

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5/2018

Date of Institution ... 28.12.2017

Date of Decision ... 28.01.2022

Noor-Ul-Amin, Ex-Constable No. 75/RR Distt: Swat.

... (Appellant)

VERSUS

The Regional Police Officer, Malakand, Saidu Sharif, Swat and one another

... (Respondents)

Uzma Syed,
Advocate

...

For Appellant

Noor Zaman Khattak,
District Attorney

...

For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...

...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

This single judgment

shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

1. Service Appeal bearing No. 6/2018 titled Nizam Khan
2. Service Appeal bearing No. 7/2018 titled Saeed Ullah
3. Service Appeal bearing No. 8/2018 titled Ubaid Ullah

02. Brief facts of the case are that the appellant while serving as Constable in Police Department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 12-10-2009. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide

order dated 29-11-2017, hence the instant service appeal with prayers that the impugned orders dated 12-10-2009 and 29-11-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the law had badly been violated; that the impugned order has been passed in violation of mandatory provision of law, hence such order is void and illegal. Reliance was placed on 2007 SCMR 1129 and 2006 PLC CS 221; that departmental appeal of the appellant was rejected being barred by time, but since the impugned order is void, hence no limitation would run against void order. Reliance was placed on 2015 SCMR 795; that delay if any is condonable if delay already condoned in identical cases. Reliance was placed on PLD 2003 SC 724 and 2003 PLC CS 796; that this tribunal in similar cases has already granted condonation of delay and granted relief, hence the appellant is also entitled to the same under the principle of consistency; that the appellant has been discriminated, as other police officials, who were dismissed with the appellant, have been re-instated, whereas the appellant has been denied the same treatment.

04. Learned District Attorney for the respondents has contended that the appellant willfully absented himself from lawful duty without permission of the competent authority, hence he was issued with charge sheet/statement of allegation and proper inquiry was conducted; that despite repeated reminders, the appellant did not join the disciplinary proceedings; that right from the date of his absence i.e. 06-01-2009 till his order of dismissal i.e. 12-10-2009, the appellant neither reported his arrival nor bothered to join inquiry proceedings rather remain dormant which clearly depicts his disinterest in his official duty; that after fulfillment of all the codal formalities, the appellant was awarded major punishment of dismissal from service in absentia; that the appellant preferred

departmental appeal after lapse of 8 years, which was rejected being barred by time; that stance of the appellant being devoid of merit may be dismissed.

05. We have heard learned counsel for the parties and have perused the record.

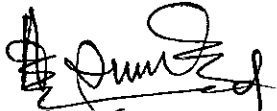
06. Placed before us is cases of police constables, who alongwith many other police personnel had deserted their jobs in the wake of insurgency in Malakand division and particularly in District Swat. Police department had constituted a committee for cases of desertion and taking humanitarian view, re-instated such personnel into service in large number. Placed on record is a notification dated 01-11-2010, where 16 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Other cases of similar nature have been noticed by this tribunal, where the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time and re-instated such deserted employees in service after years of their dismissal. Even this tribunal has already granted relief in similar nature cases on the principle of consistency. Appellants are also amongst those, who had deserted their jobs due to threats from terrorists. Coupled with this are dents in the departmental proceedings, which has not been conducted as per mandate of law, as the appellant in case of willful absence was required to be proceeded under general law i.e. Rule-9 of E& D Rules, 2011. Regular inquiry is also must before imposition of major punishment of dismissal from service, which also was not conducted.

07. Consequently, keeping in view the principle of consistency, the impugned orders are set aside and the appellants are re-instated in service. Since the appeals are decided on technical grounds more so while keeping in view the conduct of the appellants, they shall not be entitled to any of the back benefits, hence the absence period as well as the intervening period during which the appellants has not performed duty shall be treated as extra-ordinary leave

without pay. The department is at liberty to conduct de-novo inquiry against the appellants in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

28.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



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

ORDER

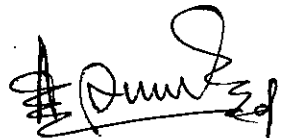
28.01.2022

Learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for respondents present. Arguments heard and record perused.

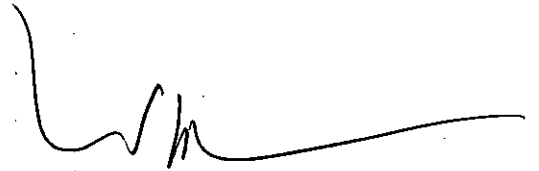
Vide our detailed judgment of today, separately placed on file, the impugned orders are set aside and the appellants are re-instated in service. Since the appeals are decided on technical grounds more so while keeping in view the conduct of the appellants, they shall not be entitled to any of the back benefits, hence the absence period as well as the intervening period during which the appellants has not performed duty shall be treated as extra-ordinary leave without pay. The department is at liberty to conduct de-novo inquiry against the appellants in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

28.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



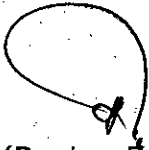
(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

09.09.2021

Junior to counsel for appellant present.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Lawyers are on general strike, therefore, case is adjourned. To come up for arguments on 25.01.2022 before D.B.



(Rozina Rehman)
Member (J)


Chairman

25.01.2022

Appellant in person and Mr. Asif Masood Ali Shah, DDA for the respondents present.

Former seeks short adjournment as his learned counsel is not in attendance due to general strike of the lawyers. Request is accorded. To come up for arguments on 28.01.2022 before the D.B.


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


Chairman

09.12.2020

Due to COVID-19, case is adjourned to 01.03.2021 for the same as before.


Reader

01.03.2021

Due to COVID-19, the case is adjourned for the same on 01.06.2021.


READER

01.06.2021

Nemo for the appellant. Mr. Khawas Khan, Inspector (Legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Today's date was posted on Note Reader, therefore, notice for prosecution of the appeal be issued to appellant as well as his counsel and to come up for arguments before D.B on 09.09.2021.

Note
Sign
09-06-2021



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

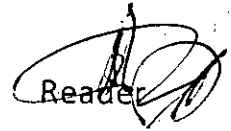


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

_____ .2020

Due to COVID19, the case is adjourned to

12/8/2020 for the same as before.


Reader

12.08.2020

Due to summer vacations case to come up for the same on
15.10.2020 before D.B.


Reader


15.10.2020


Miss. Uzma Syed, Advocate for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents is also present.

The learned counsel submitted that the issue of retrospectivity is involved in the instant appeal and as Larger Bench of this august Tribunal has been constituted for considering the issue, therefore, unless and until a decision on the issue is made this appeal may please be kept pending till further proceedings. Request is appropriate, the impugned order dated 12.06.2009 has been given retrospective effect, therefore, the appeal is kept pending till the decision of the Larger Bench.

Perusal of the record also reveals that Member copy of record is not available. The appellant is directed to make up deficiency well before next date.

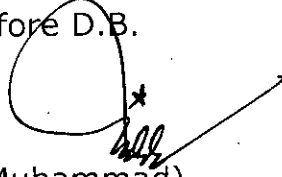
File to come up for further proceedings on 09.12.2020 before D.B.


(Atiq-ur-Rehman Wazir)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

20.03.2020

Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 22.05.2020 for arguments before D.B.



(Mian Muhammad)
Member



(M. Amin Khan Kundi)
Member

15.11.2019

Syed Noman Bukhari, learned counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Subhan, Constable for the respondents present. Second Member copy of the present appeal is not available on the record. Learned counsel for the appellant is directed to provide second Member copy of the present appeal on or before the next date of hearing. Adjourned to 14.01.2020 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

14.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 24.02.2020 for arguments before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

24-2-2020


The Bench is incomplete
Therefore case is adjourned
to 20-3-2020


Reader

31.05.2019

Clerk to counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Mir Faraz DSP for the respondents present. Clerk to counsel for the appellant requested for adjournment as counsel of the appellant is not in attendance. Adjourned. To come up for arguments on 10.07.2019 before D.B.



(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

10.07.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 03.09.2019 before D.B.

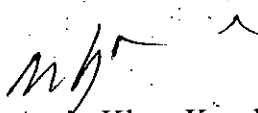

Member


Member

03.09.2019


Learned counsel for the appellant present. Mr. Riaz Khan Paindakhel learned Assistant Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 15.11.2019 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

31.12.2018


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 04.03.2019 before D.B.


Member


Member

04.03.2019

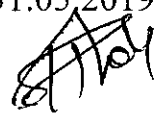
Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 16.04.2019 before D.B.



(M. HAMID MUGHAL)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

16.04.2019


Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for argument on 31.05.2019 before D.B


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

Service Appeal No. 05.2018

31.08.2018 Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 08.10.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Khan Kundi)
Member

08.10.2018 Counsel for the appellant present. Mr. Riaz Ahmad Paindakhel, Assistant AG alongwith Mr. Khawas Khan, S.I (Legal) for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 12.11.2018 before D.B.

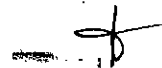

(Ahmad Hassan)
Member


(Muhammad Amin Kundi)
Member

12.11.2018 Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 31.12.2018.


READER

10.04.2018 Counsel for the appellant and Addl: AG alongwith Mr. Khawas Khan, S.I for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Another last opportunity is granted. To come up for written comments on 24.04.2018 before S.B.



Member

24.04.2018 Appellant in person and Addl: AG alongwith Mr. Khawas Khan, S.I for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 11.07.2018 before D.B.

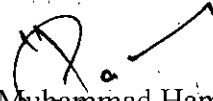


Chairman

11.07.2018 Appellant in person and and Mr. Sardar Shaukat Hayat learned Additional Advocate General present. Appellant submitted rejoinder which is placed on file. Due to general strike of the bar, the case is adjourned. To come up on 31.08.2018 before D.B.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member


26.02.2018

Counsel for the appellant and Addl: AG for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply on 13.03.2018 before S.B.


(Ahmad Hassan)
Member(E)


13.03.2018

Counsel for the appellant present. Mr. Riaz Paindakhel, Assistant AG for the respondents present. Written reply not submitted. Learned Assistant AG requested for adjournment. Adjourned. To come up for written reply/comments 26.03.2018 before S.B.


(M. Hamid Mughal)
Member

26.03.2018

Appellant alongwith counsel present Mr. Kabir Ullah Khattak, Addl: AG alongwith Mr. Khawas Khan, S.I for the respondent present. Written reply not submitted. Requested for adjournment. Adjourned. Last opportunity is granted. To come up for written reply/comments 10.04.2018 before S.B.


Member

12.01.2018

Counsel for the appellant present. Preliminary arguments heard. It was contended by learned counsel for the appellant that the appellant was serving in Police Department and during service he was dismissed from service on the allegation of his absence from duty vide order dated 12.10.2009. It was further contended that the impugned order of dismissal from service was passed retrospectively from the date of his absence i.e January 2009 therefore, the same is void ab-initio and limitation does not run against such void order. It was further contended that the appellant also filed departmental appeal but the same was rejected vide order dated 29.11.2017 hence, the present service appeal. It was further contended that since the impugned order is void ab-initio therefore, the same is liable to be set-aside.

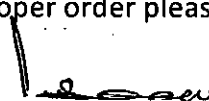

The contentions raised by learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to deposit of security and process fee within 10 days, thereafter notice be issued to the respondents for written reply/comments for 26.02.2018 before S.B.

8111
Appellant Deposited
Security & Process Fee

MA
(Muhammad Amin Khan Kundi)
Member

Form-A
FORM OF ORDERSHEET

Court of _____
Case No. 5/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	2/1/2018	<p>The appeal of Mr. Noor-ul-amin resubmitted today by Uzma Syed Advocate, may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 2/1/18</p>
2-	4/01/18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/01/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Noor-ul-Amin Ex-Constable No. 75/RR Distt. Swat received today i.e. on 28.12.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 2- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.

No. 2774 /S.T,

Dt. 29/12 /2017


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.


Uzma Syed Adv. Pesh.

Sis,

① The copy of departmental appeal is not attached with the appeal. the same may be required from the department. the plea also taken in pleading.

② There is no charge sheet statement of allegation were served upon the Appellant neither any enquiry was conducted.

objections were heard as per the sub order.


2-1-18

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 5 /2018

Noor Ul Amin

V/S

Police Deptt:

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S.No.	Documents	Annexure	Page No.
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2.	Copy impugned order	-A-	05
3.	Copy order	-B-	06
4.	copy of rejection order	-C-	07-08
5.	Vakalat Nama	-----	09

تودا الحبيب
APPELLANT

THROUGH:

Uzma Syed
(UZMA SYED)

&
Syed Noman Ali Bukhari
SYED NOMAN ALI BUKHARI
(ADVOCATES, PESHAWAR)

①

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 5 /2018

Noor-Ul-Amin, EX- Constable, No.75/RR
Distt: Swat.

Khyber Pakhtukhwa
Service Tribunal

Diary No. 1466

Dated 28/12/17

.....(Appellant)

VERSUS

1. The Regional Police Officer, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 29.11.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 12.10.2009 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

Filed to-day
[Signature]
Registrar
28/12/17

THAT ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE ORDERS DATED 29.11.2017 AND 12.10.2009 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Re-submitted to -day
and filed.

[Signature]
Registrar
21/1/18

RESPECTFULLY SHEWETH:**FACTS:**

Facts giving rise to the present service appeal are as under:

1. That the appellant was the employee of the police and was on the strength of the police force Buner.
2. That during Taliban Militancy in Swat appellant was dismissed from the service by the respondent no.2 vide order dated 12.10.2009. **Copy of impugned order is attached as Annexure-A.**
3. That, neither any show cause, charge sheet, statement of allegation, inquiry, opportunity of defense, final show cause notice, opportunity of personal hearing has been served and provided respectively nor any publication has ever been made calling him for assumption of his duty.
4. That some of the colleagues of the appellant have been re-instated by the respondent no.1 vide OB NO 6421-22/E dated 1.11.2011. **Copy of order is attached as Annexure-B.**
5. That appellant upon getting knowledge of the aforesaid re-instatement order, immediately preferred departmental appeal before respondent no.1 & requested therein that case of the appellant is at par with those police officer, who have been re-instated in to service vide order dated 01.11.2011, so the appellant has also entitled to re-instatement in principle of natural justice. The copy of departmental appeal may be requisite from the department, the same is not available with the appellant.
6. That the departmental appeal of the appellant was rejected by respondent no.1 vide order dated 29.11.2017 for no good grounds. **Copy of rejection order is attached as Annexure-C.**
7. That appellant being aggrieved of the impugned order of respondent and having no other adequate and efficacious remedy, file this service appeal inter-alia on the following grounds amongst others.

GROUNDS:

- A) That the appellant has not been treated in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan 1973 by the respondents and the appellant has been dismissed from his legal service without adopting legal Pre-requisite mandatory Legal procedure. The order passed in violating of mandatory provision of law, such order is void and illegal order according to superior court judgment reported as 2007 SCMR 834. Hence the impugned order is liable to be set aside.
- B) That the impugned order was retrospective order which was void in the eye of law and also void according to Superiors Court Judgment reported as 2002 SCMR 1129, 2006 PLC 221 and KPK Service Tribunal Judgment titled as Abdul Shakoor Vs Govt of KPK.
- C) That the appeal of the appellant was rejected on the ground that the appeal is time barred but according to superior court judgment reported as 2015 SCMR 795 there is no limitation was run against the void order. Moreover, the Supreme court of Pakistan has laid down vide reported judgment PLD 2003 SC 724 and 2003 PLC (CS) 796 that the delay if any shall be condoned in respect of employee where delay already condoned in identical circumstances. All the person shall be treated equally who are sailing in the same board,
- D) That the appellant has highly been discriminated. Other police officials, who were also dismissed with appellant have been reinstated by the respondent No.1, whereas, appellant has been denied the same treatment. The case of the appellant is similar and identical in all respect with those, who have been reinstated.
- E) That neither charge sheet, statement of allegation, show cause notice was not served upon the appellant nor was inquiry conducted against the appellant, which was necessary and mandatory in law before imposing major punishment which is violation of law, rules and norms of justice.
- F) That the appellant has not been treated according to law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- G) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

ذرا کتب
APPELLANT
Noor Ul Amin

THROUGH:

Uzma Syed
(UZMA SYED)

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATES, PESHAWAR

ORDER

(Handwritten mark)

A

(Handwritten mark)

This order will dispose off the enquiry initiated against Constable Noor-ul-Amin No. 75-MRR, who while posted to Javid Iqbal Shaheed Police Lines Swat, absented himself from duty w.e. from 06-01-09 vide DD No.04, dated 06/01/2009 and failed to report for duty.

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 Final Show Cause Notice No. 691/E, dated 18-9-2009 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. Qazi Ghulam Farooq DPO Swat as a competent authority, therefore impose major penalty by dismissing him from service from the date of absence i.e 06/01/2009.

Order announced

(Signature)
District Police Officer, Swat

O.B. No. 146

Dated. 12-11-09.

(Signature)
ATTORNEY

Annex B
6

ORDER

WHEREAS as per the approval of the Provincial Police Officer, Khyber Pukhtunkhwa a Committee had been constituted vide this office No: 100-1-95 dated 24/11/2010 and 90-94/E dated 03/01/2011, headed by DPO Buner to reconsider the cases of the personnel dismissed during militancy.

AND WHEREAS the Committee has, after thorough deliberations and scrutiny of the relevant record, submitted its findings vide No: 5422/E dated 27/10/2011 wherein 16 personnel have been recommended for reinstatement in service.

NOW THEREFORE as per the approval of the Provincial Police Officer, the following personnel recommended by the Committee are hereby reinstated in service with effect from the date of their dismissal. The period during which they remained out of service after dismissal and the period of their absence will be treated as leave without pay.

S.No.	Name and No.
1.	Ex-Constable Sajjad Ali No. 32
2.	Ex-Constable Jehan Zeb No. 519
3.	Ex-Constable Shaukat Ali No. 418
4.	Ex-Constable Said Nawab Shah No. 138
5.	Ex-Constable Nawab Ali No. 188
6.	Ex-Constable Nadeem No. 20
7.	Ex-Constable Irfanullah No. 620
8.	Ex-Constable Noor Zada No. 527
9.	Ex-Constable Amir Ali No. 511
10.	Ex-Constable Liaqat Ali No. 598
11.	Ex-Constable Sher Akbar No. 577
12.	Ex-Constable Inamullah No. 555
13.	Ex-Constable Samiullah No. 454
14.	Ex-Constable Sher Ghanl No. 502
15.	Ex-Constable Said Imran Shah No. 529
16.	Ex-Constable Shah Aurang Zeb No. 593

Order announced.

Handwritten signature/initials

(AKHTAR HAYAT KHAN) PSP
Deputy Inspector General of Police,
Malakand Region, Saidu Sharif, Swat.
SAIF

o.6421-22 /E,
Dated 01/11/2010.

Copy for information and necessary action to the

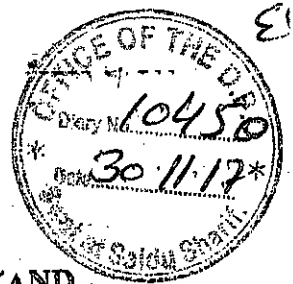
1. Provincial Police Officer, Khyber Pukhtunkhwa, Peshawar.
2. District Police Officer, Buner.

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ATTESTAD



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

Ph: 0946-9240381-83 & Fax No. 0946-9240390
Email: digmalakand@yahoo.com



ORDER:

The following Ex-Constables / Ex-SPF of the Districts noted against each, submitted applications for reinstatement in Service. Their applications were thoroughly examined and found long time barred having no legal justification to consider, hence hereby filed:-

S. No	Name and No	District	Date of Dismissal
1.	Ex-Constable Noor-ul-Amin No. 75/RR	Swat	12/10/2009
2.	Ex-Constable Naseer Ullah Khan No. 1428	Swat	26/01/2009
3.	Ex-Constable Ubaid Ullah No. 1662	Swat	12/12/2008
4.	Ex-Constable Saeed Ullah No. 1655	Swat	05/12/2008
5.	Ex-Constable Muhammad Ibrahim No. 399	Swat	15/02/2003
6.	Ex-Constable Bakht-Zaman No. 1719	Dir Lower	16/01/2013
7.	Ex-Constable Atta Ullah No. 568	Dir Lower	05/05/2008
8.	Ex-Constable Tahir Khan No. 781	Dir Lower	07/07/2009
9.	Ex-Constable Ruhul Amin No. 1012	Buner	01/09/2014
10.	Ex-Constable Aurang Zeb No. 390	Buner	30/05/2009
11.	Ex-Constable Tawseef Ahmad No. 258	Shangla	02/01/2009
12.	Ex-Constable Sher Wali No. 1050	Dir Upper	01/07/2016
13.	Ex-Constable (SPO) Nihar Muhammad No. 381	Buner	15/08/2016
14.	Ex-Constable (SPO) Imtiaz Ur Rehman No. 474	Buner	10/08/2017
15.	Ex-Constable (SPO) Zafar Ali No. 319	Buner	02/02/2017
16.	Ex-Constable (SPO) Muhammad Tariq No. 97	Buner	14/03/2016
17.	Ex-Constable (SPO) Lajbar Khan No. 279	Buner	14/03/2016
18.	Ex-Constable (SPO) Bakhtawar Zeb No. 474	Dir Lower	11/01/2013
19.	Ex-Constable (SPO) Muhammad Rafiq No. 162	Dir Lower	09/02/2016
20.	Ex-Constable (SPO) Shah Fahad No. 245	Dir Lower	11/01/2017
21.	Ex-Constable (SPO) Naik Amal No. 817	Dir Lower	16/09/2016
22.	Ex-Constable (SPO) Rahmatullah No. 459	Dir Lower	03/02/2017
23.	Ex-Constable (SPO) Muhammad Darwish No. 398	Dir Lower	24/02/2017
24.	Ex-Constable (SPO) Nadar Khan No. 2358	Swat	14/06/2017
25.	Ex-Constable (SPO) Umar Rahman No. 2828	Swat	07/12/2016
26.	Ex-Constable (SPO) Sher Ali No. 2001	Swat	30/10/2012

(Handwritten signature)

27.	Ex-Constable (SPO) Muhammad Rahim No. 2417	Swat	26/04/2017
28.	Ex-Constable (SPO) Khan Muhammad No. 2353	Swat	05/11/2015
29.	Ex-Constable (SPO) Taj Muhammad No. 714	Swat	24/05/2012
30.	Ex-Constable (SPO) Muhammad Ghafoor No. 3053	Swat	16/12/2016
31.	Ex-Constable (SPO) Muhammad Zahir Shah No. 2045	Swat	27/11/2013
32.	Ex-Constable (SPO) Hadl Khan No. 1902	Swat	10/04/2017
33.	Ex-Constable (SPO) Kishwar Ali No. 3080	Swat	18/09/2015
34.	Ex-Constable (SPO) Muhammad Alam No. 1965	Swat	19/04/2017
35.	Ex-Constable (SPO) Nazir Muhammad No. 3016	Swat	03/12/2013
36.	Ex-Constable (SPO) Taj Muhammad No. 2108	Swat	19/08/2013
37.	Ex-Constable (SPO) Waheed Gul No. 896	Swat	26/10/2016
38.	Ex-Constable (SPO) Hazrat Umar No. 2132	Swat	25/01/2016
39.	Ex-Constable (SPO) Syed Hassan No. 1194	Dir Lower	04/06/2015

The applicants of yours respective Districts may be informed accordingly, please.

(Signature)
 (AKHTAR HAYAT KHAN)
 Regional Police Officer,
 Malakand, at Saidu Sharif Swat
 Naqi

No. 13714-19 /E.

Dated 29-11 /2017.

Copy to All District Police Officers, in Malakand Region for information and necessary action. The applicants of your respective District may be informed accordingly please.

EC / Asi
 Inform the Ex-Constable
 accordingly and also make
 entry in their respective record.

(Signature)
 D.P.O Swat,
 30/11

(Signature)
 ATTESTAD

9

مدت

Service Tribunal, Peshawar

2017ء منجانب

Noor-ul-Amin بنام

Police

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام Peshawar کیلئے عطیٰ سعید

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ پر حلف دینے جو اب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کیٹرنفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے، اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

انجی

Yone
Attested
&
Accepted

المرقوم 28 19 2017

الع د گ و الع

مقام Peshawar کے لئے منظور ہے۔

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

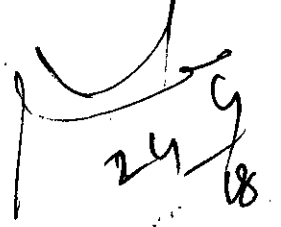
Service Appeal No.05/2018

Noor ul Amin Ex-Constable No.75/RR District: Swat.

----- (Appellant)

Versus

1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer, Swat.



----- (Respondents)

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2	Affidavit	-	4
3	Authority	-	5



District Police Officer, Swat
(Respondent No.02)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.05/2018

Noor ul Amin Ex-Constable No.75/RR District: Swat.

----- (Appellant)

Versus

1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer, 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 to the extent of employment in Police Department pertains to record, hence need no comments
2. Correct to the extent that appellant was dismissed from service after fulfillment of all legal and codal formalities as appellant while posted at Javed Iqbal Shaheed Police Lines Swat absented himself from lawful duty vide daily diary No.04 dated 06/01/2009 without prior permission/leave of the competent authority.
3. Incorrect. The appellant while posted to Javed Iqbal Shaheed Police Lines Swat, willfully and deliberately absented himself from lawful duty vide daily diary No.04 dated 06/01/2009 without prior permission/leave of the competent authority, hence he was issued charge sheet, statement of

allegations, duly served on appellant and enquiry officer was nominated to probe into the conduct of appellant. Despite repeated summons/Parwanas the appellant bitterly failed either to submit his reply or joined enquiry proceedings meaning thereby that he had no defense to provide in his favor. It is worthwhile that right from the date of his absence i.e 06/01/2009 till the order of dismissal i.e 12/10/2009, the appellant neither repeated his arrival nor bothered to join enquiry proceedings rather remained dormant which clearly depicts his disinterest in his official duties. Therefore after fulfillment of all legal and codal formalities the appellant was awarded appropriate punishment of dismissal from service which does commensurate with the gravity of misconduct of appellant.

4. Incorrect. Each and every case has its own facts and circumstances, hence plea of the appellant is not plausible.
5. Incorrect. As discussed earlier each and every case has its own facts and circumstances, hence plea of the appellant is not tenable in the age of Law, moreover the appellant after dismissal from service kept mum and after lapse of almost 08 years he preferred departmental appeal at a very belated stage which was rejected being badly time barred. Therefore, stance of the appellant is devoid of any merit, hence liable to be set aside at naught.
6. Para already explained needs not comments.
7. That appeal of the appellant is liable to be dismissed on the following grounds.

GROUND

- A. Incorrect. The respondents have no grudges or ill will against the appellant, hence stance of the appellant has no legal footings to stand on.
- B. Incorrect. The order passed by the competent authority is legal and lawful which was passed after fulfillment of codal formalities.
- C. Para explained earlier needs no comments.

- D. Incorrect. Since the respondents have no grudges against the appellant, hence discrimination on part of respondents is immaterial.
- E. Para explained in the preceding paras, therefore needs no comments.
- F. Incorrect. The appellant has been treated in accordance with law.
- G. Incorrect. As discussed earlier the appellant was summoned and informed time and again but he did not bother to join enquiry proceedings for reason that he had nothing to produce in his defense.
- H. That the respondents also seek the permission of this Honorable Tribunal to adduce additional grounds at the time of hearing.

PRAYER:-

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



Regional Police Officer,
Malakand Region at Saidu Sharif, Swat
(Respondent No.1)



District Police Officer, Swat.
(Respondent No.2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.05/2018

Noor ul Amin Ex-Constable No.75/RR District: Swat.

----- (Appellant)

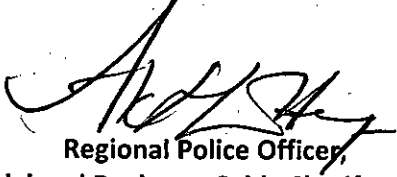
Versus


1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer, Swat.

----- (Respondents)

AFFIDAVIT

We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from this August Tribunal.


Regional Police Officer,
Malakand Region at Saidu Sharif, Swat.
(Respondent No.01)


District Police Officer, Swat.
(Respondent No.02)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No.05/2018

Noor ul Amin Ex-Constable No.75/RR District: Swat.

----- (Appellant)

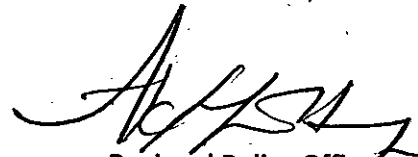
Versus

1. The Regional Police Officer, Malakand Region at Saidu Sharif, Swat.
2. The District Police Officer, Swat.

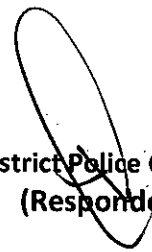
----- (Respondents)

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.



**Regional Police Officer,
Malakand Region at Saidu Sharif, Swat
(Respondent No.1)**



**District Police Officer, Swat.
(Respondent No.2)**

BEFORE THE KPK, SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. _____/2018

Norul Ameen

VS

Police Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Admitted correct by the respondents as the service record is laying in the custody of the respondents.
- 2 Incorrect. While para-2 of the appeal is correct as mentioned in the main appeal of the appellant.
- 3 Incorrect. While para-3 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, if the charge sheet, statement of allegation and final show cause notice was issued, then it is duty of the department the same could be annexed with the appeal but the department

fail to do so its means that no codal formalities were fulfilled before imposing major penalty.

- 4 Incorrect. While para-4 of the appeal is correct as mentioned in the main appeal of the appellant.
- 5 Incorrect. While para-5 of the appeal is correct as mentioned in the main appeal of the appellant.
- 6 Incorrect, hence denied misleading. While para-6 of the appeal is correct as mentioned in the main appeal of the appellant.
- 7 Incorrect, hence denied misleading. While para-7 of the appeal is correct as mentioned in the main appeal of the appellant.

GROUND:

- A) Incorrect. The orders of the respondents are against the law, rules and norms of justice therefore not tenable and liable to be set aside.
- B) Incorrect. While para-B of the appeal is correct as mentioned in the main appeal of the appellant.
- C) Incorrect. Incorrect. While para-C of the appeal is correct as mentioned in the main appeal of the appellant.
- D) Incorrect. Incorrect. While para-D of the appeal is correct as mentioned in the main appeal of the appellant.
- E) Incorrect. Incorrect. While para-E of the appeal is correct as mentioned in the main appeal of the appellant.
- F) Incorrect. Incorrect. While para-F of the appeal is correct as mentioned in the main appeal of the appellant.

G) Incorrect. Incorrect. While para-G of the appeal is correct as mentioned in the main appeal of the appellant.

H) Legal.

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

APPELLANT

Through:



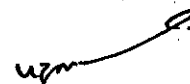
(UZMA SYED)



SYED NOMAN ALI BUKHARI
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



DEPONENT

Sr. No
Date of order/proceedings
1 2

Order or other proceedings with signature of Judge or Magistrate

3



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 264/2012

Date of Institution ... 21.02.2012
Date of Decision ... 06.10.2017

Amanat Khan Ex-Constable No. 145/EC, District Buner

Appellant

Versus

1. The Deputy Inspector General of Police, Malakand, Region Saidu Sharif, Swat.
2. The District Police Officer, Buner.

Respondents

06.10.2017

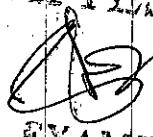
JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Appellant

present. Learned counsel for the appellant and Mr. Kabir Ullah Khattak, Assistant Advocate General for the respondents present.

2. The appellant Amanat Khan Ex-Constable, who was recruited in the year 2007, has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the respondents and challenged therein the impugned order dated 26.08.2008 passed by respondent No. 2 whereby the appellant was awarded major penalty of removal of service on the ground of absence from duty/misconduct. The appellant has also made impugned the order

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

dated 20.08.2012 whereby his application for reinstatement in service was filed by respondent No. 1 being time barred.

3. Learned counsel for the appellant contented that before the issuance of impugned order of removal from service neither any charge sheet and statement of allegations were drafted, nor inquiry conducted, nor opportunity of defense was afforded nor final show cause notice and opportunity of personal hearing was given to the appellant. Further argued that no limitation runs against the illegal/void order. Further argued that the appellant has not been treated in accordance with law as such the impugned orders are liable to be set aside and the appellant be reinstated in service.

4. Learned Assistant Advocate General while opposing the present appeal argued that the present appeal is time barred. Further argued that the appellant was reported to have gone abroad without securing ex-Pakistan leave and the competent authority was satisfied with the dispensing with the inquiry proceeding against the appellant as provided in Removal From Service (Special Power) ordinance 2000 (Amendment) 2001. Further argued that the appellant was disinterested towards his duties and escaped there from. Further argued the impugned orders were validly passed and doesn't warrant any interference.

5. Arguments heard. File perused.

Lawyer

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

6. Perusal of the record shows that the appellant was removed from his service vide order dated 26.08.2008 and after a deep slumber he preferred appeal/representation on 08.04.2011 which was dismissed by the respondent No. 1 vide order dated 14.05.2011. The appellant then filed another application before respondent No. 1 for his reinstatement which application was regretted being time barred.

7. Apparently the present appeal of the appellant is badly time barred, which fact also shows volumes about the conduct of the appellant that he was not at all interested to join the service. However the fact cannot be lost sight of that serious irregularities/illegalities were committed by the respondent in the impugned order and in the proceeding culminating in the passage of the impugned order which go to the roots of the matter. No proper show cause notice was served upon the appellant prior to the issuance of the impugned order of Removal from Service. Similarly the appellant was awarded punishment of Removal from service with retrospective effect. Consequently the impugned order of Removal from Service is set aside and the appellant is reinstated. As the present appeal is decided on technical grounds more so while keeping in view the conduct of the appellant, he shall not be entitled to any back benefit hence the absence period as well as the intervening period during which the appellant has not performed


Down

ATTESTED


[Signature]
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar


duty shall be treated as extra-ordinary leave without pay. The department is at liberty to conduct de-novo proceeding/inquiry against the appellant in accordance with law. The present appeal is decided in the above terms. Parties are left to bear their own costs. File be consigned to the record room after its completion.


(ATIMAD HASSAN)
MEMBER


(MUHAMMAD HAMID MUGHAL)
MEMBER

ANNOUNCED
06.10.2017

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

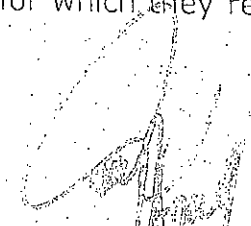
Date of Presentation of Application 04-09-18
Number of Writs 1600
Copying Fee 10/-
Urgent 2/-
Total 72/-
Name of Copyist 
Date of Completion of Copy 04-09-18
Date of Delivery of Copy 04-09-18

30/11/2010

E

ORDER

All the Ex-Officials, who dismissed / discharged from service due to their absence during the past insurgency, have been ordered and re-instated by the Region Police Chief Swat orders issued, vide Region Office Swat No. 10214-16/E dated 30/11/2010, are strictly directed to report their arrival to OASI of District Police office Swat within fortnight (15 days) from the issuance of this order, other wise their arrival report will not be considered and accepted at the belated stage i.e. beyond the fixed period. However, the OASI of the office is directed to get an affidavit from each Ex-official to the effect that he will never in submit any kind of appeal / mercy petition for the grant of all back benefits pertaining to the period, for which they remained out of service / absented himself.


District Police Officer, Swat

AYAZ

NO. 15094-16/EC Dated 01-12/2010

Copies to the:-

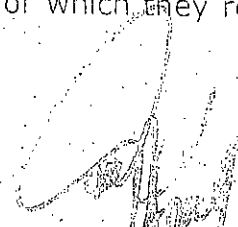
- 1- Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat for favour of information please.
- 2- Additional Superintendent of Police Upper Swat.
- 3- Superintendent of FRP Swat.
- 4- DSP/Headquarter.
- 5- All SDPOs.
- 6- Office Establishment Clerk.
- 7- OASI of District Police Office Swat.

Order of the
30/11/2010

E

ORDER

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District Police Officer, Swat

AYAZ


NO. 15094-162/EC Dated: 01-12/2010

Copies to the:-

- 1- Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat for favour of information please.
- 2- Additional Superintendent of Police Upper Swat.
- 3- Superintendent of FRP Swat.
- 4- DSP/Headquarter.
- 5- All SDPOs.
- 6- Office Establishment Clerk.
- 7- OASI of District Police Office Swat.

ORDER

All the Ex-Officials, who dismissed / discharged from service due to their absence during the past insurgency, have been ordered and re-instated by the Region Police Chief Swat orders issued, vide Region Office Swat No. 10214-16/E dated 30/11/2010, are strictly directed to report their arrival to OASI of District Police office Swat within fortnight (15 days) from the issuance of this order, other wise their arrival report will not be considered and accepted at the belated stage i.e. beyond the fixed period. However, the OASI of the office is directed to get an affidavit from each Ex-official to the effect that he will never in submit any kind of appeal / mercy petition for the grant of all back benefits pertaining to the period, for which they remained out of service / absented himself.


District Police Officer, Swat

AYAZ

NO. 15094-16/EC Dated 01-12-2010

Copies to the:-

- 1- Deputy Inspector General of Police, Malakand Region, Saidu Sharif Swat for favour of information please.
- 2- Additional Superintendent of Police Upper Swat.
- 3- Superintendent of FRP Swat.
- 4- DSP/Headquarter.
- 5- All SDPOs.
- 6- Office Establishment Clerk.
- 7- OASI of District Police Office Swat.



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 937 /ST

Dated: 25-4-2022

All communications should be
addressed to the Registrar KPK Service
Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

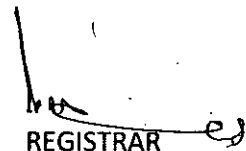
To

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

Subject: JUDGMENT IN APPEAL NO. 5/2018 MR. NOOR UL AMIN & 3 OTHERS.

I am directed to forward herewith a certified copy of Judgement dated
28.01.2022 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR