

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 558/2018

BEFORE: SALAH UD DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

Sheeraz Khan Son of Sharafat Khan Constable Belt No. 628
Police Commandant, PTC Hangu R/o Shahoo Khel, Tehsil and
District Hangu.....(*Appellant*)

VERSUS

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

Present:

INAYAT ULLAH KHAN,
Advocate --- For Appellant.

NASEER-UD-DIN SHAH,
Assistant Advocate General --- For respondents.

Date of Institution.....18.04.2018

Date of Hearing.....29.11.2022

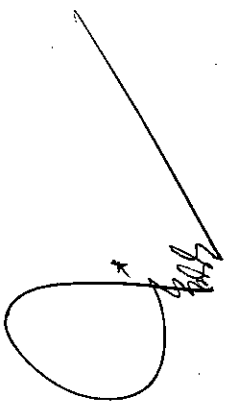
Date of Decision.....29.11.2022

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- The service appeal has been instituted, invoking jurisdiction of this Tribunal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, with the prayer that "on acceptance of the instant service appeal, the impugned original order OB No. 265 dated 15.04.2009 and impugned final order dated 19.03.2018 may kindly be set aside and the appellant be reinstated in service with all consequential back benefits. Any other relief to whom the

appellant is found entitled during course of hearing may also be granted”.

02. Brief facts of the case as averred in the memorandum of service appeal, are that the appellant being recruit Constable in the Police department was undergoing Basic Recruit course at PTC Hangu, when he absented himself from training program w.e.f. 10.09.2008. The appellant was therefore, proceeded against on the allegation of absence from duty under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 and major penalty of dismissal from service was imposed upon him vide impugned order dated 15.04.2009. Feeling aggrieved, the appellant filed departmental appeal on 13.03.2018 which was rejected/filed on 19.03.2018 hence the instant service appeal was filed on 18.04.2018.



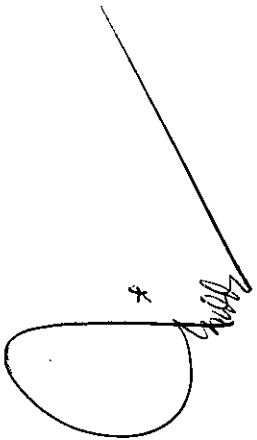
03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard learned counsel for the appellant as well as learned Assistant Advocate General for the respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant vehemently contended that the appellant was appointed as Constable in the Police department in the year 2008 and was dismissed from service on the allegation of absence from duty w.e.f. 10.09.2008, without taking into consideration of his genuine request for grant

of medical leave as he was admitted in hospital for medical treatment. The absence was therefore, not willful and deliberate but circumstances were beyond his control. He further argued that neither any charge sheet/statement of allegations was issued to the appellant nor any Show Cause Notice served on the appellant. No proper and regular enquiry was conducted into the allegation of absence and he had not been afforded opportunity of personal hearing to defend himself therefore, the appellant was condemned unheard in total disregard to the principle of natural justice as well as in violation of Article 4 and 10-A of the constitution. Moreover, the impugned order was passed with retrospective effect, therefore, the same is void ab-initio, illegal and no limitation runs against a void order. To strengthen his arguments, learned counsel for the appellant relied on 1985 SCMR 1178, 2000 SCMR 1743, 2011 SCMR 1220, judgement of the Service Tribunal dated 08.01.2018 delivered in service appeal No. 266/2017 titled "Muhammad Umar Versus Deputy Inspector General of Police, Khyber Pakhtunkhwa Peshawar and two others" and judgement of the Tribunal dated 07.12.2021 rendered in service appeal No. 1420/2017 titled "Asmat Ullah Versus District Police Officer, Bannu and two other".

05. Learned Assistant Advocate General on the other hand, controverted the arguments of learned counsel for the appellant and asserted that the appellant remained absent from Basic Recruit Course without any leave or permission of the competent authority and he was reported unqualified by Commandant PTC

Hangu. Proper charge sheet alongwith summary of allegations were issued to the appellant and enquiry committee was constituted to conduct the enquiry. Show Cause Notice was issued to the appellant but he did not join the inquiry proceedings and remained absent. Final Show Cause Notice was also issued at his home address which was received un-served as the appellant was not available at his home. He further contended that the impugned order was passed on 15.04.2009 against which the appellant filed departmental appeal after 09 years on 13.03.2018 which was rejected/filed on 19.03.2018, therefore, the instant service appeal is not maintainable and the same may be dismissed with costs, he concluded.



06. From perusal of the record it is evident that the appellant was a recruit Constable No. 628 who joined Police department in the year 2008 and while undergoing the Basic Recruit Course at PTC Hangu, he absented himself w.e.f 10.09.2008 when he had only one year service to his credit. He was therefore, dismissed from service on the ground of absence from duty w.e.f. 10.09.2008 till the passing of impugned order dated 15.04.2009. The appellant challenged the impugned order after lapse of 09 years through departmental appeal on 13.03.2018 which was rejected/filed on 19.03.2018 hence the service appeal filed in the Service Tribunal on 18.04.2018.

07. The departmental appeal of the appellant is badly time barred. The settled proposition of law dictates that when an appeal of the civil servant is time barred before the appellate

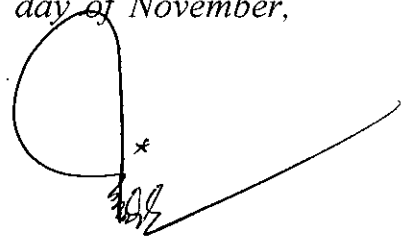
authority, then the appeal before the service Tribunal is also not competent and maintainable. Reliance is placed on PLD 1990 Supreme Court 951, 2006 SCMR 453 and 2007 SCMR 513. This Tribunal can take merits of the case into consideration only when the appeal is within time. August Supreme Court of Pakistan in its judgement reported as 1987 SCMR 92 has held that when an appeal is required to be dismissed on the ground of limitation then its merits need not to be discussed.

08. As a sequel to the foregoing discussion, the instant service appeal being not maintainable, stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

09. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 29th day of November, 2022.*



(SALAH UD DIN)
MEMBER (J)



(MIAN MUHAMMAD)
MEMBER (E)

ORDER

29.11.2022

Mr. Inayat Ullah Khan, Advocate for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgement of today separately placed on file containing (05) pages, the instant service appeal being not maintainable, stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

03. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 29th day of November, 2022.*



(SALAH UD DIN)
MEMBER (J)

(MIAN MUHAMMAD)
MEMBER (E)

14.07.2022

Counsel for the appellant. Mr. Kabir Ullah Khattak,
Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment.
Adjourned. To come up for rejoinder/arguments on 15.07.2022 before D.B.

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

15.07.2022

Counsel for the appellant. Mr. Kabir Ullah Khattak,
Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment.
Request accepted by way of last chance. To come up for
rejoinder/arguments on 15.09.2022 before D.B.

(Fareeha Paul)
Member (E)

(Kalim Arshad Khan)
Chairman

15.09.2022

Clerk of learned counsel for the appellant present. Mr.
Afzal Muhammad, S.I alongwith Mr. Muhammad Riaz Khan
Paindakhel, Assistant Advocate General for the respondents
present.

Clerk of learned counsel for the appellant requested
for adjournment on the ground that learned counsel for the
appellant is busy in the august Peshawar High Court,
Peshawar. Adjourned. To come up for arguments on
29.11.2022 before the D.B.

(Mian Muhammad)
Member (Executive)

(Salah-Ud-Din)
Member (Judicial)

01.02.2022

Nemo for the appellant. Mr. Naseeb Ullah, Reader alongwith Mr. Noor Zaman Khattak, District Attorney for the respondents present.

Notice for prosecution of the appeal be issued to the appellant as well as his counsel through registered post and to come up for arguments on 09.05.2022 before the D.B.



(Rozina Rehman)
Member (J)

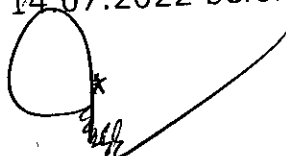


(Salah-ud-Din)
Member (J)

09.05.2022

Appellant alongwith clerk of his counsel present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is out of station today. Adjourned. To come up for arguments on 14.07.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

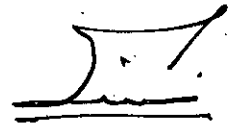
26.07.2021

Clerk of counsel for the appellant present. Mr. Attaullah, ASI alongwith Mr. Javed Ullah, Assistant Advocate General for the respondents present.

Clerk of counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy before the august Peshawar High Court, Bannu Bench. Adjourned. To come up for arguments before the D.B. on 21.10.2021.



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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

21.10.2021

Appellant present through counsel.

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

Former made a request for adjournment. Granted. To come up for arguments on 01.02.2022 before D.B.



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




(Rozina Rehman)
Member (J)

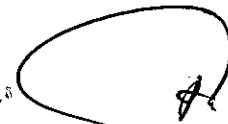
02.12.2020

Appellant in person present.

Kabirullah Khattak learned Additional Advocate General present.

Former requests for adjournment as issue involved in the present case is pending before the Larger Bench of this Tribunal. Adjourned. To come up for arguments on 10.02.2021 before D.B

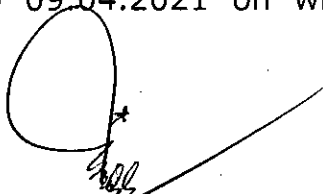

(Atiq-Ur-Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

10.02.2021

Nemo for appellant. Mr. Kabirullah Khattak, Additional Advocate General, for the respondents is also present.

The issue involved in the instant lis is pending adjudication before the Larger Bench of this Tribunal, therefore, appeal is adjourned to 09.04.2021 on which date file to come up for arguments.


(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)


(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

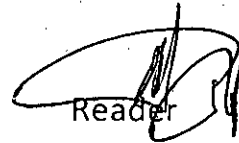
9.4.21

Due to COVID-19, The case is adjourned to 26.7.21 for the same.


Rozina

15-5.2020

Due to COVID19, the case is adjourned to
07/8/2020 for the same as before.


Reader

07.08.2020

Due to summer vacation case to come up for the same on
08.10.2020 before D.B.



Reader


08.10.2020

Nemo for appellant.

Mr. Kabir Ullah Khattak learned Additional Advocate General
alongwith Zahid Khan Inspector for respondents present.

Representative of respondents submitted additional
documents, placed on file. Issue involved in the present case
is pending before the Larger Bench of this Tribunal.
Adjourned. To come up for arguments on 02.12.2020 before
D.B. Notice be issued to appellant and his counsel.


(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

23.01.2020

Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 16.03.2020 for arguments before D.B.


(Hussain Shah)

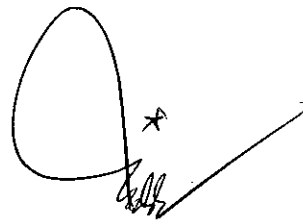
Member


(M. Amin Khan Kundi)

Member

16.03.2020

Clerk to counsel for the appellant present. Addl: AG alongwith Mr. Zahid Ur Rehman, Inspector for respondents present. Due to general strike on the call of Peshawar Bar Council, the instant case is adjourned. To come up for arguments on 15.05.2020 before D.B.


(MAIN MUHAMMAD)
MEMBER



(M. AMIN KHAN KUNDI)
MEMBER

06.08.2019

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Zahid Ur Rehmana, Inspector for respondents present.

Learned counsel for the appellant requests for adjournment.

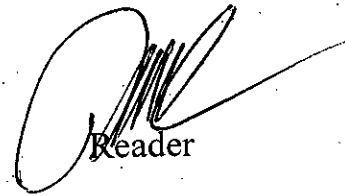
Adjourned to 29.10.2019 before D.B.


Member


Chairman

29.10.2019

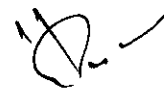
Due to incomplete bench the case is adjourned. To come up for the same on 28.11.2019 before D.B.


Reader

28.11.2019

Due to general strike of the Pakistan Bar Council, the case is adjourned. To come up on 23.01.2020 before D.B.


Member


Member

04.03.2019


Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Zahid-ur-Rehman, Inspector (Legal) for the respondents present. Learned counsel for the appellant submitted rejoinder. Copy of the same is handed over to learned Additional AG. Adjourn. To come up for arguments on 16.04.2019 before D.B.



(M. HAMID MUGHAL)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

16.04.2019

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Zahid Ur Rehman Inspector for the respondents present. Appellant requested for adjournment as his counsel is not in attendance. Adjourned. To come up for argument on 12.06.2019 before D.B


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

12.06.2019

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Zahidur Rahman, Inspector (Legal) for the respondents present.

Appellant requests for adjournment due to non-availability of his learned counsel due to indisposition.

Adjourned to 06.08.2019 for arguments before the D.B.


Member


Chairman

03.10.2018

Appellant in person present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Representative of the department is not in attendance therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply positively on the next date. Adjourned. To come up for written reply/comments on 16.11.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

16.11.2018

The learned Chairman has not yet assumed the charge. Therefore, the case is adjourned. To come up on 04.01.2019. Written reply received on behalf of respondents by Mr. Zahid ur Rehman Inspector and placed on file.


READER

07.01.2019

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 04.03.2019 before D.B


Member


Member

27.06.2018 Learned counsel for the appellant. Preliminary arguments heard.

The appellant (Constable) has filed the present service appeal against the order dated 15.04.2009 whereby he was awarded major punishment of dismissal from service on the ground of absence. Against the original impugned order the appellant filed departmental appeal on 13.03.2018 which appeal was rejected/filed being badly time barred about more than 09 years

The present service appeal was filed after about more than 09 of the issuance of original impugned order. Since the original impugned was issued with retrospective effect, in the interest of justice, the present appeal is admitted for regular hearing subject to all just legal objections including issue of limitation. The appellant is directed to deposit security and process fee within seven (10) days, thereafter notices be issued to the respondents for written reply/comments on 08.08.2018 before S.B.

Appellant Deposited
Security & Process Fee


Member

08.08.2018

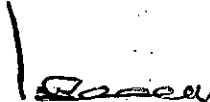


Counsel for the appellant and Mr. Kabirullah Khattak, AAG alongwith Zahid SI for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 03.10.2018 before S.B.


Muhammad Amin Khan Kundi
Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 558/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	18/04/2018	<p>The appeal of Mr. Sheeraz Khan presented today by Mr. Inayatullah Khan Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 18/4/18</p>
2-	19/04/18.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30/04/18.</u></p> <p style="text-align: right;"> MEMBER</p>
	30.04.2018	<p>Clerk of the counsel for appellant present. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on 27.06.2018 before S.B.</p> <p style="text-align: right;"> Reader</p>

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

S.A.No. 558 /2018

Sheeraz Khan..... Appellant

Versus

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar & others..... Respondents

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S.No.	Description of documents.	Annexure	Pages.
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2	Affidavit.		6
3	Addresses of the parties.		7
4	Copy of final show cause notice issued by respondent No.3 and written note prepared by P.A. DPO	A-B	A 8 - B 9 -
5	Copy of impugned original order dated 15.04.2009	C	10 -
6	Copy of departmental appeal and impugned final order dated 19.03.2018	D-E	D 11 E 12
7	Copy of judgment	F	13-16
8	Wakalatnama.		17

Sheeraz Khan

Appellant
through

Inayat Ullah Khan

Inayat Ullah Khan
Advocate High Court
LL.M (U.K)
Cell: 0333-9227736

Dated: 17.04.2018

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.Service Appeal No. 558 /2018Khyber Pakhtukhwa
Service TribunalDiary No. 591Dated 18-4-2018**Sheeraz Khan** son of Sharafat Khan

Constable Belt No.628 Police Commandant, PTC Hangu

R/O Shahoo Khel, Tehsil and District Hangu..... Appellant

Versus

- 1) Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2) Regional Police Officer, Kohat Region.
- 3) District Police Officer, Hangu..... Respondents

Appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned original order No.OB-265 dated 15.04.2009 and against which departmental appeal dated 13.03.2018 was filed before respondent No.2 which was declined vide impugned final order No.2765/EC/ diary No.1213 dated 19.03.2018 against which the instant service appeal is filed within stipulated period of 30 days, hence the appeal is within time.

Filed to-day

Registrar
18/4/18**Prayer:**

On acceptance of this service appeal, the impugned original order No.OB-265 dated 15.04.2009 and impugned final order dated 19.03.2018 may kindly be set aside and the appellant be reinstated

in service with all consequential back benefits.

Any other relief to whom the appellant is found entitled during course of hearing may also be granted.

Respectfully Sheweth;

Brief facts giving rise to the instant appeal are as under:-

- 1) That the appellant was appointed as constable in the year 2008 in police department.
- 2) That the appellant during course of undergoing training seriously got ill and was admitted in the hospital for medical treatment and also requested the respondents to grant him medical leave.
- 3) That the genuine request of the appellant was turned down by the respondents and subsequently disciplinary proceedings were initiated against the appellant on the charges of absence from duty w.e.f. 10.09.2008 till unknown date. (Copy of final show cause notice issued by respondent No.3 and written note prepared by P.A. DPO are attached as Annex: "A & B").
- 4) That respondent No.3 vide order OB No.265 dated 15.04.2009 dismissed the appellant from service on the charges of absence from duty without taking into consideration his genuine request for grant of medical leave. (Copy of impugned original order dated 15.04.2009 is attached as Annex: "C").
- 5) That the appellant preferred his departmental appeal dated 13.03.2018 before the respondent No.2 which was declined vide order No.2765/EC, diary No.1213 dated 19.03.2018. (Copy of departmental appeal and impugned

final order dated 19.03.2018 are attached as Annex: "D & E") respectively.

- 6) That the appellant feeling aggrieved against the impugned orders as referred above, constrained to file the instant service appeal for his reinstatement in service on the following amongst other grounds:

GROUND FOR APPEAL:

- a) That the impugned orders are against the law, facts and material available on record, hence not tenable in the eyes of law, which is violative of Article 4 of the Constitution of Islamic Republic of Pakistan.

"All citizens shall be treated in accordance with law".

- b) That the respondent No.2 has passed the impugned original order with retrospective effect which is void ab-initio, hence no limitation runs against a void order. Service of the appellant could not be terminated/dismissed with retrospective effect. (**2011 SCMR 1220**).

No limitation runs against a void order. (**1985 SCMR 1178**).

- c) That the impugned orders are also violative of section 24-A of General Clauses Act as the competent authority and appellate authority failed to pass a speaking order with reasons viz-a-viz the allegations without holding a regular inquiry.
- d) That no statement of allegation nor any charge sheet was served upon the appellant nor the same was communicated to him, which is factum is violative the mandatory process.

Framing of charge and its communication to civil servant along with statement of allegations was

not mere a formality but was a mandatory requisite which was to be followed. ----- principles ----- failure to follow the principle ----- the impugned penalty was set aside. (2000 SCMR 1743).

- e) That competent authority has initiated the summary proceedings without providing an opportunity of hearing to justify his case by the appellant during course of a regular inquiry and the factum of illness of the appellant was altogether ignored and imposed the major penalty of dismissal from service upon the appellant without adhering to the principles of natural justice, which are part and parcel of all statutes and also violative of the mandatory provisions of Article 10-A of the Constitution of Pakistan, hence the impugned orders cannot be sustainable within the four corners of law.
- f) That no initial show cause notice nor any final show cause notice was served upon the appellant before imposition of the major penalty of removal from service which factum is against all the canons of justice, fair play and equity. Equity demands that sufficient opportunity of providing defence should have been provided by conducting a regular inquiry, which mandatory exercise has not been carried out, therefore, the impugned orders are bereft of any legal sanctity, which can be termed as void ab-initio.
- g) That the allegations as contained in the impugned order are vehemently denied by the appellant, **for the reason that the appellant was regularly attending his official training and only got absented because of serious health issues and later on when he fully regained his health, he was unceremoniously denied to resume his training in a mechanical way, hence the absence of the appellant from his training course cannot be termed as willful but was due to serious illness.** (Complete medical record would be annexed as soon as available from the hospital concerned).
- h) That no ***opportunity of personal hearing*** was afforded by the competent authority nor by the appellate authority,

which is another instance, which could be considered as a flagrant violation of the E&D Rules or any other concerned rules hence, the impugned orders are against the well recognized principles of natural justice which sufficient to vitiate the entire disciplinary proceedings carried out against the appellant at his back in his absence.

- i) That the competent authority was required under the rules to conduct a regular inquiry through an inquiry officer or inquiry committee which procedure has altogether has been scrapped and acted as complainant, inquiry officer and judge by imposing the penalty of removal from service in a fashion alien to law which functions could not be validly undertaken by the competent authority alone.
- j) That this hon'ble Tribunal vide judgment dated 08.01.2018 reinstated the appellant and the impugned order was set aside as the same was assed with retrospective effect which was declared as illegal, void ab-initio and not sustainable in the eye of law. (Copy of judgment is attached as Annex: "F").
- k) That additional grounds will be raised at the bar with kind permission of this Hon'ble Tribunal.

Keeping in view, what has been stated above, it is, therefore, humbly requested the impugned original order No.OB-265 dated 15.04.2009 and impugned final order dated 19.03.2018 may kindly be set aside and the appellant may be reinstated in service with all consequential back benefits.

Any other relief, which has not been specifically asked for and to whom the appellant is found entitled may also be granted.


Appellant
Sheeraz Khan
Constable Belt No.628

Dated: 16.04.2018

Through


Inayat Ullah Khan
Advocate High Court
LL. M (U.K)

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

S.A.No.____/2018

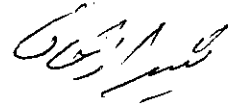
Sheeraz Khan..... Appellant

Versus

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar & others..... Respondents

AFFIDAVIT

I, **Sheeraz Khan** son of Sharafat Khan Constable Belt No.628 Police Commandant, PTC Hangu R/O Shahoo Khel, Tehsil and District Hangu do hereby affirm and declare on oath that the contents of the Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



Deponent

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

S.A.No. ____/2018

Sheeraz Khan..... Appellant

Versus

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar & others..... Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Sheeraz Khan son of Sharafat Khan
Constable Belt No.628 Police Commandant, PTC Hangu
R/O Shahoo Khel, Tehsil and District Hangu

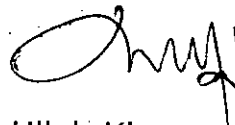
RESPONDENTS:

- 1) Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar.
- 2) Regional Police Officer, Kohat Region.
- 3) District Police Officer, Hangu



Appellant

through



Inayat Ullah Khan
Advocate High Court
LL.M (U.K)

Dated: 16.04.2018

Ann A - 8

FER/454

5

FINAL SHOW CAUSE NOTICE.

WHEREAS, you Recruit Constable Sheraz Khan No. 628 while undergoing Basic Recruit Course at PTC Hangu absented himself from training programme with effect from 10.09.2008 till now without prior permission or leave. Later on you were reverted to District as unqualified vide Commandant, PTC Hangu O.B. No. 543 dated 10.09.2008. Your this act speaks of your cowardice and lack of interest in official duty.

Therefore, you were served with Charge Sheet and Summary of Allegation. An enquiry was constituted to conduct departmental enquiry and submit findings. The Enquiry Committee have submitted the findings on 31.12.2008 and recommended you for major punishment.


Now, therefore, I, Sajjad Khan, D.P.O, Hangu have vested the power under the NWFP Removal from Service (SPECIAL POWERS) Ordinance-2000 liable to take action against you, which will render you to a Major Punishment.

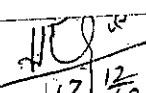
Your reply to this Final Show Cause Notice must reach to the office of the undersigned within **7 days** of the receipt of the Final Show Cause Notice. In case your reply is not received within the stipulated period otherwise, it shall be presumed that you have no defence to offer and EX-PARTE departmental action will be taken against you. Also state whether you desire to be heard in person?
(Copy of the findings of the Enquiry Committee is enclosed).

No. 271 /PA,

DI: 26/1/2009.


DISTRICT POLICE OFFICER,
HANGU.


(Si Sher Bahadar)


17/12/09

Ann B - 9 -

2

Respected Sir,

It is submitted that Recruit Constable Sheraz Khan No. 628 proceeded against departmentally on the basis of allegation that he while undergoing Basic Recruit Course at PTC Hangu absented himself from training programme with effect from 10.09.2008 till now without prior permission or leave. Later on he was reverted to District as unqualified vide Commandant, PTC Hangu vide O.B. No. 543 dated 10.09.2008.

Charge sheet and statement of allegation was issued to him, to which he failed to reply. An Enquiry Committee comprising Inspector Legal Ishaq Gul and SI Sher Bahadur was constituted to conduct departmental enquiry against him. After completion of enquiry, the Enquiry Committee submitted findings on 17.12.2008 and recommended the defaulter police official for major punishment.

Thereafter Final Show Cause Notice was issued to him through home address, but once again he failed to submit his reply.

Submitted for favour of further order please.

[Handwritten signature]

PA

W/DPO

[Handwritten signature]
(SI Sher Bahadur) 17/12/08

ORDER

This order of mine will dispose off the departmental enquiry initiated against Recruit Constable Sheraz Khan No. 628 on the basis of allegations that he while undergoing Basic Recruit Course at PTC Hangu absented himself from training with effect from 10.09.2008 till now without obtaining proper permission or leave. Later on he was reverted to District as unqualified vide the Commandant, PTC Hangu vide O.B. No. 543 dated 10.09.2008.

Charge sheet together with statement of allegations was issued to him, to which he failed to submit his reply. An Enquiry Committee comprising Inspector Legal Ishaq Gul and SI Sher Bahadur was constituted to conduct departmental enquiry against him under NWFP Removal from Service (SPECIAL POWERS) Ordinance 2000. After completion of enquiry, the Enquiry Committee submitted findings on 17.12.2008 and recommended him for major punishment.

Thereafter, Final Show Cause Notice was issued to him, to which he failed to submit his reply. He was called in Orderly Room but did not turn up.

Keeping in view of above and having gone through available record, the undersigned came to the conclusion that the defaulter constable absented himself from initial stage of his training and returned to district as unqualified by the Commandant, PTC Hangu. The defaulter recruit constable committed gross misconduct which indicates that he is not willing to serve in Police Department. Moreover, he is not found fit for service in a discipline force in these circumstances his retention in Police Department is burden on public exchequer, therefore, I, Sher Akbar, PSP, S.St District Police Officer, Hangu in exercise of the powers conferred upon me, awarded him major punishment of **Dismissal from Service from the date of his absence.**

Order Announced.

OB No. 265

Dated 15.4/2009.

SHER AKBAR,
PSP, S.St
DISTRICT POLICE OFFICER,
HANGU.

OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No. 2495-98/PA, dated Hangu, the 15/04/2009.

Copy of above is submitted to the Dy: Inspector General of Police, Kohat Region, Kohat for favour of information please.

2. Pay Officer, Reader, SRC & OHC for necessary action.

DISTRICT POLICE OFFICER,
HANGU.

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حصہ برطانیہ ڈی ایچ جی جھنگ ڈویژن کوہاٹ
عنوان: - سرویس بحالی
15/05/88
13-3-88

نہایت عاجزی سے التماس کی جاتی ہے کہ بندہ ایک زخمی بیمار شخص کو
میں شہر میں کھڑی ہو گیا۔ بندہ شوق سے اپنا شہر چھوڑا
کہ دوران شہر تک شدید بیمار ہوا۔ اپنے الحاح سے کچھ
کی درخواست کی لیکن انھوں نے یہ درخواست رد کی۔ بعد میں بیماری
اور شدت اختیار کی جو برداشت کرنے سے باہر تھی۔ اس کے بعد میں
گھر آیا۔ بیماری سے صحت یاب ہونے کے بعد کچھ سببوں سے
انھوں نے جواب میں کہا ہے کہ اب کوئٹہ کے قابل نہیں ہیں۔
اپنے گھر چلے جائیں۔

جانب والدین میں ایک عزیز خاندان سے تعلق رکھتا ہوں
مگر وہ گھر کا کافی بوجھ ہے۔ اب میں کسی اور کام کو کوری نہیں
over age ہوں۔
لہذا اب کبھی میری عمر بندہ کے سرویس کو بحال کرنا ہی مشکل
ہو گی۔

الحاج

Filed
Amalika
DIG POLICE
KOHAT

شیراز خان ولد شرافت خان سکنہ شاہ ولی سٹریٹ کوہاٹ
628

mob. 03039205280

DISTRICT POLICE OFFICER,
HANGU.

19/5/88

Phone No: 9260112.

Fax No: 9260114.

Ann E - 12 -

From: - The Regional Police Officer,
Kohat Region, Kohat.

To: - The District Police Officer, Hangu.

No. 2765 /EC, Dated Kohat the 15 / 03 /2018.

Subject: - MERCY PETITION.

MEMO:

The attached mercy petition, preferred by Ex-FC Sheraz Khan No. 628 of Hangu district Police, was examined and filed by W/RPO Kohat being badly time-barred about more than 09-years.

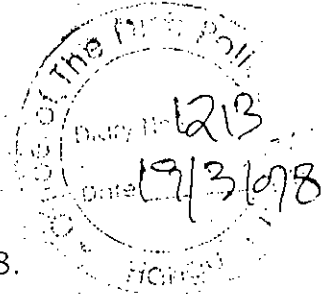
He may be informed accordingly please.

Insp: Legal.

Mr. Maclean.

D.P.O Hangu.

[Signature]
Regional Police Officer,
Kohat Region



-F- -13-

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 240 /ST

Dated 31 /01/2018

16
7/02/18

To

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

Subject: JUDGEMENT/ORDER IN APPEAL NO. 266/2017 MR. MUHAMMAD
UMAR.

I am directed to forward herewith a certified copy of Judgment/Order dated 08/01/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

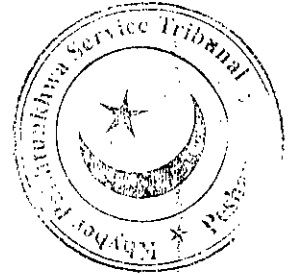
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 266/2017

Date of Institution ... 20.03.2017

Date of Decision ... 08.01.2018



Muhammad Umar Ex-Constable No. 273 of District Police Hangu.
... (Appellant)

VERSUS

1. The Deputy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
and 2 other. ... (Respondents)

MR. UZMA SYED,
Advocate --- For appellant.

MR. MUHAMMAD RIAZ PAINDA KHEL,
Assistant Advocate General --- For respondents.

MR. AHMAD HASSAN, ... MEMBER (Executive)
MR. MUHAMMAD HAMID MUGHAL ... MEMBER (Judicial)

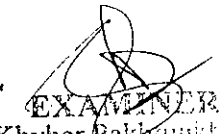
JUDGMENT

AHMAD HASSAN, MEMBER.- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that the appellant was serving as Constable. Disciplinary proceedings were initiated against the appellant and upon culmination major penalty of dismissal was imposed on him vide impugned order dated 28.05.2011. That he preferred departmental appeal which was rejected on 26.06.2011 and was not communicated to the appellant. When he got the knowledge preferred petition under Rule-11-A of Police Rules which was also rejected on 21.02.2017, hence, the instant service appeal on 20.30.2017.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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ARGUMENTS

3. Learned counsel for the appellant argued that on account of absence from duty disciplinary proceedings were initiated and upon culmination major penalty of dismissal from service was imposed vide impugned order dated 26.06.2011. Prescribed procedure laid down in the rules was not followed in the appeal in hand and as such the appellant was condemned unheard. Absence from duty was not deliberate and intentional but circumstances were beyond his control. Statements of witnesses were not recorded nor the appellant was afforded an opportunity to cross examining the witnesses. Impugned order was passed with retrospective effect which is void ab-initio.


4. On the other hand learned Deputy District Attorney General argued that all codal formalities were observed before passing the impugned order. He was treated according to law and rules, hence, there is no illegality in the said order. The appeal is not maintainable and be dismissed.

CONCLUSION.

5. Without touching the merits of the case the impugned order was passed with retrospective effect, hence, the same is illegal, void ab-initio and not sustainable in the eyes of law.

6. As a sequel to above, the appeal is accepted and the impugned order is set aside. The intervening period may be treated as leave without pay. However, the respondents are at liberty to conduct de-novo enquiry within a period of 90 days after receipt of this Judgment. In case the de-novo enquiry is conducted then the issue of payment of back benefits shall be subject to outcome of the de-novo

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.

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

S.D

(MUHAMMAD FAMID MUGHAL)
MEMBER

S.D

(AHMAD HASSAN)
MEMBER

ANNOUNCED
08.01.2018

Certified to be true copy

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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WAKALATNAMA

(Power of Attorney)

BEFORE THE SERVICES TRIBUNAL KPK, PESHAWAR.

.....Sheeraz Ischan.....
(Petitioner)
(Plaintiff)
(Applicant)
(Appellant)
(Complainant)
(Decree Holder)

Inspector General of Police I.S.P.K. 2 ^{VERSUS} others
(Respondent)
Defendant)
(Accused)
(Judgment Debtor)

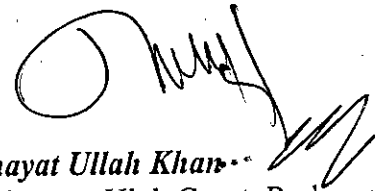
I/ We, _____

_____ in the above noted Service Appeal do hereby appoint and constitute **Inayat Ullah Khan** Advocate Peshawar to appear, plead, act, compromise, withdraw or refer to arbitration for me/ us as my/ our Counsel in the above noted matter, without any liability for that default and with the authority to engage/ appoint any other Advocate/ Counsel at my/ our matter.



CLIENT

Attested & Accepted



Inayat Ullah Khan
Advocate High Court, Peshawar.
LL.M (UK)
House No.460 Street No.12,
E/4, Phase-VII, Hayatabad Peshawar.
Cell: 0333-9227736

DHQ TEACHING HOSPITAL KDA KOHAT

Sent To: OUT DOOR PATIENT TICKET OPD NO 27634

Facility Name _____

Name: [Signature] Age _____ Sex _____

Father's/Husband's Name _____

9
10/2008

Date: _____ Clinical Findings (Investigations/ Treatment/ Referred/ Test Findings)

cap normal 1/2 sub
cap normal 1/2 sub
cap normal
cap normal 1/2 sub (3)
cap normal 1/2 sub
cap normal 1/2 sub

Ben more

7/6 Brixia 400
7/6 Chymotrip 0.3
7/6 [unclear] 1.75 f
[unclear] 1.75

Medical Officer
DHQ Hospital Kohat

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GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Shiraz Khan S/D/W/O Sherafud Khan
resident of Shono Wali Distt Hanayn
Designation _____ Department _____
having CNIC No. 14101-9356844-9 has been examined in this hospital vide
Emergency / O.P.D / Admission No. 12744 dated 10-9-2008

He / She is suffering from Bruise ache
and is advised bed / home rest alongwith the medications prescribed for a period of (04) weeks
w.e.f. 10/9/2008 to 11/10/2008 for the restoration of his / her health.

Not Valid for MLC / Court Purpose


Medical Officer
DHQ Hospital Kohat

DOCTOR'S SIGNATURE.
DHQ TEACHING HOSPITAL
KOHAT

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Sheraf Khan S/D/W/O Sherafat Khan
resident of Shah Wali Distt Hanger

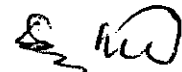
Designation _____ Department _____

having CNIC No. 14101-9356944-9 has been examined in this hospital vide
Emergency / O.P.D / Admission No. 8705 dated 12-10-2008.

He / She is suffering from Sciatica & Back Pain

and is advised bed / home rest alongwith the medications prescribed for a period of (04) weeks
w.e.f. 12/10/2008 to 13/11/2008 for the restoration of his / her health.

Not Valid for MLC / Court Purpose



Medical Officer
DHQ Hospital Kohat

DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

DHQ TEACHING HOSPITAL KDA KOHAT

OUT DOOR PATIENT TICKET OPD NO 8705

Facility Name _____ Age _____ Sex Male
 Name Ullah
 Father's/Husband's Name _____

12/10/2008

Clinical Findings / Investigational Treatment / Referred / Test Findings

24/10/08 Ullah
 25/10/08 P. M. Ullah
 26/10/08 B. M. Ullah
 27/10/08 D. M. Ullah
 28/10/08 Ullah
 29/10/08 Ullah

S. W.
 Medical Officer
 DHQ Hospital Kohat

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GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Sheraz Khan S/D/W/O Sherafat Khan

resident of Shah Wali Distt Huzar

Designation _____ Department _____

having CNIC No. 14101-9356844-9 has been examined in this hospital vide

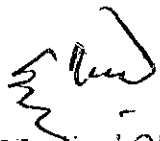
Emergency / O.P.D / Admission No. 9627 dated 14-11-2008

He / She is suffering from _____

and is advised bed / home rest alongwith the medications prescribed for a period of 04 weeks

w.e.f. 14-11-2008 to 15/12/2008 for the restoration of his / her health.

Not Valid for MLC / Court Purpose


Medical Officer
DHQ Hospital Kohat
DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

DHO TEACHING HOSPITAL KDA KOHAT

Sent To: OUT DOOR PATIENT TICKET OPD NO 9127

Facility Name _____

Name [Signature] Age _____ Sex Male

Father's/Husband's Name _____

14
11
2008

Date	Clinical Findings / Investigations / Treatment / Referred / Test Findings
1.	<p>ey. [unclear]</p> <p>[unclear] 1/1/08</p>
2.	<p>ey. [unclear] 1/1/08</p>
3.	<p>ey. [unclear] 1/1/08</p>
7/5	<p>[unclear]</p>
7/5	<p>[unclear]</p>
7/5	<p>[unclear]</p>

Medical Officer
DHO Hospital Kohat

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Sheraf Khan S/D/W/O Sharifat Khan
resident of Shah Wali Dist. Haripur
Designation _____ Department _____
having CNIC No. 14101.9356844.9. has been examined in this hospital vi
Emergency / O.P.D / Admission No. 9873 - dated 16-12-2008

He / She is suffering from Banki Sel.
and is advised bed / home rest alongwith the medications prescribed for a period of 04 weeks
w.e.f. 16-12-2008 to 17-01-2009 for the restoration of his / her health.

Not Valid for MLC / Court Purpose

Medical Officer
DHQ Hospital Kohat
[Signature]
DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

DHQ TEACHING HOSPITAL KDA KOHAT

Sent To: OUT DOOR PATIENT TICKET OPD NO 9873

Facility Name _____

Name _____

Age _____

Sex Male

Father's/Husband's Name Shirajul Islam

LINKHWA

Date
16 / 12 / 2008

Clinical Findings / Investigations / Treatment / Referrals / Test Findings

ip Urticarial rash
7/6 Breast 40D
S/P Mucous
2-2-2
S/P Tracheal
2-2-2
16 Urticarial rash

S/O
Medical Officer
DHQ Hospital Kohat

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Sheraq Khan S/D/W/O Shayafat Khan
resident of _____

Designation _____ Department _____

having CNIC No. 14101-91308-844-9 has been examined in this hospital vide

Emergency / O.P.D / Admission No. 10/01 dated 18th 01 2009

He / She is suffering from Sharh Gul Dakh

and is advised bed / home rest alongwith the medications prescribed for a period of 04 weeks

w.e.f. 18/1/2009 to 19/2/2009 for the restoration of his / her health.

Not Valid for MLC / Court Purpose

Medical Officer
DHQ Hospital Kohat
Shayafat Khan
DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

DHQ TEACHING HOSPITAL KDA KOHAT

Sent To: _____ OUT-DOOR PATIENT TICKET OPD NO 10101

Facility Name _____

Name Jibran Age _____ Sex _____

Father's/Husband's Name _____

Date

Clinical Findings / Investigations / Treatment / Referred / Test Findings

18
01
2009

20/01/09
17m hts
(3)

26 Neurological exam
NO 1
26 verbal 78 P
26 Design DS

[Signature]
Medical Officer
DHQ Hospital Kohat

DHQ TEACHING HOSPITAL KDA KOHAT

Sent To: _____ OUT DOOR PATIENT TICKET OPD NO. 10283

Facility Name _____

Name [Signature] Age _____ Sex _____

Father's/Husband's Name _____

Date	Clinical Findings / Investigations / Treatment / Referred / Test Findings
2 20/2009	76 Brixu roap 1 →
	76 Mezo 1 →
	76 unu 80 p 1 →
	76 Nombu 10 1 →
	80p mule 2 →
	[Signature] Medical Officer DHQ Hospital Kohat

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Sheraaz Khan S/D/W/O Sharafat Khan
resident of _____
Designation _____ Department _____
having CNIC No. 14101-9356844-9 has been examined in this hospital vide
Emergency / O.P.D / Admission No. 10283- dated 20/2/2009.

He / She is suffering from Siccantia (Bucki Neli)
and is advised bed / home rest alongwith the medications prescribed for a period of 04 Weeks
w.e.f. 20/2/2009 to 21/3/2009 for the restoration of his / her health.

Not Valid for MLC / Court Purpose

Medical Officer
DHQ Hospital Kohat
DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Sheeraz Khan S/D/W/O Sharifat Khan
resident of Mohal Distl Heroy

Designation _____ Department _____

having CNIC No. 14101-9356 844-9 has been examined in this hospital vide
Emergency / O.P.D / Admission No. 10535 dated 22/3/2009

He / She is suffering from Backache

and is advised bed / home rest alongwith the medications prescribed for a period of 04 Weeks
w.e.f. 22/3/2009 to 20/4/2009 for the restoration of his / her health.

Not Valid for MLC / Court Purpose


DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

Medical Officer
DHQ Hospital Kohat

DHQ TEACHING HOSPITAL KDA KOHAT

Sent To: OUT DOOR PATIENT TICKET OPD NO 10535

Facility Name: _____

Name: Ullah Age _____ Sex _____

Father's/Husband's Name _____

Date
22 / 3 / 2009

Clinical Findings / Investigations / Treatment / Referred / Test Findings

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Ad. Ant. for Col. 10 eels
Def 22 / 3 / 2009

[Signature]
Medical Officer
DHQ Hospital Kohat

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

Service Appeal No. 558/2018

Ex Constable Sheraz Khan No. 628

..... Appellant.

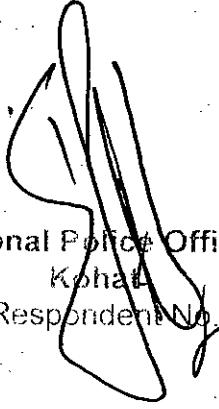
VERSUS

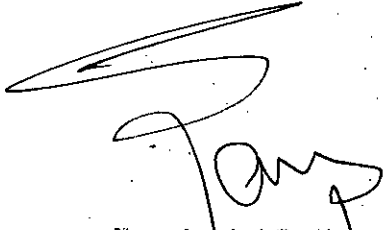
Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar and others

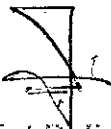
..... Respondents.

COUNTER AFFIDAVIT

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.


Regional Police Officer/DIG,
Kohat
(Respondent No. 1)


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 3)


District Police Officer,
Hangu
(Respondent No. 2)

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

Service Appeal No. 558/2018

Ex-constable Sheraz Khan No. 628

..... Appellant

VERSUS

Inspector General of Police,
Khyber Pakhtunkhwa, & others

..... Respondents

COMMENTS ON BEHALF OF RESPONDENTS.

Respectively Sheweth:

Parawise comments are submitted as under:-

Preliminary Objections:

1. That the appellant has got no cause of action.
2. That the appellant has got no locus standi.
3. That the appellant is estopped to file the instant appeal due to his own act.
4. The appellant did not approach the Honorable Tribunal with clean hands.
5. That the appeal is not maintainable in its present form.
6. That the appeal is not maintainable due to misjoinder and non-joinder of necessary parties.
7. **That the appeal is badly time barred (about 09 years) and the appellant has not prayed for condonation of delay / limitation.**

Facts:

1. Pertains to record, hence no comments.
2. Incorrect, the appellant (ex-recruit constable) was detail for basic recruit course at PTC Hangu. The appellant absented himself from training on 10.09.2008 and reported unqualified by Commandant PTC, Hangu.
3. Incorrect, the appellant willfully absented from training and did not report to District Police / Police Lines. He did not make any request for leave. Therefore, the appellant was issued charge sheet alongwith statement of allegation and inquiry committee was constituted. The appellant neither make his arrival, nor join the inquiry proceedings. Final show cause notice was issued at his home address, but received unserved as the appellant was not found at his house.
4. Incorrect, the appellant did not make any request for leave and deliberately absented himself from training and district Police. Inquiry proceedings culminated into his dismissal from service as, there was no probability of rejoining duty by the appellant. Furthermore, the appellant committed a gross misconduct during his initial service i.e one year.
5. The appellant approached, departmental appellate forum after 09 years of his dismissal from service, hence the departmental appeal being badly time barred was filed by the respondent No. 2.
6. Incorrect, the appellant estopped to file the instant appeal for his own conduct.

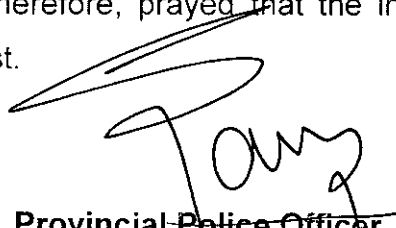
Grounds:-

- a. Incorrect, the appellant was treated in accordance with law & rules.-

- b. Incorrect, a legal and speaking orders were passed by the respondents No. 2 & 3. Furthermore, regarding submission of case law / ruling, it is submitted that each case has its own circumstances and facts
- c. Incorrect, the respondents No. 2 & 3 had passed legal and speaking orders in the light of appellant's conduct.
- d. Incorrect, the appellant was repeatedly summoned through different sources and lastly through his home address, but did not join the proceedings, nor reported his arrival. Furthermore, submission of a long delay in appeals i.e 09 years itself speaks of his disinterest in discharge / serving in Police department. Furthermore, Police a disciplined force and reinstatement of appellant will be burden on public exchequer.
- e. Incorrect, a proper departmental inquiry was initiated against the appellant with appointment of an inquiry committee. Furthermore, the appellant proceeded with departmentally in accordance with law & rules.
- f. Incorrect, proper show cause notice was issued against the appellant, but he did not join the inquiry proceedings and remained absent. Final show cause notice was issued at his home address, but received unserved as the appellant was not available at his home.
- g. Incorrect, as submitted in the above paras that the appellant absented himself from basic recruit course and returned unqualified to the district, but the appellant did not make his arrival to Police Lines, neither joint inquiry proceedings. Furthermore, the appellant approached in departmental appeal after a laps of about 09 years of his dismissal from service.
- h. The appellant did not report till the disposal of departmental proceedings which speaks of his disinterest.
- i. Incorrect, proper departmental inquiry was conducted against the appellant under the law & rules.
- j. Each and every case has its own facts/circumstances. Legally the appellant cannot refer / get benefit of the judgment passed by this honorable Tribunal in other service appeal.
- k. The respondent may also be allowed to advance additional grounds during course of hearing.

Keeping in view of the above, it is submitted that the appeal is without merit, substance, against fact and badly time barred. It is, therefore, prayed that the instant appeal of the appellant may kindly be dismissed with cost.


Regional Police Officer/DIG,
Kohat
(Respondent No. 1)


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 3)


District Police Officer,
Hangu
(Respondent No. 2)

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

IN

S.A.No.558/2018

Sheeraz Khan..... Appellant

Versus


Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar & others..... Respondents

INDEX

S.No.	Description of documents.	Annexure	Pages.
1	Rejoinder		1-3
2	Affidavit.		4
3	Medical Documents		5-18

Appellant

Through



Inayat Ullah Khan
Advocate High Court
LL.M (U.K)

Mob: 0333-9059746

Add: Hayatabad Phase-2 Peshawar

& 

Faheem Ullah Khan
Advocate High Court

- 1 -

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

IN
S.A.No.558/2018

Sheeraz Khan..... Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar & others..... Respondents

**REJOINDER ON BEHALF OF APPELLANT WITH
REGARD TO THE PARA-WISE COMMENTS
SUBMITTED BY RESPONDENTS NO.1,2 AND 3.**

RESPECTFULLY SHEWETH;

Reply Preliminary objections:

i to vii

All the preliminary objections are incorrect, hence denied. With regard to objection No.vii the appeal of the appellant can not be dismissed on the point of limitation as the impugned order dated 15.04.2019 was passed with retrospective effect from 10.09.2008.

REPLY ON FACTS:

- 1) Para-1 needs no reply.
- 2) Para-2 of reply is incorrect, hence denied. In fact the appellant got seriously ill on 10.09.2008 and requested the respondents to grant him medical leave which was denied without any valid reason hence the

absence of appellant from his duties on 10.09.2008 is not willful but due to his serious illness.

Complete medical record which was not available at the time of filing the service appeal is now annexed with this rejoinder for ready reference as it was indicated in the appeal at as soon as the original medical record is available would be filed before this Honourable Tribunal for perusal.

It is pertinent to mention that according to the medical record the appellant was suffering from Sciatica / backache and in these circumstances it was almost impossible for him to continue his training course, therefore denying medical leave is against the service rules on the subject. *(Reported case law will be produced at the time of hearing.)*

- 3) Para-3 of reply is incorrect, hence denied. Detailed reply has been given in para-2 of the rejoinder, furthermore para 3 of appeal is correct.
- 4) Para 4 of reply incorrect hence denied. Para 4 of appeal is correct.
- 5) Para 5 of reply is incorrect hence denied for the reason as explained above that no limitation runs against void order hence the question of limitation is immaterial and the appellant's appeal can not be knocked out on the question of limitation. Even otherwise there is a reported judgment of the august Supreme Court of Pakistan that litigants should not be non suited on the basis of technicalities including limitation. PLD 2003 SC Page 724 Citation K.
- 6) Para-6 of reply is incorrect hence denied.

REPLY ON GROUNDS:

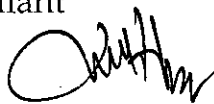
A All Grounds "A to K" are incorrect, wrongly set up, hence denied while the grounds raised in the appeal are correct and applicable to the claim of appellant in the light of the reported judgments referred above.

Keeping in view the aforesaid submissions, it is, most humbly prayed that the legal points raised in the rejoinder to be considered as part and parcel of the appeal in its true perspective hence the appeal may kindly be allowed.

4-3-2019

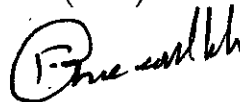
Appellant

Through



Inayat Ullah Khan
Advocate High Court
LL.M (U.K)

&



Faheem Ullah Khan
Advocate High Court

BEFORE THE PROVINCIAL SERVICE TRIBUNAL, KPK, PESHAWAR.

IN
S.A.No.558/2018

Sheeraz Khan..... Appellant

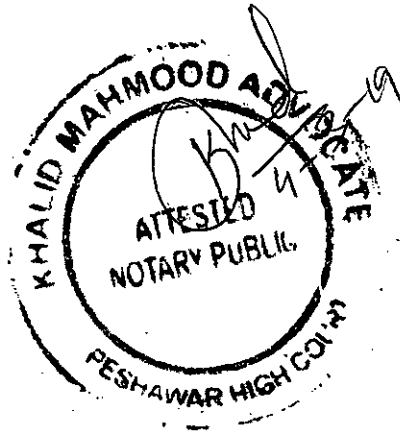
Versus

Inspector General of Police, Khyber Pakhtunkhwa,
Peshawar & others..... Respondents

AFFIDAVIT

I, **Sheeraz Khan** son of Sharafat Khan Constable Belt No.628 Police Commandant, PTC Hangu R/O Shahoo Khel, Tehsil and District Hangu do hereby affirm and declare on oath that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

4-3-2019



شیراز خان

Deponent

DHQ TEACHING HOSPITAL KDA KOHAT

Sent To: _____ OUT DOOR PATIENT TICKET OPD NO. 27634

Facility Name: _____

Name: _____ Age: _____ Sex: _____

Father's/Husband's Name: _____

(5)

Date

Clinical Findings / Investigations / Treatment / Referred / Test Findings

9
10/2008

cap. *[Handwritten]* 1.88
cap. *[Handwritten]* 1.28
cap. *[Handwritten]*
cap. *[Handwritten]* ③
cap. *[Handwritten]* 1.14
cap. *[Handwritten]* 1.18

Her name

Ms. *[Handwritten]*
Ms. *[Handwritten]*
Ms. *[Handwritten]*
Ms. *[Handwritten]*

Medical Officer
DHQ Hospital Kohat

6

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

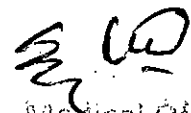
MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Shiraz Khan S/D/W/O Shirafat Khan
resident of Shoh Wali Mist Hanger
Designation _____ Department _____
having CNIC No. 14101-9356844-9 has been examined in this hospital vide
Emergency / O.P.D / Admission No. 12744 dated 10-9-2008

He / She is suffering from Bruise
and is advised bed / home rest alongwith the medications prescribed for a period of (04) weeks
w.e.f. 10/9/2008 to 11/10/2008 for the restoration of his / her health.

Not Valid for MLC / Court Purpose


Medical Officer
DHQ Hospital Kohat
DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

(7)

DHQ TEACHING HOSPITAL KDA KOHAT

Sent to: OUT DOOR PATIENT TICKET OPD NO 8705

Facility Name: _____

Name: [Signature] Age: _____ Sex: Male

Father's/Husband's Name: _____

12 ¹⁰/₂₆₆₈

Date

Clinical Findings / Investigations / Treatment / Referred / Test Findings

ey: Normal
 ear: Normal
 2/5 Bronchus
 2/5 Trachea
 7/5 ventral
 sup muscle

[Signature]
 Medical Officer
 DHQ Hospital Kohat

8

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

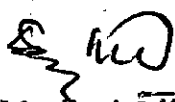
MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Shiraj Khan S/D/W/O Shirafat Ichan
resident of Shah Wali Mist Hamir
Designation _____ Department _____
having CNIC No. 14101-9356944-9 has been examined in this hospital vide
Emergency / O.P.D / Admission No. 8705 dated 12-10-2008.

He / She is suffering from Sciatica & Back Pain
and is advised, bed / home rest alongwith the medications prescribed for a period of (04) Weeks
w.e.f. 12/10/2008 to 13/11/2008 for the restoration of his / her health.

Not Valid for MLC / Court Purpose


Medical Officer
DHQ Hospital Kohat
DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

9

DHQ TEACHING HOSPITAL KDA KOHAT

Sent To: OUT DOOR PATIENT TICKET OPD NO 9.129

Facility Name _____

Name [Signature] Age _____ Sex Male

Father's/Husband's Name _____

14/11/2008

Date:

Clinical Findings / Investigations / Treatment / Referred / Test Findings

1. [Signature] [Signature]
2. [Signature] [Signature]
3. [Signature] [Signature]

705 [Signature]
 705 [Signature]
 705 [Signature]

Medical Officer
DHQ Hospital Kohat

15

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

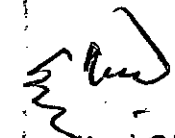
MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Shiraz Khan S/D/W/O Sharifat Khan
resident of Shah Wali Distt Huzar
Designation _____ Department _____
having CNIC No. 14101-9356844-9 has been examined in this hospital vide
Emergency / O.P.D / Admission No. 9127 dated 14-11-2008

He / She is suffering from Backache
and is advised bed / home rest alongwith the medications prescribed for a period of 04 weeks
w.e.f. 14-11-2008 to 15/12/2008 for the restoration of his / her health.

Not Valid for MLC / Court Purpose


Medical Officer
DHQ Hospital Kohat
DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

DHQ TEACHING HOSPITAL KDA KOHAT

Sent To: _____ OUT DOOR PATIENT TICKET OPD NO 9873

Facility Name: _____

Name: Qasim Age: _____ Sex: Male

Father's/Husband's Name: Shahid Ali

Date

Clinical Findings / Investigations / Treatment / Referral / Test Findings

16 / 12 / 2008

ip Urticaria / 1 mo

7th Boxcar 400
①

8/11 Mucosa
2-2-2

8/11 Tracheal
2-2-2

16 Urticaria 1-1

[Signature]
Medical Officer
DHQ Hospital Kohat

11

12

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Shiraj Khan S/D/W/O Sharifat Khan
resident of Shah Wali Distt Hangu

Designation _____ Department _____

having CNIC No. 14101-9356944-9 has been examined in this hospital vide
Emergency / O.P.D / Admission No. 9973 dated 16-12-2008

He / She is suffering from Banki sel

and is advised bed / home rest alongwith the medications prescribed for a period of 04 weeks
w.e.f. 16-12-2008 to 17-02-2009 for the restoration of his / her health.

Not Valid for MLC / Court Purpose

Medical Officer
DHQ Hospital Kohat
[Signature]
DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

(13)

DHQ TEACHING HOSPITAL KDA KOHAT

Sent To _____ OUT DOOR PATIENT TICKET OPD NO. 10283

Facility Name _____

Name (Signature) Age _____ Sex _____

Father's/Husband's Name _____

Date
2
20
2009

Clinical Findings / Investigations / Treatment / Referred / Test Findings

76 Broken roof

75 Mezz

75 under 80 p

75 Membership

Dr. M. Hussain

(Signature)
Medical Officer
DHQ Hospital, Kohat

(14)

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Sheraz Khan S/D/W/O Sharafat Khan
resident of _____

Designation _____ Department _____

having CNIC No. 14101-9356844-9 has been examined in this hospital vide

Emergency / O.P.D / Admission No. 10283- dated 20/2/2009.

He / She is suffering from Sciatica (Back pain)

and is advised bed / home rest alongwith the medications prescribed for a period of 04 Weeks

w.e.f. 20/2/2009 to 21/3/2009 for the restoration of his / her health.

Not Valid for MLC / Court Purpose

Medical Officer
DHQ Hospital Kohat
DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

UD

DHO TEACHING HOSPITAL KDA KOHAT

Sent To: _____ OUT DOOR PATIENT TICKET OPD NO 10535

Facility Name _____

Name Ud... Age _____ Sex _____

Father's/Husband's Name _____

Date
3
22/2009

Clinical Findings / Investigations / Treatment / Referred / Test Findings

Do Baekam

Re Cep

ty vithul

tes buke

Adh link for Coa weekly
Wed 22/3/2009

[Signature]

Medical Officer
DHO

(18)

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms. Sheraaz Khan S/D/W/O Sharifat Khan
resident of Mohal Distri Herat

Designation _____ Department _____

having CNIC No. 14101-9356 844-9 has been examined in this hospital vide
Emergency / O.P.D / Admission No. 10535 dated 22/3/2009.

He / She is suffering from Berkahic
and is advised bed / home rest alongwith the medications prescribed for a period of 04 Weeks
w.e.f. 22/3/2009 to 20/4/2009 for the restoration of his / her health.

Not Valid for MLC / Court Purpose

[Signature]
DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

Medical Officer
DHQ Hospital Kohat

(17)

DHQ TEACHING HOSPITAL KDA KOHAT

Sent To: OUT-DOOR PATIENT TICKET OPD NO 10107

Facility Name _____

Name Jib/W Age _____ Sex _____

Father's/Husband's Name _____

18 01 2009

Date

Clinical Findings / Investigational / Treatment / Referred / Test Findings

up normal 20 P
1122 81.5
③

26 Neurological 200
NO 1
26 normal 20 P
26 2009 DS
1

[Signature]
Medical Officer
DHQ Hospital Kohat

(18)

GOVERNMENT OF KHYBER PAKHTUNKHWA
DISTRICT HEADQUARTER HOSPITAL KDA KOHAT

MEDICAL LEAVE CERTIFICATE

Signatures of Patient _____

Certified that Mr./Ms.

Shereaz Khan

S/D/W/O

Sharafat Khan

resident of _____

Designation _____

Department _____

having CNIC No. 14101-9306844-9

has been examined in this hospital vide

Emergency / O.P.D / Admission No. 10/01

dated

18th
2009

He / She is suffering from

sun burn, skin

and is advised bed / home rest alongwith the medications prescribed for a period of

04 weeks

w.e.f. 18/1/2009

to

19/2/2009

for the restoration of his / her health.

Not Valid for MLC / Court Purpose

Medical Officer
DHQ Hospital Kohat
DOCTOR'S SIGNATURE
DHQ TEACHING HOSPITAL
KOHAT

FERS (454) (1)

ORDER

This order of mine will dispose off the departmental enquiry initiated against Recruit Constable Sheraz Khan No. 628 on the basis of allegations that he while undergoing Basic Recruit Course at PTC Hangu absented himself from training with effect from 10.09.2008 till now without obtaining proper permission or leave. Later on he was reverted to District as unqualified vide the Commandant, PTC Hangu vide O.B. No. 543 dated 10.09.2008.

Charge sheet together with statement of allegations was issued to him, to which he failed to submit his reply. An Enquiry Committee comprising Inspector Legal Ishaq Gul and SI Sher Bahadur, was constituted to conduct departmental enquiry against him under NWFP Removal from Service (SPECIAL POWERS) Ordinance 2000. After completion of enquiry, the Enquiry Committee submitted findings on 17.12.2008 and recommended him for major punishment.

Thereafter, Final Show Cause Notice was issued to him, to which he failed to submit his reply. He was called in Orderly Room but did not turn up.

Keeping in view of above and having gone through available record, the undersigned came to the conclusion that the defaulter constable absented himself from initial stage of his training and returned to district as unqualified by the Commandant, PTC Hangu. The defaulter recruit constable committed gross misconduct which indicates that he is not willing to serve in Police Department. Moreover, he is not found fit for service in a discipline Force in these circumstances his retention in Police Department is burden on public exchequer, therefore, I, Sher Akbar, PSP, S.St District Police Officer, Hangu in exercise of the powers conferred upon me, awarded him major punishment of **Dismissal from Service from the date of his absence.**

Order Announced.

OB No. 265

Dated 15.4 /2009.



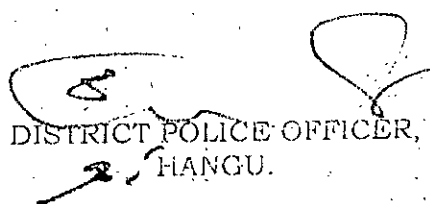
SHER AKBAR,
PSP, S.St
DISTRICT POLICE OFFICER,
HANGU.

OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No. 2495-98 /PA, dated Hangu, the 15/04/2009.

Copy of above is submitted to the Dy: Inspector General of Police, Kohat Region, Kohat for favour of information please.

2. Pay Officer, Reader, SRC & OHC for necessary action.



DISTRICT POLICE OFFICER,
HANGU.

Respected Sir,

It is submitted that Recruit Constable Sheraz Khan No. 628 proceeded against departmentally on the basis of allegation that he while undergoing Basic Recruit Course at PTC Hangu absented himself from training programme with effect from 10.09.2008 till now without prior permission or leave. Later on he was reverted to District as unqualified vide Commandant, PTC Hangu vide O.B. No. 543 dated 10.09.2008.

Charge sheet and statement of allegation was issued to him, to which he failed to reply. An Enquiry Committee comprising Inspector Legal Ishaq Gul and SI Sher Bahadur was constituted to conduct departmental enquiry against him. After completion of enquiry, the Enquiry Committee submitted findings on 17.12.2008 and recommended the defaulter police official for major punishment.

Thereafter Final Show Cause Notice was issued to him through home address, but once again he failed to submit his reply.

Submitted for favour of further order please.

[Handwritten signature]

PA

W/DPO

[Faint handwritten signature]

242
SH

FER 2 454

3

FINAL SHOW CAUSE NOTICE.

WHEREAS, you Recruit Constable Sheraz Khan No. 628 while undergoing Basic Recruit Course at PTC Hangu absented himself from training programme with effect from 10.09.2008 till now without prior permission or leave. Later on you were reverted to District as unqualified vide Commandant, PTC Hangu O.B. No. 543 dated 10.09.2008. Your this act speaks of your cowardice and lack of interest in official duty.


Therefore, you were served with Charge Sheet and Summary of Allegation. An enquiry was constituted to conduct departmental enquiry and submit findings. The Enquiry Committee have submitted the findings on 31.12.2008 and recommended you for major punishment.

Now, therefore, I, Sajjad Khan, D.P.O, Hangu have vested the power under the NWFP Removal from Service (SPECIAL POWERS) Ordinance-2000 liable to take action against you, which will render you to a Major Punishment.

Your reply to this Final Show Cause Notice must reach to the office of the undersigned within **7 days** of the receipt of the Final Show Cause Notice. In case your reply is not received within the stipulated period otherwise, it shall be presumed that you have no defence to offer and EX-PARTE departmental action will be taken against you. Also state whether you desire to be heard in person?

(Copy of the findings of the Enquiry Committee is enclosed).

No. 271 /PA,
DU: 26/1/2009.


DISTRICT POLICE OFFICER,
HANGU.

DFC

1 Insp. SHO, Hangu

Ret:- 06/04/09

(Si Sher Akhtar)

4

FINAL SHOW CAUSE NOTICE.

WHEREAS, you Recruit Constable Sheraz Khan No. 628 while undergoing Basic Recruit Course at PTC Hangu absented himself from training programme with effect from 10.09.2008 till now without prior permission or leave. Later on you were reverted to District as unqualified vide Commandant, PTC Hangu O.B. No. 543 dated 10.09.2008. Your this act speaks of your cowardice and lack of interest in official duty.

Therefore, you were served with Charge Sheet and Summary of Allegation. An enquiry was constituted to conduct departmental enquiry and submit findings. The Enquiry Committee have submitted the findings on 31.12.2008 and recommended you for major punishment.


Now, therefore, I, Sajjad Khan, D.P.O, Hangu have vested the power under the NWFP Removal from Service (SPECIAL POWERS) Ordinance-2000 liable to take action against you, which will render you to a Major Punishment.

Your reply to this Final Show Cause Notice must reach to the office of the undersigned within **7 days** of the receipt of the Final Show Cause Notice. In case your reply is not received within the stipulated period otherwise, it shall be presumed that you have no defence to offer and EX-PARTE departmental action will be taken against you. Also state whether you desire to be heard in person?

(Copy of the findings of the Enquiry Committee is enclosed).

No. 271 /PA;

Dt: 26/1/2009.


DISTRICT POLICE OFFICER,
HANGU.

(S: Sheraz Khan) 6.1.2009

جناب S.H-5 صاحب خانہ

از دفتر PA to DPO
Hauzu

ریکریٹ کینسل شیڈولز خاں پٹر 628 نکتہ شاہ خلیل خانہ ہنگو۔
بذریعہ D.F.C خانہ ہنگو تحصیل کر کے بعد از تحصیل دفتر ہنگو بھولیں۔

APA to DPO
Hauzu
Date: 20/09

ریکریٹ شیڈولز خاں پٹر 628 سیک، شاہ خلیل
شاہ خلیل ہے۔ اور صلح کرانے

سر اور خان زہر کبار خانہ شاہ خلیل
ملاحظہ

ریکریٹ شیڈولز خاں پٹر 628 سیک، شاہ خلیل
شاہ خلیل ہے۔ اور صلح کرانے
ریکریٹ شیڈولز خاں پٹر 628 سیک، شاہ خلیل
شاہ خلیل ہے۔ اور صلح کرانے
ریکریٹ شیڈولز خاں پٹر 628 سیک، شاہ خلیل
شاہ خلیل ہے۔ اور صلح کرانے

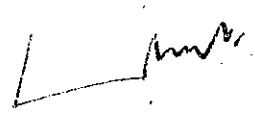
ریکریٹ شیڈولز خاں پٹر 628 سیک، شاہ خلیل
شاہ خلیل ہے۔ اور صلح کرانے
ریکریٹ شیڈولز خاں پٹر 628 سیک، شاہ خلیل
شاہ خلیل ہے۔ اور صلح کرانے

Respected Sir,

It is submitted that Recruit Constable Sheraz Khan No. 628 proceeded against departmentally on the basis of allegation that he while undergoing Basic Recruit Course at PTC Hangu absented himself from training programme with effect from 10.09.2008 till now without prior permission or leave.

He was served with Charge Sheet and Statement of Allegation under N.W.F.P. Removal from Service (SPECIAL POWERS) Ordinance, 2000 to which he failed to reply. An Inquiry Committee comprising of Inspector Legal Ishaq Gul and SI Sher Bahadur was constituted to conduct departmental enquiry against him. After completion of enquiry, the inquiry committee submitted its finding on 17.12.2008 and recommended the defaulter police official for major punishment as neither he submitted his reply to the charge-sheet nor joined the enquiry proceedings.

Submitted for favour of further order please.



PA

W/DPO

*Done FSC & Name
Project*

W 23/11/19

Defenceless enquiry against recruit constable

Sheroz Khan No 620

7

Findings:

Ofc, the above named constable (under training) was going under training in P.T.C. Hojra, absented himself from P.T.C. vide commandment P.T.C. Hojra Signal No 3435-36/G.C. dated 13.9.08. He was summoned with charge sheet along with statement of allegations under the RUCIP Removal from Service (SPLs Power) ord: 2000 and was ^{are} ~~was~~ appointed as Enquiry officer.

The defaulter constable was summoned severally but failed to attend/join the enquiry proceedings. Next he was summoned through D.P.C. concerned, but did not appear. Moreover Police line Syed Yasrab Hussain was summoned and examined.

Perusal of record reveals that the defaulter was recruited in Police depalt as a constable and was under training in P.T.C. Hojra from where he absented himself. Yet to day he is where about is not known. He neither submitted reply to the charge sheet nor joined the enquiry proceedings. So we came to the conclusion that he is not willing to serve in Police Deptt. and from initial stage he committed gross misconduct. Therefore he is recommended for major punishment. Please

H/O/

H/O

H/O
17/12

Departmental Enquiry against Recruit Constable Sheraz Ali 628.

- 1-11-08 Enquiry papers received. The defaulter Constable be summoned for 10-11-08 do
Eo
- 10-11-08 the defaulter Constable absent, be summoned for 21-11-08 do
whenever be heard.
- 21-11-08 The defaulter Constable is against absent be summoned for 26-11-08. Whenever Police Line is present and examined.
- 26-11-08 The defaulter Constable is against absent, be summoned for 3-12-08 do
- 3-12-08 Absent as above, be summoned through DFC do
Per 17-12-08 do
Eo
- 17-12-08 Absent as above. Findings are submitted for H's present and order please do
w/o do 17-12-08
Eo

CHARGE SHEET.

I, SAJJAD KHAN, D.P.O, HANGU as competent authority, hereby charge you, Recruit Constable Sheeraz Khan No. 628 as follows: -

That you, while Posted at Police Lines Hangu committed the following irregularities: -

You Recruit Constable Sheeraz Khan absented yourself from Training Programme (P.T.C, Hangu) with effect from 10.09.2008 to till now without any leave or prior permission.

Your above noted absentee shows your negligence and also amount to gross misconduct on your part.

2. By reasons of the above, you appear to be guilty of misconduct Under Section - 3 of the NWFP (Removal from Service) Special Power, 2000, and have rendered yourself liable to all or any of the penalties specified in section - 3 of the Ordinance ibid.

3. You are, therefore, required to submit your written defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer / Committees, as the case may be.

4. Your written defence, if any, should reach to the Enquiry Officer / Committees within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

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

6. A statement of allegation is enclosed.

(SAJJAD KHAN)
DISTRICT POLICE OFFICER,
HANGU.

No. 2448 /PA,
Dt: 28/10/2008.

Dy. No 124 IR
dt. 31-10-08

DISCIPLINARY ACTION

I, SAJJAD KHAN, D.P.O, HANGU as competent authority, am of the opinion that, Recruit Constable Sheeraz Khan No. 628 while posted at Police Lines Hangu has rendered himself liable to be proceeded against as he committed the following acts / omissions within the meaning of section-3 of the North - West Frontier Province Removal from Service (Special Power) Ordinance, 2000: -

STATEMENT OF ALLEGATIONS

You Recruit Constable Sheeraz Khan absented yourself from Training Programme (P.T.C, Hangu) with effect from 10.09.2008 to till now without any leave or prior permission.

Your above noted absentee shows your negligence and also amount to gross misconduct on your part.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry Committee consisting of the following is constituted under section - 3 of the Ordinance: -

- i. Inspector Legal Ishaq Gul
- ii. S.I / Sher Bakht S.H.O.P.s Hangu.

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

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

(SAJJAD KHAN)
DISTRICT POLICE OFFICER,
HANGU.
21/11/08

A copy of the above is forwarded to :-

1. _____ The Committee for initiating proceedings against the accused under the provisions of the NWFP Removal from Service (Special Power) Ordinance, 2000.
2. _____ The concerned officer's with the directions to appear before the Enquiry Committee, on the date, time and place fixed by the Committee, for the purpose of the enquiry proceedings.

(11) 96

پولیس لائن

تعمیر روزنامہ 16/9/08

فلاح حداد

رد 6 :- اطلاع رپورٹ / غیر حافی / ASI حورم 16/9/08 وقت 11:00 بجے آگ وقت

OHC صاحب نے بذریعہ فون اطلاع دی کہ ریکورڈ سٹراخان 628

جو کہ خطی انگرنی P.T.C 3435-36 13-9-08 OB 543 10-9-08 جو غیر حافی

28 یوم حکم افسران بالا P.T.C سٹریٹ سے فلاح حداد ان کو ایف ایڈ واپس

کیا گیا ہے۔ اگر مذکورہ ریکورڈ نے بروقت پولیس لائن ختمو حافی نہ

کی ہے۔ تو مذکورہ ریکورڈ کو حورم 10-9-08 سے غیر حافی تصور کیا

جائے۔ لہذا مذکورہ ریکورڈ کے خلاف رپورٹ غیر حافی درج و درج

یوکر تعمیر علیحدہ مرتب ہو کر بغیر مناسب کامروائی افسران بالا کی صورت

سین ایس ایس بی

صاحب عالی

نیل عتیق امجد

M. M. LINE Haqu
dat: 27-9-08

Car forwarded

Dopline Haqu
di 27-9-08

Car forwarded

Ri/Line Haqu
di 27-9-08

635
7-10-08

Pay may be stopped

Departmental Proceedings may be initiated

D.P.O. HANGU

29/9
By: Superintendent of Police
H. Qas/Hangu

ضابطہ عالی!

کوآلڈ سٹڈنٹز جی انگریزی بورڈ کے کمانڈر جنٹل PTC ہنگو

(۲۳)

موضوع خدمت ہوں کہ ریگولر کٹیشن سیرا خاں 628

(12)

جو راجہ غیر جامری 28 نومبر PTC ہنگو سے لہورت آن

کوآلڈ سٹڈنٹز ضلع ہوزا اس کیا گیا ہے اور

مذکورہ کٹیشن نے کوڈ راز ضلع و اس کو پولس اسٹیشن

ہنگو میں بھی حاضری لیں گی ہے ضابطہ حکم صادر

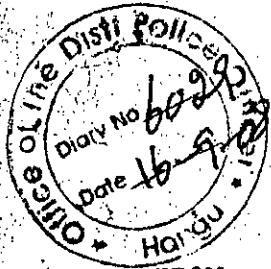
فرمایا جاوے

ذات

OHC, Hangu.

departmental

M



(13) out — 3
13-9-08
(4)

SIGNAL.

FROM
TO

COMMDT:PTC/HANGU (.) 131130/60
DPOs/HANGU AND DIR LOWER (.)

NO. 3435-36 /GC, DT: 13-9-2008 (.) SUB: (.) RETURN TO DISTT:
AS UNQUALIFIED (.) THE FOLLOWING RECRUITS OF YOUR DISTT: HAVE ABSENT
THEMSELVES FROM TRAINING PROGRAMME WITHOUT ANY LEAVE PERMISSION (.)

SR:NO.	NAME & NO.	DISTT:	ABSENTEE.
1.	SHEERAZ KHAN NO.628	HANGU. ✓	28 DAYS
2.	KIRAMAT KHAN NO.169	DIR LOWER.	35 DAYS
3.	NOORJAMAL NO.208	DIR LOWER.	35 DAYS.

THEY ARE THEREFORE RETURNED TO THE DISTT: AS UNQUALIFIED VIDE THIS
OFFICE O.B.NO.543 DT: 10.9.2008 (.)

COMMDT:PTC/HANGU (.)

NOx5

xxxx

~~Principal~~

Handwritten signature
for u-action
6/18

ملفوظات

تقدیر کا روزنامہ 16/9/08

(14) پولیس (14)

مرکب اطلاع و رپورٹ ڈیپارٹمنٹ آف ایس ایف 16/9/08

بھارتی پولیس ایجنسیوں سے ملنے والی رپورٹیں 28 جولائی

کوئی ایجنسیوں کی طرف سے ملنے والی رپورٹیں 3435-36/10-9-08

بھارتی پولیس ایجنسیوں سے ملنے والی رپورٹیں 28 جولائی

کوئی ایجنسیوں کی طرف سے ملنے والی رپورٹیں 3435-36/10-9-08

بھارتی پولیس ایجنسیوں سے ملنے والی رپورٹیں 28 جولائی

ملفوظات

ملفوظات

ملفوظات

forwarded

Delivered
M.M. Police Civil H. Agency
del: 16-9-08

Delivered
M.M. Police Civil H. Agency
del: 16-9-08

گورنر کا دفتر
16-11-08

پتہ: لاہور

سر کی اشد اہم / ریجنل منسٹر ہاؤس ایسی فورم 16⁹/₀₈ تاریخ 09:00 بجے اس وقت کوٹہ میں منعقد ہوئی۔
اندرم دیا گیا اور منسٹر ہاؤس 620 جو کم انگریزی 36-34.35 فورم 13⁹/₀₈ یو۔ پی۔ سی
اور بی غیر 543 بلوچ منسٹر ہاؤس/28 بلوچ حکیم منسٹر ہاؤس P.T.C. منسٹر ہاؤس منسٹر ہاؤس
منسٹر ہاؤس کیا گیا ہے۔ انگریزوں کے بارے میں منسٹر ہاؤس منسٹر ہاؤس منسٹر ہاؤس منسٹر ہاؤس
فورم 13⁹/₀₈ سے منسٹر ہاؤس منسٹر ہاؤس منسٹر ہاؤس منسٹر ہاؤس منسٹر ہاؤس
درج روزنامہ 27 کو منسٹر ہاؤس منسٹر ہاؤس منسٹر ہاؤس منسٹر ہاؤس منسٹر ہاؤس

منسٹر ہاؤس
منسٹر ہاؤس
منسٹر ہاؤس
102
08

Sir,
Forwarded,

Amreen

Lo, Police Line.
20.11.2008.

Sir,
Forwarded,

le
hr

Ri, Police Line.
20-11-2008.

بیان اذان سپریم کورٹ - 1984ء حال غیر پولیس ٹرین سنٹر

بیان کیا گیا کہ ٹرین پولیس ٹرین میں چمراہوں کے ساتھ ساتھ نازک فون ایڈرم ری - آڈیو از خان وغیرہ 620 ریکارڈ جو کہ قومی ایڈمنسٹریٹو 3435-36

پورٹ 13-1-85 P.T.C. سنٹر اور 05 نمبر 543 10/9/85 کوامینڈر ہارپر سے P.T.C سے ایلوایٹڈ مائیکرو پولیس کیا گیا ہے جو کہ ایسی ہیڈ میٹروپولیٹن ڈیپارٹمنٹ کے کابینہ، مار، آڈیو دینے کے پولیس ٹرین حافر میں آیا اور ٹرین کے آڈیو کے ساتھ ساتھ

حاجی علی
سپریم کورٹ میں
پولیس ٹرین سنٹر
29-11-85

مستند
20/11/85
E.C.

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 1420 /2017

Khyber Pakhtunkhwa
Service Tribunal

Dirary No. 1417

Date: 13-12-2017

Appellant

Asmat Ullah S/o Zarwali Khan,
R/o Zahid Abad Township, Bannu,
Ex-Constable No. 1381,
Police Station, Township, Bannu

VERSUS

1. District Police Officer, Bannu.
2. Regional Police Officer, Bannu,
Region Bannu.
3. Provincial Police Officer,
KP, Peshawar. Respondents

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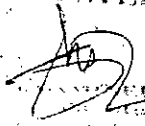
APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,
1974 AGAINST OB NO. 2017 DATED 30-12-2009
OF R. NO. 1 WHEREBY APPELLANT WAS
DISMISSED FROM SERVICE ON THE SCORE OF
ABSENCE FROM DUTY OR OFFICE ORDER NO. 3113
/ EC DATED 18-10-2017 OF R. NO. 2 WHEREBY
DEPARTMENTAL APPEAL OF APPELLANT WAS
REJECTED OR OFFICE ORDER NO. 7204/ 17 DATED
03-11-2017 OF R. NO. 03 WHEREBY REVISION
PETITION WAS REJECTED:

ACCEPTED

☞<=>☞<=>☞<=>☞<=>☞

13/12/17

Respectfully Sheweth:


Khyber Pakhtunkhwa
Service Tribunal

Short facts giving rise to the present appeal are as under:-

1. That appellant was appointed as Constable on 23-06-2006 and served the department to the best of his ability and with devotion.

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 1420/2017

Date of Institution ... 13.12.2017

Date of Decision ... 07.12.2021

Asmat Ullah S/O Zarwani Khan, R/O Zahid Abad Township, Bannu,
Ex-Constable No. 1381, Police Station, Township, Bannu.

(Appellant)

VERSUS

District Police Officer, Bannu and two others.

(Respondents)

MR. ARBAB SAIF-UL-KAMAL,
Advocate

For appellant.

MR. NOOR ZAMAN KHATTAK,
District Attorney

For respondents.

MR. AHMAD SULTAN TAREEN
MR. SALAH-UD-DIN

CHAIRMAN
MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts forming the background of the instant service appeal are that the appellant while serving as Constable in Police Station Township District Bannu, was proceeded against departmentally on the allegations of his absence from duty and was dismissed from service vide order dated 30.12.2009. The departmental appeal of the appellant was disposed by the Regional Police Officer vide order dated 18.10.2017 with the remarks as seen and filed. The appellant then submitted revision petition to the Inspector General of Police Khyber Pakhtunkhwa Peshawar, which was rejected on

ATTESTED


03.11.2017 and intimation was conveyed to the appellant through cell phone on 14.11.2017, hence the instant service appeal.

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

3. Learned counsel for the appellant has contended that the absence of the appellant from duty was not willful rather he was unable to attend his duty due to severe illness; that the prescriptions regarding illness of the appellant were handed over to the departmental Authority, however the appellate Authority did not consider the plea of the appellant and decided the departmental appeal in a cursory manner; that no charge sheet or statement of allegations as well as final show-cause notice was issued to the appellant and whole of the proceedings were conducted at the back of the appellant without affording him any opportunity of self defense or personal hearing, that the appellant was dismissed from service vide order dated 30.12.2009 with retrospective effect from 24.10.2008, therefore, the impugned order is void ab-initio, hence no limitation would run against the same; that the charge sheet as well as statement of allegations and final show-cause notice was not at all served upon the appellant and even no publication regarding the alleged absence of the appellant was made in the newspaper; that the impugned order being wrong and illegal may be set-aside and the appellant may be reinstated into service with all back benefits. Reliance was placed on 2019 SCMR 648 and 2000 SCMR 75 as well as judgment dated 07.12.2017 passed by this Tribunal in Service Appeal No. 967/2016.

4. On the other hand, learned District Attorney for the respondents has contended that the appellant remained absent from duty without leave or seeking permission of the competent Authority, therefore, disciplinary action was taken against him; that charge sheet as well as statement of allegations were issued to the appellant, however he did not

ATTESTED


K. S. ANAND
Secretary
Service Tribunal
Chennai

bother to attend the inquiry proceedings; that on completion of the inquiry, final show-cause notice was issued to the appellant, however he failed to submit the reply of the same, therefore, he has rightly been awarded the punishment of dismissal from service; that the departmental appeal of the appellant was time barred, therefore, his service appeal is not maintainable; that the inquiry proceedings were conducted by complying all legal and codal formalities, therefore, the impugned orders may be kept intact and the appeal in hand may be dismissed with costs.

5. We have heard the arguments of learned counsel for the appellant as well as learned District Attorney for the respondents and have perused the record.

6. A perusal of the record would show that disciplinary action was taken against the appellant on the allegations that he absented himself from duty with effect from 24.10.2008 without any leave or permission from the competent Authority. Charge sheet as well as statement of allegations were issued to the appellant and DSP Headquarter Bannu was appointed as inquiry officer for conducting inquiry against the appellant under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Nothing is available on the record which could show that the charge sheet, statement of allegations as well as final show-cause notice were served upon the appellant. The respondents did not comply the relevant codal formalities for serving of charge sheet, statement of allegations as well as final show-cause notice upon the appellant, therefore, the ex-parte action taken against the appellant by depriving him of self defense and personal hearing is void ab-initio and nullity in the eye of law.

7. Moreover, the appellant agitated in his departmental appeal that he has not been treated in accordance with law and that his absence was not willful, rather he was unable to attend his duty being suffering from severe illness of jaundice. The appellate Authority, however dismissed the appeal in a cursory manner without considering the point agitated by the

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DINER
Khyber Pakhtunkhwa
Tribunal
www

appellant in his appeal. In these circumstances, in order to meet the ends of justice, conducting of de-novo inquiry into the matter is necessary.

8. In light of the above discussion, the appeal in hand is allowed by setting-aside the impugned orders and the appellant is reinstated in service with the directions to the respondents to conduct de-novo inquiry in accordance with relevant law/rules within a period of 60 days of receipt of copy of this judgment. The issue of back benefits shall be subject to final outcome of de-novo inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
07.12.2021



(Handwritten signature of Ahmad Sultan Tareen)

(AHMAD SULTAN TAREEN)
CHAIRMAN

(Handwritten signature of Salah-ud-Din)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy

(Handwritten signature)
Khalid Peshawar
Service Tribunal
Peshawar

Date of Presentation of Application 07-12-2021
Number of Words 2000
Copying Fee 22/-
Urgent _____
Total 22/-
Date of Copy 21-12-2021

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL PESHAWAR

Review Petition No.228/2019

Hikmat Ullah Khan

Appellant

Versus

The Inspector General of Police Khyber Pakhtunkhwa Peshawar and others

Respondents

POINT WISE COMMENTS/REPLY BY RESPONDENTS NO.1, 2 & 3

Respectfully Sheweth

Preliminary Objections

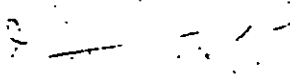
1. That the appeal of the appellant is badly barred by law and limitation
2. That the appeal is not maintainable in its present form.
3. That the appellant has concealed the actual facts from this Honorable Tribunal.
4. That the appeal is bad in law due to mis-joinder and non-joinder of necessary parties.
5. That the appellant has approached the Honourable Tribunal with unclean hands.
6. That the appellant has got no cause of action and locus-standi to file the instant appeal.
7. That the appellant has been estopped by his own conduct.

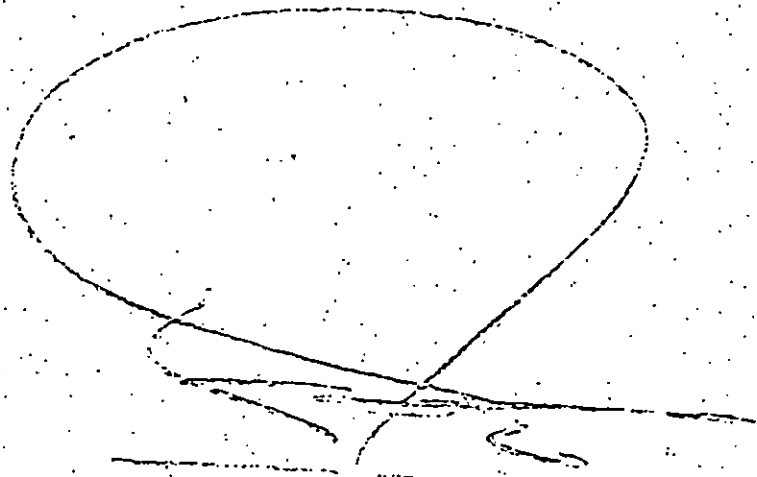
OBJECTIONS ON FACTS:

1. Pertains to the record of Hon'ble Tribunal. Appeal of the appellant was dismissed with the remarks that "*the appeal in hand is without any merits calling for its admission for regular hearing. The same is, therefore, dismissed hereby*".
2. Pertains to the record of Hon'ble Tribunal. Hence, needs no comments.
3. Incorrect. Service Appeal No. 498/2018 of appellant was dismissed by Hon'ble Tribunal during pre-admission stage/hearing on merits and in light of judgment of Apex Court. (Copy of judgment is annexed by annexure-A)


PRAYER:

In view of the above replies, it is most humbly prayed that the review petition for restoration of appeal of the appellant being not maintainable and badly time barred by limitation, may kindly be dismissed with costs, please.


District Police Officer,
Bannu.
(Respondent No.1)



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


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