

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Service Appeal No. 14126/2020

BEFORE: **MR. KALIM ARSHAD KHAN, ... CHAIRMAN**
MISS. FAREEHA PAUL, ... MEMBER(E)

Mr. Dawood, Ex-Constable No. 1080, Police Line Swabi.
.....(*Appellant*)

Versus

1. **The Inspector General of Police Khyber Pakhtunkhwa, Peshawar.**
2. **The Regional Police Officer Mardan Region, Mardan.**
3. **The District Police Officer, Swabi. (Respondents)**

Mr. Noor Muhammad Khattak, ... For appellant.
Advocate

Mr. Muhammad Riaz Khan Paindakhel, ... For respondents.
Asstt. Advocate General

Date of Institution.....16.10.2020
Date of Hearing.....10.05.2022
Date of Decision.....11.05.2022

JUDGMENT


KALIM ARSHAD KHAN CHAIRMAN. This appeal has been filed by the appellant Dawood against the order dated 12.09.2019, whereby he was discharged from service and against the order dated 05.12.2019, whereby order of discharge from service has been modified/converted into removal from service and against the appellate order dated 17.09.2020, whereby the Review petition of the appellant has been rejected. It has been prayed that on



acceptance of the appeal, the impugned orders might be set aside and the appellant might be reinstated into service with all back benefits.

2. Brief facts of the case as enumerated in the appeal, are that the appellant was the employee of the respondent department and had served as Constable for quite considerable period efficiently and up to the entire satisfaction of his superiors. That during the service, the appellant met with a road accident and was seriously injured in the said accident. That the appellant was unable to perform his duty very well but in between of his treatment, he performed his duty at the concerned station; that the appellant also informed his high ups about the accident but the respondent department issued the order dated 12.09.2019, whereby the appellant was discharged from service and directions were issued for deduction of pay for the absence period from salary of the appellant; that feeling aggrieved, the appellant preferred departmental appeal before respondent No.1 who modified/converted order of discharge from service into removal from service vide impugned order dated 05.12.2019; that thereafter, the appellant preferred revision petition before respondent No. 1 which was rejected on 17.09.2020, hence the present appeal.

3. On receipt of the appeal, notices were issued to the respondents to file their reply. The respondents submitted reply, wherein it has been stated that appellant, without prior sanction of leave from the competent authority absented himself from duties on different occasions and proved himself habitual absentee; that on account of willful absence, he was served with show cause notice. The reply of appellant to the show cause notice was found unsatisfactory, hence, he was charge sheeted; that after proper departmental

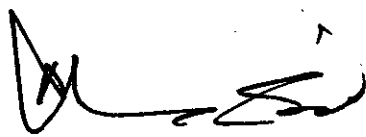

11/5/22

enquiry, allegations against the appellant were proved and the enquiry officer recommended that the appellant was not willing to serve the department, hence, he was issued final show cause notice and after personal hearing, he was removed from service.

4. We have heard arguments of learned counsel for the parties and perused the record with their assistance.

5. Learned counsel for the appellant argued that the impugned orders were against law, facts, norms of natural justice and material on record; that the appellant had not been treated in accordance with law and rules on the subject; that absence of the appellant was not willful but due to reason which was beyond his control; that neither charge sheet alongwith statement of allegation was issued to the appellant nor show cause notice was served upon him and no regular inquiry was conducted before passage of the impugned orders and that no chance of personal hearing was afforded to the appellant. He requested that the appeal might be accepted as prayed for.

6. Learned Assistant Advocate General, while rebutting the arguments of learned counsel for the appellant, contended that the appellant had been treated in accordance with law/rules; that due to his willful absence, the appellant was proceeded against departmentally. That proper charge sheet/statement of allegations was issued to the appellant, which was duly replied by him and after proper enquiry, he was removed from service; that the appellant remained absent without leave or prior permission of the competent authority and he had rightly been removed from service. Learned AAG requested that the appeal might be dismissed with cost.


11/5/22

7. Perusal of enquiry report would reveal that enquiry has not been conducted in accordance with law/rules. No statement of the appellant has been recorded nor was he given proper opportunity to defend himself, especially when his contention was that he met road accident and was under treatment during absence period.

8. As a sequel to the discussion, we have arrived at the conclusion that the appellant was not given fair chance to present his case before the Inquiry Officer. Before awarding major penalty of removal from service, the competent authority should have ensured that relevant clauses of laws/rules had been fully adhered to. The appeal in hand is therefore, allowed by setting aside the impugned orders. The appellant is reinstated in service with the directions to the respondents to conduct de-novo inquiry strictly in accordance with the Law & Rules within 60 days of the receipt of copy of this judgment, under intimation to this Tribunal through its Registrar. The question of back benefits shall be decided as per the outcome of the denovo enquiry. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 11th day of May, 2022.*




(KALIM ARSHAD KHAN)
Chairman


(FAREEHA PAUL)
Member (E)

11th May, 2022

Mr. Noor Muhammad Khattak, Advocate for appellant present. Mr. Muhammad Riaz Khan Paindakhel, Asstt. AG for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today, containing 04 pages, the appeal in hand is allowed by setting aside the impugned orders. The appellant is reinstated in service with the directions to the respondents to conduct de-novo inquiry strictly in accordance with the Law & Rules within 60 days of the receipt of copy of this judgment, under intimation to this Tribunal through its Registrar. The question of back benefits shall be decided as per the outcome of the denovo enquiry. Consign.

3. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11th of May, 2022.*



(KALIM ARSHAD KHAN)
Chairman




(FAREEHA PAUL)
Member (E)

10.05.2022

Mr. Noor Muhammad Khattak, Advocate for the appellant present. Mr. Naseer-ud-din Shah, Assistant Advocate General for the respondents present.

Argument heard. To come up for order before the D.B on 11.05.2022.



(Fareeha Paul)
Member (E)

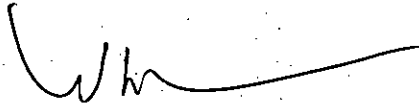


Chairman

11.10.2021

Clerk to counsel for the appellant present. Mr. Javed Ullah Assistant Advocate General alongwith Fazal Subhan for the respondents present.

Learned Members of the DBA are observing Sogh over the demise of Dr. Abdul Qadeer Khan (Scientist) and in this regard request for adjournment was made; allowed. To come up for arguments on 05.01.2022 before D.B.



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



(Rozina Rehman)
Member (J)

05.01.2022

Mr. Farooq Mohmand, Advocate junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondent present.

Former made a request for adjournment as senior counsel for the appellant is not available today. Adjourned. To come up for arguments before the D.B on 16.02.2022.



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



Chairman

16-2-22

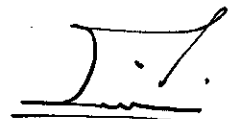
*Due to Retirement of the Hon.ble Chairman
The case is adjourned to come up for the same
as before on 10-5-22*

*Justice
Rehman*

22.03.2021

Mr. Afrasiyab Khan Wazir, Advocate, junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Neither written reply on behalf of respondents submitted nor representative of the department is present, therefore, learned Additional Advocate General is directed to contact the respondents and furnish written reply/comments on the next date of hearing. Adjourned to 02.06.2021 on which date file to come up for written reply/comments before S.B.



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

02.06.2021

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

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

Reply Submitted



Chairman

28.12.2020

Mr. Mir Zaman Safi, Advocate, for appellant is present.

The abridgement of what has been agitated at the bar by the learned counsel representing appellant, is that the absence of appellant from duty was due to happening of road accident due to which he was incapacitated to attend to his official assignments, the notice of which has been made to the higher-ups despite of which he was initially discharged from service and later on that order was converted into removal from service vide the impugned orders dated 12.09.2019 and 05.12.2019 passed by the District Police Officer District Swabi and by the Regional Police Officer, Mardan Region, Mardan, respectively. The movement of revision petition resulted into rejection vide impugned order dated 17.09.2020, assigning no valid reason for the same thus necessitating the instant service appeal.

The points so agitated at the bar need consideration. The appeal is admitted for regular hearing subject to all just legal exceptions. Appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 22.03.2021 before S.B.


**Appellant Deposited
Security & Process Fee**


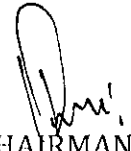

(MUHAMMAD JAMAL KHAN)
MEMBER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 14126 /2020


| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 12/11/2020 | <p>The appeal of Mr. Dawood resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>28/12/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: right;">Security & Process Ltd Appellate Division</p> |

The appeal of Mr. Dawood Ex-Constable no. 1080 Police Line Swabi received today i.e. on 16.10.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Annexures of the appeal may be flagged.
- ③- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 4- Copies of departmental appeal and revision petition are not attached with the appeal which may be placed on it.
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2982 /S.T,

Dt. 19/10 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv.

Sir,

All objections have been removed, hence re-submitted today dated 12/11/2020. That charge sheet, statement of allegations and other formalities have not been fulfilled by the authorities, due to which the above documents are not available.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. _____/2020

DAWOOD

VS

POLICE DEPTT:

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| 5 | Revision petition | D | 7. |
| 6 | Appellate order | E | 8. |
| 15 | Vakalat nama | | 9. |

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

APPEAL NO. 14126/2020

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11629

Dated 16/10/2020

Mr. Dawood, Ex-Constable No.1080,

Police Line Swabi, District Swabi.....**APPELLANT**

VERSUS

- 1- The Inspector General Of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Regional Police officer Mardan Region, District Mardan.
- 3- District Police Officer, District Swabi.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT-1974 AGAINST THE IMPUGNED ORDER DATED 12.09.2019 WHEREBY THE APPELLANT WAS DISCHARGED FROM HIS DUTIES AND AGAINST THE ORDER DATED 05.12.2019 WHEREBY THE ORDER OF DISCHARGED FROM SERVICE HAS BEEN MODIFIED/CONVERTED INTO REMOVAL FROM SERVICE AND AGAINST THE APPELLATE ORDER DATED 17.09.2020 WHEREBY THE REVISION PETITION OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.

PRAYER:

That on acceptance of this service appeal the impugned orders dated 12.09.2019, 05.12.2019 and 17.09.2020 may very kindly be set aside and the appellant be re-instated into service with all back benefits. Any other remedy which this august tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

FACTS:

- 1- That the appellant was the employee of the respondent department and had served as Constable for quite considerable period quiet efficiently and up to the entire satisfaction of his superiors.
- 2- That during service the appellant has got road accident and was seriously injured in the said accident. That due to the above mentioned accident the appellant was unable to perform his duty

Filed to-day
Registrar
16/10/2020

Registrar
17/11/2020

22-3

very well but in between of his treatment the appellant performed his duty at the concerned station.

- 3- That the appellant has also been informed his high ups about his road accident but in spite of that the respondent Department issued the order dated 12.09.2019 whereby the appellant was discharged from his service and issued directions by the respondent No.3 for deduction of pay of the absence period from his salaries. Copy of the order dated 12.09.2019 is attached as annexure.....**A.**
- 4- That feeling aggrieved from the order dated 12.09.2019 the appellant preferred Departmental appeal before the respondent No.1. That the respondent No.1 modified/converted the order of discharge from service into removal from service vide impugned order dated 05.12.2019. Copies of the Departmental appeal & impugned order are attached as annexure.....**B & C.**
- 5- That appellant further aggrieved from the impugned order dated 05.12.2019 filed revision petition before the respondent No.1 but the same has also been rejected vide appellate order dated 17.09.2020 on no good grounds. Copies of the revision petition and Rejection order are attached as annexure.....**D & E.**
- 6- That the appellant feeling aggrieved and having no other remedy but to file the instant service appeal on the following grounds amongst others.

ON GROUNDS:

- A- That the impugned orders dated 05.12.2019 & 17.09.2020 are against law, facts, norms of natural justice and material on record, hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan.
- C- That the respondent department acted in arbitrary and malafide manner while issuing the impugned orders dated 05.12.2019 and 17.09.2020.

- D- That no regular inquiry has been conducted before issuing the impugned appellate order dated 05.12.2019 and order dated 12.09.2019 is against law and liable to be set aside.
- E- That no show cause notice has been served upon the appellant while issuing the impugned appellate order dated 05.12.2019 and order dated 12.09.2019.
- F- That absence of the appellant was not willful but due to cause the above mentioned road accident which was in well known of the high ups of appellant, but inspite of that the appellant has been removed from service, hence the impugned orders dated 12.09.2019, 05.12.2019 and 17.09.2020 are not tenable in the eye law and the same are liable to be set aside.
- G- That no charge sheet and statement of allegation has been issued by the respondent Department before issuing the impugned orders dated 12.09.2019 and 05.12.2019.
- H- That no show cause notice has been served upon the appellant before issuing the impugned orders dated 12.09.2019 and 05.12.2019 which is necessary as per rule before taking punitive action against the civil servant.
- I- That no chance of personal hearing/defense has been provided to the appellant before issuing the impugned orders dated 12.09.2019 and 05.12.2019.
- J- That the appellant seeks permission to advance any other ground and proof at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may very kindly be accepted as prayed for.

APPELLANT


DAWOOD

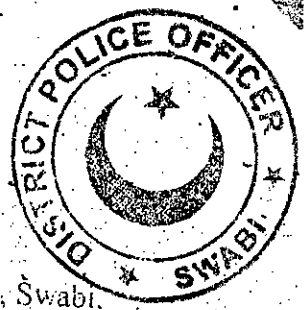
THROUGH:


NOOR MUHAMMAD KHATTAK


MIRZAMAN SAFI
ADVOCATES

1080

A-4



OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

ORDER

Constable Dawood No.1080, while posted to Police Lines, Swabi, on account of habitual absentee has been kept under watch since 25.02.2019. Although he was under watch, he absented himself from duty on 07.03.2019, 08.03.2019 to 12.03.2019, 13.03.2019 to 15.03.2019, 19.03.2019, to 07.07.2019 and 15.07.2019 to 25.08.2019. Therefore, he was served with Show Cause Notice. His reply to the Show Cause Notice was received, perused and found un-satisfactory. Therefore, he was issued with Charge Sheet and Summery of Allegations and DSP, Lahor was appointed to conduct departmental enquiry against him. The officer conducted enquiry, recorded statements of all concerned, collected evidence and submitted his findings wherein he found Constable Dawood No.1080 guilty for the mis-conduct and recommended him for major punishment. The undersigned perused the enquiry papers and findings of the Enquiry Officer and by agreeing with him served Constable Dawood No.1080 with Final Show Cause Notice. His reply to the Final Show Cause Notice was received, perused and he was heard in Orderly Room but his reply was found un-satisfactory.

Therefore, I, Syed Khalid Hamdani, PSP, QPM, District Police Officer, Swabi, in exercise of the powers vested in me under rules 12.21 of Khyber Pakhtunkhwa Police Rules 1975, hereby award Constable Dawood No.1080, Major Punishment of discharge from service, with immediate effect. The pay for the period of his absence is hereby deducted from his salary.

O.B No. 727

Dated 12-9-2019

Certified to be True Copy.

(SYED KHALID HAMDANI) PSP, QPM
District Police Officer, Swabi.

Amad
ATTESTED
[Signature]
District Police Officer, Swabi.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

No. 2000-04/PA, dated Swabi, the 12-09-2019.

- Copies to the:-
1. DSP, HQrs.
2. Pay Officer.
3. Establishment Clerk.
4. Fauji Missal Clerk.
5. Official concerned

Date of Presentation of Application: 08/10/2020

Copying Fee: N/C

Total Pages: (06)

Name of Copying: Rashid Ali

Date of Completion of Copy: 09-10-2020

Date of Delivery of Copy: 09-10-2020

[Handwritten signatures and checkmarks]

ORDER.

C-6

This order will dispose-off the departmental appeal preferred by Ex-Constable Dawood No. 1080 of Swabi District Police against the order of District Police Officer, Swabi, whereby he was awarded Major punishment of discharged from service vide OB No. 727 dated 12.09.2019. The appellant was proceeded against on the allegations that he, while posted to Police Lines, Swabi, absented himself from duty on 07.03.2019, 08.03.2019 to 12.03.2019, 13.03.2019 to 15.03.2019, 19.03.2019 to 07.07.2019 and 15.07.2019 to 25.08.2019, without taking any leave/permission from his seniors. He had been kept under watch for being in the habit of habitual absenting himself from duty.

In this connection, he was served with Show Cause Notice. His reply to the Show Cause Notice was received, perused and found un-satisfactory. Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Mr. Sajjad Hussain SDPO/Lahor, Swabi, was nominated to conduct Enquiry into the matter, who conducted enquiry recorded statements of all concerned, collected evidence and submitted his finding wherein he found the delinquent Official guilty for the misconduct and recommended him for major punishment.

Certified to be True Copy.

He was issued Final Show Cause Notice to which, his reply was received and found unsatisfactory.

Keeping in view the recommendation of Enquiry Officer and other material available on record, the appellant was discharged from service and pay for the period of his absence was deducted from his salary.

Feeling aggrieved from the order of District Police Officer, Swabi, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 03.12.2019.

From the perusal of the enquiry file and the service record of the appellant, it has been found that the delinquent official has been showing irresponsible attitude in utter disregard of the discipline of the force. He could not present any cogent justification for such long absence from duty.

Keeping in view the above, **I, Sher Akbar, PSP S.St, Regional Police Officer, Mardan**, being the appellate authority, finds no substance in the appeal because enquiry has been conducted according to the canons of justice, hence warrants no interference. However, the order of Discharge from Service is modified and converted into Removal from Service under Khyber Pakhtunkhwa Police Rules, 1975 amended 2014.

Order Announced.

[Signature]
Regional Police Officer,
Mardan.

No. 13814 /ES, Dated Mardan the 05-12-2019.

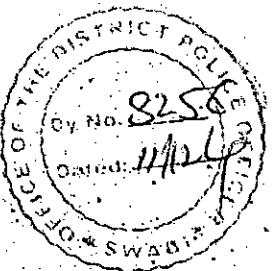
Copy forwarded to District Police Officer, Swabi for information and necessary action.

[Signature]

ATTESTED

District Police Officer, Swabi

OB No 1099
dt 11/12/19



SB/Ec/Po/Pc/Ins/Agd

درخواست مراد علی صاحب مدد

جناب عالی! درخواست ہے کہ میں صاحب کو صاب PP0 صاحب کو

نے جو رقم آرڈر نمبر 727 مورخ 19/12/2019 کو جو غیر حاضر کی مدد رقم تھی

میں دس سس روپے کا حکم صادر فرمایا ہے۔ جناب عالی اس ضمن میں اس میں

تعمیرات تھا۔ اور ایک دفعہ درج ذیل رقمیں جو صاحب کو سس روپے غیر حاضر

صاحب کو سس روپے کا حکم صادر فرمایا ہے۔ اس کا رقم سس روپے کا حکم

بغیر اسرار کی بنیاد پر فروری سے دس سس روپے کا حکم صادر فرمایا گیا ہے

اور سس روپے کا حکم صادر فرمایا گیا ہے۔ اس دوران سس روپے کا حکم

بغیر اسرار کی بنیاد پر فروری سے دس سس روپے کا حکم صادر فرمایا گیا ہے

اور سس روپے کا حکم صادر فرمایا گیا ہے۔ اس دوران سس روپے کا حکم

جناب عالی! میں صاحب کو غیر حاضر کی رقم اور دس روپے کا حکم صادر فرمایا گیا ہے۔

بیماری تھی۔ جس میں میں سس روپے کا حکم صادر فرمایا گیا ہے۔

آپ صاحب کی طرف سے عافرانہ رقمیں آرڈر نمبر 12/9/2019

کے تحت میں نے صاب PP0 صاحب کو درخواست گزارا میں PP0 صاحب

نے سس روپے کا حکم صادر فرمایا ہے۔ اس کے ساتھ میں صاحب کو سس روپے

مورخ 19/12/2019 کا حکم صادر فرمایا گیا ہے۔

لہذا عافرانہ درخواست ہے کہ درخواستی رقم آرڈر نمبر 12/9/2019

کو مسترد کرنے کے احکامات صادر فرمائیں۔ اور دوبارہ اپنی درخواست

پر ماضی میں کے احکامات صادر فرمائیں تاکہ

میں صاحب کو سس روپے کا حکم صادر فرمایا گیا ہے۔

میں صاحب کو سس روپے کا حکم صادر فرمایا گیا ہے۔

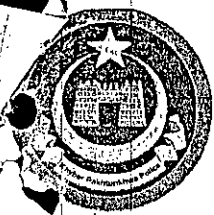
میں صاحب کو سس روپے کا حکم صادر فرمایا گیا ہے۔

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میں صاحب کو سس روپے کا حکم صادر فرمایا گیا ہے۔

میں صاحب کو سس روپے کا حکم صادر فرمایا گیا ہے۔



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

E-8

No. S/ 3671 /20, dated Peshawar the 17/09/2020.

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by **Ex-FC Dawood No. 1080**. The petitioner was removed from service by District Police Officer, Swabi vide OB No. 727, dated 12.09.2019 on the allegations of absence from duty w.e.f 07.03.2019, 08.03.2019 to 12.03.2019, 13.03.2019 to 15.03.2019, 19.03.2019 to 07.07.2019 and 15.07.2019 to 25.08.2019 for total period of 05 months & 07 days. His appeal was filed by Regional Police Officer, Mardan vide order Endst: No. 13814/ES, dated 05.12.2019.

Meeting of Appellate Board was held on 24.08.2020 wherein petitioner was heard in person. During hearing petitioner contended that he was ill.

Perusal of the record reveals that the petitioner remained absent for long period of 05 months & 07 days. He has earned 04 bad entries during his service of less than three years. His revision petition is also time barred. Therefore, the Board decided that his petition is hereby rejected.

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

Sd/-

DR. ISHTIAQ AHMED, PSP/PPM
Additional Inspector General of Police,
HQrs: Khyber Pakhtunkhwa, Peshawar.

No. S/ 3672-80 /20,

Copy of the above is forwarded to the:

1. Regional Police Officer, Mardan. One Service Roll and one Fauji Missal of the above named Ex-FC received vide your office Memo: No. 3733-34/ES, dated 18.06.2020 is returned herewith for your office record.
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.

(KASHIF ZULFIQAR) PSP
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Dawood

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Deptt:

(RESPONDENT)
(DEFENDANT)

I/We Dawood

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2020

DD

CLIENT

ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

MIR ZAMAN SAFI

&

AFRASIAB KHAN WAZIR
ADVOCATES

OFFICE:
Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 14126/2020.

Dawood Ex-Constable No. 1080.....
Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar

&

Others..... Respondents.

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 14126/2020.

Dawood Ex-Constable No. 1080..... Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar

& Others..... Respondents.

WRITTEN REPLY BY RESPONDENTS.

Respectfully Sheweth:

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 barred by law & limitation.
4. That the appellant has not come to this 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.

REPLY ON FACTS.

1. Para No. 01 of appeal to the extent of enlistment of appellant in Police Department is correct, however appellant during initial stage of service/probation period, proved himself an inefficient Police officer.
2. Para No. 02 of appeal is misleading and based on surmises. Appellant without prior sanction of leave from the competent authority absented himself from duties on different occasion and proved himself habitual absentee.
3. Para No. 03 of appeal is incorrect. Appellant despite of previously warned and kept under watch again absented himself from duty for a longtime on account of which, he was served with Show Cause Notice. The reply of Show Cause Notice was found unsatisfactory, hence he was Charge Sheeted (**Copy of Show Cause Notice, reply, Charge Sheet with Summary of Allegations are annexed as Annexure A, B, C & D**).
4. Para No. 04 of appeal is incorrect. After proper departmental enquiry during which the allegations against appellant have been proved and Enquiry Officer recommend that appellant is not willing to serve the department, hence he was issued Final Show Cause Notice and after personal hearing, he was removed from service (**Copy of Enquiry report, Final Show Cause Notice and reply is annexed as Annexure E, F & G**).




5. Para No. 05 of appeal to the extent of filing of departmental appeal and revision are correct, however the same were rejected on merits.
6. Para No. 06 of appeal is incorrect. The appellant has got no cause of action and the instant appeal is groundless and liable to be dismissed with cost.


GROUND.

- A. Incorrect. The orders of respondents are quite legal in accordance with law/rules.
- B. Incorrect. The appellant has been treated in accordance with law/rules and the respondents have not violated any constitutional rights of appellant.
- C. Incorrect. Appellant proved himself an inefficient officer and found habitual absentee on account of which, he was proceeded against departmentally. After proper departmental enquiry, he was removed from service through speaking orders of respondents.
- D. Incorrect. Reply already given vide para above.
- E. Incorrect. Proper Show Cause Notice was served upon appellant which was responded, but his reply was not convincing, therefore he was Charge Sheeted and after proper departmental enquiry, he was removed from service.
- F. Incorrect. The stance of appellant regarding road accident is based on surmises, he did not inform the department rather in response to Show Cause Notice, he replied by taking the plea of his illness.
- G. Incorrect. Reply already given vide para above.
- H. Incorrect. Reply already given vide para above.
- I. Incorrect. After proper departmental enquiry and on recommendation of Enquiry Officer, appellant was removed from service however before passing final order, proper opportunity of personal hearing/defense was provided, but appellant failed to offer anything in his defense.
- J. That the respondents also seeks permission to advance further grounds at the time of arguments/hearing of appeal.

Prayer.

Keeping in view the above narrated facts, it is humbly prayed that the instant appeal being devoid of merits may very kindly be dismissed with costs, please.


**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)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 14126/2020.

Dawood Ex-Constable No. 1080..... Appellant

VERSUS





Inspector General of Police, Khyber Pakhtunkhwa, Peshawar

& Others..... Respondents.

AFFIDAVIT:-

We the respondent No. 1 to 3 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)**

A B

4

OFFICE OF THE DISTRICT POLICE OFFICER DISTRICT, SWABI, KPK

SHOW CAUSE NOTICE.

Whereas you **Constable Dawood No.1080**, while posted to Police Line Swabi, have been kept under watch since 25.02.2019. But you absented yourself from duty on 07.03.2019, 08.03.2019, 12.03.2019, from 13.03.2019 to 15.03.2019 and 19.03.2019 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, **Syed Khalid Hamdani, PSP, QPM**, 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 Dawood No.1080**, 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.

10 Swabi
17.04.19

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Service

A/1

Local Value

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کے لئے

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16204-0368590-1 M.D.F.

دفعہ وار سو کارڈوں کے لئے

جنا - 1

ایک دفعہ سو کارڈوں کے لئے

فے زریعہ طور پر وصول کر کے

سے کارڈوں کو پیکر لیں اور

خدمت ہے

Handwritten signature

SI PP Ballu

23-4-19

B

(6)

صنادید عالی

علاج معوقگان و زوال عقل و غیره
که بیمار بعد از معاینه و علاج و حالش در خاطر منیا مدیکل استر و والدین
حاضر و اکثر چیز دیگر سے علاج و حالش در خاطر منیا مدیکل استر و والدین اور

Complete Bed Rest Advised 15/11/19

از آن پس در این بیمار که عوارض خود حاصل گشته است - در این بیمار
بسیار ضعیف و غذا نماندگی و بی خوابی و غیره - در این بیمار
سینه و کمر و دستها و پاها در این بیمار - در این بیمار
در این بیمار -

این بیمار که عوارض خود حاصل گشته است که در این بیمار
در این بیمار -

المزوم 25/4/19

Dr. M. M. M.

دستیار محمد داود 1080

H
C

(7)

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 **Syed Khalid Hamdani, PSP, QPM**, District Police Officer, Swabi charge you **Constable Dawood No.1080**, on 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.

D

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SUMMARY OF ALLEGATION.

It is alleged that Constable Dawood No.1080, while posted to Police Lines Swabi, has been kept under watch since 25.02.2019. Absented himself from duty on 07.03.2019, 08.03.2019, 12.03.2019 from 13.03.2019 to 15.03.2019 and 19.03.2019 till date, which is highly against the discipline and amounts to gross misconduct, hence summary of allegation.

Mr. Sajjad Hussain, DSP, Lahor, is appointed to conduct proper departmental enquiry against him.

Dawood
District Police Officer,
Swabi.

No. 26 /CC/PA

Dated: 30/04 /2019

E

9

No. 402 /L,
Dated 16/08 /2019.

**DEPARTMENTAL ENQUIRY AGAINST CONSTABLE DAWOOD NO.1080
POLICE LINES SWABI.**

Allegations:

According to the statement of allegations Constable Dawood No.1080, while posted to Police Lines Swabi, was kept under watched since 25.02.2019. he was absent from duty on 07.03.2019, 08.03.2019, 12.03.2019 than again from 13.03.2019 to 15.03.2019 and 19.03.2019 till date, which speaks of his inefficiency and amount to gross mis-conduct.

In the light of above allegations the undersigned was appointed as enquiry officer vide letter No.26-CC/PA dated 30.04.2019.

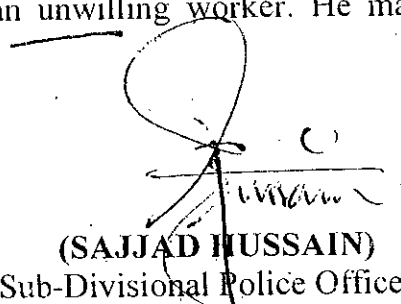
The undersigned conducted enquiry and summoned alleged Constable vide letters No.216/L dated 03.05.2019, No.289/L dated 18.06.2019, No.302/L and 303/L dated 20.06.2019 and Letter No.314/L dated 25.06.2019 but he did not appear before the undersigned for recording his statement in the subject departmental enquiry which shows that the alleged Constable is not taking interest in official duties. However, then on 09.07.2019, he appeared before the undersigned alongwith his father. Letters attached.

FINDINGS.

Constable Dawood No.1080 was provided ample opportunities to mend his attitude towards service but he failed to do so. He appeared before the undersigned twice. He was thoroughly counselled and encouraged to continue his job. Every effort of the undersigned went futile. During the process of enquiry, the undersigned kept on asking about him whether he has had reported for duty or not. Interestingly Constable Dawood No.1080 is still absent from duty. **(Total absence period is 4 months and 19 days)**

RECOMMENDATION.

Constable Dawood No.1080 is not only guilty for the allegations leveled against him but it also came up that he is an unwilling worker. He may be awarded **Major Punishment**, if agreed please.


(SAJJAD HUSSAIN)
Sub-Divisional Police Officer,
Lahor.

①

F

⑩

ORDER.

FINAL SHOW CAUSE NOTICE

Whereas you **Constable Dawood No.1080**, while posted to Police Lines Swabi, have been kept under watch since 25.02.2019. Although you were under watch, you absented yourself from duty on 07.03.2019, 08.03.2019, 12.03.2019, from 13.03.2019 to 15.03.2019 and 19.03.2019 till date, without any leave/prior permission of the competent authority, which is against the discipline and amounts to gross mis-conduct.

In this connection you were charge sheeted and served with summary of allegation and **Mr. Sajjad Hussain, DSP, Lāhor**, was appointed to conduct proper departmental enquiry. The enquiry officer held enquiry and submitted his findings, wherein, he found you **Constable Dawood No.1080**, guilty for the mis-conduct and recommended for Major punishment.

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, **Syed Khalid Hamdani, PSP,QPM**, 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 Dawood No.1080**, 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

F/11

(11)

کتابت علیہ السلام علی بن ابی طالب علیہ السلام
فولاد و کرامتین از خود در دست طبرستان و یمن و غیره

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۳۱۲-۵۶۰۲۴۵

~~محمد زکریا~~
~~محمد زکریا~~
~~محمد زکریا~~

Answer - (C) په ځای

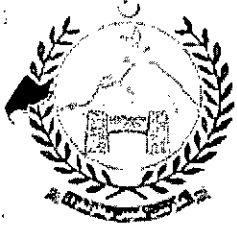
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KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

No. 1243/ST

Dated: 03/06/2022

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281

To

District Police Officer
Swabi

Subject: JUDGMENT IN APPEAL NO 14126/20 OF MR DAWOOD

I am directed to forward herewith a certified copy of judgment dated 11.05.2022 passed by this Tribunal on the above subject for information please.

Encl: As Above.


(WASEEM AKHTAR)

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.