

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

Service Appeal No.02/2018

Date of Institution ... 01.01.2018  
Date of Decision ... 06.07.2022

Anwar Shah S/O Gulbar Khan, Ex-Constable No.126 Swat Police R/O  
Shahgram Tehsil Bahrain, District Swat.

... (Appellant)

**VERSUS**

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

... (Respondents)

Barrister Adnan Khan,  
Advocate

... For appellant

Noor Zaman Khattak,  
District Attorney

... For respondents

Rozina Rehman  
Fareeha Paul

... Member (J)  
... Member (E)

**JUDGMENT**


**ROZINA REHMAN, MEMBER (J):** The appellant has invoked the  
jurisdiction of this Tribunal through above titled appeal with the prayer  
as copied below:

**"On acceptance of this appeal, the impugned order No.OB 31  
dated 25.02.2009 may be set aside and appellant be  
reinstated in service as Constable".**

2. Brief facts of the case are that appellant was inducted in  
the Police Department and subsequently, posted in Police Force of



District Swat as Constable on 05.05.2016. During service, he performed his duties in extremely harsh security situation when the militants had occupied several parts of District Swat. The appellant even in the said circumstances did not avail his annual leave and continued performing his duties to the entire satisfaction of his high-ups. However, due to some compelling circumstances, appellant could not perform his duties for a certain period. That after the above-mentioned absence, when he appeared at his place of duty, he was informed about dismissal from service. Feeling aggrieved, he filed various written and oral requests which were never responded to by the respondents. That having his grievances not redressed by respondents, appellant lost all hopes about his reinstatement. However, in the year 2015-16, various Constables of Reserved Police with similar status as that of appellant were reinstated in service and last in the series of such orders was made on 18.03.2016. Relying on such like orders, one Adil Said Ex- Constable approached the Service Tribunal and his appeal was accepted. The above-mentioned reinstatement order and judgment of this Tribunal gave a fresh ray of hope to the appellant, hence, he filed a fresh departmental appeal for his reinstatement which was dismissed being time barred. Feeling aggrieved, the present service appeal was filed.



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

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

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

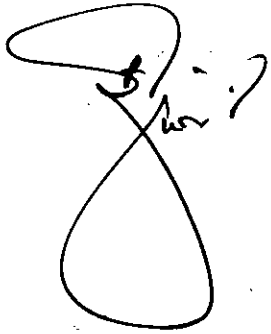
departmentally on the allegations of absentia, therefore, he was awarded major punishment of dismissal from service by the competent authority after fulfillment of all codal formalities.

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that Constable Anwar Shah absented himself from duty w.e.f 03.11.2008 till the date of impugned order i.e. 25.02.2009 vide DD No.09 dated 03.11.2008 without any permission or leave and vide order dated 25.02.2009 of District Police Officer, Swat major punishment of dismissal from service was awarded from the date of his absence i.e. 03.11.2008. No doubt, departmental appeal was not filed within time and the case of the present appellant was filed relying on the orders in respect of one Adil Said Constable No.763 of Swat Police who approached this Tribunal in Service Appeal No.1214/2015 and which appeal was accepted vide order dated 02.01.2017. He submitted different applications but when other constables of the Reserved Police were reinstated into service in the year 2015-16 and the last in the series of such of orders was made on 18.03.2016 which prompted the appellant to pursue his case. He, therefore, filed departmental appeal for his reinstatement. Learned counsel has placed on file different orders of Ex-Constables who were dismissed from service in the year 2009 w.e.f 2008 but was reinstated vide order dated 18.03.2016. In this regard, order of Commandant Frontier Reserved Police Khyber Pakhtunkhwa Peshawar in respect of Ex-Constable Khalil Ur Rehman is available on file as "Annexure-B". Similarly, one



Bashir Khan Ex-Constable of FRP Malakand Range was removed from service on 10.10.2008 but was reinstated on 04.03.2016. Another order is in respect of Ex-Constable Arshad Iqbal of FRP Malakand Range who was removed from service on 21.02.2008 but was reinstated on 29.03.2016. Another order in respect of Ex-Constable Jamshaid Ali is also available on file who was proceeded against departmentally on allegation of absentia w.e.f 28.09.2008 till his removal from service. Lenient view was taken and he was reinstated in service vide order dated 23.09.2015. Similar orders in respect of Ex-Constables Imran and Muhammad Shahid are also available on file. One Ex-Constable Adil Said No.763 of District Swat preferred service appeal against the impugned order dated 29.12.2008 vide which he was awarded major penalty of dismissal from service and vide order of this Tribunal dated 02.01.2017, his appeal was accepted. Relevant Para from the judgment of this Tribunal in Service Appeal No.1214/2015 is hereby reproduced for ready reference:

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



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

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

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

A handwritten signature or mark, possibly a stylized 'S' or '8', with some scribbles and arrows pointing to the right.

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

ANNOUNCED.

06.07.2022



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



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

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District Attorney

... For respondents

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Fareeha Paul

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consigned to the record room.

ANNOUNCED.  
06.07.2022



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



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

ORDER

06.07.2022


Appellant present through counsel.

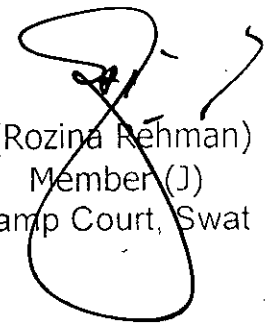
Noor Zaman Khan Khattak, learned District Attorney for respondents present. Arguments heard. Record perused.

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

ANNOUNCED.

06.07.2022

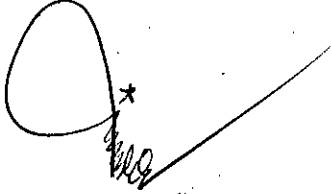
  
(Fareeha Paul)  
Member (E)  
Camp Court, Swat

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

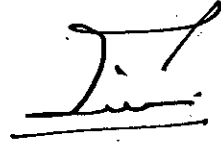
13.05.2022

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

Appellant requested for adjournment on the ground that  
his counsel is not available today. Adjourned. To come up for  
arguments on 08.06.2022 before the D.B at camp court Swat.



(Mian Muhammad)  
Member(E)

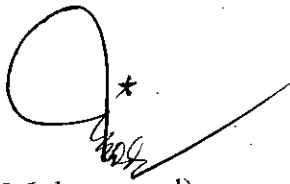


(Salah Ud Din)  
Member(J)  
Camp Court Swat

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

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

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



(Mian Muhammad)  
Member(E)



(Kalim Arshad Khan)  
Chairman  
Camp Court Swat

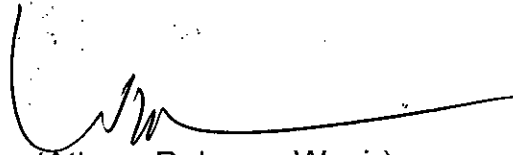


09.12.2021

Junior to counsel for appellant present.

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

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



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



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

10.02.2022

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



Reader

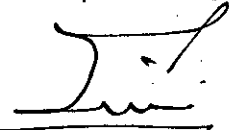
07.04.2022

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

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



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



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


05/04/2021

Due to COVID-19, the case is adjourned to

07/06/2021 for the same.

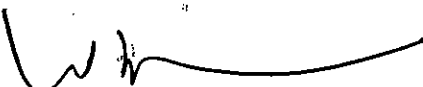
  
READER


Due to COVID-19, the case is  
adjourned to 7/10/21

  
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07.10.2021 Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents Present.

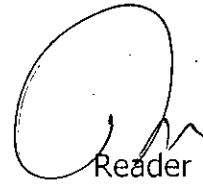
Learned Members of the DBA are observing Sogh over the demise of Qazi Imdadullah Advocate and in this regard request for adjournment was made; allowed. To come up for arguments before the D.B on 09.12.2021 at Camp Court, Swat.

  
(Atiq-Ur-Rehman Wazir)  
Member (E)  
Camp Court, Swat

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

07.12.2020

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



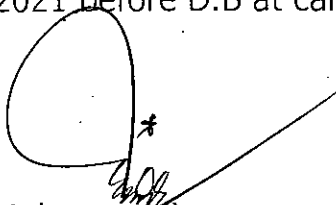
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01.02.2021


Nemo for parties.

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

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



(Mian Muhammad)  
Member(E)



(Rozina Rehman)  
Member(J)  
Camp Court Swat

01.06.2020 Due to Covid-19, the case is adjourned. To come up for the same on 06.07.2020, at camp court Swat.



Reader

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



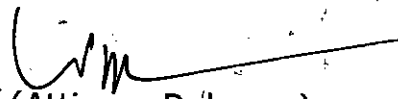
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07.09.2020 Appellant present through counsel.


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

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

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




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




(Rozina Rehman)  
Member  
Camp Court, Swat

08.01.2020

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


  
(Hussain Shah)  
Member  
Camp Court Swat

  
(M. Amin Khan Kundi)  
Member  
Camp Court Swat

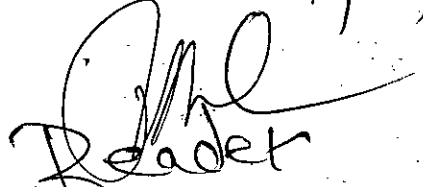
02.03.2020

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

  
Member


  
Member  
Camp Court, Swat.


Due to corona virus foul  
to camp court swat for th  
has been cancelled. To come  
up for the same on - 07/06/20

  
Reader

11.06.2019

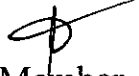
Mr. Arshed Khan, Advocate on behalf of learned counsel for the appellant present and seeks adjournment. Mr. Mian Ameer Qadir, learned District Attorney for the respondents present. Adjourn. To come up for arguments on 02.09.2019 before D.B at Camp Court Swat.


  
(M. Amin Khan Kundi)  
Member  
Camp Court Swat

  
(M. Hamid Mughal)  
Member  
Camp Court Swat

02.09.2019


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


  
Member

  
Member  
Camp Court Swat

04.11.2019

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


  
(Hussain Shah)  
Member  
Camp Court Swat

  
(M. Amin Khan Kundi)  
Member  
Camp Court Swat

06.02.2019

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

  
Member

  
Member  
Camp Court Swat.


06.03.2019

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

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


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


  
Member

  
Chairman  
Camp Court, Swat

03.04.2019


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

  
(M. Amin Khan Kundi)  
Member  
Camp Court Swat

  
(M. Hamid Mughal)  
Member  
Camp Court Swat

07.08.2018

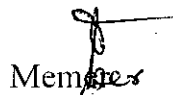
Appellant in person present. Due to summer vacation the case is adjourned to 02.10.2018 for the same at camp court Swat.



Reader

02.10.2018

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



Member




Chairman  
Camp Court Swat

04.12.2018

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



Member



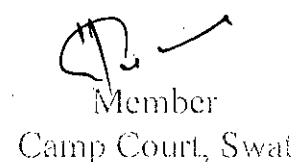
Member  
Camp Court, Swat

06.12.2018

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



Member



Member  
Camp Court, Swat



03.04.2018

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

  
Chairman  
Camp court, Swat


09.05.2018

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

  
Reader

05.06.2018

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

  
Chairman  
Camp Court, Swat


02.02.2018

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

Learned counsel for the appellant argued that the appellant was inducted in the Police Department and subsequently posted in Police Force of District Swat as Constable on 05.05.2006. At the time of dismissal from service, the appellant was performing his duty at Police Station Matta, District Swat. That during his service as Constable, the appellant has performed his duties in extremely harsh security situation when the militants had occupied several parts of District Swat. That due to some compelling circumstances the appellant could not perform his duty for certain period, whereafter, the appellant reported for duty, but he was informed about his dismissal from service by respondent No. 3, vide order dated 25.09.2009, with effect from the date of absence i.e. 03.11.2008. That the impugned order dated 25.09.2009 is void as retrospective order is not acceptable in the eyes of law. That in similar cases belonging to Malakand Region the appellants were reinstated in service. That being similarly placed person, no limitation runs against void orders and similarly placed persons. Learned counsel also relied on the judgment reported as 2002 PLD (C.S) 268.


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

Appellant Deposited  
Security / Process Fee

  
(Gul Zeb Khan)  
Member  
Camp Court Swat.

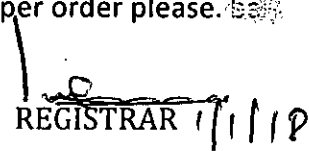

08.03.2018

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

  
Chairman  
Camp court, Swat

Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_  
Case No. 2/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	1/1/2018	<p style="text-align: center;">The appeal of Mr. Anwar Shah presented today by Mr. Dr. Adnan Khan Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 1/1/18</p>
2-	9-1-2018	<p style="text-align: center;">This case is entrusted to Touring S. Bench at Swat for preliminary hearing to be put up there on <u>02-02-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>

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

Service Appeal No. 21 of 2018

Anwar Shah..... Appellant

VERSUS

Government of Khyber Pakhtunkhwa and others

..... Respondents

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3.	Addresses of the parties		8
4.	Copy of dismissal order	A	9
5.	Copies of reinstatement orders by Commandant FRP	B	10-16
6.	Copy of judgment	C	17-19
7.	Copy of reinstatement application	D	20
8.	Copy of order dated 18-09-2017	E	21
9.	Copy of memo of appeal	F	22
10.	Wakalatnama		23

*Anwar Shah*  
Appellant through Counsel

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

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

Service Appeal No. 21 of 2018

Anwar Shah s/o Gulbar Khan, Ex-Constable No.126 Swat Police  
 r/o Shahgram Tehsil Bahrain, District Swat

..... Appellant

Khyber Pakhtukhwa  
 Service Tribunal

Diary No. 05

Dated 01-01-2018

VERSUS

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

..... Respondents

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

Filed to-day

Registrar

01/01/18

**PRAYER:**

On acceptance of this Appeal, the impugned order No. O.B 31 dated 25-02-2009 may be set aside and appellant be reinstated into service as Constable.

*Respectfully Sheweth:*

1. That the appellant was inducted in the Police Department and subsequently posted in police force of District Swat as Constable on 05-05-2006. At the time of dismissal from service, appellant was performing his duty at Police Station Kabal, District Swat.
2. That during his service as Constable, appellant has performed his duties in extremely harsh security situation when the militants had occupied several parts of District Swat. Needless to say that a handsome majority of police officials serving in District Swat were hesitant to continue their duties in the said period.
3. That appellant even in the said circumstances did not avail his annual leave and continued performing his duties to the entire satisfaction of his high ups. However, due to some compelling circumstances arising out of severe illness in the family, appellant could not perform his duty for a period of almost two months. It is worth mentioning that appellant had informed his high ups about the absence from duty telephonically.
4. That after the above mentioned absence, when the appellant appeared at his place of duty, he was informed about dismissal from service by respondent No.3 vide order dated 25-09-2009 (Copy of dismissal order is attached as Annexure "A").
5. That appellant being aggrieved with the dismissal order, presented various written and oral requests for his

reinstatement before his high-ups, which were never respondent to by them.

6. That having his grievances not redressed by respondents, appellant lost all the hopes about his reinstatement. However, in the year 2015-16, various constables of Reserve Police with similar status as that of appellant were reinstated to service by Commandant FRP. The last in the series of such orders was made on 18-03-2016 (Copies of reinstatement orders by Commandant FRP are attached as Annexure "B").
7. That relying on such like orders, one Adil Said Ex-Constable No.763 of Swat Police approached this Hon'ble Tribunal through Service Appeal No.1214 of 2015. The said appeal was accepted by this Hon'ble Tribunal vide judgment dated 02-01-2017 (Copy of judgment is attached as Annexure "C").
8. That the above mentioned reinstatement orders and judgment of this Hon'ble Tribunal gave a fresh array of hope to appellant, hence he filed another application for his reinstatement before respondent No.2 on 11-09-2017 (Copy of reinstatement application is attached as Annexure "D").
9. That respondent No.2 vide order dated 18-09-2017 dismissed the above mentioned application alongwith applications of other Ex-employees of Police Department being time barred (Copy of order dated 18-09-2017 is attached as Annexure "E").

10. That feeling aggrieved with the above mentioned order of rejection of reinstatement application, appellant filed departmental appeal before respondent No.1 on 29-09-2017 (Copy of memo of appeal is attached as Annexure "F").
11. That the above mentioned Departmental Appeal has not been responded to as yet, hence this appeal, *inter alia*, on the following grounds:

**GROUND:**

- A) That the impugned order has been passed unilaterally and in blatant violation of law, hence the same is liable to be set aside.
- B) That the requirements of due process, fairness and justness have not been complied in the present case. The appellant was neither show caused nor a statement of allegations was given to him.
- C) That appellant was not associated with the alleged inquiry conducted by respondent No.4. Hence, appellant has been condemned unheard in the instant case. Therefore, on this score as well the impugned order is liable to be set aside.
- D) That the mandatory requirement of publication has not been fulfilled in the instant case. Therefore, on this ground as well the impugned order is not tenable in the eyes of law.
- E) That numerous officers and officials of Malakand Regional Police had fled their duties at the time of insurgency. Majority of those individuals were reinstated into service after restoration of peace in the area. Regrettably, appellant



has not been treated at par with those reinstated individuals.

- F) That no doubt, the last in the series of reinstatement applications has been made by the appellant at belated stage. However, as mentioned in the facts, these were the reinstatement orders in respect of sacked constables of FRP and judgment of this Hon'ble Tribunal in Service Appeal No.1214 of 2015, which gave the appellant a fresh cause of action. In this respect the rule laid down in a judgment reported as 2002 PLC (C.S) 268 is applicable, where it was held that no limitation shall run in cases of similarly placed employees.
- G) That further grounds with leave of this Hon'ble Tribunal will be raised at the time of oral submissions.

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

Appellant



Anwar Shah

Through Counsel

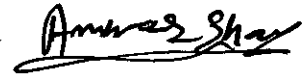


Dr. Adnan Khan, Barrister-at-Law

CERTIFICATE:

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

Appellant



Anwar Shah

Through Counsel



Dr. Adnan Khan, Barrister-at-Law

7

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

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

Anwar Shah s/o Gulbar Khan, Ex-Constable No.126 Swat Police r/o  
Shahgram Tehsil Bahrain, District Swat

..... *Appellant*

VERSUS

Government of Khyber Pakhtunkhwa and others

..... *Respondents*

**AFFIDAVIT**

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

Identified by

*Adnan Khan*

Dr. Adnan Khan, Barrister-at-Law

DEPONENT

*Anwar Shah*

Anwar Shah



8

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

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

Anwar Shah..... Appellant

VERSUS

Government of Khyber Pakhtunkhwa and others

..... Respondents

ADDRESSES OF THE PARTIES

APPELLANT:

Anwar Shah s/o Gulbar Khan, Ex-Constable No.126 Swat Police r/o  
Shahgram Tehsil Bahrain, District Swat.

CNIC# 15602-8779268-9

Cell # 0342-1237615

RESPONDENTS:

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

Appellant

Anwar Shah  
Anwar Shah

Ann x "A"

9

**ORDER**

This order will dispose off the enquiry initiated against Constable Anwar Shah No. 126, who while posted to Police Station Kabal absented himself from duty with vide DD No.09, dated 03/11/2008 and failed to report. Thus absented himself from his legitimate duty and a report to this effect was entered at Police Station Kabal vide DD No.09, dated 03/11/2008.

He was issued charge sheet with statement of allegations. Enquiry was initiated against him and DSP Legal was appointed as Enquiry Officer. The Enquiry Officer in his finding report submitted that the defaulter Constable was summoned time and again, but did not appear to record his statement. Hence he was recommended for Major punishment of the Enquiry Officer. He was issued Charge Sheet No. 833/E, dated 26/12/2008 but no reply has been received.

This constitutes misconduct, cowardice on his part and as such he is liable for action under section 5 sub section (4) of the Removal from service (Special Powers) Ordinance 2000 (Amendment) Ordinance 2001.

This constitutes misconduct/disinterest on his part and as such he is liable for action under section 5 Sub Section (4) of the Removal from service (Special Power) Ordinance 2000 (Amendment) Ordinance 2001 and dispose with the enquiry proceeding as laid down in the Ordinance and am further satisfied that there is no need of holding further departmental enquiry. Since the defaulter Constable has been found guilty of gross misconduct as defined in the said Ordinance, I Mr. Dilawar Khan Bangash DPO Swat as a competent authority, therefore impose major penalty by dismissing him from service from the date of absence i.e 03/11/2008.

Order announced.

District Police Officer, Swat

O.B. No. 31

Dated. 25.2.09.

10

Ann "B"

**ORDER**

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

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

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

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

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

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

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

Order announced.

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

2388  
No. \_\_\_/EC, dated Peshawar the 18/03/2016

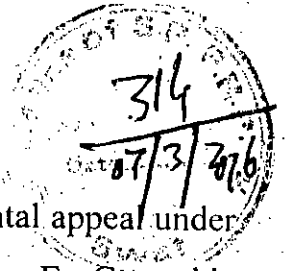
Copy of above is forwarded for information and necessary action to the SP FRP Malakand Range Swat with R/O his office memo No. 190/EC, dated 04.02.2016. His Service Roll and D/File sent herewith.

*E. S/Record  
alongwith D/Paper*

*OB No 163  
22/3/2016*

**CERTIFIED TO  
BE TRUE COPY**  
*[Signature]*  
Barrister  
Dr. Adnan Khan  
Advocate High Court

ORDER



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

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

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

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

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

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

Order announced.

*OB/EC/OAS/PO  
for w/a.*

*SP/FRP Mkd Range Swat  
7/3/2016*  
No 1977 /EC, dated Peshawar the 04/03/2016

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

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

**CERTIFIED TO  
BE TRUE COPY**

*OBNO 123  
7-3-016*

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

**ORDER**

(12)

407  
31/3/16  
Khyber

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

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

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

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

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

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

Order announced.

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

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

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

OB/EC/OAS3/PO

Por w/a

SP/FRP Malakand Range Swat  
31/3/2016

178

اب عالی! منورہ بالا بحوالہ حکیم عمر بالا اس دفتر کو الیم 28 مہر 178  
وضو 29/3/16 کو دوبارہ ملازمت پر بحال کرنے کی توجیہ لکھی ہے  
4832 ایڈلٹ کر کے پلاٹون نمبر 768 میں دوسرے پوائنٹ

*Shahid Zuber*  
N.OAS1

**CERTIFIED TO  
BE TRUE COPY**

Barrister  
*Dr. Adnan Khan*  
Advocate High Court





ORDER

14

1293  
309/10

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

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

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

New No. 3811

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

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

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

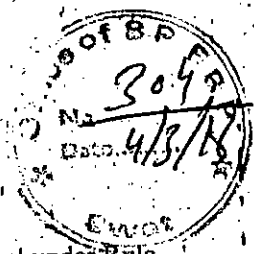
CBNO 348  
Dmk -1-10 -TS

OB/ASL/EC/PO  
For 11/9  
*[Signature]*  
SP FRP SWAT  
29/09/015.

**CERTIFIED TO  
BE TRUE COPY**

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

ORDER



15

This order is hereby passed to dispose of departmental appeal under Rule 11 of Khyber Pakhtunkhwa Police Rules-1973, submitted by Ex-Constable Imran Khan No. 4279 of FRP Malakand Range, against the order of the SP, FRP/Kohat Range, in which the applicant was removed from service.

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

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

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

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

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

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

Order announced.

OB/OSI/EC/PO  
For n/a  
SP, FRP/SWAT  
04/03/16  
Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa, Peshawar.

OB: 123

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

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

CERTIFIED TO BE TRUE COPY

Barrister  
Dr. Adnan Khan  
Advocate High Court

ORDER

16

New No. 4241

1225  
19/9/2015

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

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

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

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

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

No 7659 /EC dated Peshawar the 9 / 10 / 2015.

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

End - 5/Record  
Enquiry Site

OB/AS1/EC/PO  
For: 21/9  
*[Signature]*  
SP FRP SWAT  
14/09/2015

OB No 319  
Date: 14/09/2015

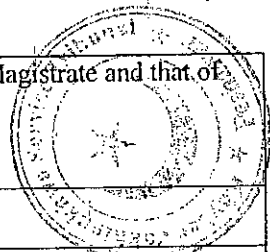
**CERTIFIED TO  
BE TRUE COPY**

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




17

Ann "C"

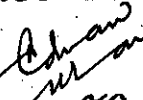


S. No.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	02.01.2017	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>CAMP COURT SWAT</u></p> <p align="center">Service Appeal No. 1214/2015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

ATTESTED

  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

**CERTIFIED TO BE TRUE COPY**

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

ATTESTED  
SECRETARY

  
 SECRETARY  
 Khyber Pakhtunkhwa Service Tribunal,  
 Peshawar

18

10

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

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

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

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

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

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Barrister  
Dr. Adnan Khan  
Advocate High Court

*[Faint, illegible stamp or signature]*

(19)

(19)

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

Announced  
 02-01-2017

Self M. Azim Khan Afridi,  
 Chairman  
 Chief Court Secret

Certified to be true copy  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

Self Ahmad Hassan  
 Member

Date of Presentation of Application: 10-01-2017  
 Number of Words: 1600  
 Copying Fee: 10/-  
 Urgent: 2/-  
 Total: 12/-  
 Name of Applicant: [Signature]  
 Date of Completion: 10-01-2017  
 Date of Delivery of: 10-01-2017

**CERTIFIED TO  
 BE TRUE COPY**

Barrister  
 Dr. Adnan Khan  
 Advocate High Court

CERTIFIED TO  
 BE TRUE COPY

[Signature]  
 Advocate High Court

کتابت ضابطہ D.1.5 ہے و الٹو ڈیٹ پر ہے

Ann "D"

در فرائض عمارت بحال رہی ...

بیت پناہ درتہ 08 فروری 31  
25 2009

صاحبزادہ / شہزادہ صاحب و شہزادہ صاحبہ

بیت پناہ درتہ درتہ 08 فروری 31

بیت پناہ درتہ 08 فروری 31  
25 2009

بیت پناہ درتہ 08 فروری 31

3: بیت پناہ درتہ 08 فروری 31

4: بیت پناہ درتہ 08 فروری 31

5: بیت پناہ درتہ 08 فروری 31

6: بیت پناہ درتہ 08 فروری 31

7: بیت پناہ درتہ 08 فروری 31

8: بیت پناہ درتہ 08 فروری 31

بیت پناہ درتہ 08 فروری 31  
25 2009

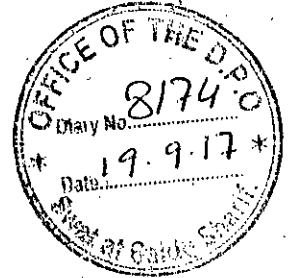
CERTIFIED TO BE TRUE COPY

Barrister  
Dr. Adnan Khan  
Advocate High Court



(21)

Ann "E" BY FAX



From : The Regional Police Officer,  
Malakand, at Saidu Sharif, Swat.

To : The District Police Officers,  
Swat, Buner, Dir Lower and Dir Upper.

No. 8609-12 /E, dated Saidu Sharif, the 18-09- /2017.

Subject: ORDER

Memorandum:

Applications of the following Ex-Police officers in connection with reinstatement in Service of the Districts as noted against each were examined and filed being time barred:-

S. No	Name and No	District
1.	Ex-Constable Yaseen Khan No. 1595	Dir Lower
2.	Ex-Constable Muhammad Ayub No. 1460	Swat
3.	Ex-Constable Aleem Shah No. 173	Dir Lower
4.	Ex-Constable Anwar Shah No. 126	Swat
5.	Ex-Constable Habib Ur Rehman No. 877	Dir Upper
6.	Ex-SPF Fazal Khaliq No. 155	Swat
7.	Ex-SPF Awrang Zeb No. 613	Swat
8.	Ex-SPF Saleem Bahadar No. 887	Buner
9.	Ex-Class-IV Rahim Ullah	Dir Upper

The applicants may be informed accordingly, please.

*[Signature]*  
Regional Police Officer,  
Malakand, at Saidu Sharif Swat  
18/9

EC.  
For m.c.r.  
is directed  
*[Signature]*  
18/9/17

**CERTIFIED TO  
BE TRUE COPY**

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

2004

بخدمت جناب انسپکٹر جنرل آف پولیس صاحب خیبر پختونخواہ بمقام پشاور

اپیل پر خلاف حکم محررہ 18-09-2017

جناب عالی!

حسب ذیل عرض ہے،

- ۱- یہ کہ سائل گاؤں شاگرام مدین سوات کا مستقل سکونتی رہائشی ہے۔
- ۲- یہ کہ سائل محکمہ پولیس میں بطور کنشیل بھرتی ہوا تھا۔ جو کہ بروئے حکم محررہ 25-02-2009 بوجہ غیر حاضری نوکری سے برطرف کیا گیا ہے (نقل حکم لف ہے)۔
- ۳- یہ کہ سائل کی غیر حاضری دانستہ تھی بلکہ اپنی زوجہ کی سنگین بیماری کی وجہ سے سائل عرصہ تقریباً دو ماہ کیلئے نوکری سے غیر حاضر رہا۔
- ۴- یہ کہ سائل نے اپنی نوکری کی بحالی کیلئے درخواست رو برو DIG ملاکنڈ گزاری جو کہ بروئے حکم محررہ 18-09-2017 خارج کی گئی (نقل حکم لف ہے)۔
- ۵- یہ کہ سائل اندریں وقت بیروزگار ہے اور نہایت غربت اور کمپرسی کی زندگی گزار رہا ہے۔
- ۶- یہ کہ حکومتی پالیسی اور عدالت ہائے کے فیصلہ جات کے روشنی میں کئی ملازمین کو نوکری پر بحال کیا گیا ہے اور من سائل بھی مذکورہ فیصلہ جات کی روشنی میں نوکری پر بحالی کا مستعدی ہے۔

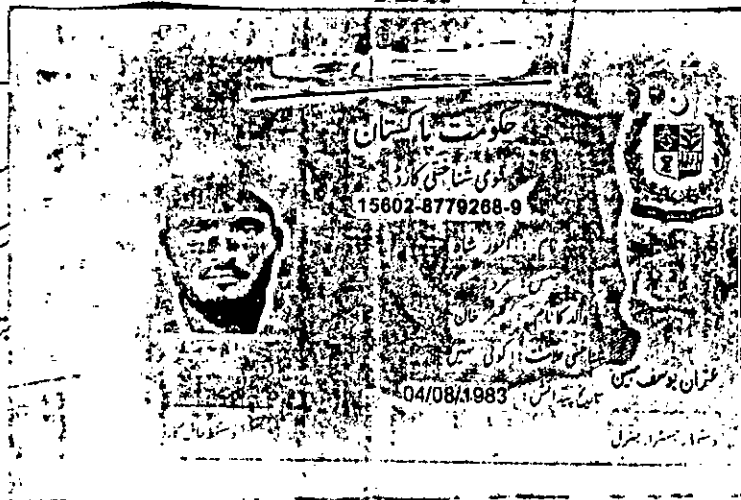
لہذا استدعاء ہے کہ بمنظوری اپیل ہذا من سائل کو بطور کنشیل اپنی سابقہ حیثیت میں بحال کرنے کے احکامات صادر فرمائے جائیں۔

*Amicus Slog*

سائل انور شاہ سابقہ کنشیل نمبر 126

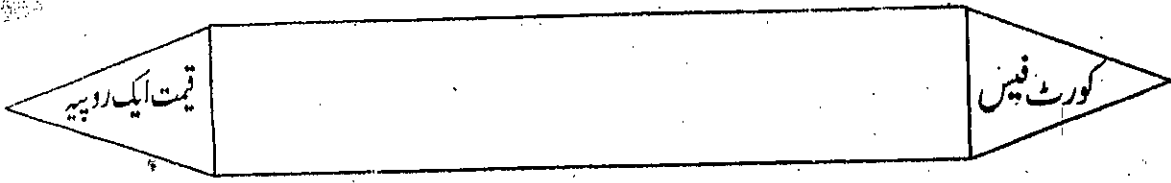
سکنہ شاگرام مدین ضلع سوات۔

بتاریخ: 29-09-2017



C.T.C  
صیغہ

بعدالت صبر خستوخواہ سرکس ٹریبونل بمقام پشاور



مورخہ ۲۹ دسمبر ۲۰۱۷ء منجانب اربلائیٹ  
مقدمہ انور شاہ بنام حکومت و عیش  
دعویٰ سرکس اربلائیٹ

جرم  
باعث تحریر آنکہ

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

المرقوم ۲۹ ماہ دسمبر ۲۰۱۷ء

العبد گواہ شاہ ولد طبرخان  
Attested & Accepted

بمقام پشاور / سوات کے لئے منظور ہے



Barrister  
Dr. Adnan Khan  
Advocate High Court

انور شاہ ولد طبرخان

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

**Service Appeal No.02/2018**

Anwar Shah s/o Gulberg Khan, Ex-Constable No.126 Swat Police r/o  
Shahgram Teshil Bahrain, District Swat.

----- (Appellant)

**Versus**

- Place in file  
S.I.B. 2018*
1. Government of Khyber Pakhtunkhwa through Provincial Police Officer/IGP at Peshawar.
  2. The Regional Police Officer/DIG, Malakand Region at Saidu Sharif, Swat.
  3. District Police Officer, Saidu Sharif, Swat.
  4. DSP, Legal Swat Police at Saidu Sharif Swat.

----- (Respondents)

**INDEX**

S.No:	Description of Documents	Annexure	Page
1	Para-wise Comments	-	1-3
2	Affidavit	-	4
3	Authority Letter	-	5

*(Signature)*  
District Police Officer, Swat  
(Respondent No.03)

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

**Service Appeal No.02/2018**

Anwar Shah s/o Gulberg Khan, Ex-Constable No.126 Swat Police r/o Shahgram  
Teshil Bahrain, District Swat.

----- (Appellant)

**Versus**

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

----- (Respondents)

**Parawise comments on behalf of Respondents:**

**Respectfully shewith:**

**Preliminarily objection:-**

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

**ON FACTS**

1. Para No.01 regarding enlistment in Police Department and subsequent posting pertains to record, hence need no comments
2. Incorrect. Being member of disciplined force every police official/officer is under obligation to perform his duties with zeal, zest and devotion irrespective of harsh, tense and calm environment, hence stance of the appellant is not tenable in the eye of Law.
3. Incorrect. The appellant being member of disciplined force was duty bound to apply for proper leave/permission but he did not bother to do so. Moreover plea of the appellant is not appealable to a prudent mind

because the appellant should have to annex the documents with leave application which he neither sent nor produced during enquiry.

4. Incorrect. The appellant while posted at Police Station Kabal Swat willfully and deliberately absented himself from his lawful duty vide DD No.09 dated 03/11/2008 whereupon he was proceeded departmentally and departmental enquiry was initiated against him during the course of which the appellant was summoned time and again to join enquiry proceedings for defending himself, but to no avail Therefore after fulfillment of all codal formalities the appellant was awarded appropriate punishment of dismissal from service.
5. Application of the applicant was thoroughly considered by the appellate authority which was filed on sound grounds.
6. Incorrect. Each and every case has its own facts and circumstances and fate of one case has no effects on others
7. Para already explained, hence needs no comments.
8. Para already explained, hence needs no comments.
9. Incorrect. The appellant in order to conceal the issue of limitation cooked this story which has no legal footing to stand on.
10. That applicant of the appellant was paid due consideration by the appellate authority but the same was filed on sound reasons.
11. That appeal of the appellant is liable to be dismissed on the following grounds amongst the others.

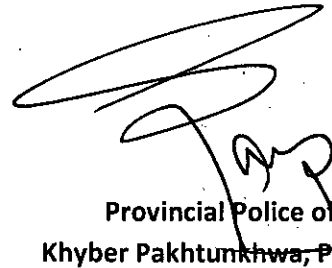
#### **GROUND**

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

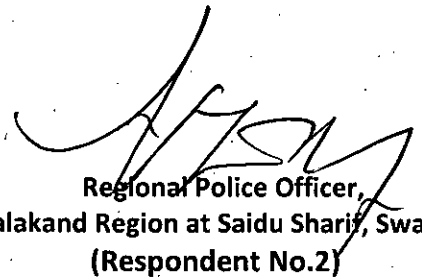
- C. Incorrect. As explained earlier he bitterly failed to join enquiry proceedings as report his arrival, hence after fulfillment of codal formalities the punishment order was passed which does commensurate with the gravity of misconduct of appellant.
- D. Para explained earlier, hence needs no comments.
- E. Incorrect. Each and every case has its own facts and circumstances and fate of one case has no effect on the other, therefore stance of the appellant is not plausible.
- F. Para already explained in the preceding Para, hence needs no comments.
- G. That respondents also seek permission of this honorable Tribunal to adduce additional grounds at the time of arguments.

**PRAYER:-**

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



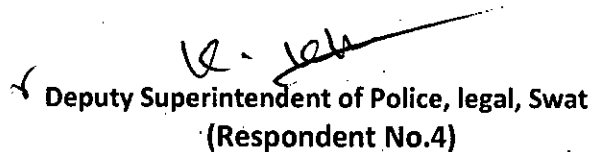
Provincial Police officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)



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



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



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

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

**Service Appeal No.02/2018**

Anwar Shah s/o Gulberg Khan, Ex-Constable No.126 Swat Police r/o  
Shahgram Teshil Bahrain, District Swat.

----- (Appellant)

**Versus**

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

----- (Respondents)

**AFFIDAVIT**

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



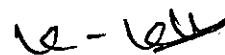
Provincial Police officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)



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



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



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



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

**Service Appeal No.02/2018**

Anwar Shah s/o Gulberg Khan, Ex-Constable No.126 Swat Police r/o  
Shahgram Teshil Bahrain, District Swat.

----- (Appellant)

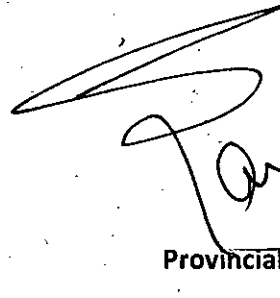
**Versus**

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


----- (Respondents)

**AUTHORITY LETTER**

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



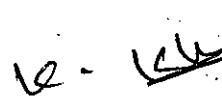
Provincial Police officer,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No.1)



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



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

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