

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**  
**AT CAMP COURT, SWAT**

Service Appeal No.26/2018

Date of Institution ... 08.01.2018  
Date of Decision ... 06.07.2022

Bakht Amin S/O Umar Khan, Ex-Constable No.871 Swat Police R/O  
Haroon Abad Odigram Tehsil Babozai, District Swat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Provincial Police  
Officer/IGP at Peshawar and three others.

... (Respondents)

Barrister Adnan Khan, ... For appellant.

Noor Zaman Khattak,  
District Attorney ... For respondents.

Rozina Rehman ... Member (J)

Fareeha Paul ... Member (E)

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 No.OB  
218 dated 08.12.2010 may be set aside and appellant be  
reinstated in service as Constable".**

2. Brief facts of the case are that appellant was inducted in the  
Police Department and subsequently, posted in Police Force of District  
Swat as Constable on 19.10.2004. During service, he performed his

duties in extremely harsh security situation when the militants had occupied several parts of District Swat. The appellant even in the said circumstances did not avail his annual leave and continued performing his duties to the entire satisfaction of his high-ups. However, due to some compelling circumstances, appellant could not perform his duties for a certain period. That after the above-mentioned absence, when he appeared at his place of duty, he was informed about dismissal from service. Feeling aggrieved, he filed various written and oral requests which were never responded to by the respondents. That having his grievances not redressed by respondents, appellant lost all hopes about his reinstatement. However, in the year 2015-16, various Constables of Reserved Police with similar status as that of appellant were reinstated in service and last in the series of such orders was made on 18.03.2016. Relying on such like orders, one Adil Said Ex-Constable approached the Service Tribunal and his appeal was accepted. The above-mentioned reinstatement order and judgment of this Tribunal gave a fresh ray of hope to the appellant, hence, he filed a fresh departmental appeal for his reinstatement which was dismissed being time barred. Feeling aggrieved, the present service appeal was filed.

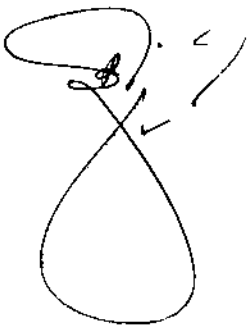


3. We have heard Barrister Adnan Khan, learned counsel for the appellant and Noor Zaman Khan Khattak, learned District Attorney for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Barrister Adnan Khan, learned counsel for the appellant argued inter alia that the impugned order had been passed unilaterally and in

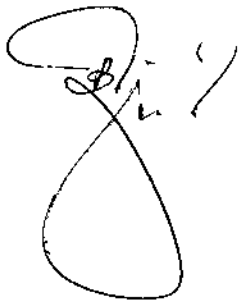
blatant violation of law, hence, liable to be set aside; that the requirements of due process, fairness and justness were not complied with as the appellant was neither issued a show cause notice nor charge sheet alongwith statement of allegations. Learned counsel submitted that the appellant was never associated with the inquiry proceedings and he was condemned unheard. It was further submitted that numerous officers and officials of Malakand Region Police had fled away at the time of insurgency but majority of those were reinstated into service after restoration of peace in the area and that appellant was not treated at par with those reinstated individuals. He submitted that last in the series of the reinstatement, application had been made by the appellant at belated stage, however, these were the reinstatement orders in respect of sacked constables of FRP and that judgment of this Tribunal in Service Appeal No.1214 of 2015 gave the appellant a fresh cause of action. Reliance was placed on 2002 PLC (CS) 268, wherein, it was held that no limitation shall run in cases of similarly placed employees. He, therefore, requested that the impugned order being void ab-initio is liable to be set aside and the appellant may kindly be reinstated with all back benefits.

5. Conversely, learned District Attorney submitted that the appellant being member of the disciplined force was under an obligation to perform his duties with zeal, zest and devotion irrespective of harsh and tense environment, hence, stance of the appellant is not tenable in the eyes of law. He submitted that the appellant could not perform his duties for a certain period and that he was proceeded against departmentally on the allegations of absentia, therefore, he was




awarded major punishment of dismissal from service by the competent authority after fulfillment of all codal formalities.

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 Constable Bakht Amin absented himself from duty w.e.f 17.08.2008 till the date of impugned order i.e. 08.12.2010 vide DD No.09 dated 17.08.2008 followed by DD No.12 dated 11.10.2010 of Police Line without any permission or leave and vide order dated 08.12.2010 of District Police Officer, Swat major punishment of dismissal from service was awarded from the date of his absence i.e. 17.08.2008. No doubt, departmental appeal was not filed within time and the case of the present appellant was filed. Relying on the orders in respect of one Adil Said Constable No.763 of Swat Police who approached this Tribunal in Service Appeal No.1214/2015 and which appeal was accepted vide order dated 02.01.2017. He submitted different applications but when other constables of the Reserved Police were reinstated into service in the year 2015-16 and the last in the series of such of orders was made on 18.03.2016 which prompted the appellant to pursue his case. He, therefore, filed departmental appeal for his reinstatement on 26.07.2017. Learned counsel has placed on file different orders of Ex-Constables who were dismissed from service in the year 2009 w.e.f 2008 but was reinstated vide order dated 18.03.2016. In this regard, order of Commandant Frontier Reserved Police Khyber Pakhtunkhwa Peshawar in respect of Ex-Constable Khalil Ur Rehman is available on file as "Annexure-B". Similarly, one Bashir Khan Ex-Constable of FRP



Malakand Range was removed from service on 10.10.2008 but was reinstated on 04.03.2016. Another order is in respect of Ex-Constable Arshad Iqbal of FRP Malakand Range who was removed from service on 21.02.2008 but was reinstated on 29.03.2016. An order in respect of Ex-Constable Jamshaid Ali is also available on file who was proceeded against departmentally on allegation of absentia w.e.f 28.09.2008 till his removal from service. Lenient view was taken and he was reinstated in service vide order dated 23.09.2015. Similar orders in respect of Ex-Constables Imran and Muhammad Shahid are also available on file. One Ex-Constable Adil Said No.763 of District Swat preferred service appeal against the impugned order dated 29.12.2008 vide which he was awarded major penalty of dismissal from service and vide order of this Tribunal dated 02.01.2017, his appeal was accepted. Relevant Para from the judgment of this Tribunal in Service Appeal No1214/2015 is hereby reproduced for ready reference:



*"The Commandant FRP vide orders referred to above had reinstated ex-constables including Khalilur Rehman, Bashir Khan, Arshad Iqbal, Basir Khan and similar others vide orders referred to above. We are not in a position to ascertain from the record that the case of the appellant is similar to the afore-stated constables who were reinstated in service despite their absence during the period of insurgency and militancy. In such a situation we are left with no option but to accept the present appeal, set aside the impugned orders and directed that the appellate authority shall examine the case of the appellant with the cases of those constables who were reinstated in service by the*

*Commandant FRP and in case the appellant is found entitled to similar treatment as extended to the said constables then the said authority shall also extend the same treatment to the present appellant. The appellant shall be afforded opportunity of hearing during the proceedings which shall be conducted and concluded within a period of 2 months from the date of receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room."*

7. So far as limitation is concerned, in this respect the Rule laid down in judgment reported as 2002 PLC (CS) 268 is applicable where it was held that no limitation shall run in cases of similarly placed employees and the Apex Court condoned the delay which in some cases was more than 10 years, in the interest of justice and in view of the similarity of point involved in other cases.

8. In view of the above discussion, we have come to the conclusion that in such a situation, we are left with no option but to accept the present appeal, set aside the impugned orders and direct the appellate authority to examine the case of appellant in line with the cases of those constables who were reinstated in service by the Commandant FRP and in case the appellant is found entitled to similar treatment as extended to other constables, then the said authority shall also extend the same treatment to the present appellant. Needless to mention that the appellant shall be afforded opportunity of hearing during the proceeding which shall be conducted and concluded within a period of 60 days from the date of receipt of copy



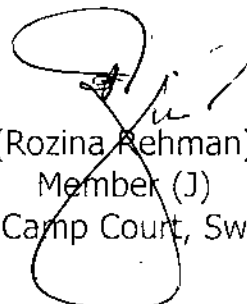
of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

06.07.2022



(Fareeha Paul)  
Member (E)  
Camp Court, Swat



(Rozina Rehman)  
Member (J)  
Camp Court, Swat

ORDER

06.07.2022


Appellant present through counsel.

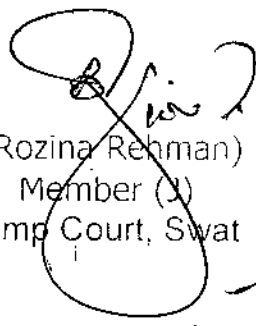
Noor Zaman Khan Khattak, learned District Attorney for respondents present. Arguments heard. Record perused.

Vide our detailed judgment of today of this Tribunal placed on file, we have come to the conclusion that in such a situation, we are left with no option but to accept the present appeal, set aside the impugned orders and direct the appellate authority to examine the case of appellant with the cases of those constables who were reinstated in service by the Commandant FRP and in case the appellant is found entitled to similar treatment as extended to other constables, then the said authority shall also extend the same treatment to the present appellant. Needless to mention that the appellant shall be afforded opportunity of hearing during the proceeding which shall be conducted and concluded within a period of 60 days from the date of receipt of copy of judgment. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.

06.07.2022

  
(Fareeha Paul)  
Member (E)  
Camp Court, Swat

  
(Rozina Rehman)  
Member (J)  
Camp Court, Swat



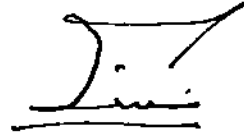
13.05.2022

Appellant in person present. Mr. Kabirullah Khattak,  
Addl: AG for respondents present.

Appellant requested for adjournment on the ground that his counsel is busy before the august Supreme Court of Pakistan. Adjourned. To come up for arguments on 08.06.2022 before the D.B at camp court Swat. .



(Mian Muhammad)  
Member(E)



(Salah Ud Din)  
Member(J)  
Camp Court Swat

8<sup>th</sup> June, 2022

None for the appellant present. Mr. Kabirullah Khattak,  
Addl: AG for respondents present.

Counsel are on strike. To come up for arguments on 06.07.2022 before the D.B at camp court Swat.



(Mian Muhammad)  
Member(E)



(Kalim Arshad Khan)  
Chairman  
Camp Court Swat

09.12.2021

Junior to counsel for appellant present.

Muhammad Riaz Khan Paindakheil, learned Assistant Advocate General for respondents present.

Request for adjournment was made on behalf of appellant as senior counsel for appellant is not available today. Opportunity is granted and case is adjourned. To come up for arguments on 10.02.2022 before D.B at Camp Court, Swat.



(Atiq ur Rehman Wazir)  
Member (E)  
Camp Court, Swat.



(Rozina Rehman)  
Member (J)  
Camp Court, Swat

10.02.2022

Tour is hereby canceled. Therefore, the case is adjourned to 07.04.2022 for the same as before at Camp Court Swat.



Reader

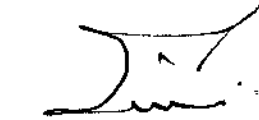
07.04.2022

Appellant alongwith his counsel present. Mr. Ali Rehman Inspector (Legal) alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he is proceeding for appearance in cases before Hon'ble Peshawar High Court, Mingora Bench (Dar-UI-Qaza) Swat, therefore, an adjournment may be granted. Adjourned. To come up for arguments on 13.05.2022 before the D.B at Camp Court Swat.



(Rozina Rehman)  
Member (J)  
Camp Court, Swat



(Salah-Ud-Din)  
Member (J)  
Camp Court Swat

05/04/2021

Due to COVID-19, the case is adjourned to

05/05/2021 for the same.

  
READER

*Due to covid-19 the case is  
adjourned to 06/06/21*

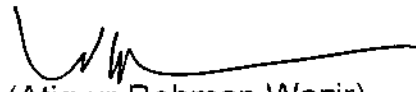
*Om  
Reader*


06.10.2021

Nemo for appellant.

Asif Masood Ali Shah learned Deputy District Attorney  
for respondents present.

Preceding date was adjourned on a Reader's note,  
therefore, appellant/counsel be put on notice for  
09.12.2021 for arguments before D.B at Camp Court,  
Swat.

  
(Atiq ur Rehman Wazir)  
Member(E)  
Camp Court, Swat

  
(Rozina Rehman)  
Member(J)  
Camp Court, Swat

07.12.2020

Due to COVID-19, case is adjourned to 01.02.2021 for the same as before.

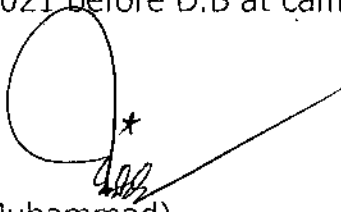
  
Reader


01.02.2021

Nemo for parties.

Muhammad Riaz Khan Pindakhel, Assistant Advocate General for respondents is present.

Preceding date was adjourned on account of Covid-19, therefore, both the parties be put on notice for the date fixed. Issue involved in the instant case is pending before Larger Bench of this Tribunal, therefore, case is adjourned to 05.04.2021 before D.B at camp court Swat.

  
(Mian Muhammad)  
Member(E)

  
(Rozina Rehman)  
Member(J)  
Camp Court Swat

06.07.2020 Bench is incomplete. Therefore, the case is adjourned.  
To come up for the same on 07.09.2020, at camp court  
Swat.



Reader

07.09.2020 Appellant present through counsel.

Mr. Riaz Paindakhel learned Assistant Advocate  
General for respondents present.

Learned counsel for appellant seeks adjournment as  
issue involved in the present case is pending before  
Larger Bench of this Tribunal.

Adjourned to 07.12.2020 for arguments before D.B.  
at Camp Court, Swat.



(Attiq-ur-Rehman)  
Member  
Camp Court, Swat



(Rozina Rehman)  
Member  
Camp Court, Swat

Due to corona viruse tour  
to camp court Swat has been cancelled.  
To come up for the same on 1/6/20


Reader  
Reader

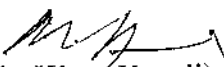
03.06.2020 Due to Covid-19, the case is adjourned. To come up for the  
same on 06.07.2020, at camp court Swat.

Reader

04.11.2019


Appellant in person and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Mir Faraz, DSP (Legal) for the respondents present. Appellant submitted an application for adjournment on the ground that his counsel is busy before the Hon'ble Dara-ul-Qaza, Swat and cannot attend the Tribunal today. Application is placed on record. Case to come up for arguments on 08.01.2020 at Camp Court Swat:


  
(Hussain Shah)  
Member  
Camp Court Swat

  
(M. Amin Khan Kundi)  
Member  
Camp Court Swat

08.01.2020

Appellant in person and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Muhammad Ishaq, Head Constable for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 02.03.2020 for arguments before D.B at Camp Court Swat.

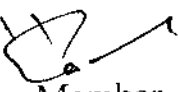
  
(Hussain Shah)  
Member  
Camp Court Swat

  
(M. Amin Khan Kundi)  
Member  
Camp Court Swat

02.03.2020

Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 04.05.2020 before D.B at Camp Court Swat.

  
Member

  
Member  
Camp Court, Swat.

لعد است ضبا - پنج ماہ پر روپیہ ٹریبونل کے در فیسیب کو روپیہ سمیت

محکمہ زمین - انور شہان بنام سرکار

اسٹیک

روپیہ است کے لئے تبدیل تاریخ مئی ۲۰۱۴  
مدم عدوڑ کے ساتھ ان ماہوں میں در التقداد  
مستورہ سے تاریخ مئی ۲۰۱۴ تک

ضبا کی

اسٹیک ان حساب دہلا کر فنڈ آریا  
ان ماہ میں صدر عدالت عدوڑ سے رقم لیا گیا  
صاحب تاریخ مئی ۲۰۱۴ سے ۱۱/۱۱/۲۰۱۴ تک  
ان ماہ میں ان ماہوں میں در التقداد سے  
تاریخ مئی ۲۰۱۴ کے لئے جو رقم اسٹیک عدوڑ میں عدالت عدوڑ  
سے واپس لیا گیا ہے قاعدہ

Amirul Mulk

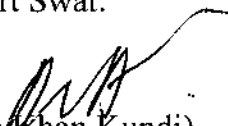
تاریخ مئی و تبدیلی کے عالم  
صدر عدالت عدوڑ  
۱۱/۱۱/۲۰۱۴


ان کے لئے (B) کے لئے زمین / اسٹیک ان  
صدر انور شہان



11.06.2019

Mr. Arshed Khan, Advocate on behalf of learned counsel for the appellant present and seeks adjournment. Mr. Mian Ameer Qadir, learned District Attorney for the respondents present. Adjourn. To come up for arguments on 02.09.2019 before D.B at Camp Court Swat.

  
(M. Amin Khan Kundi)  
Member  
Camp Court Swat

  
(M. Hamid Mughal)  
Member  
Camp Court Swat

02.09.2019

Learned counsel for the appellant present. Mian Amir Qadir, DDA alongwith Mr. Khawas Khan, SI for respondents present. Learned counsel for the appellant seeks adjournment as he has not prepared the brief. Adjourn. To come up for arguments on 04.11.2019 before D.B at camp court Swat.

  
Member

  
Member  
Camp Court Swat

06.02.2019

Appellant in person and Mian Amir Qadar learned Deputy District Attorney alongwith Khawas Khan SI present. Due to general strike of the bar, the case is adjourned. To come up for arguments on 06.03.2019 before D.B at camp Court Swat.

  
Member

  
Member  
Camp Court Swat.


06.03.2019

Counsel for the appellant and Mian Amir Qadir, District Attorney alongwith Khawas Khan, S.I (Legal) for respondents present.

Learned counsel for the appellant requests for adjournment due to his engagement before the Honourable High Court today in many cases.


Adjourned to 03.04.2019 before the D.B at camp court, Swat.

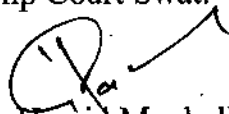
  
Member

  
Chairman  
Camp Court, Swat

03.04.2019

Learned counsel for the appellant and Mr. Mian Ameer Qadir, District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment for arguments and to assist the Tribunal on the issue of limitation. Adjourn. To come up for arguments on 11.06.2019 before D.B at Camp Court Swat.

  
(M. Amin Khan Kundi)  
Member  
Camp Court Swat

  
(M. Hamid Mughal)  
Member  
Camp Court Swat

07.08.2018

Appellant in person present. Due to summer vacation the case is adjourned to 02.10.2018 for the same at camp court Swat.



Reader

02.10.2018

Appellant Bakht Amin in person present. Mr, Usman Ghani District Attorney for the respondents present. Appellant made a request for adjournment. Granted. To come up for arguments on 04.12.2018 before the D.B at camp court, Swat.



Member




Chairman  
Camp Court Swat

04.12.2018

Irfan Muhammad Advocate present on behalf of appellant and Mr. Usman Ghani learned District Attorney for respondents present. Irfan Muhammad Advocate requested for adjournment on the ground that learned counsel for the appellant is not in attendance. Adjourn. To come up for arguments on 06.12.2018 before D.B at Camp Court Swat.



Member




Member  
Camp Court, Swat

06.12.2018

Appellant in person and Mr. Usman Ghani learned District Attorney present. Appellant seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 06.02.2019 before D.B at Camp Court Swat.



Member



Member  
Camp Court, Swat

03.04.2018

Clerk of counsel for the appellant and Mr. Usman Ghani, District Attorney Khawas Khan, S.I (Legal) for the respondents present. Seeks adjournment for submission of written reply. Granted. To come up for Written reply/comments on 08.05.2018 before S.B at camp court, Swat.

  
Chairman  
Camp court, Swat

09.05.2018

The Tribunal is non-functional due to retirement of the Worthy Chairman. To come up for the same on 05.06.2018 before the S.B at camp court, Swat.

  
Reader

05.06.2018

Appellant Bakht Amin in person present. Mr. Khawas Khan, S.I (Legal) alongwith Mr. Usman Ghani, District Attorney for the respondents present. Written reply submitted. To come up for rejoinder, if any, and arguments on 07.08.2018 before the D.B at camp court, Swat.

  
Chairman  
Camp Court, Swat

02.02.2018

Learned counsel for the appellant present. Preliminary arguments heard and case file perused.

Learned counsel for the appellant argued that the appellant was inducted in the Police Department and subsequently posted in Police Force of District Swat as Constable on 19.10.2004. At the time of dismissal from service, the appellant was performing his duty at Police Station Matta, District Swat. That during his service as Constable, the appellant has performed his duties in extremely harsh security situation when the militants had occupied several parts of District Swat. That due to some compelling circumstances the appellant could not perform his duty for certain period. Whereafter the appellant reported for duty, but he was informed about dismissal from service by respondent No. 3 vide order dated 08.12.2010, with effect from the date of absence i.e. 07.08.2008. That the impugned order dated 08.12.2010 is void as retrospective order is not acceptable in the eyes of law. That in similar cases belonging to Malakand Region the appellants were reinstated in service. That being similarly placed person, no limitation runs against void orders and similarly placed persons. Learned counsel also relied on the judgment reported as 2002 PLD (C.S) 268.


Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is also directed to deposit security and process fee within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 08.03.2018 before S.B at Camp Court, Swat.

Appellant Deposited  
Security & Process Fee

  
(Gul Zeb Khan)  
Member  
Camp Court Swat.

08.03.2018



Appellant in person and Addl: AG alongwith Mr. Khawas Khan, SI for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 03.04.2018 before S.B at camp court, Swat.

  
Chairman  
Camp court, Swat

Form-A  
FORM OF ORDERSHEET

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

Case No. 26/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	8/1/2018	<p>The appeal of Mr. Bakht Amin presented today by Dr. Adnan Khan Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 2/11/18</p>
2-	11-1-2018	<p>This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>02-02-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>

**BEFORE THE HON'BLE SERVICE TRIBUNAL,**  
**KHYBER PAKHTUKHWA, PESHAWAR**

Service Appeal No. 26 of 2018

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o  
Haroon Abad Odigram Tehsil Babozai, District Swat

..... Appellant

VERSUS

Government of Khyber Pakhtunkhwa and others

..... Respondents

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08/01/2018  
Dated

(B) Amin  
Appellant through Counsel

Dr. Adnan Khan, Barrister-at-Law  
Office: Adnan Law Associates,  
Opp. Grassy ground Mingora,  
Swat. Cell: 0346-9415233

**BEFORE THE HON'BLE SERVICE TRIBUNAL,  
KHYBER PAKHTUKHWA, PESHAWAR**

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Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o  
Haroon Abad Odigram Tehsil Babozai, District Swat

..... *Appellant*

**Khyber Pakhtunkhwa  
Service Tribunal**

Diary No. 15

VERSUS

Dated 08-01-2018

- 1) Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
- 2) The Regional Police Officer/DIG Police, Malakand Region at Saidu Sharif, Swat.
- 3) The District Police Officer, Swat at Saidu Sharif.
- 4) DSP, Legal Swat Police at Saidu Sharif, Swat.

..... *Respondents*

APPEAL UNDER SECTION 4 OF THE  
KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE  
ORDER OF IMPOSITION OF MAXIMUM  
PENALTY WHEREBY APPELLANT WAS  
DISMISSED FROM SERVICE.

Filed to-day  
Registrar  
8/01/18

PRAYER:

On acceptance of this Appeal, the impugned order No. O.B 218 dated 08-12-2010 may be set aside and appellant be reinstated into service as Constable.



*Respectfully Sheweth:*

1. That the appellant was inducted in the Police Department and subsequently posted in police force of District Swat as Constable on 19-10-2004. At the time of dismissal from service, appellant was performing his duty at Police Station Matta, District Swat.
2. That during his service as Constable, appellant has performed his duties in extremely harsh security situation when the militants had occupied several parts of District Swat. Needless to say that a handsome majority of police officials serving in District Swat were hesitant to continue their duties in the said period.
3. That appellant even in the said circumstances did not avail his annual leave and continued performing his duties to the entire satisfaction of his high ups. However, due to some compelling circumstances arising out of severe financial burden in the family, appellant could not perform his duty for a certain period.
4. That after the above mentioned absence, when the appellant appeared at his place of duty, he was informed about dismissal from service by respondent No.3 vide order dated 08-12-2010 (Copy of dismissal order is attached as Annexure "A").
5. That appellant being aggrieved with the dismissal order, presented various written and oral requests for his reinstatement before his high-ups, which were never responded to by them.

6. That having his grievances not redressed by respondents, appellant lost all the hopes about his reinstatement. However, in the year 2015-16, various constables of Reserve Police with similar status as that of appellant were reinstated to service by the competent authorities. The last in the series of such orders was made on 18-03-2016 (Copies of reinstatement orders by Commandant FRP are attached as Annexure "B").
7. That relying on such like orders, one Adil Said Ex-Constable No.763 of Swat Police approached this Hon'ble Tribunal through Service Appeal No.1214 of 2015. The said appeal was accepted by this Hon'ble Tribunal vide judgment dated 02-01-2017 (Copy of judgment is attached as Annexure "C").
8. That the above mentioned reinstatement orders and judgment of this Hon'ble Tribunal gave a fresh array of hope to appellant, hence he filed a fresh departmental appeal for his reinstatement before respondent No.2 on 27-07-2017 (Copy of reinstatement application is attached as Annexure "D").
9. That respondent No.2 vide order dated 30-08-2017, communicated very recently to the appellant, dismissed the above mentioned application alongwith applications of other Ex-employees of Police Department being time barred (Copy of order dated 30-08-2017 is attached as Annexure "E").

10. That feeling aggrieved with the above mentioned order of rejection of departmental Appeal, the appellant files this appeal, *inter alia*, on the following grounds:

**GROUND:**

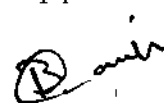
- A) That the impugned order has been passed unilaterally and in blatant violation of law, hence the same is liable to be set aside.
- B) That the requirements of due process, fairness and justness have not been complied in the present case. The appellant was neither show caused nor a statement of allegations was given to him.
- C) That appellant was not associated with the alleged inquiry. Hence, appellant has been condemned unheard in the instant case. Therefore, on this score as well the impugned order is liable to be set aside.
- D) That the mandatory requirement of publication has not been fulfilled in the instant case. Therefore, on this ground as well the impugned order is not tenable in the eyes of law.
- E) That numerous officers and officials of Malakand Regional Police had fled their duties at the time of insurgency. Majority of those individuals were reinstated into service after restoration of peace in the area. Regrettably, appellant has not been treated at par with those reinstated individuals.
- F) That no doubt, the last in the series of reinstatement applications has been made by the appellant at belated stage. However, as mentioned in the facts, these were the reinstatement orders in respect of sacked constables of FRP

and judgment of this Hon'ble Tribunal in Service Appeal No.1214 of 2015, which gave the appellant a fresh cause of action. In this respect the rule laid down in a judgment reported as 2002 PLC (C.S) 268 is applicable, where it was held that no limitation shall run in cases of similarly placed employees.

- G) That by virtue of the impugned order, punishment by way of imposition of major penalty has been inflicted upon the appellant retrospectively, i.e from the date of appellant's alleged absence and not from the date of decision. The impugned order being *void ab initio*, is liable to be set aside on this score as well. Furthermore, as per the consistent view of superior courts and this Hon'ble Tribunal in numerous judgments, limitation shall not run against a void order. Hence, the present appeal is within time for the said reason.
- H) That further grounds with leave of this Hon'ble Tribunal will be raised at the time of oral submissions.

*Therefore, it is humbly prayed that on acceptance of this appeal, the impugned order be set aside and the appellant be reinstated in service with all back benefits. Any other remedy though may not specifically prayed for but which canons of justice would demand may also be granted.*

Appellant



Bakht Amin

Through Counsel



Dr. Adnan Khan, Barrister-at-Law

**CERTIFICATE:**

Certified that no such like appeal has earlier been filed before this Hon'ble Tribunal on the subject matter.

Appellant



Bakht Amin

Through Counsel



Dr. Adnan Khan, Barrister-at-Law.

7

**BEFORE THE HON'BLE SERVICE TRIBUNAL,**  
**KHYBER PAKHTHUKHWA, PESHAWAR**

Misc: Application No. \_\_\_\_\_ of 2018

In Service Appeal No. \_\_\_\_\_ of 2018

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o  
Haroon Abad Odigram Tehsil Babozai, District Swat

..... *Applicant/Appellant*

VERSUS

Government of Khyber Pakhtunkhwa and others

..... *Respondents*

**APPLICATION FOR CONDONATION OF DELAY**  
**IN FILING THE INSTANT APPEAL.**

**Respectfully sheweth,**

- 1) That the captioned appeal is being filed before this Hon'ble Tribunal, which is yet to be fixed for regular hearing.
- 2) That the appeal is having some apparent delay, which may become condoned inter alia on the following grounds:

**GROUND:**

- A) That various civil servants at par with appellant have been recently reinstated into service by the competent authority. On the ground of rule of consistency and similar treatment, the appellant has a fresh cause of action to file this appeal.

- B) That as per the judgment of this Hon'ble Tribunal in Service Appeal No.1214 of 2015, a civil servant with similar case as that of the present appellant was reinstated into service, which also gave the appellant a fresh cause of action. In this respect the rule laid down in a judgment reported as 2002 PLC (C.S) 268 is applicable, where it was held that no limitation shall run in cases of similarly placed employees.
- C) That by virtue of the impugned order, punishment by way of imposition of major penalty has been inflicted upon the appellant retrospectively, which makes the order *void ab initio*. As per the consistent view of superior courts and this Hon'ble Tribunal in numerous judgments, limitation shall not run against a void order.

*In view of above, it is therefore, humbly prayed that any delay in filing this appeal may be condoned in the interests of justice.*

Appellant/Applicant  
Through Counsel

Dr. Adnan Khan, Barrister-at-Law

9

BEFORE THE HON'BLE SERVICE TRIBUNAL,  
KHYBER PAKHTHUKHWA, PESHAWAR

Misc: Application No. \_\_\_\_\_ of 2018

In Service Appeal No. \_\_\_\_\_ of 2018

Bakht Amin..... *Applicant/Appellant*

VERSUS

Government of Khyber Pakhtunkhwa and others

.....*Respondents*

AFFIDAVIT

I, **Bakht Amin** (Applicant/Appellant), do hereby solemnly affirm and declare that the contents of the above titled Misc: application are true and correct to the best of my knowledge and belief.

Identified by

DEPONENT



Dr. Adnan Khan, Barrister-at-Law



**Bakht Amin**





(10)

**BEFORE THE HON'BLE SERVICE TRIBUNAL,**  
**KHYBER PAKHTHUKHWA, PESHAWAR**

Service Appeal No. \_\_\_\_\_ of 2018

Bakht Amin..... *Appellant*

VERSUS

Government of Khyber Pakhtunkhwa and others

.....*Respondents*

**AFFIDAVIT**

I, **Bakht Amin** (Appellant), do hereby solemnly affirm and declare that the contents of the above titled Appeal are true and correct to the best of my knowledge and belief. Furthermore, no such like appeal has earlier been filed before this Honourable Tribunal or elsewhere on this subject matter.

Identified by

DEPONENT



Dr. Adnan Khan, Barrister-at-Law



**Bakht Amin**



(11)

**BEFORE THE HON'BLE SERVICE TRIBUNAL,**  
**KHYBER PAKHTHUKHWA, PESHAWAR**

Service Appeal No. \_\_\_\_\_ of 2018

Bakht Amin..... *Appellant*

VERSUS

Government of Khyber Pakhtunkhwa and others

.....*Respondents*

**ADDRESSES OF THE PARTIES**

**APPELLANT:**

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o  
Haroon Abad Odigram Tehsil Babozai, District Swat

CNIC# 15602-0492973-9

Cell # 0344-9992393

**RESPONDENTS:**

- 1) Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
- 2) The Regional Police Officer/DIG Police, Malakand Region at Saidu Sharif, Swat.
- 3) The District Police Officer, Swat at Saidu Sharif.
- 4) DSP, Legal Swat Police at Saidu Sharif, Swat.

Appellant



Bakht Amin

Ann "A"

(12)

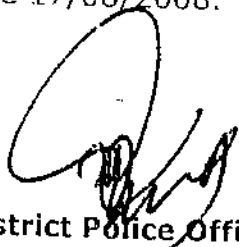
**ORDER**

This order will dispose off the enquiry initiated against Constable Bakht Amin No.871 of Police Station Matta absented himself from duty with effect from 17/08/2008 till to date vide D.D No. 09 dated 17/08/2008 followed by D.D No. 12 dated 11/10/2010 of Police Line without any prior permission or leave. As per finding report of Enquiry Officer DSP/Hqrs: Swat dated 11/11/2010 intimated that you have gone to Saudi Arabia for labour and not present in home, as per written verification of local elders namely Hazrat Bilal s/o Umar Khan r/o Odigram NIC No. 15602-8944617-3 and Itbar Ali s/o Mazang r/o Odigram NIC No. 15602-0454062-7. The charges leveled against you were proved and the enquiry officer recommended you for dismissal from service.


Consequently he was served Final Show Cause Notice No. 287/E dated 01/12/2010 but he did not submit his reply within stipulated period and remained absent.

Therefore-I, Qazi Ghulam Farooq DPO Swat in exercise of the power vested in me under Removal from Service (Special Power) Ordinance 2000 (amendment ordinance 2001) awarded him major punishment of Dismissal from Service from the date of his absence i-e 17/08/2008.

Order announced.

  
District Police Officer, Swat

**CERTIFIED TO BE TRUE COPY**

  
Barrister  
Dr. Adnan Khan  
Advocate High Court

OB No. 218

Dated: 8.12 /2010

Ann "B"  
13

**ORDER**

This order is hereby passed to dispose of departmental appeal under Rule 11- of Khyber Pakhtunkhwa Police Rules -1975, submitted by: Ex-Constable Khalil-ur-Rehman No.4289 of FRP Malakand Range, against the order of the SP, FRP/Malakand Range, Swat in which the applicant was removed from service.

Brief facts of the case are that Ex-Constable Khalil-ur-Rehman No.4289 of FRP Malakand Range was enlisted on 11-05-2006. He while posted to platoon No.78 district Swat, absented himself from lawful duty w.e.f. 02.12.2008 till to the date of his removal from service i.e. 21-02-2009 without any leave or prior permission of the competent authority for the period of 02 months and 20 days.

He was issued charge sheet along with summary of allegations vide SP, FRP Malakand Range Swat office order Endst: No.775/EC, dated 16-12-2008, but neither he reported for duty nor submitted reply to the charge sheet in the stipulated period. He was also issued Urdu parwana to resume his duty but he failed to submit reply in the response of the same within stipulated period, therefore ~~The~~ defaulter Constable was recommended for removal from service by the enquiry Committee.

In the light of recommendation of enquiry Committee he was removed from ~~service vide~~ office order OB: No.23, dated 21-02-2009.

The enquiry file of the applicant was perused and found that the applicant ~~has not dealt~~ with proper departmental proceedings as he was not participated with the enquiry proceedings ~~while he~~ was removed from service unheard.

He was also heard in person, during the course of hearing he advanced cogent reasons in his defense his plea was found plausible and satisfactory.

Keeping in view the above and as well as his poor family back ground, Take a lenient view, he (Ex-Constable Khalil-ur-Rehman No.4289 of FRP Malakand Range) is hereby ~~re-instated~~ in service from the date of removal from service. However, the period of absence and the intervening period from service are treated as extra ordinary leave without pay.

Order announced.

*[Signature]*  
Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa, Peshawar.

2388

No. 18/03 /EC, dated Peshawar the 18/03 /2016

Copy of above is forwarded for information and necessary action to the SP, FRP: Malakand Range Swat with R/O his office memo No. 190/EC, dated 04.02.2016. His Service Roll and D/File sent herewith.

*E. S/Record  
along with B/Papers*

*OB No 163  
22/3/2016*

CERTIFIED TO  
BE TRUE COPY

*[Signature]*  
Barrister  
Dr. Adnan Khan  
Advocate High Court

ORDER

(14)

314  
87/3/16  
Swat

This order is hereby passed to dispose of departmental appeal under Rule 11-a. of Khyber Pakhtunkhwa Police Rules 1975, submitted by Ex-Constable Bshir Khan No. 4837/7457<sup>3814</sup> of FRP Malakand Range against the order of the SP/ FRP, Malakand Range swat<sup>91</sup>, in which the applicant was removed from service.

Brief facts of the case are that Ex- Constable Bshir Khan No. 4837/7457 of FRP Malakand Range was enlisted in Police Department on 26.07.2007. While he was posted to Platoon No. 85 FRP/Swat absented himself from lawful duty w. e. from 27.06.2008 till the date of his removal from service i.e. 10.10.2008. He was issued charge sheet and summary allegation vide SP/FRP/Malakand Range swat office order Endst: No. 501/EC, dated 08.07.2008, but neither he reported his arrival for duty nor replied to charge sheet in the stipulated period. He was also issued final show cause notice vide this office Endst: No. 504 /EC, dated 015.07.2008, but his reply was not received in the stipulated period and the said Constable was recommended for removal from service by the enquiry committee.

In the light of recommendation of the enquiry committee he was removed from service vide SP/FRP/Swat Range office Endst: No. 138 dated 10.10.2008.

The enquiry file of the applicant was perused and found that the applicant has not dealt with proper departmental proceedings as he was not participated with the enquiry proceedings while he was removed from service with slipshod manner.

He was also heard in person. during the course of hearing he advanced cogent reasons in his defense his plea was found plausible and satisfactory.

Keeping in view the above and as well as his poor family back ground I, take a lenient view he (Ex-Constable Bshir Khan No. 4837/7457 of FRP Malakand Range Swat. is hereby re-instated in service from the date of removal from service. However, the period of absence and the intervening period from service are treated as extra ordinary leave without pay.

Order announced.

OB/EC/PAE/PO  
for u/a.

SP/FRP Mied Range, Swat  
7/3/2016

No. 1977/EC, dated Peshawar the 04/03/2016

*[Signature]*  
Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa, Peshawar.

Copy of above is forwarded for information and necessary action to the SP, FRP, Malakand Range Swat with R/O his office memo No. 115/EC. dated 19.01.2016, alongwith service record and other relevant papers sent herewith.

**CERTIFIED TO  
BE TRUE COPY**

*[Signature]*  
Barrister  
Dr. Adnan Khan  
Advocate High Court

OBNO 123  
7-3-016

*[Signature]*

ORDER

15

16

407  
31/8/16

This order is hereby passed to dispose of departmental appeal under Rule 11 of Khyber Pakhtunkhwa Police Rules -1975, submitted by Ex- Constable Arshad Iqbal No.4832 of FRP Malakand Range, against the order of SP/FRP, Malakand Range, Swat in which the applicant was removed from service.

Brief facts of the case are that, Ex-Constable Arshad Iqbal No.4832 of FRP/Malakand was enlisted in Police department on-26-07-2007. He while posted to Platoon No.85-FRP, Buniar was absented himself from his lawful duty w.e.f 16-07-2008 till to the date of his removal from service. He was issued charge sheet and statement of allegations vides SP FRP Malakand Range Swat Office NO.768/EC dated 16-12-2008. He neither reported his arrival for duty nor submitted his reply to the charge sheet in the stipulated period and the defaulter Constable was recommended for removal from service by the Enquiry Committee.

In the light of recommendation of the enquiry committee the defaulter Constable Arshad Iqbal No.4832 was removed from service vide SP FRP Malakand Range Swat office Endst: 241.dated 21-02-2008.

The enquiry file of the applicant was perused and found that the applicant was not participated with the enquiry proceedings while he was removed from service unheard. The SP/FRP Malakand Range Swat has narrated that the appellant a trained solder and recommended him for re-instatement in service vide his office Memo No. 2211/EC, dated 08.12.2015.

He was also heard in person, during the course of hearing he advance cogent reasons in his defense his plea was found plausible and satisfactory.

Keeping in view the above and as well as his poor family back ground I take a lenient view, he (Ex- Constable Arshad Iqbal No.4832 of FRP/Malakand Range) is hereby re-instated in service from the date of removal from service. However, the period of his absence and the intervening period from service are treated as extra ordinary leave without pay.

Order announced.

*J. Amin*  
Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa, Peshawar.

No. 2642/EC, dated Peshawar the 29/3 /2016

Copy of above is forwarded for information and necessary action to the SP,FRP, Malakand Range Swat with R/O his office memo No. 2211/EC, dated 08.12.2015. His Service Roll and D/File sent herewith.

OB/EC/OAS2/PO

For n/a

178

استجالی  
مذکورہ بالا حوالہ سے مراد اس دفتر کو الٹا کر کے لیا جائے گا  
29/3/16 کو دوبارہ ملازمت پر بحال کر کے لیا جائے گا  
4832 ایڈوانس کریڈٹ برائوں میں سے ایک ہے

CERTIFIED TO BE TRUE COPY

SP/FRP Malakand Range Swat  
31/8/2016

*Dr. Adnan Khan*  
Barrister  
Advocate High Court.

RECEIVED  
SERIAL COPY

**ORDER**

This order shall dispose off the departmental appeal of Ex-Constable Bsir Khan No. 4730 of FRP / Malakand Range Swat.

Brief facts of the case are that he was enlisted in Police Department on 25.07.2007 and while posted to Platoon No. 82 FRP/Swat, absented himself from lawful duty w. e. from 04.08.2008 till his removal from service i.e. 19.11.2008. He was issued charge sheet and summary allegation vide SP/FRP/Malakand Range Swat office order Endst: No. 634/EC, dated 30.10.2008, but neither he reported his arrival for duty nor replied to charge sheet in the stipulated period. He was also issued final show cause notice vide this office Endst: No. 708 /EC, dated 01.11.2008, but his reply was not received in the stipulated period and the Enquiry Committee was recommended him for major penalty of removal from service.

In the light of recommendation of the enquiry committee he was removed from service by the SP/FRP/Malakand Range, Swat vide office order Endst: No. 1471 dated 19.11.2008.

The enquiry file of the applicant was perused and found that the applicant has not dealt with proper departmental proceedings as he was not participated with the enquiry proceedings while he was dismissed from service with slipshod manner.

He was also heard in person, during the course of hearing he advanced cogent reasons in his defense his plea was found plausible and satisfactory.

Keeping in view the above and as well as his poor family back ground he (Ex-Constable Bsir Khan No. 4730) of FRP / Malakand Range Swat, is here by re-instated in service from the date of dismissal from service. However, the period of absence and the intervening period from service are treated as extra ordinary leave without pay.

Order announced.

*[Signature]*  
Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa, Peshawar.

*[Handwritten notes in Urdu]*  
کاملاً  
نمبر 4730  
3581  
23  
28/12/2015

No. 10762/EC, dated Peshawar the 22 /10/2015.

Copy of above is forwarded for information and necessary action to the SP, FRP, Malakand Range Swat with R/O his office memo No. 1987/EC, dated 30.10.2015, alongwith service record and other relevant papers sent herewith.

*[Handwritten signature]*  
Office  
28/12/2015

**CERTIFIED TO BE TRUE COPY**

*[Signature]*  
Barrister  
Dr. Adnan Khan  
Advocate High Court

**CERTIFIED TO BE TRUE COPY**

*[Signature]*  
Barrister  
Dr. Adnan Khan  
Advocate High Court

ORDER

17

16

1293  
34911

This order shall dispose of the departmental appeal lodged by Ex-Constable Jamshid Ali No.7838/4904 of FRP Malakand Range Swat against the order of SP FRP Malakand Range Swat.

Ex-Constable Jamshid Ali No.7838/4904 was enlisted as Constable on 26.09.2007; He while posted to Platoon No.86 Dir lower absented himself from his lawful duty w.e.f 28.09.2008 till his removal from service. He was issued charge sheet and statement of allegations vide SP Malakand Range Swat office No.750/EC dated 16.12.2008. Thus issued Final Show Cause Notice vide Endst: No.895/EC dated 03.01.2009 and the defaulter Constable was recommended for removal from service by the Enquiry committee. The defaulter Constable Jamshid Ali No.7838/4904 was removed from service vide SP Malakand Range Swat Office OB No:76 dated 12.05.2008.

He was heard in person. Keeping in view his poor family background, I take a lenient view and the order regarding award of punishment i.e. removal from service is here by set aside. Ex- Constable Jamshid Ali No.7838/4904 of FRP Malakand Range Swat is here by re-instated in service with immediate effect. However the period of absence and the intervening period from service are treated as extra ordinary leave without pay.

New No. 3811

*[Signature]*  
Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa, Peshawar.

No 8049 /EC dated Peshawar the 23/09/2015.

Copy of above along with service record is forwarded to SP FRP Malakand Range Swat for information and necessary action.

OB No 348  
Dmk -1-10-15

OB/ASL/EC/120  
For M/A  
*[Signature]*  
SP FRP SWAT  
29/09/15.

CERTIFIED TO  
BE TRUE COPY

*[Signature]*  
Barrister  
Dr. Adnan Khan  
Advocate High Court.

*[Faint official stamps and signatures]*



18

NO. OF B.P. 3098  
Date: 4/3/16  
Swat

**ORDER**

This order is hereby passed to dispose of departmental appeal under Rule 11 of Khyber Pakhtunkhwa Police Rules 1975, submitted by Ex-Constable Imran Khan No. 4279 of FRP Malakand Range, against the order of the SP, FRP/Kohat Range, in which the applicant was removed from service.

Ex-Constable Imran Khan No. 4279 of FRP Malakand Range was enlisted on 13-01-2004. He while posted to platoon No. 72 Gul Kadda district Swat, absented himself from lawful duty w.e.f. 06.10.2008 till to the date his removal from service i.e. 21-02-2009 without any leave or prior permission of the competent authority for the period of 04 months and 14 days.

He was issued charge sheet along with summary of allegations vide SP FRP Malakand Range Swat Order Endst: No. 775/EC, dated 16-12-2008, but neither he reported for duty nor submitted reply to the charge sheet in the stipulated period. He was also issued Urdu parwana to resume his duty but he failed to submit reply in the response of the same within stipulated period, therefore the defaulter Constable was recommended for removal from service by the enquiry Committee.

After completion of the enquiry the enquiry committee submitted the findings wherein recommending him for major punishment. In the light of recommendation of enquiry Committee he was removal from service vide office order Endst: No. 312/EC, dated 21-02-2009.

The enquiry file of the applicant was perused and found that the applicant has not dealt with proper departmental proceedings as he was not participated with the enquiry proceedings while he was dismissed from service with slipshod manner.

He was also heard in person, during the course of hearing he advanced cogent reasons in his defense his plea was found plausible and satisfactory.

Keeping in view the above and as well as his poor family back ground I take a lenient view. he (Ex-Constable Imran Khan No. 4279 of FRP Malakand Range) is hereby reinstated in service from the date of removal from service. However, the period of absence and the intervening period from service are treated as extra ordinary leave without pay.

Order announced.

Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa, Peshawar.

OB/GAS/EC/PO  
For n/a

SP FRP SWAT  
04/03/16

OB. 123

No. 1922/EC, dated Peshawar the 03/03/2016

Copy of above is forwarded for information and necessary action, to the SP, FRP, Malakand Range Swat with R/O his office memo, No. 2175/EC, dated 02.12.2015. His Service roll and Fuji missal sent herewith.

**CERTIFIED TO  
BE TRUE COPY**

Barrister  
Dr. Adnan Khan  
Advocate High Court

19  
ORDER

Now No. 4241


OFFICE OF S.P.A.  
No. 1225  
14/9/2015

This order shall dispose of the departmental appeal lodged by, Ex- Constable Muhammad Shahid No.4890 of FRP Malakand Range Swat, against the order of SP FRP Malakand Range Swat.

Ex-Constable Muhammad Shahid No.4890 was enlisted as Constable in Police Department on 26.07.2007. He while posted to FRP Lines Timergara District Dir Lower platoon No.86 absented himself from his lawful duty w.e.f.1.09.2008 till his removal from service. He was issued charge sheet and statements of allegation vide Endst: No. 648/EC, dated 30.10.2008, thus issued Final Show Cause Notice vide Endst: No.886/EC, dated 3.01.2009. The Constable was recommended for removal from service by the enquiry committee.

In the light of the recommendation of the enquiry committee and material available on the record the defaulter Constable Muhammad Shahid No.4890 was removed from service vide SP FRP Malakand Range Swat Endst: No.239, dated 21.02.2008. Like some other personnel to the force the appellant also absented himself due to uncertain and tense situation in Malakand division especially at swat District. As the appellant is a trained Constable therefore in the best interest of the state he was recommended by SP FRP Malakand Range Swat for re-instatement in service.

He was heard in person. Keeping in view his poor family background, I take a lenient view and the order regarding award of punishment i.e. removal from service is here by set aside. Ex- Constable Muhammad Shahid No.4890 of FRP Malakand Range Swat is here by reinstated in service from with immediate effect. However the period of absence and the intervening period from service are treated as extra ordinary leave without pay.

  
Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa, Peshawar.

No. 7659 /EC dated Peshawar the 9. 1. 9 /2015.

Copy of above is forwarded to SP FRP Malakand Range Swat for information and necessary action.


Encl - 5/Recor L  
Enquiry Site

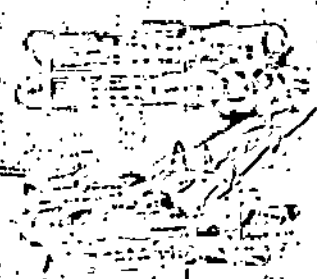
OB/OSI/EC/PO  
For 11/9

SP FRP SWAT  
14/09/15

OB No 318  
Date 14/09/2015

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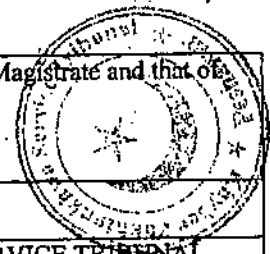
  
Barrister  
Dr. Adnan Khan  
Advocate High Court




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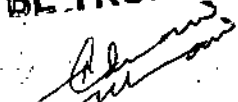
Ann "C"


S. No.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	02.01.2017	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> <u>CAMP COURT SWAT</u></p> <p style="text-align: center;">Service Appeal No. 1214/2015 Adil Said Versus the Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others.</p> <p style="text-align: center;"><u>MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:</u></p> <p>Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader alongwith Mr. Muhammad Imran, S.I (Legal) for respondents present.</p> <p>2. Adil Said Ex-Constable No. 763, District Swat hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against impugned order dated 29.12.2008 vide which he was awarded major penalty of dismissal from service against which his departmental appeal/mercy petition dated 4.6.2014 was also rejected vide order dated 17.08.2012 and 01.09.2015 communicated to the appellant on 11.09.2015.</p> <p>3. Brief facts giving rise to the present appeal are that the appellant was serving as constable when subjected to enquiry on the allegations of wilful absence and dismissed from service vide impugned order referred to above.</p> <p>4. Learned counsel for the appellant during the course of hearing referred to orders dated 4.3.2016, 18.03.2016, 29.03.2016 and similar</p>

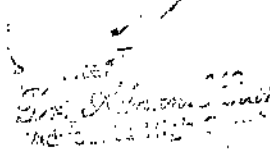


**ATTESTED**  
  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

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 Barrister  
**Dr. Adnan Khan**  
 Advocate High Court

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21




other orders placed on record vide which similarly placed employees removed from service on the allegations of wilful absence during the insurgency period were reinstated in service by the Commandant, FRP Khyber Pakhtunkhwa, Peshawar while the intervening period of absence from service was treated as extra-ordinary leave without pay. Learned counsel for the appellant argued that the appellant is also entitled to similar treatment as laid down by the august Supreme Court of Pakistan in case of Hameed Akhtar Niazi reported as 1996-SCMR-1185 and Tara Chand reported as 2005-SCMR-499.

5. Learned Senior Government Pleader has argued that it is not ascertainable from record that the case and grievances of the appellant are similar to those who were reinstated in service by the Commandant FRP. That in the absence of any such record it cannot be ascertained that the appellant is entitled to treatment, similar in nature and extended to the said civil servants.

6. We have heard arguments of learned counsel for the parties and perused the record.

7. The Commandant FRP vide orders referred to above had reinstated ex-constables including Khailur Rahman, Bashir Khan, Arshad Iqbal, Basir Khan and similar others vide orders referred to above. We are not in a position to ascertain from the record that the case of the appellant is similar to the afore-stated constables who were reinstated in service despite their absence during the period of insurgency and militancy. In such a situation we are left with no option but to accept the present appeal, set aside the impugned orders and direct


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GOVERNMENT OF  
KHYBER PAKHTUNKHWA


  
Senior Government Pleader



that the appellate authority shall examine the case of the appellant with the cases of those constables who were reinstated in service by the Commandant FRP and in case the appellant is found entitled to similar treatment as extended to the said constables then the said authority shall also extend the same treatment to the present appellant. The appellant shall be afforded opportunity of hearing during the proceedings which shall be conducted and concluded within a period of 2 months from the date of receipt of this judgment. Parties are left to bear their own costs. File be consigned to the record room.

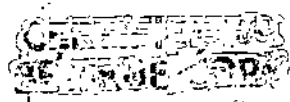
Announced  
02.01.2017


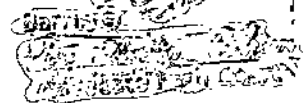
*Sd/- M. Azim Khan Afridi,*  
Chairman  
Chief Constable Secret

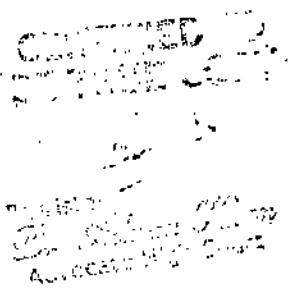
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 Khwaja Farukh Khan  
 Notary Public  
 Peshawar

*Sd/- Ahmad Hassan,*  
Member

Date of Presentation of Application: 10-01-2017  
 Number of Words: 1600  
 Copying Fee: 10/-  
 Urgent: 3/-  
 Total: 17/-  
 Name of Copyist: *[Signature]*  
 Date of Completion: 10-01-2017  
 Date of Delivery of Copy: 10-01-2017





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*[Signature]*  
 Barrister  
 Dr. Adnan Khan  
 Advocate High Court

آداب۔ لہذا از آداب گزارش ہے کہ سائل سنوٹ پولیس میں بطور کانسٹیبل  
سراجام رہا تھا، چونکہ کوٹھماٹھ ملک کی حالات اور گھریلو حالات  
کیوجہ سے سائل مجبوراً ڈیوٹی سے غیر حاضر رہا۔ جس کا سائل کو انتہائی افسوس  
اور دکھ ہے چونکہ یہ جو کوٹھماٹھ انتہائی مجبوری اور حالات کی نراکت  
کے تحت ہوا تھا۔

جناب عالی! محکمہ خدا کے بیشتر پولیس آفیسرز جان بچانے کے خاطر  
یا تو ادوں تک روپوش ہو گئے تھے یا بیرون ملک بچوں کی رزق حلال  
کے خاطر مسافرت کی زندگی گزار رہے تھے جن کوئی پولیس آفیسرز آپ صاحبان  
کی ذاتی مہربانی سے دوبارہ بحال ہوئے ہیں۔

جناب عالی! میرا سابقہ سرورس ریکارڈ خدا کے فضل و کرم سے صاف ہے  
جس کا آپ صاحبان تجزیہ کر سکتے ہیں اور آئندہ بھی محتاط رہوں گا۔  
لہذا سائل آپ صاحبان سے ہمدردانہ اپیل کرتا ہے کہ سائل کے معصوم  
بچوں / لوڑھے والدین کی کفالت اور سائل کے مفلس اہالی کو مد نظر رکھتے ہوئے  
سائل کو دوبارہ محکمہ پولیس میں واپس جگہ دینے کا حکم صادر فرمادیں  
تو سائل تاحیات دعا گو رہیگا۔

العارض!  
سر کمانڈر لالچ فرخان کانسٹیبل نجات آفس (B) 871 سنوٹ پولیس

تاریخ: 26/7/17

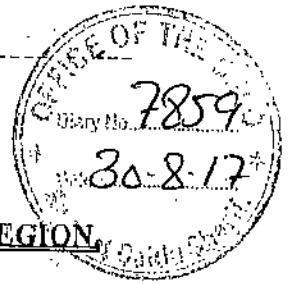
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Barrister  
Dr. Adnan Khan  
Advocate High Court

Annex "E"

(24)



**OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND REGION,  
AT SAIDU SHARIF SWAT**

**ORDER:**

The following Ex-Police officers of the Districts as noted against each were called in Orderly Room on 29/08/2017, in connection with their applications for reinstatement in Service and heard them in person. Their applications are hereby filed being time barred:-

S. No	Name and No	District
1.	Ex-Constable Said Ali No. 1187	Buner
2. ✓	Ex-Constable Bakht Amin No. 871	Swat
3.	Ex-Constable Hazrat Ali No. 458	Dir Lower
4. ✓	Ex-Constable Muhammad Rahman No. 639	Swat
5.	Ex-Constable Aziz Sultan No. 984	Dir Lower
6. ✓	Ex-SPF Naik Muhammad No. 868	Swat

(AKHTAR HAYAT KHAN)  
Regional Police Officer,  
Malakand, at Saidu Sharif Swat  
30/08/17  
\*\*Naqi\*\*

No. 8053-56/E,

Dated 30-08-2017.

Copy to District Police Officers, Swat, Buner and Dir Lower for information and with the directions to inform the applicants accordingly, please.

\*\*\*\*\*

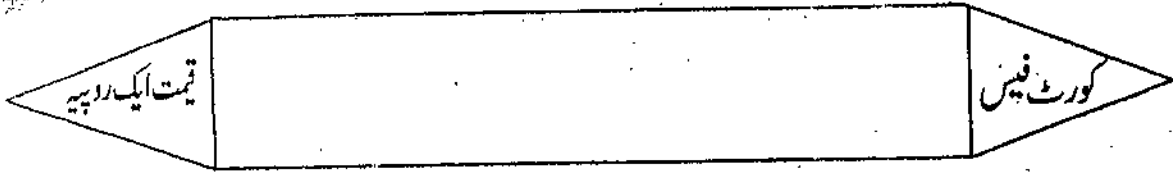
OASI/EC.  
For Naqi  
D/OSI  
30/8/17

OASI  
informel S.No- 2, 3 and  
6 about their  
appeals and report.  
Kerr

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Barrister  
*Adnan Khan*  
Dr. Adnan Khan  
Advocate High Court

# بعدالت حیرتوخواہ کروکس ٹریبونل چاور



مورخہ 2 جنوری 2018ء منجانب اینڈرائٹ  
 مقدمہ عدالت اینڈ  
 دعویٰ سروکس اپیل  
 بنام حکومت و غیرہ

## باعث تحریر آنکھ

جرم

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ آن مقام سٹاؤڈنٹ کورٹ سوانہ کیلئے سرسرسر ڈاکٹر عدنان خان مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ و تقرر ثالث و فیصلہ پر حلف دینے جواب دی اور اقبال دعویٰ اور درخواست ہر قسم کی تصدیق زرا اور اس پر دستخط کرنے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری ایک طرف یا اپیل کی برآمد ہوگی اور منسوخ مذکور کے نسل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنی ہمراہ یا اپنی بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقررہ شدہ کو بھی جملہ مذکورہ بالا اختیارات حاصل ہونگے اور اس کا ساختہ برداشت منظور و قبول ہوگا۔ اور دوران مقدمہ میں جو خرچہ دہر جانہ التوا یہ مقدمہ کے سبب سے ہوگا اسکے مستحق وکیل صاحب ہونگے۔ نیز بقایا و خرچہ کی وصولی کرتے وقت کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام دورہ ہر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہونگے کی پیروی مقدمہ مذکور لہذا وکالت نامہ لکھ دیا ک سند رہے

المرقوم 2 ماہ جنوری 2017ء

المعتمد واہش

Attested & Accepted

بمقام منگورہ سوات / چاور

کے لئے منظور ہے



*Dr. Adnan Khan*  
 Barrister  
 Advocate High Court

کت این ولد غر خان  
 15602-0492973-9

0344 9992393



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWA**

**Service Appeal No.26/2018**

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o Haroon  
Abad Odigram, Teshil Babozai, District Swat.

----- (Appellant)


**Versus**

- Place a file  
5.6.18*
1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
  2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
  3. District Police Officer, Saidu Sharif, Swat
  4. DSP, Legal Swat Police at Saidu Sharif Swat.

----- (Respondents)

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2	Affidavit	-	4
3	Authority	-	5

  
District Police Officer, Swat  
(Respondent No.03)

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

**Service Appeal No.26/2018**

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o Haroon  
Abad Odigram, Teshil Babozai, District Swat.

----- (Appellant)

**Versus**

1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
3. District Police Officer, Saidu Sharif, Swat
4. DSP, Legal Swat Police at Saidu Sharif Swat.

----- (Respondents)

**Parawise comments on behalf of Respondents.**

**Respectfully shewith:**

**Preliminarily objection:-**

1. That the service appeal is time barred.
2. That the service appeal is not maintainable in its present form.
3. The instant appeal is bad due to mis-joinder and non-joinder of necessary parties.
4. That the appellant is estopped due to his own conduct.
5. That the appellant has concealed material facts from this Honorable Tribunal.
6. That the appellant has got no cause of action and locus standi to prefer the instant appeal.
7. The appellant has not come to this Tribunal with clean hands.

**ON FACTS**

1. Para No.01 regarding enlistment in Police Department and subsequent posting pertains to record, hence need no comments
2. Incorrect. Being member of disciplined force every police official/officer is under obligation to perform his duties with zeal, zest and devotion irrespective of harsh, tense and calm environment, hence stance of the appellant is not tenable in the eye of Law.
3. Incorrect. Plea of the appellant regarding continued performance of his duties is not plausible because he was duty bound to do so. Moreover, the appellant admitted himself in a categorical manner that he could not perform his duties for a certain period but the fact regarding his absence

was not mentioned as he was proceeded abroad which had been established during the enquiry proceedings.

4. Incorrect. The appellant while posted at Police Station Matta absented himself from lawful duty vide DD No.09 dated 17/08/2008 whereupon a proper departmental enquiry was initiated during the course of which the appellant was summoned time and again to join enquiry proceeding for defending himself but to no avail he was proceeded abroad and in this regard proper verification was carried out through elders of the locality. Hence the appellant was awarded punishment of dismissal from service by the competent authority.
5. Incorrect. The application/presentation of the appellant was thoroughly considered by the appellate authority which was filed on sound reasons.
6. Incorrect. Each and every case has its own facts and circumstances and fate of one case has no effects on others
7. Para already explained, hence needs no comments.
8. Para already explained, hence needs no comments.
9. Incorrect. The appellant in order to give legal cover to the issue of limitation propounded this story which has no legal footing to stand on.
10. That appeal of the appellant is liable to be dismissed on the following grounds amongst the others.

#### **GROUND**

- A. Incorrect. Order passed by the competent authority is in consonance with Law, rules and material available on record, therefore liable to be maintained.
- B. Incorrect. The appellant was proceeded departmentally and enquiry was initiated during the course of which appellant was summoned time and again to defend himself but he did not bother to do so as he was proceeded abroad, hence plea of the appellant is not tenable in the eye of Law.
- C. Incorrect. As explained earlier he bitterly failed to join enquiry proceedings as report his arrival, hence after fulfillment of codal

formalities the punishment order was passed which does commensurate with the gravity of misconduct of appellant.

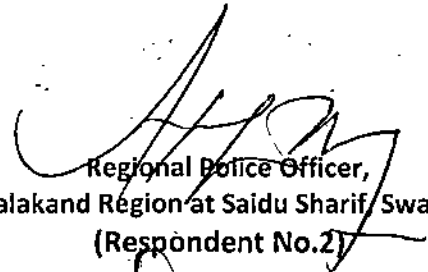
- D. Para explained earlier, hence needs no comments.
- E. Incorrect. Each and every case has its own facts and circumstances and fate of one case has no effect on the other, therefore stance of the appellant is not plausible.
- F. Para already explained in the preceding Para, hence needs no comments.
- G. Incorrect. As discussed earlier the appellant had been awarded appropriate punishment after taking into consideration each and every aspect of the case, hence liable to be maintained.
- H. That respondents also seek permission of this honorable Tribunal to adduce additional grounds at the time of arguments.

**PRAYER:-**

In view of the above comments of answering respondents, it is prayed that instant appeal may be dismissed with cost.



Provincial Police-officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)



Regional Police Officer,  
Malakand Region at Saidu Sharif Swat  
(Respondent No.2)



District Police Officer, Swat.  
(Respondent No.3)

12-10-15  
Deputy Superintendent of Police, legal, Swat  
(Respondent No.4)

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

**Service Appeal No.26/2018**

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o Haroon  
Abad Odigram, Teshil Babozai, District Swat.

----- (Appellant)

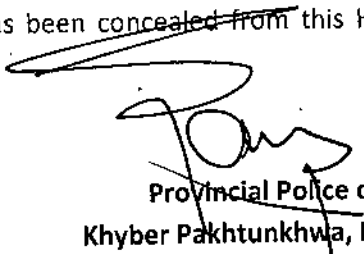
**Versus**

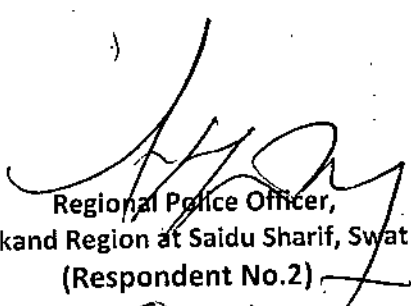
1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
3. District Police Officer, Saidu Sharif, Swat
4. DSP, Legal Swat Police at Saidu Sharif Swat.


----- (Respondents)


**AFFIDAVIT**

We, the above respondents do hereby solemnly affirm and declare on oath that the accompanying Para-wise comments submitted in reply to above cited service appeal are correct to the best of our knowledge and nothing has been concealed from this Honorable Tribunal.

  
Provincial Police officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)

  
Regional Police Officer,  
Malakand Region at Saidu Sharif, Swat  
(Respondent No.2)

  
District Police Officer, Swat.  
(Respondent No.3)

  
Deputy Superintendent of Police, legal, Swat  
(Respondent No.4)

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

**Service Appeal No.26/2018**

Bakht Amin s/o Umar Khan, Ex-Constable No.871 Swat Police r/o Haroon  
Abad Odigram, Teshil Babozai, District Swat.

----- (Appellant)

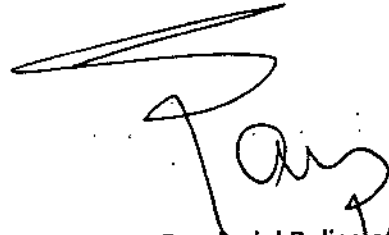
**Versus**

1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
3. District Police Officer, Saidu Sharif, Swat.
4. DSP, Legal Swat Police at Saidu Sharif Swat.

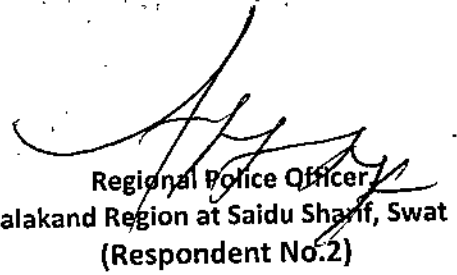
----- (Respondents)

**AUTHORITY LETTER**

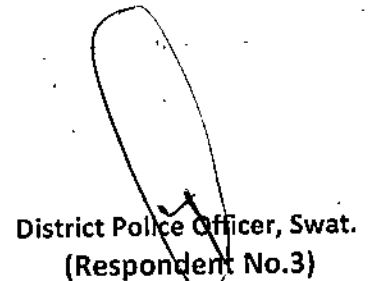
We, the above respondents do hereby authorize Mr. Khawas Khan Si Legal Swat to appear in the Service Tribunal on our behalf on each date fixed in connection with titled Service Appeal and do whatever is needed.



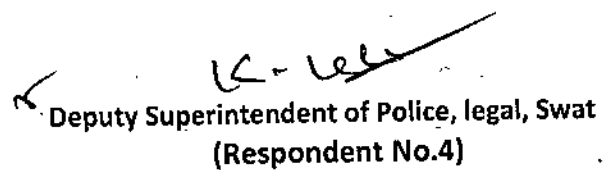
Provincial Police officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)



Regional Police Officer  
Malakand Region at Saidu Sharif, Swat  
(Respondent No.2)



District Police Officer, Swat.  
(Respondent No.3)



Deputy Superintendent of Police, legal, Swat  
(Respondent No.4)

BEFORE THE HON'BLE SERVICE TRIBUNAL, KPK PESHAWAR



Service Appeal No. 368 of 2016

Fayaz Ali S/O Sardar Ali (Ex-Constable No. 914), R/O Village and Tehsil Charbagh, District Swat

Appellant Khyber Pakhtunkhwa Service Tribunal

VERSUS

Diary No. 337

Date 05-4-2016

- 1) Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar
- 2) The Regional Police Officer, Malakand Division at Saidu Sharif Swat.
- 3) The District Police Officer, Swat at Saidu Sharif.
- 4) Sub Divisional Police Officer, Khwazakhela Circle, District Swat

Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER OF DISMISSAL FROM SERVICE AND IMPOSITION OF MAXIMUM PENALTY

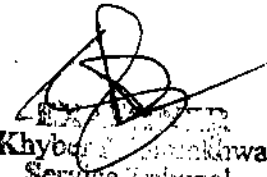
PRAYER:

*On acceptance of this Appeal, the impugned order O.B. No. 42 dated 11/03/2015 may be set aside and the appellant be restored as Constable in Swat Police.*

Respectfully Sheweth:

1. That the appellant was appointed as constable in the Police Department in 2007. At the time of dismissal from service, the appellant was performing his duties at Police Station Mingora District Swat.

ATTESTED

  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
CAMP COURT SWAT.**

Service Appeal No. 368/2016

Date of Institution... 05.04.2016

Date of decision... 02.01.2018



Fayaz Ali son of Sardar Ali (Ex-Constable No. 914) R/O Village and Tehsil Charbagh  
District Swat. ... (Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Provincial Police Officer Peshawar  
and 3 others. ... (Respondents)

Barrister Adnan Khan,  
Advocate

... For appellant.

MR. Kabir Ullah Khattak  
Addl. Advocate General

... For respondents.

MR. NIAZ MUHAMMAD KHAN, ...  
MR. MUHAMMAD HAMID MUGHAL, ...

CHAIRMAN  
MEMBER

JUDGMENT

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

FACTS:

2. The appellant was removed from service on 11.3.2015 due to his absence,  
against which he filed an application for reinstatement to the concerned authority which  
was rejected on 25.6.2015 and thereafter, the appellant filed an appeal to the Regional  
Police Officer on 7.7.2015 which was again rejected on 4.3.2016 and thereafter he filed  
the present service appeal on 05.04.2016.

ARGUMENTS

3. The learned counsel for the appellant argued that the impugned order has been  
given retrospective effect which is a void order and no limitation shall run against void  
order, which cannot be sustained in the eyes of law.

**ATTESTED**

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal.



4. On the other hand, the learned AAG argued that the present appeal is time barred as the departmental appeal was also time barred. That there was no provision for the reinstatement application to the same authority. That the limitation would run from the impugned order dated 11.3.2015 for the purpose of departmental appeal. That the departmental appeal was filed almost four years after the original order. That all the codal formalities were fulfilled.

**CONCLUSION**

5. Without advertent to the merits of the case, the very order of removal from service has been given retrospective effect which is a void order. No limitation shall run against void order. This Tribunal in a number of cases has decided this issue on the basis of judgment reported as 1985-SCMR-1178:

6. As a sequel to above discussion void order cannot be sustained in the eyes of law and no limitation shall run against void order. Hence this appeal is accepted and the appellant is reinstated in service. The department is however, at liberty to hold denovo proceedings within a period of ninety days from the date of receipt of this judgment. The issue of back benefits shall be subject to final outcome of denovo proceedings and if no denovo proceedings are initiated then the absence period may be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.

Announced  
02-01-2018

SD/- Niaz Muhammad Khan,  
Chairman  
Camp court Swat

SD/- M. Hamid Mughal,  
Member

Certified to be true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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