

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1495/2022.

Gohar Zaman Ex-FC..... Appellant

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa.

& 02 Others..... Respondents.

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Inspector General of Police, Khyber Pakhtunkhwa.

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WRITTEN REPLY ON BEHALF OF RESPONDENTS.

1. **Preliminary Objections.**

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

2. **REPLY ON FACTS.**

1. Para No. 01 of appeal pertains to record, hence no comments.
2. Para No. 02 of appeal to the extent of posting of appellant with late DIG Muhammad Yameen Khan is correct, however after demise of DIG Muhammad Yameen, appellant was directed to report his arrival in Police Line vide DD No. 21 dated 10.07.2021, but he failed to comply the order of high ups, therefore he was reported as absent from Police Line vide DDs No. 34 dated 12.07.2021 (Copies of DD is attached as Annexure A&B).
3. Para No. 03 of appeal is incorrect. On account of absence, appellant was proceeded against departmentally and after proper enquiry, he was dismissed from service (Copy

of Show Cause Notice, Charge Sheet and Enquiry Report are attached as Annexure C,D&F).

4. Para No. 04 of appeal is correct to the extent of dismissal from service on account of willful absence for a period of more than five months, however despite of information regarding enquiry proceedings and service of Final Show Cause Notice through appellant's son, he did not join enquiry proceedings nor appear before the competent authority for personal hearing, hence dismissed from service (Copies of Final Show Cause Notice, service and order are attached as Annexure F,G&H).
5. Para No. 05 of appeal is incorrect. Appellant during enquiry proceedings was contacted on his personal cell number by the Enquiry Officer, but he did not respond, however before passing final order, the competent authority (respondent No. 01) served Final Show Cause Notice through appellant's son but he did not submitted reply nor appear for personal hearing, hence dismissed from service vide order dated 15.12.2021. Appellant filed departmental appeal which was dismissed being devoid of merit as well as badly time barred, hence the present Service Appeal is also time barred.
6. The orders of respondent No. 01 and 02 are in accordance with law/rules and the present appeal is liable to be dismissed being devoid of merit/grounds.

GROUNDS.

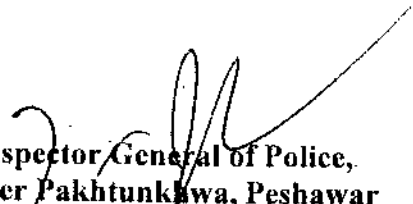
- i. Incorrect. Appellant got willful absence from duty and despite of directions from high ups, he did not report his arrival in Police Line.
- ii. Incorrect. Appellant was time and against directed to report his arrival in Police Line, but despite of that did not report back.
- iii. Incorrect. The order of dismissal from service is strictly in accordance with law/rules.
- iv. Incorrect. Reply already given vide paras above.
- v. That after the death of late DIG Muhammad Yameen Khan, appellant was directed to report in Police Line, but he disobeyed the directions of respondent No. 01 and remains absent from duties which he could not justified.
- vi. Incorrect. The respondent No. 01 before passing final order provided opportunity of defense/personal hearing, but due to disinterest in Police service he failed to appear for personal hearing despite of service, hence the order dated 15.12.2021 is speaking in nature.
- vii. Incorrect. Appellant was dismissed from service after proper departmental enquiry in accordance with law/rules.


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viii. Incorrect. The orders of respondents No. 01 and 02 are legal in accordance with the rules.

PRAYERS

It is therefore prayed that the appeal of appellant may kindly be dismissed with cost being devoid of merits and without any legal substance.


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 3)


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


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

4

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1495/2022.

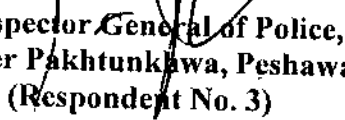
Gohar Zaman Ex-FC..... **Appellant**

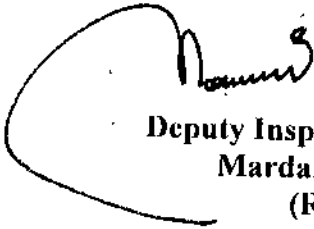
VERSUS

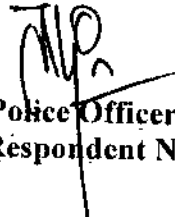
Inspector General of Police, Khyber Pakhtunkhwa.
& 02 Others..... **Respondents.**

AFFIDAVIT:-

We the respondent No. 1 to 3 do hereby solemnly affirm and declare on oath that the contents of the written reply are correct/true to the best of our knowledge / belief and nothing has been concealed from the honorable Tribunal.


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 3)


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


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

الشيخ
عبدالله

تاريخ: 10/7/2021
محل: العراق

الاطلاع: بغداد في وقت 10:09:10 يوم 10/7/2021 الموافق 10/7/2021 في العراق

بني فون الطلع في - سلمان الله 530 فواردي 153 كثر صالح 149

1456 - 1364 - 354

كثر صالح 149 - 983 كثر صالح 149

977 - 977 كثر صالح 149

أودع من الختم أف من بال آج من صالح في العراق

بإذن من العراق من آج - آفة الطلع درج رزناج حور صالح

سلمان الله 530 فواردي 153 - حنين الباري 1364 - نور صالح 354

كثير صالح 1456 كثر صالح 149 - 977 كثر صالح 149

كثير الطلع صالح 1456 كثر صالح 149

الطلع صالح كثر الختم أف من بال آج من صالح في العراق

في العراق بإذن من العراق من آج - الطلع إلهيا طاهر

وزناج حور كثر الختم أف من بال آج من صالح في العراق

محل: العراق
لعل من صالح في العراق
SAMPLS
16-12-2022

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16-12-2022

إرسال حرة

"B"

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دیس کنٹری

کھلم 34 روزہ 7/12/2022

بھارتی قیادت کے ساتھ 15-14-2022 7/12/2022 کو جمعہ 9/12/2022

بھارتی قیادت کے ساتھ 15-14-2022 7/12/2022 کو جمعہ 9/12/2022

بھارتی قیادت کے ساتھ 15-14-2022 7/12/2022 کو جمعہ 9/12/2022

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بھارتی قیادت کے ساتھ

بھارتی قیادت کے ساتھ
16-12-2022

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Forwarded
16-12-2022

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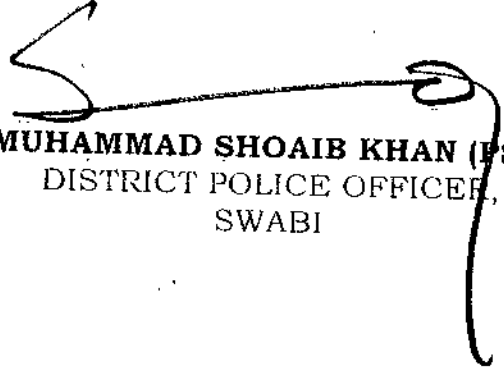
SHOW CAUSE NOTICE

I, **Muhammad Shoaib Khan, District Police Officer, Swabi** as competent authority under Police Disciplinary Rules 1975, hereby served upon you, **Constable Gohar No.917** as follow:

Whereas you Constable Gohar No.917 while posted to Police Lines Swabi absented yourself from duty .w.e. from 12.07.2021 till date without any leave/prior permission of the competent authority, which is against the discipline and amounts to gross mis-conduct.

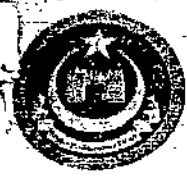
You are hereby directed to show cause of your irresponsible acts towards performing your professional responsibilities within 07 days, as to whether you will not be punished as defined by Police rules.

In case of ^{no} none submission of your reply within 07-days of its delivery in the normal course of circumstances, it shall be presumed that you have no defense to offer, and ex-parte action shall be taken against you.


MUHAMMAD SHOAIB KHAN (PSP)
DISTRICT POLICE OFFICER,
SWABI

"D"

(8)



OFFICE OF THE
DISTRICT POLICE OFFICER SWABI
PHONE# 0938-920050 FAX# 0938-920054
EMAIL: dpo_swabi@yahoo.com

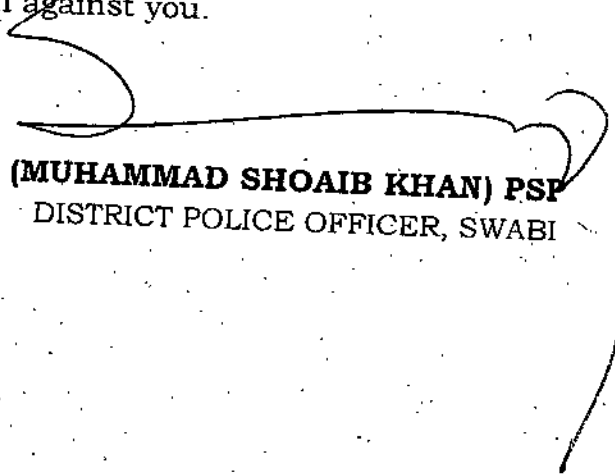
CHARGE SHEET UNDER KPK POLICE RULES-1975

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

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

Now therefore as required by Rules 6(1) of the aforesaid Rules I **Muhammad Shoaib Khan, PSP**, District Police Officer Swabi charge you **Constable Gohar Zaman No.917**, on the basis of statement of allegations attached to this charge sheet.

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


(MUHAMMAD SHOAIK KHAN) PSP
DISTRICT POLICE OFFICER, SWABI

D/1 09

OFFICE OF THE
DISTRICT POLICE OFFICER SWABI
PHONE# 0938-920050 FAX# 0938-920054
EMAIL: dpo_swabi@yahoo.com

DISCIPLINARY ACTION UNDER KPK POLICE RULES-1975

I, **Muhammad Shoaib Khan**, District Police Officer, Swabi as competent authority am of the opinion that **Constable Gohar Zaman No.917**, has rendered himself liable to be proceeded against as he has committed the following acts/omission within the meaning of section 02 (iii) of KPK Police Rules-1975.

STATEMENT OF ALLEGATIONS

That Constable Gohar Zaman No.917 while posted to Police Lines Swabi absented himself from duty w.e. from 12.07.2021 till date without any leave/prior permission of the competent authority. Therefore, he was issued with Show Cause Notice. He has been directed time and again to receive his Show Cause Notice but all these directions fell on deaf ears, hence summary of allegations.

This amounts to grave misconduct on his part, warranting departmental action against him.

For the purpose of scrutinizing the conduct of the said official Mr. Noor ul Amin DSP H.Qrs Swabi is hereby deputed to conduct proper departmental enquiry against the aforesaid official, as contained in section 6 (I) (a) of the afore mentioned rules, The enquiry officer after completing all proceedings shall submit his verdict to this office within (7) days, Constable Gohar Zaman No.917, is directed to appear before the enquiry officer on the date, time and place fixed by the later (enquiry officer) a statement of charge sheets is attached herewith.


(MUHAMMAD SHOAIB KHAN) PSP
DISTRICT POLICE OFFICER, SWABI

No. 131 /CC/PA

Dated: 18/10 /2021

"E"

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**OFFICE OF THE DEPUTY SUPERINTENDENT OF POLICE,
HEADQUARTER, SWABI.**

Phone No. 0938-280279, E-Mail: dsphqswabi@gmail.com

To: The District Police Officer,
Swabi.

No: 591 /H.Qrs: Swabi dated 28/11/2021.

Subject: - **DEPARTMENTAL ENQUIRY AGAINST CONSTABLE GOHAR ZAMAN NO. 917**

Kindly refer to your office Endorsement No. 131/CC/PA dated 12.10.2021 on the subject cited above.

SUMMARY OF ALLEGATION:-

It is alleged that Constable Gohar Zaman No. 917, posted to Police lines, Swabi, absented himself from duty w.e. from 12.07.2021 till date without any leave/prior permission of competent authority. Therefore, he was issued show cause notice but all these directions fell on deaf ears, hence summary of allegations. This amounts to grave mis-conduct on his part, warranting departmental action against him.

PROCEEDINGS:

The delinquent constable was summoned vide this office letter No. 445/Hqrs dated 13.10.2021 to appear before the undersigned but he failed to comply. He was issued warning under KP Police Rules 1975 (section 5:6) on his home address through DSP, Swabi vide this office letter No. 478/Hqrs dated 02.11.2021. He was further contacted on his cell No. 0313-9350450 but he could not be reached. After the expiry of warning period, and having failed to reach the constable through any means, whatsoever, ex-parte action is initiated.

FINDINGS:-

In view of the aforementioned proceedings the instant enquiry is hereby closed with the fact that either the delinquent officer has no regards for departmental proceedings or he has nothing to offer in his defense before the enquiry officer.

RECOMMENDATIONS:

He is therefore, recommended for **Ex-Parte Action**, if agreed, please.

(NOOR-UL-AMIN KHAN)
Deputy Superintendent of Police,
H.Qrs, Swabi.

"F"

(11)

FINAL SHOW CAUSE NOTICE

I, Muhammad Shoaib Khan, District Police Officer, Swabi as competent authority under Police Disciplinary Rules 1975, hereby serves upon you, **Constable Gohar Zaman No.917** as follow:

Whereas, you Constable Gohar Zaman No.917 while posted to Police Lines Swabi absented yourself from duty w.e.f 12.07.2021 till date without any leave/prior permission of the competent authority. Your this act is highly against the discipline and amounts to gross mis-conduct.

Therefore, you were issued a Show Cause Notice and were directed time and again to receive your Show Cause Notice but all these directions fell on deaf ears.

In this connection you were issued charge sheet alongwith summary of allegations and DSP, H.Qrs Swabi, was appointed to conduct proper departmental enquiry. The enquiry officer held enquiry and submitted his findings. However, after proper enquiry he recommended you Constable Gohar Zaman No.917, for ex parte proceedings for the mis-conduct and recommended you for Major punishment.

You are hereby directed to Show Cause Finally of your irresponsible acts towards performing your professional responsibilities within 07 days, as to whether you will not be punished as defined by Police rules.

In case of none submission of your reply within 07-days of its delivery in the normal course of circumstances, it shall be presumed that you have no defense to offer, and ex-parte action shall be taken against you.

MUHAMMAD SHOAIB KHAN (PSP)
DISTRICT POLICE OFFICER,
SWABI

"9"

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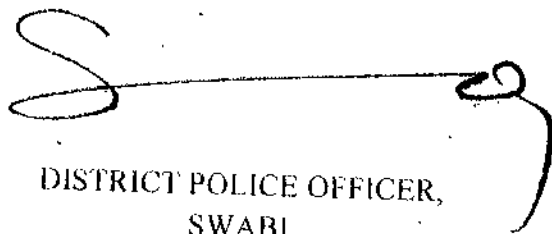
SHO PS SWABI

No. 5017 /PA,
Dt. 03/18 /2021.

Subject: SERVICE OF FINAL SHOW CAUSE NOTICE.

Memo:

Enclosed please find herewith Final Show Cause Notice in r/o Constable **Gohar Zaman S/o Muhammad Yousaf** R/o Swabi Mohalla Inayat Khel Swabi for service upon him. Duplicate copy, thereof, duly signed by him may be returned to this office for further necessary action.



DISTRICT POLICE OFFICER,
SWABI.

میں دلبرام کو "11" صحت سے رکھ کر اور اس کا
آگے کے آگے گاہ کوڑا سے عالم کا
فائل سے کازینو سے وصول کرنا ہے اس کے
میں کرنا

Mob 2931982-2345

CNIC 9473866-1-16202

میں سے جو ہے وہ ہے زمان سے ہوا کے عین ہے

4-12-2021

"H"

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917/11
DVR

ORDER

This Order will dispose off the departmental enquiry against **Driver Constable Gohar Zaman No.917**, who while posted to Police Lines Swabi, willfully absented himself from duty w.e.f 12.07.2021 till date without any leave or prior permission of the competent authority. He was issued with charge sheet alongwith summary of allegations and Mr. Noor ul Amin DSP H.Qrs Swabi was appointed as Enquiry Officer. The enquiry officer conducted proper departmental enquiry, recorded statements of all concerned, collected evidence and submitted his findings, wherein the enquiry officer recommended the defaulter Driver Constable Gohar Zaman No.917 for ex-parte proceedings for the mis-conduct.

The undersigned has gone through the enquiry papers and findings of the enquiry officer and by agreeing with the recommendations of the enquiry officer issued Final Show Cause Notice to defaulter. The Final Show Cause Notice were sent to SHO PS Swabi for service upon him; consequently Final Show Cause Notice was handed over to his son namely Abbas Gohar for service upon him on 04.12.2021. He was clearly directed vide Para No.05 of the Final Show Cause Notice to submit his reply within seven days of the receipt of the Notice, otherwise ex-parte action will be taken against him, however, he did not bother to submit his reply nor appear for personal hearing even after lapse of 10 days which shows his dis-interest in Police service and has nothing to offer in his defence, hence ex-parte action.

Therefore, I, **Muhammad Shoaib Khan, PSP**, District Police Officer, Swabi, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 1975, hereby award **Driver Constable Gohar Zaman No.917**, Major Punishment of dismissal from service with immediate effect. He will not be entitle for payment of any salary for the period of his absence on the principle no work no pay.

MUHAMMAD SHOAIB KHAN (PSP)
DISTRICT POLICE OFFICER, SWABI

O.B No. 1182

Dated 15/12 /2021.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

No. 1518-22 /PA, dated Swabi, the 17/12 /2021.

Copies to the: -

1. DSP H.Qrs Swabi.
2. Establishment Clerk.
3. Fauji Missal Clerk.
4. Pay Officer, Swabi
5. Official concerned.