police station.
2. That appellant put in meritorious services in the department for long 9 years and at the relevant time was performing his duties on the grave of Mashal Khan a victim of the Abdul Wali Khan University Mardan Occurrence.
3. That without any information/reason a charge sheet with summary of allegation was served upon the appellant alleging therein that he has committed abetment and conspiracy in a murder case registered vide FIR No.364 dated 15.6.2017 Police Station Kalo Khan (copy of charge sheet and relevant document a/w summary of allegation are annexed as annexure "A" & "B" while FIR etc will be produced at the relevant time.)
4. That Sub Divisional Officer Razar Circle Karnal Sher Kaly was appointed as inquiry officer to conduct inquiry and inspite of the fact that it is neither proved from FIR nor the complainant has charge the appellant nor there is any evidence to connect the appellant with the alleged offence, but even then the

**Filed to-day**  
**Registrar**  
**23/4/18**

appellant was recommended for major punishment vide inquiry dated ~~05.07~~ 2017. (copy of the inquiry and relevant documents are annexed).

5. That a final show cause notice was also served upon the appellant where after he appeared in person and also submitted reply, but inspite thereof he was dismissed from service by the competent authority vide order dated ~~10~~ <sup>21/8</sup> 2017. (Copy of the final show cause notice and impugned order dated ~~10~~ <sup>21/8</sup> 2017 are annexed as annexure "C").
6. That departmental appeal was filed which was also rejected vide order dated 26.03.2018. (copy of the impugned order dated 26.3.2018 is annexed as annexure "D").
7. That the impugned orders dismissing appellant from service and rejecting his departmental appeal are unwarranted, illegal, without jurisdiction, hence this appeal inter-alia on the following grounds:-

**GROUND:-**

- a) That the impugned order dismissing service of the appellant is against law facts and material brought on file including verification from the concern quarter that the appellant was at the hospital at the relevant time, hence requires to be set aside by this Hon'ble Tribunal.
- b) That the impugned orders dismissing services of the appellant and rejecting departmental appeal there from are malafide in law, as well as infact in as much as the same are without any justification and without application of mind.
- c) That neither proper inquiry whatsoever has been conducted by the inquiry officer, rather the respondent were adamant to done away with the services of the appellant and as such has wrongly implicated him in a murder case which cannot be proved in any manner whatsoever.
- d) That the complainant side has effected compromise with the actual culprit, no more perusing the criminal case and even Challan has not been put in Court, but through illegal proceedings dismissed services of the appellant will be tried in due course.
- e) That no codal formalities whatsoever have been followed by the respondents while booking appellant for the alleged offence and there after dismissing him from service. Hence, the whole proceedings are required to be set at naught, reinstating the appellant in service.
- f) That the appellant has neither been heard in person as required under the law nor his contention has been incorporated in the inquiry, hence the very proceedings conducted by the inquiry officer, his recommendation and

(3)

subsequent dismissing of departmental appeal amount condemning him unheard.


- g) That appellant be allowed to add/rely upon other grounds at the time of arguments.

It is therefore humbly prayed that on acceptance of this appeal the impugned order dated 07.10.2017 and final order dated ~~26.03.2018~~ rejecting departmental appeal may graciously be set aside and appellant be reinstated in the service with full back benefits in the interest of justice.


Any other order deem appropriate in the circumstances of the case may also be passed.

Appellant

Through

  
Fida Muhammad Yousafzai,

And

  
Mehtab Sikandar,  
Advocates.



(9)

KPK Service Tribunal,

*[Handwritten signature]*

**BEFORE THE PESHAWAR.**

Service Appeal No...../2018

Kashif F.C No.447 Police Station Lahor, presently r/o Mohallah Mama Khel, Tehsil Razzar, District Swabi.....Appellant.

VERSUS

Inspector General of Police, Peshawar and others.....Respondents.

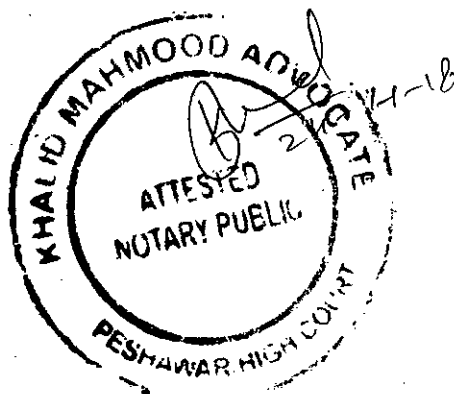
**AFFIDAVIT**

I, kashif NO 447 Police Station Lahor, presently r/o Mohallah Mama Khel, Tehsil Razzar, District Swabi, do hereby solemnly affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief that nothing has been concealed from this Hon'ble Court.

Identified by:

*[Handwritten signature of Mehtab Sikandar]*

**Mehtab Sikandar,**  
Advocate Peshawar.



*[Handwritten signature of Deponent]*  
Deponent

16202-7326274-9

5

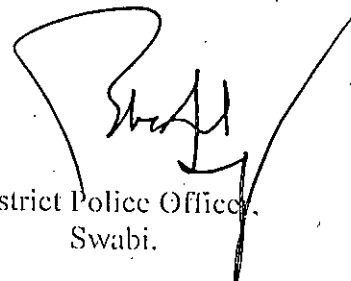
CHARGE SHEET

Whereas I am satisfied that formal enquiry as contemplated by Khyber Pakhtunkhwa Police Rules 1975 is necessary and expedient.

And whereas I am of the view that the allegations if established would call for Major/Minor penalty as defined in Rules 4(b) a & b of the aforesaid Rules.

Now therefore as required by Rules 6(1) of the aforesaid Rules I **Muhammad Sohaib Ashraf, PSP**, District Police Officer, Swabi charge you Constable Kashif Ali No.447 the basis of statement of allegations attached to this charge sheet.

In case your reply is not received within seven days without sufficient cause it will be presumed that you have no defence to offer and exparte action will be taken against you.



District Police Officer,  
Swabi.

**Certified to be True Copy.**

**ATTESTED.**

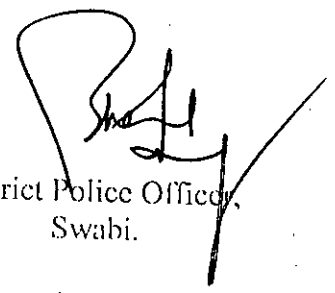
**PIO**  
District Police Officer, Swabi.

6

SUMMARY OF ALLEGATIONS


It is alleged that Constable Kashif Ali No.447, while posted to Police Station Lahor absented himself from duty with effect from 28.02.2017 till date without any leave/prior permission of the competent authority. Furthermore, he was informed through control room to collect his Show Cause Notice from the office of the undersigned, but he failed to collect the same, which is clear violation of the lawful orders of his senior and against the discipline and amounts to gross mis-conduct, hence statement of allegations.

Mr. Bashir Dad, DSP Razzar is appointed to conduct proper departmental enquiry against him.

  
District Police Officer,  
Swabi.

No. 11 /CC/PA,  
Dated 18.1.05 /2017

**Certified to be True Copy.**

**ATTESTED.**  
  
PIO  
District Police Officer, Swabi.

7

ایکٹر جنرل پولیس KPMK فارم نمبر ۲۷

0346-7519792 0315-9417135  
 ① کانسٹ 16202-73262749 ② 56202-79834869

فارم نمبر ۱۵-۱۴

ابتدائی اطلاع رپورٹ تیار شدہ

قابل

ابتدائی اطلاع نسبت قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ ۱۵۲ مجموعہ ضابطہ فرجاری

تاریخ وقت و موضع ۱۶ جولائی ۲۰۱۷ء ۱۷:۱۵ بجے  
 ضلع بہاول  
 مقامہ 24 کمارخان 518

۱۔	تاریخ و وقت رپورٹ	16 جولائی 2017ء	وقت 15:15 بجے
۲۔	نام و سکونت اطلاع دہندہ مستغنیہ شائقہ کارڈ نمبر / موبائل نمبر	لکھن حسین خان ۱۵۰ گھانہ کالو خان	حاکمہ بی بی صاحبہ 16 جولائی 2017ء وقت 15:40 بجے
۳۔	مشعر کیفیت جرم (مردہ دفعہ) حال اگر کچھ لیا گیا ہو۔	490-3/4 AF-15AA-13KPMK	
۴۔	جائے وقوعہ فاصلہ مقام سے اور سمت	شہر مانا صیل کالو خان جانب عرف کما علم پراکو سٹر از گھانہ	
۵۔	نام و سکونت مزم شائقہ کارڈ نمبر / موبائل نمبر	① کاشف عرف کے ٹو ولد سکندر سنہ ۱۹۸۰ء ② ثناء اللہ ولد شمس الرحمن سنہ ۱۹۸۰ء	
۶۔	کاروائی جو پیش کیے متعلق کی گئی اگر اطلاع درج کرنے میں توقف و تاخیر وجہ بیان کرے	مہر سیدی و اسمہ بی بی صاحبہ درج ذیل مشورہ کیا گیا	
۷۔	مقام سے روانگی کا تاریخ و وقت	مہر سیدی و اسمہ	

Certified to be True Copy. ابتدائی اطلاع پچھے درج کرو۔ اس وقت ایک کاپی مہر سیدی و اسمہ صاحبہ سے لی گئی۔

مہر سیدی و اسمہ صاحبہ سے 539 نمبر پر کاپی لی گئی۔ شہر گھانہ کالو خان اطلاع میں لکھا گیا کہ حمل مانا صیل میں حق تو والدین نے ایس جی راجہ سنہ میں جیسے اور ایس جی ایس سیدوں سے گولیوں پر فائرنگ کر رہے ہیں۔ اسی اطلاع پر میں ہم سفید سیدوں سے ASI دہلی کوی اریٹنگ فورس ملکی سٹان کالو خان مانا صیل میں پانچ فرد دیکھا۔ گواہ پولیس کنسٹبل کاشف عرف 2 کا ولد سکندر اور درولہ شمس درویش کو چاہو رے کاشف عرف 2 کا بھائی کو سے اڈاکسٹریٹ سٹول 30 اور بلڈ پریسور شدہ اور درولہ سیدی صاحبہ سے کہیں اڈاکسٹریٹ سٹول 30 اور بلڈ پریسور میں مہر سیدی و اسمہ صاحبہ سے اسی طرح درولہ شمس نے ایسا نام ثناء اللہ ولد شمس الرحمن سنہ 1980ء کا ریمانٹ آباد نیو گول سید بنکرٹا کن جاہر ٹکڑی لگا کر اس کے پاس سے اڈاکسٹریٹ سٹول 30 پور ٹری - 36 HA 11 گولڈن ڈیہ 4 عدد کارٹریجز برآمد کر کے پروٹیکٹڈ ہوئے۔ درولہ شمس کے پاس میں نے ہر دو ملڈ سٹون مڈلٹ پریم نارنڈا کے پاس ضابطہ نمبر 17 کے پرزہ پر آگے نظر چھینا کالو خان میں مہر سیدی و اسمہ صاحبہ سے ASI ملکی سٹان کالو خان مانا صیل میں۔ مہر سیدی و اسمہ صاحبہ سے 539 نمبر پر کاپی لی گئی۔ میں عرفی نقش 20 جولائی 2017ء میں مانا صیل کالو خان 16 جولائی 2017ء کو اندر مہر سیدی و اسمہ صاحبہ سے عرف درج بالا پورہ لیواری FIR نمبر اسم واد نقش عدت 540 ملے جو ان کے پاس میں مہر سیدی و اسمہ صاحبہ سے

16 جولائی 2017ء  
 IHC PSMK

ATTESTED  
 PIO

# TALAL PHARMACY

Phone: 0938-311476

Date: \_\_\_\_\_

Pyocin	516
Gazole	62
Stellan	40
Cotton	120
	222
	70
	292
250	260

Signature \_\_\_\_\_

9

DHIS - 02 (F)

Sent To: \_\_\_\_\_

# OUT DOOR PATIENT TICKET

District Amul

CRP No: \_\_\_\_\_

Facility Name \_\_\_\_\_

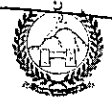
Name \_\_\_\_\_ Age: \_\_\_\_\_ Sex: \_\_\_\_\_

Father's/Husband's Name Karm

Monthly OPD Serial No. \_\_\_\_\_ 13-1d

Provisional Diagnosis: \_\_\_\_\_

Date	Clinical Findings / Investigations / Treatment / Referred / Test Findings
2-4-17	<p>- dij Ronalal</p> <p>- dij mbal</p>
	<p>cep velosaf somg</p>
	<p>17171</p>
	<p>17171</p> <p>retrol sd</p> <p>171 100g</p>
	<p>17171</p> <p>12000-105</p> <p>171</p> <p>1700000</p> <p>17171 somg</p>



10

DHIS - 02 (F)

Sent To: \_\_\_\_\_

### OUT DOOR PATIENT TICKET

OPD TICKET  
Cat. B Hosp. CK

District \_\_\_\_\_ CRP No: 940

Facility Name \_\_\_\_\_

Name SB Age: \_\_\_\_\_ Sex: \_\_\_\_\_

Father's/Husband's Name \_\_\_\_\_

Monthly OPD Serial No. 196

Provisional Diagnosis: FAL

Date	Clinical Findings / Investigations / Treatment / Referred / Test Findings
13 <sup>04</sup> 17	<p>① Capi Velocity 1-17 5000y</p> <p>② Tm Danglew 1-17 DS</p> <p>③ Tm Bflw 1-17 400y</p> <p>Adv2 seed sent to Procurment for 03 days</p> <p>Zhu</p>



Sent To: \_\_\_\_\_

OUT DOOR PATIENT TICKET

(11)

District \_\_\_\_\_ CRP No: 448

Facility Name \_\_\_\_\_

Name \_\_\_\_\_ Age: \_\_\_\_\_ Sex: \_\_\_\_\_

Father's/Husband's Name \_\_\_\_\_

Monthly OPD Serial No. 1010

Provisional Diagnosis: \_\_\_\_\_

Date	Clinical Findings / Investigations / Treatment / Referred / Test Findings
10/24/17	<p>① Cap Velocity 500 mg 1+1</p> <p>② Tab Doryllus DS 1+1+1</p> <p>③ Tab azimutin have bed rest treatment for (03 days)</p>





Sent To: \_\_\_\_\_

OUT DOOR PATIENT TICKET

(12)

District: \_\_\_\_\_ CRP No: \_\_\_\_\_

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

Name: Sub Age: \_\_\_\_\_ Sex: \_\_\_\_\_

Father's /Husband's Name: \_\_\_\_\_

Monthly OPD Serial No. 4353

Provisional Diagnosis: \_\_\_\_\_

Date	Clinical Findings / Investigations / Treatment /Referred/Test Findings
<u>2/03/17</u>	<p><u>old injury</u></p> <p><u>① iliac region</u></p> <hr/> <p><u>Two Amoxiclav 1gm</u></p> <p><u>Tab Metformin</u></p> <p><u>Tab folic acid</u></p> <p><u>Advised rest &amp; prognosis.</u></p> <p><u>D. Tew</u></p>

Sent To: \_\_\_\_\_

OUT DOOR PATIENT TICKET

(13)

District \_\_\_\_\_

CRP No: \_\_\_\_\_

Facility Name \_\_\_\_\_

Name Sub Age: \_\_\_\_\_ Sex: \_\_\_\_\_

Father's /Husband's Name \_\_\_\_\_

Monthly OPD Serial No. 6742

Provisional Diagnosis: \_\_\_\_\_

Date	Clinical Findings / Investigations / Treatment / Referred / Test Findings
3/04/17	<p style="text-align: right;"><u>OLD PAT</u></p> <p>Tab worn out 121</p> <p>Cap broken</p> <p>Advised not for days</p> <p style="text-align: right;"><u>Hand</u></p>

(14)

# Dr , Mian Iqbal Psychiatric Clinic

**Clinic**

Auqaf plaza  
Dabgari garden  
Peshawar.

Sudher seray  
Distt: swabi

## MEDICAL LEAVE CERTIFICATE

This is to certify that Kashif Hayat S/D/W of Sikandar Hayat of Dept. I

Organization Police Deptt is under treatment for Sever Depression

He/ she is recommended a MEDICAL LEAVE for 15 days with effect from 17/4/2017

This certificate is being issued with a clear understanding that to the best of our knowledge this patient is  
Not involved in any criminal, civil or departmental case, should that turn out to be the case . This certificate

Stnads null and void.

**DR. MIAN IQBAL**  
MBBS (Pesh) MCPS (Psy) FACP (USA)  
Psychiatrist Khyber Teaching Hospital  
Govt. Mental Hospital Peshawar

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

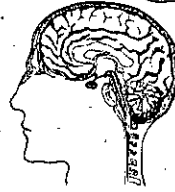
Signature and seal of psychiatrist

15

# Dr. Mian Iqbal Kaka Khel

M.B.B.S (Pesh)  
M.C.P.S (Psy)  
F.A.C.P (USA)

Police Moun



Psychiatrist  
Psychotherapist Department of Psychiatry  
Hayat Shaheed Medical Peshawar

Clinic: SUDHER SERY

Mob: 0344-9147687

E-mail: doc\_mainiqbal@yahoo.com

# ڈاکٹر میاں اقبال کاکا خیل

ایم بی بی ایس (پشاور) ایم سی پی ایس (سائیک) ایف ای سی پی (امریکہ)

ماہر امراض سر درد، مرگی، دماغ، نشیات و جنسی امراض  
سابقہ سائیکائٹرسٹ امراض دماغی حیات شہید چنگ پشاور  
گورنمنٹ میٹل ہسپتال پشاور

کلینک: سوڈھری سیرے موبائل: 0314-9693649

Name کاشف کالوفان Age 26 1/2 Sex M Date 16/6/17

Rx

2 NO (28) Time 11:45

1) Brintell  
2

2) Dentur 100,  
1000 /

3) Achr 2  
1000

4) SM SUB  
net /

5) Rest for 13 days

230  
has

دوبارہ معائنہ کے لئے 15 دن بعد تشریف لائیں۔

نوٹ: بروز جمعرات مکمل چھٹی ہوگی۔

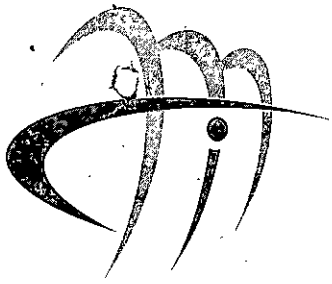
PA 12/8

ASSUM

V. 12/11

S 44

ICE 12/11



(16)

# Islamic Medical Center

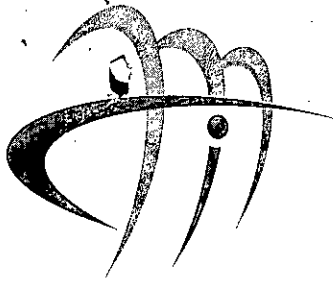
Addiction Treatment and Rehabilitation Center

Date: 08/12/2017

To whom It may concern

It is to certify that  
Mr. Karim Hayat S/O of  
Mr. Sikander Hayat has been  
admitted here at Islamic  
Medical Center for the  
treatment of Bipolar disorder  
from w.e.f 19th Sept 2017

  
DIRECTOR  
Islamic Medical Center  
An Addiction Treatment Center



(17)

# Islamic Medical Center

Addiction Treatment and Rehabilitation Center

Age 28 year

Date: 21.12.2017

(Date of Discharge)

Kashif Hyat

Follow  
up  
After  
30  
days

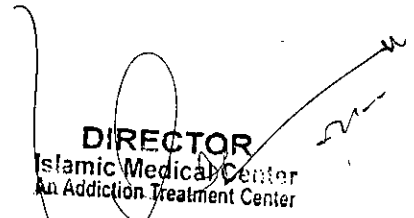
▷ PE conelation stable  
▷ Adlected to Ice

Rx

Tab Spirul 500mg  
1 + 0 + 1  
صبح و شام

Tab Olanzapine 10mg  
1 + 0 + 0  
صبح (35 @)

Tab Rivoflo 500mg  
0 + 0 + 1  
صبح (35 @)

  
DIRECTOR  
Islamic Medical Center  
An Addiction Treatment Center

18

OFFICE OF THE SUB DIVISIONAL POLICE OFFICER, RAZZAR CIRCLE  
KERNAL SHER KELLI, SWABI (TEL PHONE NO. 0938 312-777)

To: The District Police Officer,  
Swabi.

No. 379 /S, dated Razzar the 19/07/2017.

Subject: CASE FIR NO. 518 DATED: 16.7.2017 U/S 3/4AF/15AA13 PS  
KALU KHAN.

Memo:

It is submitted that on 16.7.2017 at 14:50 hours, local Police received an information that constable Kashif alias K-2 S/o Sikandar R/o village Kalu Khan and Sana Ullah R/o Queta presently Hayatabad, Peshawar who have smoke ice and are liquorish are busy in aerial firing on public. On receipt of information, Police rushed to the spot and arrested the above person alongwith pistols. The subject case was registered against them. Photocopy of FIR is sent herewith for necessary action please.

Enclosed: (FIR photo copy)

*[Handwritten Signature]*

Sub Divisional Police Officer,  
Razzar Circle, Kernal Sher Kelli.

**(Certified to be True Copy.)**

*DSD*  
*Issue SC/M*

*[Handwritten Signature]*  
*DPO Swabi*  
*19/7*

**ATTESTED**

**PIO**

District Police Officer, Swabi.

*[Vertical handwritten notes on the left margin]*



(19)

From: The Sub Divisional Police Officer,  
Circle Razzar, Kernal Sher Kelli.

To: The District Police Officer,  
Swabi.

No. 302 /S, dated Razzar the 05/07/2017.

Subject: DEPARTMENTAL ENQUIRY AGAINST CONSTABLE KASHIF NO. 447.

Memo:

In compliance with your office letter No.11/CC/PA dated: 18.05.2017 on subject noted above.

SUMMARY OF ALLEGATIONS:-

**Certified to be True Copy.**

It is alleged that constable Kashif No. 447, while posted to Police station Lahor absented himself from duty with effect from 28.02.2017 till date without any leave/prior permission of the competent authority. Furthermore, he was informed through control room to collect his show cause notice from the office of the worthy District Police Officer Swabi, but he failed to collect the same, which is clear violation of the lawful orders of his senior and against the discipline and amounts to gross misconduct, hence statement of allegations.

Constable Kashif No. 447 R/o Muhallah Mama Khel village Kalu Khan, Swabi was called for so many times to appear before the following dates to record his statement in connection with his departmental enquiry.

S#	Memo No.	Date of issue	Date of appearance
1.	229	18.05.2017	22.05.2017
2.	234	22.05.2017	24.05.2017
3.	241	25.05.2017	26.05.2017
4.	254	02.06.2017	05.06.2017

He attended the office of undersigned but did not record his statement in connection with his departmental enquiry, pending for the last 34 days which is malafid and oblivious on the part of him, due to which Ex-part action was also initiated against him vide this office Memo. No.265/S, Dated 13.06.2017. All the relevant contents are attached herewith

Recommendation:

Therefore, constable Kashif Ali No. 447 is hereby recommended for suitable punishment, please.

Enclosed: (11 -Pages)

PSO  
ISSUE FSCTP

**ATTESTED**

District Police Officer, Swabi.

Sub Divisional Police officer,  
Circle Razzar, Kernal Sher Kelli.

DPo Swabi.

20

OFFICE OF THE DISTRICT POLICE OFFICER DISTRICT, SWABI, KPK

SHOW CAUSE NOTICE.

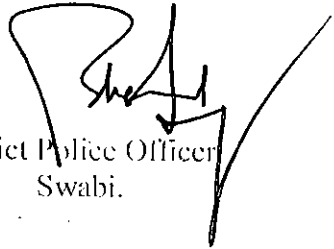
Whereas, you Constable Kashif Ali No.447, while posted to Police Station Lahor absented yourself from duty with effect from 28.02.2017 till date without any leave/prior permission of the competent authority, which is against the discipline and amounts to gross mis-conduct.

Therefore it is proposed to impose a Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence I, **Muhammad Sohaib Ashraf, PSP**, District Police Officer, Swabi in exercise of powers vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 call upon **Constable Kashif Ali No.447** to show cause as to why the proposed punishment should not be awarded to you.

Your reply should reach to the office of the undersigned within seven days of the receipt of this notice, failing which it will be presumed that you have no explanation to make.

You are also at liberty to appear for personal hearing

  
District Police Officer  
Swabi.

Dated: 04.05.2017

**Certified to be True Copy.**

**ATTESTED**  
  
District Police Officer, Swabi.

(21)

FINAL SHOW CAUSE NOTICE

Whereas, you Constable Kashif No.447, while posted to Police Station Lahor absented yourself from duty with effect from 28.02.2017 till date without any leave/prior permission of the competent authority. Furthermore, you were informed through control room to collect your Show Cause Notice from the office of the undersigned, but you failed to collect the same, which is clear violation of the lawful orders of your senior and against the discipline and amounts to gross mis-conduct.

In this connection you were charge sheeted and served with summary of allegation and **DSP, Razzar** was appointed to conduct proper departmental enquiry. The enquiry officer held enquiry and submitted his findings, wherein, he held you Constable Kashif No:447 guilty for the mis-conduct.


Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence I **Muhammad Sohaib Ashraf PSP**, District Police Officer, Swabi in exercise of power vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you to show cause finally as to why the proposed punishment should not be awarded to you.

**Certified to be true Copy.**

Your reply should reach to the office of the undersigned within seven days of the receipt of this notice failing which it will be presumed that you have no explanation to offer.

You are also at liberty to appear for personal hearing before the undersigned.

  
District Police Officer,  
Swabi.

Date: 04.07.2017

**ATTESTED**

  
District Police Officer, Swabi.

0346-7519792

447 

22

SHOW CAUSE NOTICE.

Whereas you Constable Kashif No. 447, while posted in Police Lines Swabi involved himself in the abetment and conspiracy of a murder in the Holy Month of Ramazan vide FIR No. 364 dated 15.06.2017 u/s 302/120-B/148/149/114/177 PPC PS Kalu Khan. Being member of Police force instead of protecting life and liberty of citizens you himself murdered an innocent soul for the reason best known to you, which speaks of your inefficiency and amounts to gross mis-conduct.

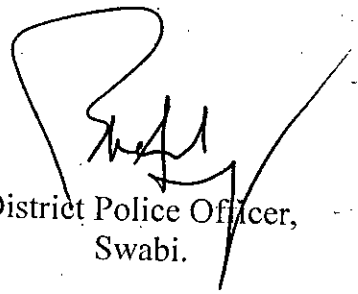
You are therefore found guilty of gross mis-conduct as define in rule 2.(iii) of KPK Police Rules 1975 (as amended) and as such liable to action under rule-3 of the ibid Rules.

Based on the facts reported by the Officer Incharge Investigation PS Kalu Khan, the authority is satisfied that no departmental enquiry through an Enquiry Officer is necessary in this case as contained in clause (a) of rule 5.3 of the said Rules.

**Certified to be True Copy.**


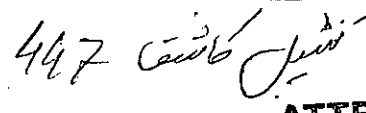
Now therefore, I **Muhammad Sohaib Ashraf PSP**, District Police Officer, Swabi as competent authority called upon you Constable Kashif No. 447 under, clause (c) of rule 5.3 of the KPK Police Rules 1975 to Show Cause within 07 days, as to way one or more of major or minor punishment as deemed necessary under rule 5.5 of said Rules should not be imposed upon you.

If you failed to submit reply in compliance of this Show Cause Notice within stipulated period, it will be presumed that you have nothing to offer in your defence and in that case ex-parte action shall be taken against you without further notice.

  
District Police Officer,  
Swabi.

No 337-38 /PSO,

Dated 12 / 07 / 2017.

0346-7519792   
447 

**ATTESTED**  
  
District Police Officer, Swabi.

File  
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posi  
rev  
sp  
rec

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9/c

(23)

FINAL SHOW CAUSE NOTICE

Whereas, you Constable Kashif Belt No. 447, while posted to Police Station Lahor absented yourself from the duty with effect from 28.02.2017 till date without any leave/prior permission of the competent authority, furthermore, he was informed through Control Room Swabi to collect his show cause notice from the office of the worthy District Police Officer Swabi, but he failed to collect the same, which is clear violation of the lawful orders of his senior and against the discipline and amounts to gross mis-conduct.

In this connection you were charge sheeted and served with summary of allegation and **DSP, Razzar** was appointed to conduct proper departmental enquiry. The enquiry officer held enquiry and submitted his findings, wherein, he held you Constable Kashif No.447 guilty for the mis-conduct.

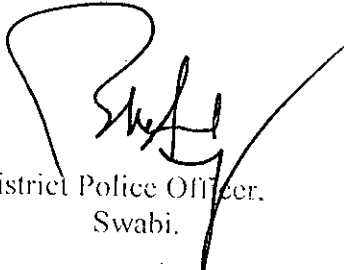
Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence I **Muhammad Sohaib Ashraf PSP**, District Police Officer, Swabi in exercise of power vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you to show cause finally as to why the proposed punishment should not be awarded to you.

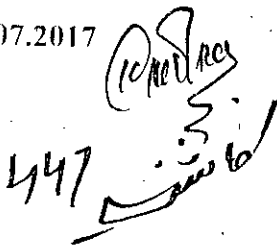
**Certified to be True Copy.**

Your reply should reach to the office of the undersigned within seven days of the receipt of this notice failing which it will be presumed that you have no explanation to offer.

You are also at liberty to appear for personal hearing before the undersigned.

  
District Police Officer,  
Swabi.

Date: 13.07.2017

  
447  
10/07/2017  
[Signature]

**ATTESTED**  
  
PIO  
District Police Officer, Swabi.

24

OFFICE OF THE DISTRICT POLICE OFFICER DISTRICT, SWABI, KPK

SHOW CAUSE NOTICE.

Whereas you Constable Kashif 447, while posted to Police Line Swabi involved yourself in case vide FIR No. 518 Dated 16.07.2017 U/s ¼ AF/15AA13 PS.Kalu Khan, which is against the discipline and amounts to gross mis-conduct.

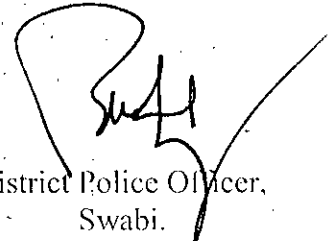
Therefore it is proposed to impose a Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence I, **Muhammad Sohaib Ashraf, PSP**, District Police Officer, Swabi in exercise of powers vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you **Constable Kashif 447** to show cause as to why the proposed punishment should not be awarded to you.

**Certified to be True Copy**

Your reply should reach to the office of the undersigned within three days of the receipt of this notice failing which it will be presumed that you have no explanation to make.

You are also at liberty to appear for personal hearing.



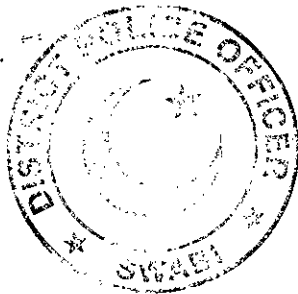
District Police Officer,  
Swabi.

Dated: 19.07.2017



0346-7519  
447

**ATTESTED**  
PIO  
District Police Officer, Swabi.



447

25

**ORDER**

A murder case was registered vide case FIR No.364 dated 15.06.2017 u/s 302/148/149/114 PPC at Police Station Kalu Khan against unknown accused. During investigation statement of Kashif s/o Zar Muhammad r/o Nawan Killi was recorded u/s 161 CrPC, after which his statement was recorded u/s 164 CrPC before the competent court, wherein he charged Constables Kashif No.447 and Salman No.117 for the commission of the murder of Tanveer s/o Amjid r/o Kalu Khan for the reasons best known to you, which is against the discipline and amounts to gross mis-conduct.

Therefore, I, **Muhammad Sohaib Ashraf**, PSP District Police Officer, Swabi, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 1975, hereby place the above mentioned constables, under suspension with immediate effect.

O.B No. 65  
Dated 12/7/2017.

Detained to be true Copy.

District Police Officer,  
Swabi.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

No. /PSO, dated Swabi, the /2017.

Copies to the: -

- 1. DSP Razzar
- 2. DSP, II.Qrs, Swabi.
- 3. Establishment Clerk.
- 4. FMC.

**ATTESTED**

P/O  
District Police Officer, Swabi

447

26

**OFFICE OF THE DISTRICT POLICE OFFICER, SWABI**

**ORDER**

It is alleged that Constable Kashif No.447, while posted to Police Station Lahor absented himself from duty with effect from 28.2.2017 till date without any leave/prior permission of competent authority, which is highly against the discipline and amounts to gross mis-conduct.

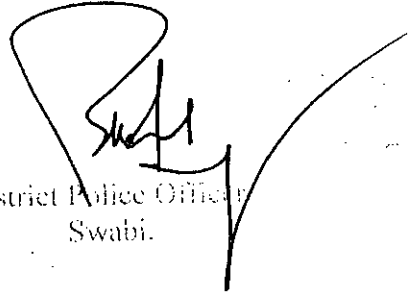
Therefore, he was issued Show Cause Notice. He was directed time and again to receive his Show Cause Notice, but he dis-obeyed lawful orders of his senior and did not receive. Therefore, he was served with Charge Sheet and Summary of allegations and DSP, Razzar, was appointed as Enquiry Officer. The Officer conducted proper departmental enquiry, collected evidence and recorded statements of all concerned. He submitted his findings, wherein he found Constable Kashif No.447, guilty for the mis-conduct and recommended him for suitable punishment. The undersigned perused the enquiry papers, findings and by agreeing with the Enquiry Officers, served him with Final Show Cause Notice. He was clearly directed to submit his reply within seven days of the receipt of final show cause notice, otherwise ex-parte action will be taken against him, but he did not submit, which means that he has nothing to offer in his defence. Besides above he also involved himself in criminal cases registered vide Nos.364 dated 15.6.2017 U/S 302/120-B/148/149 PPC and NO.518 dated 16.7.2017 U/S ¼ AF/15 AA-13 KPK Police Station Kalu Khan.

**Certified to be true copy.**

Therefore, I, **Muhammad Sohaib Ashraf, PSP**, District Police Officer, Swabi, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 1975, hereby award Constable Kashif No.447, Major Punishment of dismissal from service from the date of his absence i.e 28.2.2017.

O.B No. 775

Dated 4.5.2017

  
District Police Officer  
Swabi.

**OFFICE OF THE DISTRICT POLICE OFFICER, SWABI**  
No. 521-25 /PSO, dated Swabi, the 07-08 /2017.

- Copies to the: -
1. DSP, H.Qrs, Swabi.
  2. Pay Officer.
  3. Establishment Clerk.
  4. Fauji Missal Clerk.
  5. Official Concerned

**ATTESTED**  
  
PIO  
District Police Officer, Swabi.

*Handwritten signature in Urdu script*

*Multiple handwritten signatures and checkmarks at the bottom of the page.*

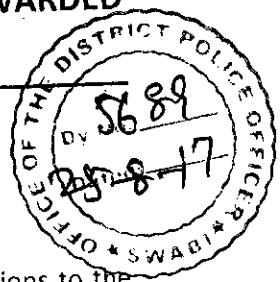


(27) *cts* (1)

F/A  
1

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

Subject: **APPEAL AGAINST THE ORDER O.B NO. 725 DATED 07-08-2017 OF DISTRICT POLICE OFFICER SWABI, WHERE BY THE APPELLANT WAS AWARDED THE PUNISHMENT " DISMISSEL FROM SERVICE".**



R/Sir,

The DPO Swabi had issued the following charge sheet with summary of allegations to the appellant with the following allegations:-

- A. Constable Kashif No.447, while posted at police station Lahore absented himself from duty with effect from 28-02-2017 till date without any leave / permission of competent authority.
- B. He is involved in a criminal case registered vide FIR No.364 dated 15-06-2017 u/s 302/120 B / 148/149 PPC PS Kalo khan.
- C. He is involved in a case registered vide FIR No. 518 dated 16-07-2017 u/s ¼ AF/15AA-13 KPK PS KALo Khan

No. 6489/ES,  
dt: 23-8-17

in response to the above allegations , the appellant submits as under:.

1. That in the month of Feb, 2017, the appellant remained posted at police lines Lahore. On 27-07-2017, the appellant went to his village on Night Pass. On 28-02-2017, at early morning time while present in the home, 02 unknown persons entered in the house and fired at the appellant with deadly weapon. The appellant was hit on left iliac region and injured. The appellant did not reported the matter at police station and went to civil hospital Kalo Khan for treatment. The appellant informed Moharar of PS Lahore regarding the above incidence. The appellant continued his treatment and was lying on bed at his home. During this period, the appellant was marked absent at PS Lahore ( Medical document are enclosed ).

DPO/Swabi

For Comments

Pl: *[Signature]*  
*RDP/mdn*

EC

*[Signature]*  
2/14

Imp. Legal

For Comments

2. That while present in the village on 14-06-2017, the appellant along with his friends Kashif and Fawad were kidnapped by accused Aamir s/o Said Ghafoor and salman s/o Shad Ali r/o Kalo Khan and kept them in their custody. On 15-06-2017, Tanveer resident of Kalo Khan, a close friend of the appellant was murdered in the field of Saleem Khan situated in the limits of village of Shera Ghond. After the death of Tanveer, we were released by the accused Aamir etc and came to our village.

3. That On 22-06-2017, the appellant was summoned by SHO Kalo Khan to the PS. There the appellant was told that he is involved in the murder of deceased Tanveer. SHO PS Kalo Khan kept the appellant in illegal confinement till 28-06-2017. On 28-06-2017, the appellant was shown arrested in the murder case of deceased Tanveer and produced to the court on following day. 03 days custody was obtained and on the expiry of police custody, the appellant was sent to District Jail Swabi. On 07-07-2017, the appellant was released on Bail by the court of ASJ Swabi. In this case, the appellant was totally innocent and unaware of the incident. The inheritance of deceased Tanveer did not charged the appellant in the case. Similarly, no evidence against the appellant was obtained during the investigation of the case.


- (28) (1)
4. That on 16-07-2017, the appellant came out of his home and in the meanwhile some unknown accused already present in the Bhatia of Zulfiqar Bacha started indiscriminate firing at the complainant and luckily the appellant unhurt. The appellant also fired in his self defense but Non was hit from the accused side. The appellant informed the SHO PS Kalo Khan regarding the incident but no action was taken on the report of the appellant in this regard, rather the SHO PS Kalo Khan registered a criminal case vide FIR No. 518 dated 16-07-2017 u/s 3/4 AF /15 AA PS Kalo Khan.

**Conclusion:-**

- I. That the period of absence from 28-02-2017 till to the dismissal from the appellant was not intentional but was due to the fire arm injury caused to the appellant in the incident occurred on 28-02-2017 at early morning in the house of the appellant. The fact of this incidence are evident from the medical documents already enclosed. The murder case of Tanveer, in which the appellant has been arrested is against the norm of justice. Neither the appellant has been charged by the deceased family nor any evidence has been brought against him on case file during investigation. The case is still pending court and nothing has been proved against the appellant till date.
- II. The incident of areal firing is also carrying a separate story which has been described at Para -4 of the appeal. In this case again the appellant is innocent and has been falsely implicated. This case is also pending trial and has been decided by the competent court of law.
- III. That during the period of absence, the appellant was neither served with show cause notice nor charge sheet etc. similarly no opportunity of defense was given to the appellant and an ex-parte action was taken against him which is against the justice. It is well settled principle of law that no one can be condemned unheard but the appellant has been deprived of his this fundamental right. In absentia, the appellant was dismissed from service by DPO Swabi vide O.B No.725 dated 07-05-2017 and hence the present appeal ( Copy of O.B No.725 dated 07-08-2017 is attached ).

Keeping in view of the facts and circumstances mentioned above, it is humbly requested that the appeal of the appellant may kindly be accepted and the impugned Order passed by DPO Swabi may kindly be set aside.

Yours Obediently,

 21/8/2017  
Ex-Constable KASHIF No.447  
District Police Swabi  
(Now Dismissed from service)

1

29

ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Kashif No. 447 Swabi District Police against the order of District Police Officer, Swabi, whereby he was awarded Major Punishment of dismissal from service vide OB No. 725 dated 07.08.2017.

Brief facts of the case are that, the appellant while posted to Police Station Lahor absented himself from duty with effect from 28.02.2017 till the date of his dismissal. He was issued Show Cause Notice but he disobeyed the lawful orders of his senior and did not receive, therefore he was served Enquiry Officer recommended him for suitable punishment. He was served with Final Show Cause Notice with direction to submit his reply within seven days, otherwise ex-parte action will be taken against him but he did not submit his reply and also involved himself in criminal cases registered vide FIR Nos. 364 dated 15.06.2017 u/s 302/120-B/148/149PPC & 518 dated 16.07.2017 u/s 3/4 AF/15AA-13KPK PS Kalu Khan. Therefore he was dismissed from service by the District Police Officer, Swabi.

He was called twice in orderly room held in this office on 18.10.2017 and 01.11.2017 but he failed to appear before the undersigned for hearing. Therefore, I find no grounds to intervene the order passed by District Police Officer, Swabi. Appeal is rejected.

ORDER ANNOUNCED.

(Muhammad Alam Shiwari)PSP  
Regional Police Officer,  
Mardan *AK*

No. 8144 /ES, Dated Mardan the 03/11 /2017.

Copy to District Police Officer, Swabi for information and necessary action w/r to his office  
Memo: No. 204/Insp: Legal dated 03.10.2017.. The Service Record is returned herewith.  
(\*\*\*\*\*)

30

**BEFORE THE PROVINCIAL POLICE OFFICER KPK PESHAWAR**

Subject: MERCY PETITION AGAINST THE ORDER O.B NO. 725 DATED 07-08-2017 OF DISTRICT POLICE OFFICER SWABI, WHERE BY THE APPELLANT WAS AWARDED THE MAJOR PUNISHMENT " DISMISSEL FROM SERVICE". AND REJECTION OF APPEAL BY DIG MARDAN ISSUED VIDE HIS OFFICE LETTER NO.8144/ES DATED 03-11-2017.

**Respected Sir,**

The DPO Swabi had issued the following charge sheet with summary of allegations to the appellant with the following allegations:-

- A. **Constable Kashif No.447, while posted at police station Lahore absented himself from duty with effect from 28-02-2017 till date without any leave / permission of competent authority.**
- B. **He is involved in a criminal case registered vide FIR No.364 dated 15-06-2017 u/s 302/ 120 B / 148/149 PPC PS Kalu Khan.**
- C. **He is involved in a case registered vide FIR No. 518 dated 16-07-2017 u/s 3/4 AF/15AA-13 KPK PS Kalu Khan**

In response to the above allegations, the appellant submits as under:

1. That in the month of Feb, 2017, the appellant remained posted at police lines Lahore. On 27-07-2017, the appellant went to his village on Night Pass. On 28-02-2017, at early morning time while present in the home, 02 unknown persons entered in the house and fired at the appellant with deadly weapon. The appellant was hit on left iliac region and injured. The appellant did not reported the matter at police station and went to civil hospital Kalu Khan for treatment. The appellant informed Moharrar of PS Lahore regarding the above incidence. The appellant continued his treatment and was lying on bed at his home. During this period, the appellant was marked absent at PS Lahore( Medical document are enclosed ).
2. That while present in the village on 14-06-2017, the appellant along with his friends Kashif and Fawad were kidnapped by accused Aamir s/o Said Ghafoor and salman s/o Shad Ali r/o Kalu Khan and kept them in their custody. On 15-06-2017, Tanveer resident of Kalu Khan, a close friend of the appellant was murdered in the field of Saleem Khan situated in the limits of village of Shera Ghond. After the death of Tanveer, we were released by the accused Aamir etc and came to our village.
3. That On 22-06-2017, the appellant was summoned by SHO Kalu Khan to the PS. There the appellant was told that he is involved in the murder of deceased Tanveer. SHO PS Kalu Khan kept the appellant in illegal confinement till 28-06-2017. On 28-06-2017, the appellant was shown arrested in the murder case of deceased Tanveer and produced to the court on following day and 03 days custody was obtained and on the expiry of police custody, the appellant was sent to District Jail Swabi. On 07-07-2017, the appellant was released on Bail by the court of ASJ Swabi. In this case, the appellant was totally innocent and unaware of the incident. The inheritance of deceased Tanveer did not charge the appellant in the case. Similarly, no evidence against the appellant was brought during the investigation of the case.

4. That on 16-07-2017, the appellant came out of his home and in the meanwhile some unknown accused already present in the Bhatia of Zulfiqar Bacha started indiscriminate firing at the complainant and luckily the appellant unhurt. The appellant also fired in his self defense but Non was hit from the accused side. The appellant informed the SHO PS Kalu Khan regarding the incident but no action was taken on the report of the appellant in this regard, rather the SHO PS Kalu Khan registered a criminal case vide FIR No. 518 dated 16-07-2017 u/s 302 AF /15 AA PS Kalo Khan.
5. That the petitioner filed an appeal before the DIG Mardan against the punishment awarded by DPO Mardan vide O.B 725 dated: 07-08-2017. All the relevant explanation was given in the appeal. The version of the petitioner was not considered and the appeal of the appellant was rejected by the DIG Mardan vide his office order No.8144/ES dated 03-11-2017. The appellant was called twice in orderly room by DIG Mardan on 18-10-2017 and 01-11-2017 respectively but failed to appear before the DIG Mardan due to admission in Islamic Medical Center, Islamabad for the treatment of Bipolar disorder wef 19 September, 2017 to 21-12-2017. Certificate to this effect has been issued on 09-12-2017 by the Islamic Medical Center. ( Copy of the DIG Mardan Order/Certificate and Discharge paper for further follow up of Islamic Medical Center are herewith attached )

**GROUND OF MERCY PETITION:-**

- I. That the period of absence from 28-02-2017 till to the dismissal from the appellant was not intentional but was due to the fire arm injury caused to the appellant in the incident occurred on 28-02-2017 at early morning in the house of the appellant. The fact of this incidence are evident from the medical documents already enclosed. The murder case of Tanveer, in which the appellant has been arrested is against the norm of justice. Neither the appellant has been charged by the deceased family nor any evidence has been brought against him on case file during investigation. The case is still pending before court and nothing has been proved against the appellant till date.
- II. The incident of areal firing is also carrying a separate story which has been described at Para -4 of the appeal. In this case again the appellant is innocent and has been falsely implicated. This case is also pending trial and has been decided by the competent court of law.
- III. That during the period of absence, the appellant was neither served with show cause notice nor charge sheeted etc. similarly no opportunity of defence was given to the appellant and an ex-parte action was taken against him which is against the justice. It is well settled principle of law that no one can be condemned unheard but the appellant has been deprived of his this fundamental right. In absentia, the appellant was dismissed from service by DPO Swabi vide O.B No.725 dated 07-05-2017. The appellant also filed an appeal before the worth DIG Mardan but that was also rejected vide his office letter no.8144/ES dated 03-11-2017 and hence the present Mercy appeal in your honour. ( Copy of the Order of DPO Swabi and DIG Mardan are hereby attached ).
- IV. That the appellant was called twice in orderly room by DIG Mardan as stated above but failed to appear before the DIG Mardan due to admission in Islamic Medical Center, Islamabad for the treatment of Bipolar disorder. The non appearance of the petitioner before the DIG Mardan was not intentional but

32

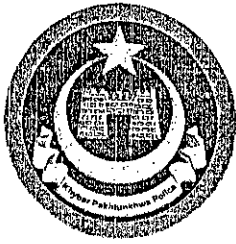
due to unavoidable circumstances that is evident from the medical documents attached with this appeal.

Keeping in view the facts and circumstances mentioned above, it is humbly requested that the mercy petition of the appellant may kindly be accepted and the impugned Orders passed by DPO Swabi and DIG Mardan may kindly be set aside.

Yours Obediently,

**Ex-Constable KASHIF No.447**  
District Police Swabi  
(Now Dismissed from service)

Dated: January, 2018



33

OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
PESHAWAR.

No. S/ 1127 /18, dated Peshawar the 26/03/2018.

**ORDER**

This order is hereby passed to dispose of departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 submitted by Ex-FC Kashif No. 447. The petitioner was dismissed from service w.e.f 28.02.2017 by DPO/Swabi vide OB No. 725, dated 07.08.2017 on the charge of absence from duty for 05 months and 10 day and involvement in criminal cases registered vide FIR No. 364, dated 15.06.2017 u/s 302/120-B/148/149 PPC & No. 518 dated 16.07.2017 u/s 3/4 AF/15AA-13KPK PS Kalu Khan.

His appeal was rejected by Regional Police Officer, Mardan vide order Endst: No. 8144/ES, dated 03.11.2017.

Meeting of Appellate Board was held on 01.03.2018 wherein petitioner was heard in person. During hearing petitioner contended that he is innocent and has been falsely implicated in the case.

Perusal of record revealed that petitioner was dismissed from service on the charge of absence from duty for 05 months and 10 days and involvement in case FIR No. 364, dated 15.06.2017 u/s 302/120-B/148/149 PPC & No. 518 dated 16.07.2017 u/s 3/4 AF/15AA-13KPK PS Kalu Khan. The Board see no ground and reasons for acceptance of his petition. Therefore, the Board decided that his petition is hereby rejected.

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

(AHSAN SAIFULLAH)  
AIG/Establishment,

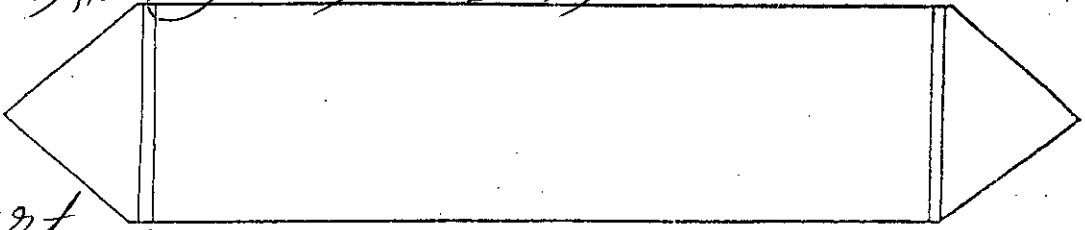
For Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.

No. S/ 1128-34 /18,

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan.
2. District Police Officer, Swabi.
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.

بعدالت سروس ٹریبونل صدر ہائیکورٹ



APPHeart

کاشف بنام ایچ ایچ ایف ویف

20/4/18

سروس

مقدمہ

دعویٰ

جرم

سروس ایپل نمبر 566/2018

### باعث تحریر آنگہ

محمد  
فیضان  
ایڈووکیٹس

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام 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 فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور باسورت ڈگری کرنے اجراء اور وصولی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیار حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

المرقوم 20 ماہ 4 2018

Affected

وادی کے لئے منظور ہے۔

بمقام

Accepted

Attached

Accepted

M. A. P.

Amir

21/04/2018



C

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

*Service Appeal No. 566/2018.*

**Kashif Ex-FC No. 447 Swabi..... Appellant**

**VERSUS**

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.  
& 03 Others.....**Respondents.**

**WRITTEN REPLY ON BEHALF OF RESPONDENTS.**

**1. Preliminary Objections.**

1. That the appellant has got no Cause of action and locus standi to file the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is time barred.
4. That the appellant has not come to the Tribunal with clean hands.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant concealed the material facts from this Hon'ble Tribunal.
8. That the appellant has been estopped by his own conduct to file the appeal.

**2. REPLY ON FACTS.**

1. Para No. 01 of appeal pertains to service record, hence need no comments.
2. Para No. 02 of appeal to the extent of posting is correct, however according to the service record of appellant, he was found habitually absentee.
3. Para No. 03 of appeal is incorrect, appellant while posted to PS Lahor absented himself from lawful duty with effect from 28.02.2017 till date of dismissal i.e. 07.08.2017 without any leave of the authority on account of which he was proceeded against departmentally. During pendency of enquiry appellant was also involved in case FIR No. 364 dated 15.06.2017 u/s 302/120-

B/148/149/114/177 PPC PS Kalu Khan and FIR No. 518 dated 16.07.2017 u/s 4PO/ ¾ AF/15AA PS Kalu Khan, on account of which, he was also served with Show Cause Notices (Copy of complete enquiry is "A").

4. Para No. 04 of appeal is correct to the extent of appointment of SDPO Razzar as Enquiry Officer in the above allegations of absence from duty, however during enquiry the allegations regarding willful absence from duty was proved and he was recommended for punishment by the Enquiry Officer.
5. Para No. 05 of appeal is incorrect, after proper departmental enquiry on recommendation of Enquiry Officer, he was served with Final Show Cause Notice but due to his indiscipline attitude and disinterest in service he did not submit reply nor appear in person before the respondents, hence dismiss from service on account of his willful absence and involvement in criminal cases.
6. Para No. 06 of appeal is correct to the extent of rejection of departmental appeal, however the same was rejected to merit.
7. The orders of respondents are in accordance with law/rules and the instant appeal is groundless and liable to be dismissed.

#### **GROUND.**

- a. Incorrect. The orders of respondents are quite legal in accordance with law/rules. Appellant being member of discipline force did not applied for any medical leave nor inform his senior officer and willfully absented himself from duty.
- b. Incorrect. Reply already given vide para above.
- c. Incorrect. Proper department enquiry in accordance with law/rules was conducted and despite of several reminders regarding his appearance, he did not attend the office of Enquiry Officer, however after several attempts he joins the enquiry proceedings but again disappear which shows his disinterest in Police service, hence proceeded ex-parte.
- d. Incorrect. The allegations of willful absence were proved against appellant upon which he was dismissed from service. During pendency of above enquiry, he was involved in criminal cases in which he was served with Show Cause Notice but did not respond, however before passing final order, he was issued Final Show Cause Notice.
- e. Incorrect. All codel formalities have been followed by respondents and the orders of respondents are quite legal in accordance with law/rules.
- f. Incorrect. Reply already given vide para above.

g. That respondents may also be allowed to rely on additional ground at the time of arguments.

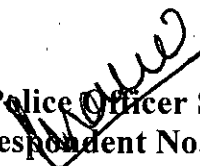
It is therefore requested that the appeal of appellant may kindly be dismissed being devoid of merits.



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



**Deputy Inspector General of Police,  
Mardan Region-I Mardan.  
(Respondent No. 2)**



**District Police Officer Swabi,  
(Respondent No. 3)**



**Sub Divisional Police Officer, Razzar  
(Respondent No. 4)**

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

*Service Appeal No. 566/2018.*

**Kashif Ex-FC No. 447 Swabi..... Appellant**

**VERSUS**

1. **Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.  
& 03 Others..... Respondents.**

**POWER OF ATTORNEY.**

We, the respondent No. 1 to 4 do hereby appoint Mr. Faheem Khan Inspector Legal Swabi as special representative on our behalf in the above noted appeal. He is authorized to represent us before the Tribunal on each and every date fixed and to assist the Govt: Pleader attach to Tribunal.



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



**Deputy Inspector General of Police,  
Mardan Region, Mardan.  
(Respondent No. 2)**



**District Police Officer Swabi,  
(Respondent No. 3)**



**Sub Divisional Police Officer, Razzar  
(Respondent No. 4)**

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

*Service Appeal No. 566/2018.*

**Kashif Ex-FC No. 447 Swabi..... Appellant**

**VERSUS**

1. **Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.  
& 03 Others..... Respondents.**

**AFFIDAVIT:-**

We the respondent No. 1 to 4 do hereby solemnly affirm and declare on oath that the contents of the written reply are correct/true to the best of our knowledge / belief and nothing has been concealed from the honorable Tribunal.



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



**Deputy Inspector General of Police,  
Mardan Region-I Mardan.  
(Respondent No. 2)**



**District Police Officer Swabi,  
(Respondent No. 3)**



**Sub Divisional Police Officer, Razzar  
(Respondent No. 4)**

(A)

FINAL SHOW CAUSE NOTICE

Whereas, you Constable Kashif No.447, while posted to Police Station Lahor absented yourself from duty with effect from 28.02.2017 till date without any leave/prior permission of the competent authority. Furthermore, you were informed through control room to collect your Show Cause Notice from the office of the undersigned, but you failed to collect the same, which is clear violation of the lawful orders of your senior and against the discipline and amounts to gross mis-conduct.

In this connection you were charge sheeted and served with summary of allegation and **DSP, Razzar** was appointed to conduct proper departmental enquiry. The enquiry officer held enquiry and submitted his findings, wherein, he held you Constable Kashif No.447 guilty for the mis-conduct.

Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence I **Muhammad Sohaib Ashraf PSP**, District Police Officer, Swabi in exercise of power vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you to show cause finally as to why the proposed punishment should not be awarded to you.

Your reply should reach to the office of the undersigned within seven days of the receipt of this notice failing which it will be presumed that you have no explanation to offer.

You are also at liberty to appear for personal hearing before the undersigned.

District Police Officer,  
Swabi

Date: 04.07.2017

0346-7519792

447 Kashif

22/07

5

DP/OSWAB

7-4-2017

(A)-1

SHOW CAUSE NOTICE.

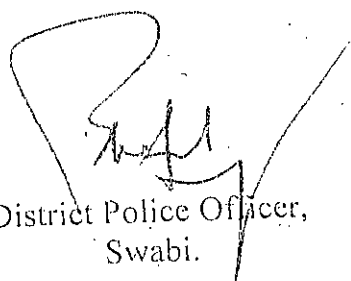
Whereas you Constable Kashif No. 447, while posted in Police Lines Swabi involved himself in the abetment and conspiracy of a murder in the Holy Month of Ramazan vide FIR No. 364 dated 15.06.2017 u/s 302/120-B/148/149/114/177 PPC PS Kalu Khan. Being member of Police force instead of protecting life and liberty of citizens you himself murdered an innocent soul for the reason best known to you, which speaks of your inefficiency and amounts to gross mis-conduct.

You are therefore found guilty of gross mis-conduct as define in rule 2.(iii) of KPK Police Rules 1975 (as amended) and as such liable to action under rule-3 of the ibid Rules.

Based on the facts reported by the Officer Incharge Investigation PS Kalu Khan, the authority is satisfied that no departmental enquiry through an Enquiry Officer is necessary in this case as contained in clause (a) of rule 5.3 of the said Rules.

Now therefore, I Muhammad Sohaib Ashraf PSP, District Police Officer, Swabi as competent authority called upon you Constable Kashif No. 447 under, clause (c) of rule 5.3 of the KPK Police Rules 1975 to Show Cause within 07 days, as to way one or more of major or minor punishment as deemed necessary under rule 5.5 of said Rules should not be imposed upon you.

If you failed to submit reply in compliance of this Show Cause Notice within stipulated period, it will be presumed that you have nothing to offer in your defence and in that case ex-parte action shall be taken against you without further notice.

  
District Police Officer,  
Swabi.

No 337-38 /PSO,

Dated 12/07/2017.

0346-7519792

447 Constable Kashif

9/6

(A)-2

FINAL SHOW CAUSE NOTICE

Whereas, you Constable Kashif Belt No. 447, while posted to Police Station Lahor absented yourself from the duty with effect from 28.02.2017 till date without any leave/prior permission of the competent authority, furthermore, he was informed through Control Room Swabi to collect his show cause notice from the office of the worthy District Police Officer Swabi, but he failed to collect the same, which is clear violation of the lawful orders of his senior and against the discipline and amounts to gross mis-conduct.

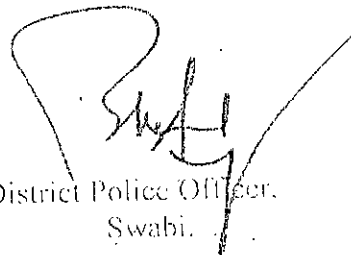
In this connection you were charge sheeted and served with summary of allegation and DSP, Razzar was appointed to conduct proper departmental enquiry. The enquiry officer held enquiry and submitted his findings, wherein, he held you Constable Kashif No.447 guilty for the mis-conduct.

Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

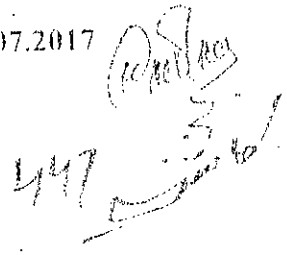
Hence I Muhammad Sohaib Ashraf PSP, District Police Officer, Swabi in exercise of power vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules, 1975 call upon you to show cause finally as to why the proposed punishment should not be awarded to you.

Your reply should reach to the office of the undersigned within seven days of the receipt of this notice failing which it will be presumed that you have no explanation to offer.

You are also at liberty to appear for personal hearing before the undersigned.

  
District Police Officer,  
Swabi.

Date: 13.07.2017

  
447



(A)-3

OFFICE OF THE DISTRICT POLICE OFFICER DISTRICT, SWABI, KPK

SHOW CAUSE NOTICE

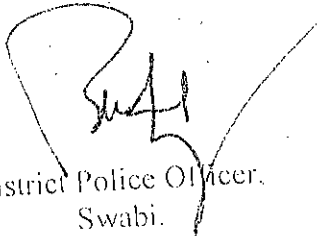
Whereas you Constable Kashif 447, while posted to Police Line Swabi involved yourself in case vide FIR No. 518 Dated 16.07.2017 U/s 3/ AF/15AA13 PS Kalu Khan, which is against the discipline and amounts to gross mis-conduct.

Therefore it is proposed to impose a Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

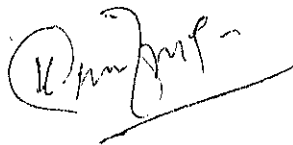
Hence I, Muhammad Sohaib Ashraf, PSP, District Police Officer, Swabi in exercise of powers vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 call upon you Constable Kashif 447 to show cause as to why the proposed punishment should not be awarded to you.

Your reply should reach to the office of the undersigned within three days of the receipt of this notice failing which it will be presumed that you have no explanation to make.

You are also at liberty to appear for personal hearing.

  
District Police Officer,  
Swabi.

Dated: 19.07.2017



0346-7519

447  
Swabi  
Jund

(A)-4

From: The Sub Divisional Police Officer,  
Circle Razzar, Kernal Sher Kelli.

To: The District Police Officer,  
Swabi.

No. 302 /S, dated Razzar the 05/07/2017.

Subject: DEPARTMENTAL ENQUIRY AGAINST CONSTABLE KASHIF NO. 447.

Memo:

In compliance with your office letter No.11/CC/PA dated: 18.05.2017 on subject noted above.

SUMMARY OF ALLEGATIONS:-

It is alleged that constable Kashif No. 447, while posted to Police station Lahor absented himself from duty with effect from 28.02.2017 till date without any leave/prior permission of the competent authority. Furthermore, he was informed through control room to collect his show cause notice from the office of the worthy District Police Officer Swabi, but he failed to collect the same, which is clear violation of the lawful orders of his senior and against the discipline and amounts to gross misconduct, hence statement of allegations.

Constable Kashif No. 447 R/o Muhallah Mama Khel village Kalu Khan, Swabi was called for so many times to appear before the following dates to record his statement in connection with his departmental enquiry.

S/#	Memo No.	Date of issue	Date of appearance
1.	229	18.05.2017	22.05.2017
2.	234	22.05.2017	24.05.2017
3.	241	25.05.2017	26.05.2017
4.	254	02.06.2017	05.06.2017

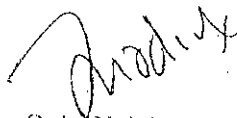
He attended the office of undersigned but did not record his statement in connection with his departmental enquiry, pending for the last 34 days which is malafid and oblivious on the part of him, due to which Ex-part action was also initiated against him vide this office Memo. No.265/S, Dated 13.06.2017. All the relevant contents are attached herewith

Recommendation:

Therefore, constable Kashif Ali No. 447 is hereby recommended for suitable punishment, please.

Enclosed: (11 -Pages)

PSO  
ISSUE FSCMP

  
Sub Divisional Police officer,  
Circle Razzar, Kernal Sher Kelli.

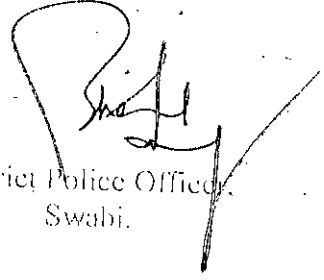
18.07.2017

(A)-5

SUMMARY OF ALLEGATIONS

It is alleged that Constable Kashif Ali No.447, while posted to Police Station Lahor absented himself from duty with effect from 28.02.2017 till date without any leave/prior permission of the competent authority. Furthermore, he was informed through control room to collect his Show Cause Notice from the office of the undersigned, but he failed to collect the same, which is clear violation of the lawful orders of his senior and against the discipline and amounts to gross mis-conduct, hence statement of allegations.

Mr. Bashir Dad, DSP Razzar is appointed to conduct proper departmental enquiry against him.



District Police Officer,  
Swabi.

No. 11 /CC/PA,  
Dated, 18 / 05 / 2017

(A)-6

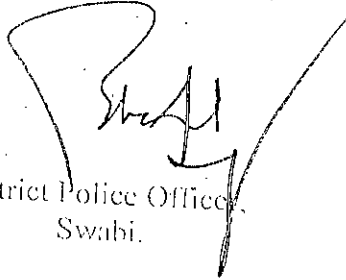
CHARGE SHEET

Whereas I am satisfied that formal enquiry as contemplated by Khyber Pakhtunkhwa Police Rules 1975 is necessary and expedient.

And whereas I am of the view that the allegations if established would call for Major/Minor penalty as defined in Rules 4(b) a & b of the aforesaid Rules.

Now therefore as required by Rules 6(1) of the aforesaid Rules I **Muhammad Sohaib Ashraf, PSP**, District Police Officer, Swabi charge you Constable Kashif Ali No.447 the basis of statement of allegations attached to this charge sheet.

In case your reply is not received within seven days without sufficient cause it will be presumed that you have no defence to offer and ex parte action will be taken against you.

  
District Police Officer,  
Swabi.

(A)-7

OFFICE OF THE DISTRICT POLICE OFFICER DISTRICT, SWABI, KPK

SHOW CAUSE NOTICE.

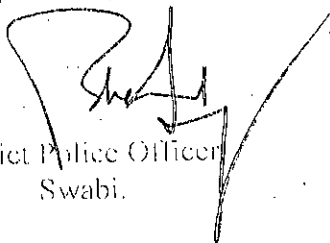
Whereas, you Constable Kashif Ali No.447, while posted to Police Station Lahor absented yourself from duty with effect from 28.02.2017 till date without any leave/prior permission of the competent authority, which is against the discipline and amounts to gross mis-conduct.

Therefore it is proposed to impose a Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence I, **Muhammad Sohaib Ashraf, PSP**, District Police Officer, Swabi in exercise of powers vested in me under Rules 5(3) of the Khyber Pakhtunkhwa Police Rules 1975 call upon **Constable Kashif Ali No.447** to show cause as to why the proposed punishment should not be awarded to you.

Your reply should reach to the office of the undersigned within seven days of the receipt of this notice failing which it will be presumed that you have no explanation to make.

You are also at liberty to appear for personal hearing.

  
District Police Officer  
Swabi.

Dated: 04.05.2017.

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

In Re  
Service Appeal No.566/2018

Kashif Ex FC No.447 District Swabi.

Appellant

Versus

Inspector General of Police, Khyber Pakhtunkhwa Peshawar and others.

Respondents

**INDEX**

S.No	Description of Document	Annexure	Pages
1	Copy of <i>Rejoinder</i>		1-2
2	Affidavit		3

Appellant

Through

*Mehtab Sikandar*

Mehtab Sikandar,  
Advocate, Peshawar.

①

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

In Re  
Service Appeal No.566/2018

Kashif Ex FC No.447 District Swabi.

Appellant

Versus

Inspector General of Police, Khyber Pakhtunkhwa Peshawar and others.

Respondents

**REJOINDER TO THE REPLY FILED BY THE RESPONDENTS.**

**Respectfully Sheweth:-**

**On Preliminary Objections:**

All the preliminary objections raised by respondent No.1-2 are stereo type, have no nexus with the plea raised by the appellant. The appeal is neither bared by time nor bad for mis-joinder and non-joinder, rather the same has been filed will within time arraying all the necessary parties as respondents.

The appellant has approached this Hon'ble Court with clean hands, having a bonafide cause for reinstatement in service.

**On Facts:-**

- 1-2 These paras need no reply. However the appellant is not habitual absentee, rather he was injured and proper application was moved before the competent authority besides that medical prescription and everything have already placed on file, hence the paras under reply are denied as laid.
- 3 This para is incorrect. Reply submitted above and proper explanation has been given supported by medical certificates. The criminal cases are false, petitioner is on bail and facing the trial. However no active role whatsoever has been attributed to the present appellant in the case.
- 4 This para is incorrect. The inquiry was not properly conducted, no chance of personal hearing was provided and report of the inquiry officer speaks malafide, ill will and vendetta of the respondents just to vacate post for some blue eyed person.
- 5 This para is incorrect. As stated above the inquiry was not properly conducted, no chance of hearing was provided to the appellant and the reply sub mitted by the appellant before the inquiry officer was not considered nor brought on file.
- 6-7 These paras need no reply. However the appeal was not considered on merit and rejected illegally. However the dismissal order being a major penalty was not warranted and against the norms of justice.

**On Grounds:-**

Reply to all the grounds of appeal submitted by the respondents is irrelevant and based on malice of the respondents. The dismissal order is very much harsh on the one hand appellant was dismissed and at the same time he was charged in a murder case which certainly debarred the appellant from appearance at various stages, but then he tried his best to submit reply, appear before the inquiry officer and has also sought personal hearing which was not provided to him, hence the inquiry has not properly been conducted and dismissal of the appellant has been made without fulfillment of codal formalities which requires interference by this Hon'ble Court because at the relevant time appellant had put in 9 and a half years regular service without any complaint whatsoever against him, but his sudden injuries and subsequent involvement in murder case disturbed him which wrongly culminated in his dismissal from service.

It is therefore prayed that the impugned order of dismissal may graciously be set aside and appellant having more than 9 years service be reinstated in service in the interest of justice.

Appellant

Through



(Mehtab Sikandar)  
Advocate Pesahwar.



**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

In Re  
Service Appeal No.566/2018

Kashif Ex FC No.447 District Swabi.

Appellant

Versus

Inspector General of Police, Khyber Pakhtunkhwa Peshawar and others.

Respondents

**AFFIDAVIT**

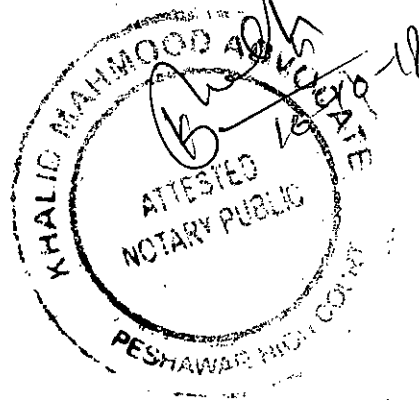
I, Kashif Ex. FC No.447 Police Station Lahore presently r/o Mohallah Mama Khel Tehsil Razzar District Swabi , do hereby solemnly affirm and declare on oath that the contents of rejoinder to the reply are true and correct to the best of my knowledge and belief that nothing has been concealed from this Hon'ble Court.

Identified by:

*M. Sikandar*  
**Mehtab Sikandar,**  
Advocate Peshawar.

Deponent

*[Signature]*





3

**BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

In Re  
Service Appeal No.566/2018

Kashif Ex FC No.447 District Swabi.

Appellant

Versus

Inspector General of Police, Khyber Pakhtunkhwa Peshawar and others.

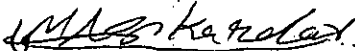
Respondents

**AFFIDAVIT**

I, Kashif Ex. FC No.447 Police Station Lahore presently r/o Mohallah Mama Khel Tehsil Razzar District Swabi , do hereby solemnly affirm and declare on oath that the contents of rejoinder to the reply are true and correct to the best of my knowledge and belief that nothing has been concealed from this Hon'ble Court.

Identified by:

Deponent

  
**Melitab Sikandar,**  
Advocate Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

AMENDED SERVICE APPEAL  
IN

Appeal No619/2019



Mr. Roziman S/o Sher Nawab Khan (Constable No.1062)  
R/o Kot Gokand Tehsil Daggar District Buner.

APPELLANT

VERSUS

1. The Regional Police Officer Malakand Division, at Saidu Sharif District Swat.
2. The Superintendent Of Police Investigation, Buner.
3. The District Police Officer, Buner.

RESPONDENTS


.....

AMENDED APPEAL UNDER SECTION-4 OF THE  
KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL  
ACT, 1974 AGAINST THE ORDER DATED  
08.02.2019 AND AGAINST THE REJECTION ORDER  
DATED 08.05.2019 WHEREBY THE  
DEPARTMENTAL APPEAL OF THE APPELLANT  
WAS REJECTED FOR NO GOOD GROUNDS

.....

PRAYER:

THAT ON ACCEPTANCE OF THIS APPEAL, THE  
ORDER DATED 08.02.2019 AND 08.05.2019 MAY  
PLEASE BE SET-ASIDE AND THE APPELLANT MAY  
BE REINSTATED INTO SERVICE WITH ALL BACK  
AND CONSEQUENTIAL BENEFITS. ANY OTHER  
REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS  
FIT AND APPROPRIATE THAT, MAY ALSO BE  
AWARDED IN FAVOUR OF APPELLANT.

ATTESTED  
  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

**RESPECTFULLY SHEWETH:**

1. That the appellant joined the Police Force and completed all his due training etc and also has a good service record throughout.
2. That the appellant was charged in the criminal case vide Fir no.1203 dated 31.12.2013 under section 276/50 6PPc. on the basis which the appellant was dismissed from the service vide order dated 06.04.2015 and also rejected the department appeal vide order dated 08.05.2018.
3. That the appellant filed Service Appeal no 648/2018 against the impugned order dated 06.04.2015 and 08.05.2018 in the KPK Service Tribunal Peshawar and the Service Appeal No. 648/2018 was heard by the Service Tribunal Peshawar on 03.12.2018 and was kind enough to accept the appeal and remanded appeal to the respondent department to conduct a denovo inquiry within period of three months by giving full opportunity to the appellant accordance with law and rules. **(Copy of the judgment is attached as Annexure-A.**
4. That the department reinstated the appellant into service vide order dated 01.01.2019 and issued charge sheet and statement of allegation dated 22.01.2019 to the appellant and just after 1 days the show cause notice dated 24.01.2019 was issued to the appellant, which was properly replied by the appellant and denied the allegation specifically but the department without hearing the appellant passed the impugned order dated 08.02.2019. **(Copy of the reinstatement order, charge sheet, show cause, reply and impugned order is attached as Annexure-B, C, D, E& F).**
5. That the appellant was aggrieved from the said impugned order, therefore he filed departmental appeal dated 11.02.2019 which was not responded with in the statutory period of 90 days. **Copy of departmental appeal is attached as Annexure-G).**
6. That thereafter the appellant filed service appeal no 619/2019 that the comments was called from the deptt:. So with the comments deptt: annexed the rejection order dated 08.05.2019 which was never communicated to the appellant but the appellant know about the rejection order dated when the deptt filed the comments. So the appellant filed application for amendment which was allowed Hence, the present amended appeal on the following grounds amongst other. **Copy of rejection order is attached as annexure-H.**

**ATTESTED**  
  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

7. That the appellant having no other remedy and constrained to file service appeal to this Honourable Tribunal on the following grounds amongst the others.

**GROUND:**

- A) That the impugned order dated 08.02.2019 and 08.05.2019 are against the law, facts, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B) That neither the appellant was associated with neither the inquiry proceedings nor any statement of the witnesses have been recorded in the presence of the appellant. Even a chance of cross examination was also not provided to the appellant which is a violation of norms of justice.
- C) That the appellant has not been treated under the proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- D) That the department not obeys the judgment dated 03.12.2018 and not conducted proper inquiry, even as wholly the appellant condemned un-heard which is against the law and rule and the impugned order is liable to the set aside.
- E) That the appellant already Honorably acquitted by the Peshawar High Court Mingora Bench/ Darul Qaza Swat, so there is no more ground remains to punish the appellant on the basis of said charges, the superior court judgment cited as 2002-SCMR 57 and 2001 SCMR 269 also has the same verdict. So the impugned order is liable to be set aside. **Copy of judgment is attached as annexure-I.**
- F) That the gap between the charge sheet and show cause notice is just one day which is proof of that the appellant condemned unheard.
- G) That the charge sheet and show cause was issued by the SP investigation and impugned order was passed by the DPO Buner which is void ab initio according to the rules the authority issuing charge sheet and show cause and penalty order would be same. So liable be set aside.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

**ATTESTED**  
  
 MEMBER  
 Service Tribunal

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

*Roz*

APPELLANT  
Roziman

THROUGH:

*U3*  
(UZMA SYED)  
ADVOCATE HIGH COURT.

&  
*U3*  
SYED NOMAN ALI BUKHARI  
ADVOCATE HIGH COURT

Certified to be true copy

*[Signature]*  
F. M. NER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 07/07/21  
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Name of Applicant ---  
Date of Receipt of Copy 07/07/21  
Date of Receipt of Copy 07/07/21

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

**Service Appeal No. 619/2019**

Date of Institution ... 13.05.2019

Date of Decision ... 09.06.2021



Rozimand S/o Sher Nawab Khan (Constable No. 1062)  
R/o Kot Gokand Tehsil Daggar District Buner.

... (Appellant)

**VERSUS**

The Regional Police Officer Malakand Division, at Saidu Sharif  
District Swat and two others.

... (Respondents)

Mr. MIR ZAMAN SAFI,  
Advocate

For appellant.

MR. JAVED ULLAH,  
Assistant Advocate General

For respondents.

**MR. SALAH-UD-DIN**

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**MEMBER (JUDICIAL)**

**MR. ATIQU-UR-REHMAN WAZIR**

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**MEMBER (EXECUTIVE)**

**JUDGMENT:**

**SALAH-UD-DIN, MEMBER:-**

The appellant has filed the appeal in hand against the order dated 08.02.2019, whereby the competent Authority upheld the order of dismissal of the appellant issued vide O.B No. 35 dated 06.04.2015 and the departmental appeal preferred by the appellant against the order dated 08.02.2019 was also turned down by the Appellate Authority vide order dated 08.05.2019.

2. Briefly stated the facts divulging from the record are that the appellant, while posted in Police Post Ambela District Buner was charged in case FIR No. 1203/2013 under sections 376/506 PPC. The appellant was dismissed from service and his departmental appeal was also rejected, therefore, he filed Service Appeal No. 648/2018 before the Service Tribunal, which was disposed of vide judgment dated 03.12.2018, by directing the department to conduct departmental

TESTED  
KHYBER PAKHTUNKHWA  
Services Tribunal  
PESHAWAR



proceedings against the appellant, strictly in accordance with law. De-novo inquiry was conducted in to the matter and the appellant was dismissed from service vide order dated 08.02.2019, which was assailed through filing of departmental appeal, however the same was not responded to within the statutory period of ninety days, therefore, service appeal was filed before this Tribunal. It was upon submission of comments by the respondents that the appellant came to know that his departmental appeal has been rejected vide order 08.05.2019, therefore, the appellant submitted an application for filing of amended appeal in order to challenge the aforementioned order dated 08.05.2019 also. The application was allowed and the appellant filed the instant amended service appeal, challenging his dismissal from service.

3. Learned counsel for the appellant has argued that despite directions issued by this Tribunal in judgment dated 03.12.2018, the de-novo inquiry against the appellant was conducted in sheer violation of the Khyber Pakhtunkhwa Police Disciplinary Rules, 1975; that the de-novo inquiry was conducted in a hurried and slipshod manner as the charge sheet and statement of allegations were issued to the appellant on 22.01.2019 while final show-cause notice was issued to him on 24.01.2019 and on the same date dated 24.01.2019, the inquiry officer sent the inquiry report to the District Police Officer Buner, who did not afford any opportunity of hearing to the appellant and passed a vague order to the effect that by agreeing with the recommendations of the inquiry officer, he upholds the order issued vide office O.B No. 35 dated 06.04.2015 in which Ex-Constable Rozimand No. 1062 was dismissed; that the departmental appeal filed by the appellant was also dismissed by the Regional Police Officer Malakand through an illegal order dated 08.05.2019; that the inquiry was conducted against the appellant on the basis of his alleged involvement in a case of Zina, however the appellant has already been acquitted of the said charge vide judgment dated 23.06.2014 rendered by august Peshawar High Court, Mingora Branch (Dara-ul-Qaza) Swat in Criminal Appeal bearing No. 67-M of the year 2015; that the fact of acquittal of the appellant in criminal case was agitated by the appellant in reply to the show-cause notice issued to him during the inquiry, however this material aspect of the case was skipped by the inquiry officer, competent Authority as well as the appellate Authority and no findings in this respect were given by them;

ATTESTED  
 J. I.  
 JUDGE  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

that the impugned orders are devoid of any legal sanctity, therefore, the same are liable to be set-aside and the appellant be reinstated in to service with all back benefits. Reliance was placed on 2010 SCMR 1554, 1983 SCMR 229, PLD 1981 Supreme Court 176, 2007 SCMR 192, 2003 SCMR 69, PLD 1985 Supreme Court 290, 2016 SCMR 108, 2019 PLC 394, 2002 SCMR 57, 2003 SCMR 215 and 2021 SCMR 420.

4. On the other hand, learned Assistant Advocate General for the respondents has contended that the appellant was found involved in a case of moral turpitude, who was dully proceeded against under the Khyber Pakhtunkhwa Police Rules, 1975; that all the necessary legal formalities of the inquiry were complied with and the appellant was found guilty of the charges leveled against him, therefore, he has been rightly dismissed from service; that the appellant has been acquitted by the worthy Peshawar High Court on the basis of compromise, which cannot be considered to be a ground for any leniency in the disciplinary proceedings taken against the appellant. Reliance was placed on 2002 SCMR 1691, 2006 SCMR 554, 2006 SCMR 1005 and 2007 SCMR 562.

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

6. A perusal of record would show that in light of judgment dated 03.12.2018 of this Tribunal, de-novo inquiry was conducted against the appellant. Charge sheet and statement of allegations were issued to the appellant by Mr. Darwesh Khan Superintendent of Police Investigation Buner on 22.01.2019 as competent Authority, whereas the contents of statement of allegations would show that in para-2, it is mentioned that Darwesh Khan (SP Investigation Buner) has been appointed as Inquiry officer vide PPO Khyber Pakhtunkhwa Peshawar Memo No. 1808/E&i dated 28.12.2017 under rule-5 (iv) of Police Disciplinary Rules, 1975. The de-novo inquiry was conducted in light of the judgment passed by this Tribunal on 03.12.2018, however it is astonishing that Darwesh Khan Superintendent of Police investigation Buner was appointed as inquiry officer vide PPO Khyber Pakhtunkhwa Peshawar Memo No. 1808/E&i dated 28.12.2017. Even otherwise too, in light of rule 5 (4) of Police Rules, 1975, competent Authority shall appoint inquiry officer in a matter. According to Schedule-I of Police Rules, 1975, Police

ATTESTED


EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Officer of the rank of DPO/SSP/SP can be competent Authority in the instant case and not Provincial Police Officer. Moreover, in view of rule-6 of Khyber Pakhtunkhwa Police Rules, 1975, it is the competent Authority to frame charge and communicating to the accused alongwith statement of allegations but in the instant case the inquiry officer Darwesh Khan S.P Investigation has issued charge sheet as well as statement of allegations to the appellant and has even issued final show-cause notice to the appellant in capacity of competent Authority. No order of the competent Authority, appointing S.P Investigation as inquiry officer for conducting de-novo inquiry in the matter is available on the record.

7. The disciplinary proceedings taken against the appellant would show that he was dealt with in general Police Proceedings as provided in rule 5 (3) of Police Rules, 1975 through appointing of inquiry officer as provided in rule 5 (4) of Police Rules, 1975, however the action taken by Superintendent of Police Investigation was not in accordance with the aforementioned provisions of the Police Rules, 1975. Superintendent of Police Investigation Buner conducted de-novo inquiry in to the matter and sent the inquiry report alongwith his recommendations to the District Police Officer Buner. Vide O.B No. 24 dated 07.02.2019 District Police Officer Buner passed order on the inquiry, however instead of awarding any penalty to the appellant, the District Police Officer Buner has mentioned in his order that he upholds the order issued vide the office O.B No. 35 dated 06.04.2015 in which Ex-Constable Rozimand No. 1062 was dismissed. These wording of order of District Police Officer Buner would show that instead of competent Authority, he has dealt with the inquiry report as appellate Authority. Furthermore, the District Police Officer has upheld the order dated 06.04.2015, which was no more in field for the reason that de-novo inquiry was being conducted in to the matter.

8. The departmental appeal was disposed of by Regional Police Officer Malakand at Saidu Sharif Swat vide order bearing No. 5480/E, dated 08.05.2019. The operative portion of the order reproduced as below:-

*" He was called in orderly room on 01.04.2019 and heard him in person. The appellant could not produce any cogent reason in his*

**ATTESTED**  
  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

defence. However, his appeal was scrutinized from DPO Buner and found him guilty for the charges/allegations leveled against him. Therefore, his appeal for reinstatement in service is hereby filed".


9. It is in the case of Police Summery Proceedings, that an accused is brought before the Authority in orderly room and the procedure so provided in rule 5 of Police Rules, 1975 is adopted; however in the instant case, the appellate Authority has mentioned in its order that the appellant was called in orderly room and heard in person. Moreover, the appellate Authority was required to meticulously deliberate upon the ground of appeal taken by the appellant in his departmental appeal, however the order of appellate Authority would show that it is mentioned therein that the appeal was scrutinized from DPO Buner and found the appellant guilty of the charges/allegations leveled against him, therefore, his appeal for reinstatement in service is hereby filed.

10. The above mentioned fatal lapses in the inquiry proceeding has rendered the entire inquiry proceedings as nullity in the eye of law. Moreover, the disciplinary proceedings were taken against the appellant on the ground that he was charged in case FIR No. 1203/2013 under sections 376/506 PPC Police Station Gagra District Buner, however the appellant has already been acquitted in the said criminal case on merits by the august Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat.

11. In view of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.

**ANNOUNCED**  
09.06.2021

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

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

Certified to be true copy  
E. S. DINI  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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BEFORE THE KHYBER PAKHTUNKHAWA SERVICE  
TRIBUNAL, PESHAWAR

APPEAL NO 566-P/2019



put up to the court with  
relevant appeal.

KASHIF

VS

IGP AND OTHERS

Readw

7/1/2020

APPLICATION FOR ASSAILING ORDER ON  
APPEAL DATED 3/11/2017 INADVERTANTLY NOT  
MENTIONED IN THE PRAYER ALTHOUGH  
PLACED ON FILE AT PAGE NO 29 AND  
SUBSEQUENTLY ORDER DATED 26/3/2018 HAS  
BEEN CHALLENGED.

RESPECTFULLY SHEWETH:-

1. That captioned Appeal matured for final hearing after submission of reply and rejoinder but inadvertently order dated 3/11/2017 rejecting departmental appeal has not been mentioned in prayer portion of the appeal although placed on record at page no 29.
2. That no doubt original order dated 17/10/2017 and final order passed on revision dated 26/3/2018 have been challenged but due to inadvertent omission order <sup>of</sup> Regional Police Officer Mardan dated 3/11/2017 passed on

departmental appeal has not been mentioned in the prayer clause of the appeal.

It is therefore humbly prayed that <sup>077</sup> acceptance of this application the order dated 03/11/2017 at page no 29 of the appeal may graciously be considered as part and parcel of the impugned order in appeal in the interest of justice.

Applicant

Through

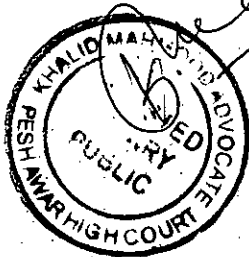
*(Signature)*

**Mehtab Sikandar**

Advocate Peshawar:

**VERIFICATION:**

It is verified as per instruction of my client that contents of the Application are true and correct and nothing has been concealed therein



*(Signature)*  
Advocate