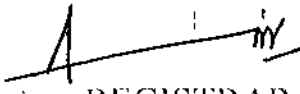


FORM OF ORDER SHEET

Court of _____

Case No. - 227/2023

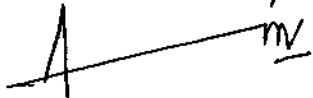
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	26/1/2023	<p>The appeal of Syed Asif Ali Shah resubmitted today by Mr. Muhammad Arif Jan Afridi Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____. Parcha Peshi is given to appellant/counsel.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

The appeal of Syed Asif Shah No. 570 Ex-Constable S.P Headquarters Peshawar received today i.e. on 20.01.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Copy of revision petition mentioned in the memo of appeal is not attached with the appeal which may be placed on it.

No. 319 /S.T.

Dt 24/1 /2023


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Muhammad Arif Jan Afridi Adv.
High Court at Peshawar.

order of Rejection
~~Memo~~ of Revision petition is attached on page
No. 15

Re Submitted after completion

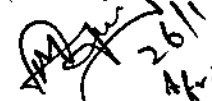
Arif Jan
Muhammad Afridi

Advocate
AHC Peshawar
26/01/2023

Note:

Copy of the Revision petition is not available for the time being. It shall be submitted later on.

It is requested that appeal may kindly be placed the Honourable Bench for preliminary hearing


Muhammad Arif Jan
Advocate for
Appellant.
26/1/23
Afridi

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Service Appeal No 227 2023

Syed Asif Ali Shah.....(Appellant)

VERSUS


I.G.P KP and others.....(Respondents)

INDEX

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGE
1.	Service Appeal alongwith Affidavit		01-7
2.	Memo of addresses	-	8
3.	Copy of the CNIC of the Appellant	-	9
4.	Copies of the impugned order, departmental appeal and rejection order	'A to C'	10-14
5.	Copy of the review petition, rejection order	'D'	15
6.	Wakalat Nama (in original)	-	16

Appellant

Through:


(MUHAMMAD ARIF JAN AFRIDI)
Advocate,
High Court, Peshawar
Cell # 0333-8807676

Dated: -20-01-2023

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Service Appeal No _____/2023

Syed Asif Ali Shah Shah No 570 Ex-Constable S.P Headquarters,
Peshawar.....Appellant

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa at Police
Line, Peshawar
2. Capital City Police Officer (CCPO) Peshawar
3. Superintendent of Police (S.P) Police Headquarters,
Peshawar.....(Respondents)

Appeal under Section 4 of the KPK Service
Tribunal Act, 1974 against the impugned
order of Respondent No 3 dated 16-02-2021,
whereby the Appellant has been dismissed
from service and absence period treated
without pay and against the rejection order
dated 15-07-2021, whereby the
departmental appeal of the Appellant has
been rejected and against the order dated
15-11-2022 received by the Appellant on
21-12-2022, whereby the appeal under 11-
A has been rejected for no good grounds

(2)

PRAYER IN APPEAL

On acceptance of this Appeal, the impugned orders dated 16-02-2021, 15-07-2021 and 15-11-2022 received by Appellant on 12-12-2022 may please be set aside and the Appellant may kindly be reinstated into service with all back and consequential benefits. Any other remedy, this Honourable Tribunal deems fit and appropriate may also be awarded in favour of Appellant.

Respectfully Sheweth:-

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

- 1) That the Appellant is the natural born citizen of Pakistan and is entitled for all the right guaranteed by the Constitution of Islamic Republic of Pakistan, 1973 and hails from a respectable family of District Peshawar.
- 2) That the Appellant was employed of the police force and work with full zeal and zest.
- 3) That mother of the Appellant was seriously ill, due to which the Appellant did not perform his duties, hence the Appellant informed the Respondent department through application. So, the absentia of the Appellant was not wilful, but due to mother illness.
- 4) That thereafter, the Appellant was departmentally proceeded without charge sheet, statement of allegation, regular inquiry and even without show cause notice, the

impugned order dated 16-02-2021 was passed against the Appellant, whereby the Appellant was "dismissed from service and absence period treated without pay" which was not communicated to the Appellant, but the same was received by the Appellant through his own efforts, the Appellant aggrieved from the impugned dismissal order preferred departmental appeal, which was rejected on 15th July, 2021. (Copies of the impugned order, departmental appeal and rejection order are attached as Annex 'A' 'B' & 'C').

- 5) That thereafter, the Appellant filed review petition, but the same has been rejected vide order dated 15-11-2021, which was received by the Appellant through own efforts on 22-12-2022 for no good grounds. (Copy of the review petition, rejection order is attached as Annex 'D').
- 6) That the Appellant having no other adequate and efficacious remedy, approaches before this Honourable Court for his reinstatement into service with all back benefits on the following grounds inter-alia:-

GROUNDS:-

- A) That the Appellant is the natural born citizen of Pakistan and is fully entitled to all the basic and fundamental rights as enshrined in the fundamental law of the state, interpreted and guaranteed by the law of the land.

(4)

- L
- B) That the Appellant has not be treated in accordance with law, rule and policy on subject and acted in violation of Article 4 of the Constitutional of Islamic Republic of Pakistan, 1973 by the Respondents and the Appellant has been dismissed from his legal service without adopting legal prerequisite mandatory legal procedure, the order passed in violation 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.
- C) That the appeals of the Appellant was rejected on ground, the appeals is time barred but according to superior Court judgment reported as 2015 SCMR 795 there is no limitation was run against the void order.
- D) 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 penalty, which is violation of law, rule and norms of justice.
- E) 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.

- F) That no chance of personal hearing was provided to the Appellant and as such the Appellant has been condemned unheard throughout.
- G) That according to superior Court and this Honourable Tribunal judgment any order passed without following mandatory provisions of law is void abinitio.
- H) That the impugned order was based on wilful absence, so for the wilful absence procedure is provided in Rule 9 of the E&D Rule, 2011; which is so much crystal clear, the authority before imposing major penalty also violates the procedure of Rule 8-A. So, the impugned order is defected in eye of law.
- I) That the absence of Appellant was not wilful but due to mother illness, so the penalty imposed upon the Appellant was so harsh.
- J) That according to Federal Shariat Court judgment cited as PLD 1989 FSC 39, the show cause notice is must before taking any adverse notice, non-issuance of show cause notice is against the injunction of Islam, hence the impugned order is liable to be set aside.
- K) That any other ground not raised here specifically may also graciously be allowed to be raised at the time of arguments.

PRAYER:-

It is, therefore, most humbly prayed that on acceptance of this Service Appeal, the impugned orders dated


(6)

16-02-2021, 15-07-2021 and 15-11-2022 received by Appellant on 12-12-2022 may please be set and the Appellant may kindly be reinstated into service with all back and consequential benefits. Any other remedy, this Honourable Tribunal deems fit and appropriate may also be awarded in favour of Appellant.

Any other relief not specifically asked for may kindly be extended in favour of the Appellant, in the circumstances of the case.

Appellant

Through:



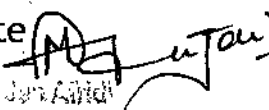
(MUHAMMAD ARIF JAN AFRIDI)
Advocate,
High Court, Peshawar

Dated: -20-01-2023

CERTIFICATE:

No such appeal has earlier been filed by the Appellant before any competent authority on the subject matter

Advocate



MUHAMMAD ARIF JAN AFRIDI
Advocate High Court,
PESHAWAR

(7)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

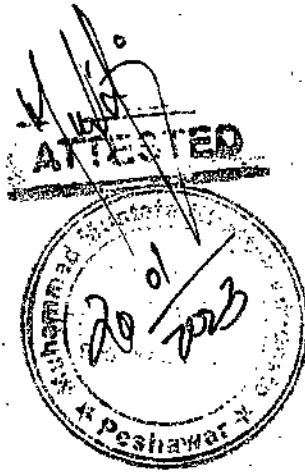
Syed Asif Shah.....(Appellant)

VERSUS

I.G.P KP and others.....(Respondents)

AFFIDAVIT

I, Muhammad Arif Jan Afridi Advocate (as per information of my client/Appellant), all the contents of accompanied Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.



Advocate Arif Jan Afridi
CNIC # 17301-
Cell # 0333-8807676
B.C No 15-5503

(8)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Syed Asif Ali Shah.....(Appellant)

VERSUS

I.G.P KP and others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT


Syed Asif Ali Shah Shah No 570 Ex-Constable S.P Headquarters,
Peshawar

RESPONDENTS

1. Inspector General of Police, Khyber Pakhtunkhwa at Police Line, Peshawar
2. Capital City Police Officer (CCPO) Peshawar
3. Superintendent of Police (S.P) Police Headquarters, Peshawar

Appellant

Through:


(MUHAMMAD ARIF JAN AFRIDI)
Advocate,
High Court, Peshawar

Dated:-20-01-2023

(10) (Annex) (A)

ORDER

This is a formal departmental proceeding against **Constable Asif Ali Shah No.5070** on the allegations/charges that he while posted at Police Lines absented himself from lawful duty w.e.f 17.04.2019 till date without taking permission or leave.

In this regard, he was issued charge sheet & summary of allegation. SDPO Suburb was appointed as E.O. He conducted the enquiry & submitted his report/findings that the alleged official did not attend the enquiry proceedings. The E.O further recommended suitable punishment for alleged official vide Enquiry Report No.65-E/PA dated 07.01.2021.

Upon the finding of E.O, he was issued final show cause notice and delivered to him through local Police PS Inqilaab which he received by himself but he failed to submit his reply or appear before this office as yet.

Note: On 11.02.2021, report of MM Police Lines has again obtained. He reported that FC Asif No.5070 is still absent from w.e.f 17.04.2019 till date.

From perusal of the findings of E.O and other material available on record it has been proved beyond any shadow of doubt that the alleged official is guilty of deliberate absence from lawful duty. Therefore, he is hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect. Hence, the period he remained absent from 17.04.2019 till date is treated without pay.


**SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR**

OB. NO. 572 / Dated 16/02/2021

No. 893-99 /PA/SP/dated Peshawar the 16/02/2021

Copy of above is forwarded for information & n/action to:

- ✓ Capital City Police Officer, Peshawar
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Officer, OASI,
- ✓ CRC & FMC along-with complete departmental file.

D.C
Make Entry in S.O.II
16/02

To

Most Respected

Chief Capital Police Officer (CC) Peshawar.

Subject;

DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER
DATED 16-2-2021 WHEREBY APPLICANT WAS DISMISSED FROM
HIS CARRIED SERVICES, HENCE QUASHMENT/RE-CALL OF THE
DISMISSAL ORDER OF APPLICANT WITH THE PRAY OF RE-
INSTATMENT ON HIS SERVICE.

Respected Sir,

I very humbly submit few lines for your kind and sympathetic consideration:

1. That ever since my appointment I had performed my duties as assigned with great zeal and devotion and there was no complaint what so ever regarding my performance since my initial appointment in the era of 2007 on word.

That since the mother of the applicant being aged lady, Chronically fell ill and became paralyze, and the phycians Strictly directed to look after quite carefully with the regular attendance.

3. That there was non to look after paralyze chronically felt ill mother of the applicant, as it is the sole responsibility of the applicant to carry such obligations, it was thus firstly applicant was remained without any leave and later on with the seriousness of the disease, applicant put his application through post to the competent authority of worthy department, which acknowledgment has not arrived.

4. That the rankers always depended upon there such like only sustainable source of income and to run their kitchen and other mandatory domestic needs and no one ^{would} good desire to get discharge from his such sustainable source of income and to put his as well as family life, into unlimited financial based complication, therefore the alleged agitated negligence on the part of the applicant is absolutely not intentional.

5. It is to say a side from the merit of dismissal order, the major punishment of dismissal from services should not be required to extend however legally stated that no proper, prescribed, usual, legal mode of treatment the leave case of the applicant, was adopted while pronouncing the above impugned order of the applicant, as no personal hearing are show cause or opportunity to file any representation or reply, was benefited to the applicant by the department so it can be safely stated that the impugned order of dismissal of service of the applicant

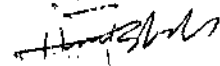
13

has no legal footing at all, illegal unlawful in nature therefore required to be quashed/re-called.

6. That applicant will be not treated in accordance with law, hence my rights guaranteed and secured under the constitution are badly violated.

It is therefore, humbly requested that on acceptance of this departmental appeal the impugned order of dismissal of applicant, bearing No OB 572 dated 16/2/2021 may kindly be set aside and the undersigned may allowed to retain on my post.

Applicant



Asif Ali Shah

Belt No 5070

CNIC: 17301-62388459

Cell: 0300-9037409

copy to.

→ Inspector General of Police
Khyber Pakhtunkhwa KP



(14) Annex (C)

**OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR**

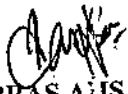
ORDER.

This order will dispose of the departmental appeal preferred by Ex-Constable Syed Asif Ali Shah No. 5070 who was awarded the major punishment of "Dismissal from service" under PR-1975 by SP/HQ Peshawar vide OB No. 572, dated 16.2.2021.

2- He while posted at Police Lines Peshawar absented himself from lawful duty w.e.f 17.4.2019 till his dismissal i.e 16.2.2021 (total 1-year & 10-months)

3- He was issued proper Charge Sheet and Summary of Allegations by SP/HQ Peshawar and SDPO Suburb Peshawar was appointed as enquiry officer to scrutinize the conduct of the accused official. The enquiry officer after conducting proper enquiry submitted his findings and found the accused official guilty. The competent authority in light of the findings of the enquiry officer issued him Final Show Cause Notice, but he failed to submit his reply to the Final Show Cause Notice, hence awarded the above major punishment.

4- He was heard in person in O.R and the relevant record along with his explanation perused. During personal hearing the appellant failed to submit any plausible explanation in his defence. A detail report regarding his conduct has also been obtained from RI Police lines, Peshawar. According to him the appellant is a habitual absentee. Therefore, his appeal for reinstatement in service is hereby rejected/file being also time barred.


(ABBAS AHSAN) PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 2279-82 /PA dated Peshawar the 15 / 7 /2021
Copies for information and necessary action to the :-

1. SP/HQ, Peshawar.
2. OSI, CRC with the direction to made necessary entry in his S.Roll.
3. FMC along with Fouji Missal.
4. Official Concern.



15

Annex

1

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
Central Police Office, Peshawar.

No. S/ 2775 /22, dated Peshawar the 15/11 /2022.

To : The Capital City Police Officer,
Peshawar.

Subject: REVISION PETITION.

Memo:

The Competent Authority has examined and filed the revision petition submitted by Ex-FC Syed Asif Ali Shah No. 5070 of CCP, against the punishment of dismissal from service awarded by SP/HQr: Peshawar vide OB No. 572 dated 16.02.2021, being badly time barred.

The applicant may please be informed accordingly

AA Jan
15/11

(AFSAR JAN)

Registrar,

For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar

in
ote 14/11/22

بعد الت حنا کسروس ٹریبونل جلد مستویا لیا

موندہ 20/01/2023

دعویٰ سوسن اپیل
جیم

2023 پنجاب ایوارڈ

سید اکھت علی شاہ
ICAP-KP & Other

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام اور کیلئے محمد عارف جمال اور عدلیہ ایدو مسٹری مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ پھر وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک ورد پیہار عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ 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 ساخنہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر چاہے التوائے مقدمہ کے سبب سے 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 لکھدیا کہ سند ہے۔

الرقوم 20 جنوری 2023

العہدہ گواہ العہدہ

مقام اور کے لئے منظور ہے

Attested & Accepted