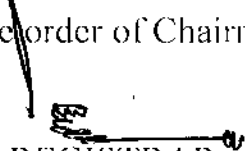


# FORM OF ORDER SHEET

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

Case No. - 104/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/1/2023	<p>The appeal of Mr. Khushal presented today by Mr. Mir Zaman Safi Advocate. It is fixed for preliminary hearing before touring Single Bench at A.Abad on _____, Parcha Peshi is given to appellant/counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

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

**CHECK LIST**

Case Title: Khushtal VS Police Deptt.

S#	Contents	Yes	No
1.	This appeal is present by <b>Mir Zaman Safi Advocate</b>	✓	
2.	Whether Counsel/Appellant/Respondent/Deponent have signed the requisite documents?	✓	
3.	Whether appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath Commissioner?	✓	
8.	Whether appeal/annexures are properly pagged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cutting/overwriting?		✓
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether security and process fee deposited? on		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		
26.	Whether copies of comments/reply/rejoinder submitted? on		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on		

It is, certified that formalities/documentation as required in the above table have been fulfilled.

Name:- **MIR ZAMAN SAFI**  
Advocate

Signature:-

Dated:

*M. Zaman Safi*  
10/01/2022

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

APPEAL NO. 104/2022 2023

**KHUSHAL**

**VS**

**POLICE DEPTT:**

**INDEX**

<b>S.NO.</b>	<b>DOCUMENTS</b>	<b>ANNEXURE</b>	<b>PAGE</b>
1	Memo of appeal	.....	1- 4.
2	Affidavit	.....	5.
3	Inquiry report	<b>A</b>	6.
4	Show Cause Notice & Reply	<b>B</b>	7- 8.
5	Letter dated 16.03.2011	<b>C</b>	9.
6	Opinion of Medical Board	<b>D</b>	10.
7	Order dated 28.04.2011	<b>E</b>	11.
8	Departmental appeal	<b>F</b>	12- 13.
9	Service appeal	<b>G</b>	14- 17.
10	Judgment dated 20.02.2018	<b>H</b>	18- 20.
11	Order dated 03.09.2018	<b>I</b>	21.
12	Apex Court judgment	<b>J</b>	22.
13	Impugned order	<b>K</b>	23.
14	Departmental appeal	<b>L</b>	24.
15	Wakalat nama	.....	25.

**APPELLANT**

**THROUGH:**

  
**MIR ZAMAN SAFI**  
**ADVOCATE**

D

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

APPEAL NO. 104 /2023

Mr. Khushal, Constable No.536,  
Police Lines, District Manshra.....APPELLANT

VERSUS

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The Deputy Inspector General of Police, Hazara Division, at Abbottabad.
- 3- The District Police Officer, District Manshra.
- 4- The District Account Officer, District Manshra.

.....RESPONDENTS

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 19.08.2022 WHEREBY THE APPELLANT HAS BEEN RE-INSTATED INTO SERVICE WITH EFFECT FROM 01.09.2018 INSTEAD OF 28.04.2011 AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS**

**PRAYER:**

That on acceptance of this appeal the impugned order dated 01.09.2022 may very kindly be modified/rectified and re-instated the appellant with effect from the date of dismissal i.e. 28.04.2011 with all back benefits. Any other relief which your good self deems appropriate may also be granted in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

- 1- That appellant is the employee of respondent department and is serving the department as Constable No. 536 quite efficiently and upto the entire satisfaction of his superiors.
- 2- That during service the appellant was charged in criminal case in FIR No. 758, under section 337/II, dated 10.06.2009, Police Station City, Manshra. That the respondent Department conducted preliminary inquiry in the matter and subsequently vide letter dated 16.03.2011 the appellant was preferred for medical examination to the Standing Medical Board. Copies of the inquiry report, Show cause notice, Reply and letter dated 16.03.2011 are attached as annexure.....A, B & C.

- 3- That the Standing Medical Board after proper medical examination was of the opinion that the appellant is suffering from "Bipolar effective disorder" with repeated mood swing, relapses and remission. That in light of above mentioned reasons of the appellant, the Medical Board recommended him for official duties only vide dated 13.04.2011. Copy of the Opinion of Medical Board is attached as annexure.....D.
- 4- That astonishingly the respondent No.3 issued order dated 28.04.2011 whereby major penalty of dismissal from service had been imposed upon the appellant. Copy of the order dated 28.04.2011 is attached as annexure.....E.
- 5- That the appellant feeling aggrieved from the order dated 28.04.2011 preferred departmental appeal followed by service appeal No.1832/2011 before this august Service Tribunal, which was allowed in favor of the appellant vide judgment dated 20.02.2018. Copies of the departmental appeal, memo of service appeal and judgment dated 20.02.2018 are attached as annexure.....F, G & H.
- 6- That the respondent department filed CPLA No.426-P/2018 before the Honourable Supreme Court against the judgment of this august Tribunal and conditionally re-instated the appellant into service w.e.f 01.09.2018 vide order dated 03.09.2018 till the final outcome of CPLA. That vide judgment dated 11.05.2022 the Honourable Supreme Court dismissed CPLA filed by the respondent Department. Copies of the order dated 03.09.2018 and judgment of the Apex Court are attached as annexure.....I & J.
- 7- That the respondent department after judgment of the Apex Court issued regular re-instatement order dated 19.08.2022 but with effect from 01.09.2018 instead of 28.04.2011 w.e.f the date of dismissal. Copy of the order dated 19.08.2022 is attached as annexure.....K.
- 8- That it is pertinent to mention that the respondent department referred the appellant to the Standing Medical Board and after detail medical examination the Medical Board provided its opinion and recommended the appellant for official duties only but the respondent department did not consider the same and straight away dismissed the appellant from service without any fault on his part.
- 9- That the appellant feeling aggrieved from the imp order dated 19.08.2022 preferred departmental appeal before the appellate authority but no reply has been received so far from the quarter concerned. Copy of the departmental appeal is attached as annexure.....L.

- 10- That the appellant feeling aggrieved and having no other remedy, but to file the instant service appeal on the following grounds amongst the others.

**GROUND:**

- A- That the impugned order dated 19.08.2022 is against the law, facts, norms of natural justice and materials on the record, hence not tenable and liable to be rectified/modified the date of re-instatement i.e. w.c.f 28.04.2011 instead of 19.08.2022.
- B- That the appellant has not been treated in accordance with law and rules on the subject noted above and as such the respondents violated Article-4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973.
- C- That the respondent department acted in arbitrary and mala fide manner while re-instating the appellant into service w.c.f 19.08.2022 instead of 28.04.2011.
- D- That the impugned order dated 19.08.2022 has been issued in clear violation of the principle of natural justice; hence the same is not tenable and liable to be rectified/modified.
- E- That the respondent department without any fault on the part of appellant, issued the dismissal order dated 28.04.2011, which was against the law and prescribed rules, therefore, the appellant is fully entitled to be re-instated into service w.c.f 28.04.2011 instead of 19.08.2022 with all back benefits.
- F- That the re-instatement of appellant w.c.f 01.09.2018 instead of 28.04.2011 is violative of law and rules and as such the same is ineffective upon the legal rights of the appellant.
- G- That due to illegal and unlawful act of the respondent department by issuing dismissal order dated 28.04.2011, the appellant and his family suffered a lot, and during the intervening period w.c.f 28.04.2011 till 01.09.2018 the appellant remained jobless, therefore, the impugned order dated 19.08.2022 is liable to be rectified/modified.
- H- That as per judgment of the Superior Court the appellant is fully entitled to be re-instated into service w.c.f the date of dismissal i.e. 28.04.2011 with all back benefits.
- I- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

W

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

APPELLANT

  
KHUSHAL

THROUGH: 

MIR ZAMAN SAFI  
ADVOCATE

**CERTIFICATE:**

It is, certified that no other earlier appeal was filed between the parties.

  
DEPONENT

**LIST OF BOOKS:**

- 1- CONSTITUTION OF PAKISTAN, 1973
- 2- SERVICES LAWS BOOKS
- 3- ANY OTHER CASE LAW AS PER NEED

5

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

APPEAL NO. \_\_\_\_\_/2022

**KHUSHAL**

**VS**

**POLICE DEPTT:**

**AFFIDAVIT**

I **Mir Zaman Safi**, Advocate High Court, Peshawar on the instructions and on behalf of my client do hereby solemnly affirm and declare that the contents of this **service appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



**MIR ZAMAN SAFI**  
Advocate  
High Court, Peshawar



A-6

ضلع

11/07/2009 مورخہ

نمبر۔۔۔۔۔ DSP ہیڈ کوارٹر

پولیس ڈیپارٹمنٹ

منجانب ڈی۔ ایس۔ پی، ہیڈ کوارٹر ماہرہ

بخدمت ڈسٹرکٹ پولیس آفیسر صاحب ماہرہ

عنوان: محکمہ انکوائری بر خلاف کانسٹیبل خوشحال نمبر 930 پولیس لائن

جناب عالی!

بحوالہ چارج شیٹ نمبر 1558-59/PA مورخہ 13-06-09 مجاریہ دفتر ڈسٹرکٹ پولیس آفیسر ماہرہ

تاریخ 13-06-09 کے متعلق ذیل معروض ہوں۔

1. کانسٹیبل خوشحال نمبر 930 کو طلب کیا جس نے اپنا تحریری بیان جواب چارج شیٹ پیش کیا جس کا بیان بھی قلمبند کیا جس نے اپنے بیان میں بتلایا کہ وہ اپنی رائفل کو آن لوڈ کر رہا تھا کہ اچانک گولی چل گئی جس سے ساتھ بیٹھے ہوئے کانسٹیبلان شاہد اور کامران لگ کر زخمی ہوئے، واقعہ اتفاقیہ ہوا ہے۔

2. ذوالفقار SI/PC کو طلب کر کے بیان لیا جس نے اپنے بیان میں بتلایا کہ وہ جیل کے اندر ملزمان داخل کر رہا تھا جب کہ کانسٹیبل خوشحال نمبر 930 مع دیگر کانسٹیبلان جن کے پاس اسلحہ تھا گیت جیل کے باہر سرکاری گاڑی میں بیٹھے تھے، اچانک فائر کی آواز آئی باہر آ کر دیکھا تو کانسٹیبلان شاہد اور کامران زخمی تھے۔ دریافت پر معلوم ہوا کہ کانسٹیبل خوشحال نمبر 930 رائفل آن لوڈ کر رہا تھا کہ اچانک فائر ہو کر کانسٹیبلان زخمی ہوئے۔ کانسٹیبلان کو ہسپتال بھیج دیا اور

10-06-09 تفسیلاً تحریر کی۔

3. کانسٹیبلان تنویر نمبر 1003 اور ذیشان نمبر 196 کو طلب کر کے بیان لئے جو وقوعہ کے چشم دید گواہ ہیں نے اپنے بیان میں بتلایا کہ کانسٹیبل خوشحال نمبر 930 رائفل خالی کر رہا تھا کہ اتفاقیہ طور پر اس سے گولی چل گئی جس سے کانسٹیبلان شاہد اور کامران زخمی ہوئے۔

4. کانسٹیبلان شاہد اور کامران جو زخمی ہوئے کو طلب کر کے بیان لئے جنہوں نے کہا کہ کانسٹیبل خوشحال ہمارے ساتھ جیل کے باہر بس میں بیٹھا ہوا تھا اور اپنی رائفل SMG خالی کر رہا تھا کہ اس سے اتفاقیہ طور پر گولی چل گئی جس سے ہم زخمی ہوئے۔ معاملہ کانسٹیبل خوشحال نمبر 930 سے اتفاقیہ ہوا ہے۔ جملہ بیانات لف فائل ہیں۔

دوران انکوائری پایا گیا ہے کہ کانسٹیبل خوشحال سے فائر ہوا ہے جس نے اپنے بیانات میں بھی خود تسلیم کیا۔ اس کانسٹیبل کے متعلق سنا گیا ہے کہ یہ ذہنی طور پر ٹھیک نہیں ہے۔ اس سے قبل بھی اس کانسٹیبل کے خلاف مختلف انکوائریاں ہو چکی ہیں۔ کانسٹیبل مذکورہ دوران انکوائری قصور وار پایا گیا ہے۔ کانسٹیبل مذکورہ کے لئے Major Punishment کی سفارش کی جاتی ہے۔ انکوائری رپورٹ برائے مناسب حکم ارسال خدمت ہے۔

ملکہ کاغذات (13)

ڈی۔ ایس۔ پی، ہیڈ کوارٹر ماہرہ

FINAL SHOW CAUSE NOTICE

B - (7)

You FC Khushal No. 930 was proceeded against departmentally with the allegations that while posted at Police Lines Mansehra involved yourself in case FIR No. 758 dated 10-6-2009 u/s 337/H PPC PS City.

The enquiry officer Mr. Rasool Shah DSP HQ after conducting proper departmental enquiry has submitted his report and has proved you guilty. You are, therefore, hereby called upon to show cause with in 7 days of the receipt of this final show cause notice as to why you should not be awarded punishment under NWFP Removal from service (Special Powers) Ordinance 2000. In case your written statement is not received within the above said stipulated period, it shall be presumed that you have no defence to offer. You are also at liberty to appear before the undersigned if you so desire. Copy of findings of the enquiry officer is enclosed.

  
District Police Officer;  
Mansehra.

ATTESTED  


پہلے سے جاری رہا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے

8

جناب عالی! یہ ہے ڈیپوٹیشن کا نوٹ  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے

میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے

میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے

میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے

میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے  
میں نے اس پر عمل کیا ہے

ATTESTED

Handwritten signature



C-9

POLICE DEPARTMENT

DISTRICT MANSEHRA

Office of the DPO Mansehra, KPK. No. 3119 /OHC, dated Mansehra the 16<sup>th</sup> 2011.

From . The District Police Officer.  
Mansehra

To The Medical Superintendent,  
King Abdullah Teaching Hospital,  
Mansehra.

Subject: MEDICAL OPINION.

*Memorandum.*

Reference this office No. 7554/OHC dated 28-07-2010 and your office No. 1979/SMB dated 11-08-2010 regarding opinion of the medical board.

It is requested that this office may please be informed as to whether constable Khushal No 930 is fit for active police service or otherwise.

*[Signature]*  
District Police Officer,  
Mansehra.

ATTESTED  
*[Signature]*

OFFICE OF THE MEDICAL SUPERINTENDENT  
KING ABDULLAH TEACHING HOSPITAL MANSEHRA.

D-10

No. 942/SMB  
Dated 13/4/2011

To: - The District Police Officer  
Mansehra

Subject: - STANDING MEDICAL BOARD.

Reference your letter No.3199 dated 16.03.2011.

Standing Medical Board King Abdullah Teaching Hospital Mansehra comprising of following doctors assembled in the office of undersigned on 11.04.2011 at 10.00 AM to examine Constable Khushal No.930 of your Department.

- 1. Medical Superintendent K.A.T. Hospital Mansehra (Chairman)
- 2. Psychiatrist K.A.T. Hospital Mansehra (Member)
- 2. Medical Specialist K.A.T. Hospital Mansehra (Member)

OPINION OF THE MEDICAL BOARD IS AS UNDER: -

Medical Board is of opinion that constable Khushal No.930 is suffering from "Bipolar effective disorder" with repeated mood swing, relapses and remission. Currently he is in remission but considering the nature of his disease, The Board recommends that he should be devoid of Fire Arm Weapon as per nature of his disease he can get relapse at any time. He can continue office duty only.

*[Signature]*  
 Medical Superintendent  
 King Abdullah Teaching Hospital Mansehra  
 (Chairman)

*[Signature]*  
 Dr. Niaz Muhammad  
 Medical Superintendent  
 King Abdullah Teaching Hospital Mansehra.

*[Signature]*  
 Medical Superintendent  
 King Abdullah Teaching Hospital Mansehra  
 (Dr. Niaz Muhammad)  
 Medical Superintendent  
 King Abdullah Teaching Hospital Mansehra.

*[Signature]*  
 Psychiatrist  
 King Abdullah Teaching Hospital Mansehra  
 (Member)

*[Signature]*  
 Dr. Naveed Irfan  
 Specialist in Psychiatry  
 King Abdullah Teaching Hospital Mansehra

*[Handwritten]*  
 OHC  
 For MIA

*[Signature]*  
 Medical Specialist  
 King Abdullah Teaching Hospital Mansehra  
 (Member)

*[Signature]*  
 Medical Specialist  
 King Abdullah Teaching Hospital Mansehra.

*[Handwritten]*  
 197  
 Dr. Niaz  
 15/4/11

ATTESTED  
*[Signature]*

E-10

ORDER

Constable Khushal No 930 was proceeded against departmentally with the allegation that while posted at Police Lines Manshra he involved himself in case FIR No. 758 dated 10-06-2009 u/s 337/11 PPC PS City.

The Enquiry officer i.e. Mr. Rasool Shah the then DSP Hqrs Manshra after conducting proper departmental enquiry against constable has submitted his report and has proved the defaulting constable guilty. The constable was also served with the final show cause notice. In response to which the constable has submitted in his written statement that he did not intentionally fired but it took place suddenly. The constable seem to be mentally deranged. therefore Medical Superintendent King Abdullah Hospital Manshra vide this office Memo No. 7554/OHC, dated 28-07-2010 was requested to examine the constable through standing medical board and to opine as to whether the constable is fit for active police duty or other wise. The medical board has reported that "constable Khushal No 930 is suffering from bipolar affective disorder with mood swings, relapse & remission. Currently he is in remission but can swings back to relapse. The Medical Superintendent King Abdullah Hospital Manshra was again requested vide this office Memo No. 3119/OHC, dated 16-03-2011 to clarify whether constable Khushal No 930 is fit for active police service or other wise. According to report of Medical Superintendent King Abdullah Hospital Manshra vide No. 942/SMB, dated 13-04-2011 the board recommends that the constable should be devoid of fired arms weapon as per nature of his disease he can get relapse at any time. Keeping in view the report of the enquiry officers and report of Medical Superintendent King Abdullah Hospital Manshra, the undersigned consider that retention of constable in police seem to be of no use and also keeping in view his mental position there is likelihood of any unwanted incident.

I, District Police Officer Manshra, therefore order dismissal of constable Khushal No 930 form service under Removal form Service (special power) Ordinance 2000 with immediate effect.

*[Signature]*  
District Police Officer,  
Manshra.

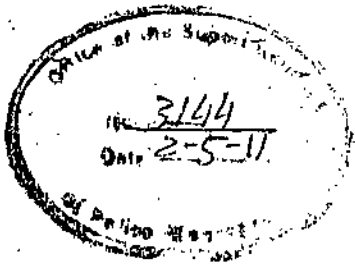
OB <sup>82</sup>  
28-4-2011

ATTESTED

*[Signature]*

ATTESTED

*[Signature]*  
District Police Officer,  
Manshra



F-12

BEFORE THE D.I.G. HAZARA, ABBOTTABAD

APPEAL AGAINST THE ORDER OF D.P.O.  
MANSEHRA VIDE ORDER NO.OB-82 DATED:  
28.04.2011 WHICH THE APPELLANT HAS BEEN  
DISMISSED FROM SERVICE.

Respected Sir,

1. That the appellant joined Police Force as a Constable and was discharging his duties as such till the date of his dismissal.
2. The appellant was proceeded against by D.P.O. Mansehra and a departmental inquiry was being conducted by Rasool Shah D.S.P. Head Quarter in order to inquire into, the allegation. The appellant was sent for medical examination and the medical board so constituted opined that the appellant is suffering from Bipolar effective disorder but at the end of the opinion, the medical board was of the opinion that appellant can continue office duty only on receipt of the inquiry report and the opinion of medical board, the appellant was dismissed from service. Infact while passing the impugned order of dismissal D.P.O. Mansehra had last sight of " he can continue office duty only).

ATTESTED  
M. J. J.

A. O. B. A.

13

3. That the appellant belongs to a poor family and the entire family members are dependent upon him. The dismissal from service has not only effected the appellant but his entire family members has been put at stack.

It is therefore, humbly requested that on acceptance of appeal the impugned order of dismissal may kindly be set aside.

Dated: 06.05.2011

.....  
Khushal No.930, Ex-Constable.....Appellant

Khushal

ATTESTED

M-  




100      G-14

**BEFORE THE SERVICE TRIBUNAL K.P.K.  
PESHAWAR //**

Khushat, Ex.F.C. NO.930 S/O Shah Zaman Caste Awan.  
resident of Morr Baffa, Tehsil and District  
Mansehra:.....Appellant

VERSUS

(1) D.P.O. Mansehra (2) D.I.G. Hazara Range Abbottabad.  
.....Respondents

APPEAL AGAINST THE ORDER OF  
RESPONDENT NO.1 AND RESPONDENT NO.2  
IN VIDE WHICH RESPONDENT NO.1 DISMISSED  
APPELLANT AND RESPONDENT NO.2 UPHELD  
THE ORDER OF RESPONDENT NO.1.

**PRAYER**

On acceptance of appeal the impugned orders of dismissal  
and appellate order of respondent NO.2 may kindly be set  
aside and the appellant be reinstated in service.

Respected Sir,

The brief facts leading to the instant appeal are as follows:-

1. That the appellant while serving in police  
department, was issued a charge sheet alongwith  
statement of allegation showing therein that while  
posted at police line Mansehra the appellant got  
himself involved in a case. The appellant submitted  
a detailed reply refuting all the charges. (The copy  
of charge sheet, statement of allegation and

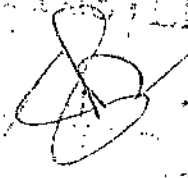
ATTESTED  
M (W)

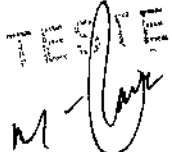
P- (2)

15

Reply are attached as Annexure "A,B,&C" respectively).

2. That D.S.P. Head Quarter was appointed as Inquiry Officer who conducted a detailed inquiry and thereafter he formed his opinion/recommendation. (The copy of finding of inquiry report is attached as Annexure "D").
3. That on receipt of recommendation by D.P.O. Manshehra a final show cause notice was issued to the appellant, who submitted a reply. (The copy of final show cause notice and reply are attached as Annexure "E&F" respectively).
4. That the District police officer got a standing medical board constituted in order to give their opinion with respect to the appellant and the medical board gave their opinion on 11.08.2010 and 13.04.2011 respectively. (The copy of medical board are attached as Annexure "G&H" respectively).
5. That respondent NO.1 on receipt of reply of appellant passed an order vide which the appellant has been dismissed from service. (The copy of order is attached as Annexure "I").
6. That the appellant aggrieved by the order of respondent NO.1 submitted an appeal before respondent NO.2, who directed respondent No.1 to modify his order in the light of report of medical board dated: 13.04.2011. Although a direction was issued by respondent NO.2, but instead respondent No.2 considered appeal preferred by the appellant

ATTESTED  


ATTESTED  


P-3

16

and rejected the same. (The copy of appeal, direction to respondent NO.1 & order of respondent No.2 are attached as Annexure "J,K&L" respectively).

That the appellant seeks indulgence of this honourable tribunal on the following amongst other grounds.

GROUNDS

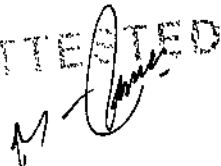
- A. That the order of respondent NO.1 is against the facts and law and hence not maintainable in the eye of law.
- B. That the order of dismissal was made on the basis of an inquiry conducted by D.S.P. Head Quarter, but the inquiry officer has not applied his independent mind. According to the respective statement of the constable, the appellant was cleaning his weapon and incidentally the fire was made. Despite clear evidence of constable the inquiry officer held the appellant guilty which led to the impugned order.
- C. That respondent NO.2 has issued direction to respondent No.1 to modify his order, but respondent No.1 did not considered this aspect and thus respondent No.1 has not applied his independent mind.
- D. That respondent No.2 also failed to apply his independent mind, while he himself remanded the order to respondent No.1 for consideration, but

ATTESTED



ATTESTED

ATTESTED



D-2 (17)

without waiting for the result of respondent NO 1 passed the impugned order.

E. That from the report of the medical board, it is crystal clear that the appellant can continue office duty only and so in the light of above observation of the board, respondent No.1 could have reinstated the appellant in service and respondent No.2 could have also accepted appeal preferred by the appellant.

It is therefore, humbly prayed that on acceptance of instant appeal the impugned orders of respondents No.1&2 be set aside and the appellant be reinstated in service.

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

*Khushal*  
Khushal, Ex.F.C. NO.930  
.....Appellant

THROUGH  
*Shad Muhammad Khan*

SHAD MUHAMMAD KHAN  
ADVOCATE SUPREME COURT OF PAKISTAN  
(MANSEHRA)

**VERIFICATION**

This is to certify that the contents of instant appeal are true and correct to the best of my knowledge and belief and nothing has been concealed or suppressed from this honourable Court.

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

*Khushal*  
Khushal  
.....Deponent

ATTESTED  
*[Signature]*  
[Faint official stamp]

ATTESTED  
*M. [Signature]*

H-18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
CAMP COURT ABBOTTABAD

Service Appeal No. 1832/2011

Date of Institution... 30.11.2011

Date of decision... 20.02.2018



Khushal, Ex FC No.930, son of Shah Zaman Caste Awan, resident of Morr Baffa,  
Fehsil and District Manshra... (Appellant)

Versus

1. D.P.O Manshra and another... (Respondents)

Mr. Shad Muhammad Khan,  
Advocate ... For appellant.

Mr. Zauddin,  
Deputy District Attorney ... For respondents.

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

JUDGMENT

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

FACTS

2. The appellant was dismissed from service on 28.4.2011 against which he filed  
departmental appeal on 06.05.2011. The appellate authority issued two orders first on  
11.0.7.2011 ordering that the order of dismissal may be modified to medical board out  
and then on 27.09.2011 the appeal was rejected.

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

**ATTESTED**

(19)

ARGUMENTS

The learned counsel for the appellant argued that the charge sheet was served on the appellant for his involvement in F.I.R u/s 337/H PPC. That the appellant was acquitted in the offence. That the inquiry officer in his inquiry also opined that fire was not made by the appellant intentionally. That despite this report the inquiry officer had opined that the appellant was guilty and he recommended for imposition of major penalty which was not in consonance with his opinion. That the appellate authority first decided to board out the appellant medically and thereafter he changed this decision, and another order was passed which was also not in accordance with law.


4. On the other hand learned DDA argued that the present appeal was time barred. That the departmental appeal was decided on 29.09.2011 and the present appeal was filed on 30.11.2011. He further argued that though the offence attributed to the appellant was mainly based on negligence but retention of such a civil servant in the police force would be a constant danger for his co-civil servants. That the authority had rightly decided to oust the appellant from service.

CONCLUSION.

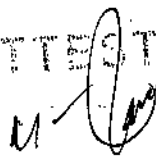
5. Regarding limitation this Tribunal is of the view that the burden of proof was on the department to have had established that the order of appellate authority was communicated to the appellant. There is no copy to the appellant in the departmental order. According to the appellant the copy was received by him on 02.11.2011. This Tribunal is, therefore, of the view that the present appeal cannot be declared as time barred.

6. According to impugned order the appellant was dismissed under Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. The charge sheet and statement of allegation never speak about any misconduct or inefficiency and the only charge is the involvement of the appellant in an FIR u/s 337/H PPC. If we go

**ATTESTED**

  
 OFFICER  
 Khyber Pakhtunkhwa  
 Service Tribunal,

**ATTESTED**



20

through RSO, 2000 a civil servant can be proceeded against under the RSO on the ground of misconduct or inefficiency. No such charge was leveled against the appellant under RSO. A civil servant can be proceeded against if he is convicted by a court of law for offences of the nature mentioned therein. But the present appellant has neither been charged for misconduct or inefficiency nor he has been convicted of any offence of the type mentioned above. Therefore, the entire proceedings under RSO, 2000 are illegal. Secondly after the inquiry the authority himself formed an opinion that the appellant was mentally deranged and he in his own discretion referred the appellant to the Standing Medical Board. Standing Medical Board affirmed the opinion of the authority by holding that the appellant was mentally deranged and that there are chances of his relapse. Therefore, they opined that the appellant should be kept in the service however he should not be given the duty of any fire arm. After the receipt of this medical board the authority instead of acting on the opinion of the medical board proceeded under the RSO, 2000 which was illegal. The two orders issued by the appellate authority also confirm the situation that the appellate authority was also not decisive. The appellant could not be awarded penalty simply for the reason that he might repeat the same conduct again. The department should have acted on the advice of the medical board and should have engaged the appellant in non-arms duty.

7 As a sequel to above discussion the present appeal is accepted and the department is directed to act on the advice/opinion of the medical board. Parties are left to bear their own costs. File be consigned to the record room.

SD/-  
(Muhammad Hamid Mughal)  
Member

SD/-  
(Niaz Muhammad Khan)  
Chairman  
Camp Court, W/Abad

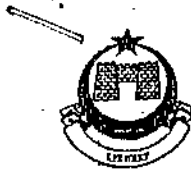
ANNOUNCED  
20.02.2018

Copy of the test copy  
M. J. Lodhkhawa  
District Tribunal,  
Peshawar

Date of Presentation of Application 26-02-2018  
Number of Words P200  
Copying Fee 8.00  
Urgent 2.00  
Total 10.00  
Name of Applicant M. J. Lodhkhawa  
Date of Completion of Case 26-02-18  
Date of Delivery of Report 26-02-18

ATTEST  
M. J. Lodhkhawa

POLICE DEPARTMENT



DISTRICT MANSERHA

ORDER

Ex-Constable Khushal No. 930 was reinstated in service, by Service Tribunal Khyber Pakhtunkhwa, vide order dated 20.02.2018. A CPLA has been instituted in Supreme Court of Pakistan Islamabad by the department through law department Khyber Pakhtunkhwa, Peshawar. The Ex-Constable has submitted an application before the worthy Inspector General of Police Khyber Pakhtunkhwa, Peshawar. The Inspector General of Police Khyber Pakhtunkhwa, Peshawar has ordered on his application that he may be reinstated/adjusted in service on conditionally basis till the decision of the CPLA by Supreme Court of Pakistan Islamabad.

Therefore, Ex-Constable Khushal No. 930 is hereby reinstated in service on conditionally basis in the light of Inspector General of Police Khyber Pakhtunkhwa, Peshawar memo: No. 2626/legal dated 20.08.2018 with effect from 01.09.2018.

He is allotted constabulary No. 538

OB-133  
03-9-2018

*Anasheed*  
District Police Officer  
Mansehra

No. 11140-40 /OHC dated Mansehra the 3-09 /2018.

Copy to:-

1. District Account Officer Mansehra
2. Pay Officer, DPO Office Mansehra
3. SRC, DPO Office Mansehra

ATTESTED  
*M. Qureshi*



**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**J-22**

**PRESENT:**

Mr. Justice Ijaz ul Ahsan  
Mr. Justice Munib Akhtar  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

**CIVIL PETITION NO.426-P OF 2018**

(Against the judgment dated 20.02.2018 of the KPK Service Tribunal, Camp Court, Abbottabad passed in Service Appeal No.1832/2011)

District Police Officer, Manshra and another ...Petitioner(s)

**Versus**

Khushal ...Respondent(s)

For the Petitioner(s): Mr. Zahid Yousaf Qureshi, Addl.A.G.  
Mr. Jamal Zeb, DSP Legal

For the Respondent(s): Not represented

Date of Hearing: 11.05.2022

**ORDER**

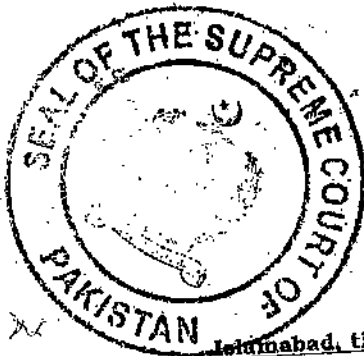
**Ijaz ul Ahsan, J.-** This petition is barred by 25 days. The application for condonation of delay (C.M.A.No.891-P/2018) does not disclose any sufficient cause for condonation within the contemplation of the Limitation Act, 1908. The application for condonation of delay is, therefore, dismissed. Consequently, the petition is dismissed as barred by time.

Sd/-J  
Sd/-J  
Sd/-J

Certified to be True Copy

Senior/Court Associate  
Supreme Court of Pakistan  
Islamabad

45519  
14/7/22



Islamabad, the  
11<sup>th</sup> of May, 2022  
Not approved for reporting  
Waqas Naseer/\*

13067/22

Civil/Criminal

Date of Presentation: 5-7-22

No of Words: 300

No of Pages: 3

Regulation Fee Rs: 500

Court Fee Rs: 180

Date of Filing: 5/7/22

Date of Delivery: 5/7/22

Compared by/Prepared by: [Signature]

Received by: [Signature]

resp by S.R.C/OAC

for rejection

[Signature]

DPO/Manshra

14-7-22

**ATTESTED**

M [Signature]

POLICE DEPARTMENT



K-23

DISTRICT MANSERHA

ORDER

Constable Khushal No. 538 of this district was reinstated in service vide this office order Endst: No. 11140-42/OHC, dated 03.09.2018 and Order Book No. 133 dated 03.09.2018 on conditionally basis in compliance of Inspector General of Police, Khyber Pakhtunkhwa, Peshawar, memo: No. 2626/legal at 20.08.2018 till the decision of CPLA lodged by the department before the honorable Supreme Court of Pakistan through Law Department, Khyber Pakhtunkhwa. The CPLA has been dismissal by the honorable Supreme Court on the basis of time barred.

Therefore, constable Khushal No. 538 is hereby adjusted on permanent basis with effect from 01.09.2018.

*[Signature]* 19/08/22

District Police Officer  
Mansehra

No. 9498 /OHC dated Mansehra the 19/08/2022

Copy to:-

1. District Account Officer Mansehra
2. Pay Officer, DPO Office Mansehra
3. SRC, DPO Office Mansehra

076 / 142  
22-08-2022

SRC  
FOR n/g  
*[Signature]*  
DPO, Mansehra

ATTESTED  
*[Signature]*

L-(24)

بخدمت جناب ڈپٹی انسپکٹر جنرل آف پولیس ہزارہ ڈویژن ایبٹ آباد

عنوان: اپیل / Respresentation بر خلاف فیصلہ آرڈر

محررہ 22-08-2022

جناب عالی! درخواست ذیل عرض ہے۔

۱۔ یہ کہ سائل قبل ازیں محکمہ پولیس میں بطور کاشمیل بھرتی ہوا اور اس دوران اپنے

فرانض منصبی، بخوبی سرانجام دیتا رہا۔

۲۔ یہ کہ اسی دوران ایک وقوعہ کی بنیاد پر سائل کو چارج شیٹ اور Statement of

Allegation دی گئیں جس کا جواب سائل نے بروقت جمع کر دیا۔

۳۔ یہ کہ اسی انکوائری کی بنیاد پر سائل کو مورخہ 28.04.2011 کو نوکری سے

Dismiss کر دیا گیا۔

۴۔ یہ کہ اس فیصلہ کے خلاف سائل نے اپیل / Representation فائل کی

جو کہ مورخہ 11.07.2011 اور مورخہ 27.09.2011 کو فیصلہ ہوئیں۔

۵۔ یہ کہ مذکورہ بالا فیصلہ جات کے خلاف سائل نے سروس ٹریبونل میں اپیل دائر کی اور

مذکورہ اپیل منظور ہوئی جس کے خلاف محکمہ نے CPLA روبرو عدالت عظمیٰ سپریم

کورٹ آف پاکستان دائر کی جو کہ عدالت موصوف سے خارج ہوئی۔ اور یوں

ATTESTED  
M. [Signature]

24/A

سائل کو مورخہ 28-04-2011 سے ہی بحال کیا جانا چاہے تھا لیکن سائل کو مورخہ 01-09-2018 سے بحالی کا آرڈر جاری کی گیا جو کہ غلط، خلاف قانون، خلاف واقع اور خلاف انصاف ہے۔

۲۔ یہ کہ سائل کی اصل تاریخ مورخہ 28-04-2011 سے عدم بحالی اور مورخہ 01-09-2018 سے بحالی اپیلانٹ کے قیمتی حقوق کی حق تلفی کے زمرہ میں آتا ہے اور ساتھ ہی ساتھ محکمانہ قواعد و ضوابط کی بھی خلاف ورزی کے زمرہ میں آتی ہے۔

لہذا استدعا ہے کہ منظورری اپیل/Representation پر اپیلانٹ کی مورخہ 28-04-2011 سے بحالی کے عاقدہ تمام مراعات کیساتھ احکامات صادر فرمائے جائیں۔

مورخہ 16-09-2022

خوشحال ولد شاہ زمان ساکن موڑ بھنگہ کلاں تحصیل ضلع مانسہرہ۔۔۔۔۔ سائل

Khushal

Mob. No. - 0342-959445

ATTESTED  
M

WAKALAT NAMA

BEFORE THE *Khyber Pakhtunkhwa Service*  
*Tribunal, Peshawar*

OF 2023

*Khushal*

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

VERSUS

*Police Deptt.*

(RESPONDENT)  
(DEFENDANT)

I/We *Khushal*

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

Dated.    /   /2023

*Khushal*  
CLIENT  
ACCEPTED  
*Mir Zaman Safi*  
ACCEPTED  
MIR ZAMAN SAFI  
ADVOCATE

OFFICE:

Room No.6-E, 5<sup>th</sup> Floor,  
Rahim Medical Centre, G.T Road,  
Hashtnagri, Peshawar.  
Mobile No.0333-9991564  
0317-9743003