

(1)

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

Service Appeal No. 1368/2022

Asif Khans/o Musafar Khan Mohallah Masal Khan P.O

Sherpo Tehsil Tangi District Charsadda.

.....Appellant

V E R S U S

1. District Police Officer, Nowshera.
2. Regional Police Officer, Mardan.
3. Provincial Plice Officer, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

REPLY ON BEHALF OF RESPONDENTS

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS: -

1. That the appellant has got no cause of action and locus standi to file the appeal.
2. That the appeal is badly barred by law and limitation.
3. That the appellant is estopped by his own conduct to file the instant appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Honourable Tribunal with clean hands.
6. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.

Reply on Facts: -

1. Para pertains to record, hence, needs no comments.
2. Incorrect. Appellant has never been devoted to duty, which is evident from his service record as the same is tainted with bad entries. (Detail of bad entries is annexure "A").
3. Incorrect. Appellant while posted at Police Station, Akbarpura, remained absent vide daily diary No. 11 dated 04-02-2018, daily diary No. 14 dated 04-02-2018 and daily diary No. 18 dated 07-03-2018 till the time of his dismissal. Later on appellant took this plea of his alleged illness only to justify his long absence. If appellant was in deed ill, he should have submitted application for proper leave but he did not do so. It is worth to mention here prior to instant dismissal appellant had also been dismissed from service in the year 2017 for his absence with effect from 14-07-2017 till the time of his dismissal i.e 26-09-2017. (Copy of dismissal order is annexure "B").

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Asif Khans/o Musafar Khan Mohallah Masal Khan P.O
Sherpo Tehsil Tangi District Charsadda.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3439

Dated 7-2-2023

.....Appellant

V E R S U S

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.

.....Respondents

I N D E X

| S.No. | Description of documents | Annexure | Pages |
|-------|--|----------|-------|
| 1. | Reply of Respondents | - | 1-3 |
| 2. | Reply to the application of condonation of delay | - | 4-5 |
| 3. | Affidavit | - | 06 |
| 4. | Copy of detail of bad entries | A | 07-08 |
| 5. | Copy of dismissal order | B | 09 |
| 6. | Copy of departmental appeal with better copy | C | 10-11 |
| 7. | Copy of show cause notice and reply of the appellant | D | 12-14 |


Inspector Legal,
Nowshera

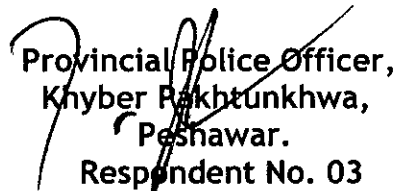
4. Para correct to the extent that appellant was dismissed from service, due to his absence from lawful duty on 31-05-2018.
5. Incorrect. Appellant was dismissed from service on 31-05-2018 while he submitted departmental appeal on 01-03-2019 which was badly time barred by almost 10 months therefore, appeal of the appellant was filed by the appellate authority being badly time barred. (Copy of departmental appeal is annexure "C").
6. Para is for the appellant to prove.
7. Appeal of the appellant is liable to be dismissed inter alia on the following grounds: -

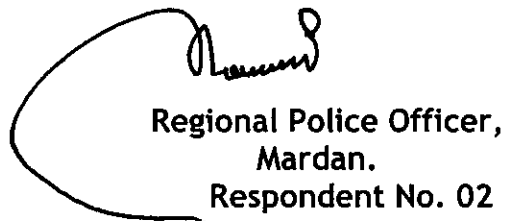
Reply on GROUNDS

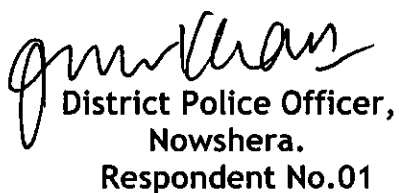
- A. Incorrect. Orders passed by the respondents are in accordance with law and rules and were passed after fulfillment of all legal and codal formalities.
- B. Incorrect. Appellant was issued Show Cause Notice to which he also submitted his reply but the same was found unsatisfactory. (Copy of Show Cause Notice and reply of the appellant are annexure "D").
- C. Incorrect. Appellant was awarded punishment for his long absence for which statement of witness was not required.
- E. Incorrect. During his service appellant has remained countless time absent meaning thereby that he was habitual absentee and was not interested in his official duty.
- F. Incorrect. As discussed in the preceding paras that prior to instant dismissal, appellant had also been earlier dismissed from service due to his long absence. However, he was reinstated by the appellate authority and his punishment of dismissal from service was converted into major punishment of reduction in time scale for 02 years. The appellant even then did not mend his way and started remaining absent from duty on one pretext or other.
- H. Incorrect. Appellant despite so many minor punishments and one punishment of dismissal from service, did not mend his way. Therefore, there was no other way but to dismiss him from service.
- I. Incorrect. Appellant was a habitual absentee and continuously remained absent. He had never been interested in his duties during his entire service, therefore, conducting enquiry was of no use as his previous record was enough for ascertaining his conduct.
- J. The respondents also seek permission of this Honourable Tribunal to advance additional grounds at the time of arguments.

Prayers

It is, therefore, most humbly prayed that on acceptance of above submissions, the appeal of the appellant may very kindly be dismissed with costs, please.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No. 03


Regional Police Officer,
Mardan.
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No.01

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

Service Appeal No. 1368/2022

Asif Khans/o Musafar Khan Mohallah Masal Khan P.O

Sherpo Tehsil Tangi District Charsadda.

.....Appellant

V E R S U S

District Police Officer, Nowshera and others.

....Respondents

REPLY TO THE APPLICATION FOR CONDONATION OF DELAY

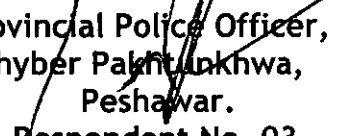
Respectfully Sheweth: -

1. Incorrect. Appeal of the appellant has been fixed for 22-12-2022.
2. Incorrect. The same cannot be considered as integral part of the petition.
3. Incorrect. Appellant was dismissed from service on 31-05-2018 while he submitted departmental appeal on 01-03-2019 which was badly time barred by almost 10 months therefore, appeal of the appellant was filed by the appellate authority being badly time barred.
4. Para is for the appellant to prove.
5. Case of the appellant has been decided on merit not on technicalities.
6. Para is for the appellant to prove.
7. Incorrect. Dismissal order was passed after fulfillment of all legal and codal formalities.
8. Incorrect. Appellant was not interested in his job which is evident from his service record. Moreover, he was heard by the appellate authority on 28-03-2019 but he failed to produce any cogent reason for his long absence.
9. Para already explained above.


5

Prayers

It is, therefore, most humbly prayed that on acceptance of above submissions, the instant application for condonation of delay may very kindly be dismissed/filed, please.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No. 03


Regional Police Officer,
Mardan.
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No.01

(6)

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

Service Appeal No. 1368/2022

Asif Khans/o Musafar Khan Mohallah Masal Khan P.O
Sherpo Tehsil Tangi District Charsadda.

.....Appellant

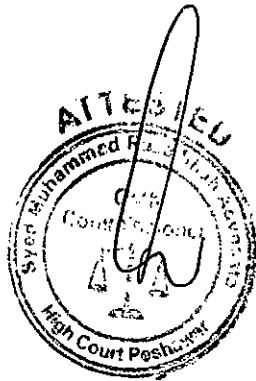
V E R S U S

1. District Police Officer, Nowshera.
2. Regional Police Officer, Mardan.
3. Provincial Plice Officer, Khyber Pakhtunkhwa, Peshawar.

.....Respondents

AFFIDAVIT

We the respondents No. 1, 2 &3 do hereby solemnly affirm and declare on Oath that the contents of reply to the appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the Honourable tribunal.



FEB 2023

Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No. 03

Regional Police Officer,
Mardan.
Respondent No. 02

District Police Officer,
Nowshera.
Respondent No.01

Annex: A)

(7)

POLICE DEPARTMENTNOWSHERA DISTRICT.INDEX OF ABSENCECONSTABLE ASIF NO. 1377

Father Name: = Musafar Khan
 Local Police Station = Umarzai Charsadda.
 Address: = Village Masil Khan Korona Sherpao, Tangi Charsadda.
 Date of Enlistment = 12-07-2007

DETAIL OF ABSENCE

| S.# | DD No & Date | Total period of Absence | Remarks |
|-----|--|-------------------------|---|
| 1. | DD 25, dt: 07-05-12 to DD 27, dt: 10-05-12 | 03 days | Period of absence treated as leave w/o pay. |
| 2. | DD 15, dt: 11-12-12 to DD 14, dt: 17-07-12 | 06 days | Period of absence treated as leave w/o pay. |
| 3. | DD 24, dt: 15-07-12 to DD 29, dt: 17-07-12 | 02 days | Period of absence treated as leave w/o pay. |
| 4. | DD , dt: 12-15-13 to DD 22, dt: 15-05-13 | 03 days | Period of absence treated as leave w/o pay. |
| 5. | DD 07, dt: 17-09-13 to DD 09, dt: 22-09-13 | 05 days | Period of absence treated as leave w/o pay. |
| 6. | DD 05, dt: 24-09-13 to DD 38, dt: 29-09-13 | 05 days | Period of absence treated as leave w/o pay. |
| 7. | DD 14, dt: 29-09-13 to DD 29, dt: 30-09-13 | 01 day | Period of absence treated as leave w/o pay. |
| 8. | DD 65, dt: 13-09-13 to DD 07, dt: 14-09-13 | 01 day | Period of absence treated as leave w/o pay. |
| 9. | DD 27, dt: 01-11-13 to DD 29, dt: 04-11-13 | 03 days | Period of absence treated as leave w/o pay. |
| 10. | DD 21, dt: 06-11-13 to DD 30, dt: 12-11-13 | 06 days | Period of absence treated as leave w/o pay. |
| 11. | DD 07, dt: 28-11-13 to DD 33, dt: 01-12-13 | 03 days | Period of absence treated as leave w/o pay. |
| 12. | DD 26, dt: 07-12-13 to DD 09, dt: 11-12-13 | 04 days | Period of absence treated as leave w/o pay. |
| 13. | DD 09, dt: 06-01-14 to DD 18, dt: 15-01-14 | 09 days | Period of absence treated as leave w/o pay. |
| 14. | DD 06, dt: 20-01-14 to DD 18, dt: 29-01-14 | 09 days | Period of absence treated as leave w/o pay. |
| 15. | DD 32, dt: 01-02-14 to DD 16, dt: 15-02-14 | 14 days | Period of absence treated as leave w/o pay. |
| 16. | DD 36, dt: 17-05-14 to DD 19, dt: 18-05-14 | 01 day | Period of absence treated as leave w/o pay. |
| 17. | DD 13, dt: 29-07-14 to DD 28, dt: 03-08-14 | 05 days | Period of absence treated as leave w/o pay. |
| 18. | DD 34, dt: 10-05-15 to DD 22, dt: 28-05-15 | 18 days | Period of absence treated as Medical Leave and awarded minor punishment of Censure. |
| 19. | DD 19, dt: 22-08-15 to DD 15, dt: 17-09-15 | 25 days | Period of absence treated as Medical Leave. |
| 20. | DD 31, dt: 23-10-15 to DD 42, dt: 27-10-15 | 04 days | Period of absence treated as leave w/o pay. |
| 21. | DD 20, dt: 23-11-15 to DD 46, dt: 25-11-15 | 02 days | Period of absence treated as leave w/o pay. |
| 22. | DD 18, dt: 30-11-15 to DD 19, dt: 04-12-15 | 04 days | Period of absence treated as leave w/o pay. |

| S.# | DD No & Date | Total period of Absence | Remarks |
|-----|---|-----------------------------|---|
| 23. | DD 20, dt: 29-01-16 to DD 05, dt: 09-02-16 | 10 days | Period of absence treated as leave w/o pay and awarded Censure. |
| 24. | DD 44, dt: 03-03-16 to DD 37, dt: 04-03-16 | 01 day | Period of absence treated as leave w/o pay and awarded Censure. |
| 25. | DD 10, dt: 14-04-16 to DD 06, dt: 17-04-16 | 03 days | Period of absence treated as leave w/o pay and awarded Censure. |
| 26. | DD 15, dt: 29-07-16 to DD 09, dt: 30-07-16 | 01 day | Period of absence treated as leave w/o pay and awarded Censure. |
| 27. | DD 08, dt: 21-07-16 to DD 08, dt: 22-07-16 | 01 day | Period of absence treated as leave w/o pay and awarded Censure. |
| 28. | DD 74, dt: 04-08-16 | Absent from Shuhada Parade. | Awarded minor punishment of 03 x days extra drill. |
| 29. | DD 35, dt: 12-08-16 to DD 07, dt: 18-08-16 | 06 days | Period of absence treated as leave w/o pay and awarded Censure. |
| 30. | DD 10, dt: 16-10-16 to DD 23, dt: 24-10-16 | 08 days | Period of absence treated as leave w/o pay and awarded Censure. |
| 31. | On 25-10-2016 remained absent from Polio duty. | Absent from Polio Duty | Awarded minor punishment of forfeiture of approved service for two years. |
| 32. | DD 17, dt: 14-12-16 to DD 23, dt: 22-12-16 | 08 days | Period of absence treated as leave w/o pay and awarded Censure. |
| 33. | DD 20, dt: 30-12-16 to DD 14, dt: 31-12-16 | 01 day | Period of absence treated as leave w/o pay and awarded Censure. |
| 34. | DD 26, dt: 21-01-17 to DD 19, dt: 27-01-17 | 06 days | Period of absence treated as leave w/o pay and awarded Censure. |
| 35. | DD 24, dt: 13-06-17 to DD 20, dt: 15-06-17 | 02 days | Period of absence treated as leave w/o pay and awarded Censure. |
| 36. | DD 31, dt: 14-07-17 to 26-09-17 till date of dismissal | 42 days | Dismissed from service & Reinstated in service on 28-11-2017. Punishment of Dismissal converted to reduction in timescale for two (02) years. |
| 37. | DD 57, dt: 29-11-17 to DD 15, dt: 05-12-17 | 05 days | Period of absence treated as leave. |
| 38. | DD 09, dt: 06-12-17 to DD 17, dt: 08-12-17 Considered absent from 05-12-17 | 03 days | Period of absence treated as leave |
| 39. | DD 25, dt: 26-12-17 to DD 15, dt: 27-12-17 | 01 day | Period of absence treated as leave |
| 40. | DD 32, dt: 30-12-17 to DD 07, dt: 31-12-17 | 01 day | Period of absence treated as leave |
| 41. | DD 27, dt: 07-01-18 to DD 26, dt: 08-01-18 | 01 day | Period of absence treated as leave |
| 42. | DD 25, dt: 02-01-18 to DD 26, dt: 06-01-18 | 04 days | Period of absence treated as leave |
| 43. | DD 28, dt: 09-01-18 to DD 06, dt: 15-01-18 | 06 days | Period of absence treated as leave |
| 44. | DD 26, dt: 15-12-17 to DD 17, dt: 16-12-17 | 01 day | Issued warning to be careful in future. |
| 45. | DD 11, dt: 04-02-18 to DD 14, dt: 28-02-18 | 28 days | Pays stopped, Issued SCN. |
| | TOTAL ABSENTEE | 272 | |

DISMISSAL ORDER

Constable Asif No. 1377, while posted at Police Station Akbarpura, remained absent from duty without any leave/permission of the competent authority vide DD No. 11 dated 04.02.2018 to DD No. 14 dated 28.02.2018 & DD No. 18 dated 07.03.2018 PS, Akbarpura till date.

On account of which, he was issued Show Cause Notice vide this office Endst: No. 89/PA dated 22.02.2018, to which his reply was received & found unsatisfactory. He was heard in the Orderly Room by the then DPO, wherein he produced medical documents, but the then DPO did not agreed with the said medical documents. He has submitted application for transfer to district Charsadda, which was forwarded to Regional Police Officer, Mardan vide this office Memo: No. 4575/EC, dated 19.03.2018, but his transfer order has not been issued so far.

He is habitual absentee and remained absent for 356 days, due to which he was dismissed from service.

His continuous absence clearly seems that he is no more interested in Police job, hence dismissed from service from the date of his absence in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules-1975.

OB 646

Dated 31/03/2018.

**District Police Officer,
Nowshera.**

No. 3034-37/PA, dated Nowshera, the 31.05 /2018.

Copy for information and necessary action to the:-

1. Pay Officer.
2. E.C.
3. OHC.
4. FMC with relevant papers (35 sheets).

Amul

Faint, illegible text at the top of the page, possibly a header or title area.

I had served the Department for about 10 years.
I am the only dependent of a large family including my aged/ ailing mother and other dependents and financial hardships.

Due to poverty, I have taken debt from my relatives and friends for my treatment.
I have no source of income and am facing difficulties.

Delay in submission of appeal is due to the fact that I was lying on bed, which may be considered as a medical emergency.

I was issued show cause notice, in response to which I have submitted an appeal, which has not been considered.

I am the only dependent of a large family including my aged/ ailing mother and other dependents and financial hardships.

Due to poverty, I have taken debt from my relatives and friends for my treatment.

I have no source of income and am facing difficulties.

Delay in submission of appeal is due to the fact that I was lying on bed, which may be considered as a medical emergency.

I, therefore, approach your good self to kindly accept my Appeal and accord an order regarding my reinstatement in service by sanctioning medical leave, for which I shall be highly obliged.

I will pray for your long life and prosperity.

EC/DPO/MSR,
For Comments

Mamun
RPO/Merdun
1/3/19

NO. 1754/ES
DT: 01/3/19
Encl: Medicals

Your Obediently
Asif Khan Ex-Constable 1377
R/O Village Sherode Distt Chorsadda
0800-5535635

(11)

To,

**The Deputy Inspector General of Police,
Mardan Region-I, Mardan**

Subject: **Appeal for reinstatement in service**

Sir,

With due respect I bet to submit that I have been dismissed from service by the then DPO Nowshera vide OB No. 640 dated 31/03/2018 for absence from duty from 04/02/2018 to 27/02/2018 and 08/03/2018 to 31/05/2018, against which I am going to submit the present Appeal for favourable consideration on the below mentioned justification/grounds:

1. While posted at Police Station, Akbarpura, I feel ill due to suffering from Backache/sciatica and got treatment at DSH Hospital Mardan vide OPD No. 6932 dated 04/02/2018, 16934 dated 23/02/2018, 5423 dated 08/03/2018, 26315 dated 24/03/2018, 27472 dated 22/04/2018, 8312 dated 06/04/2018, 8235 dated 06/05/2018 and 36195 dated 22/05/2018.
2. The Medical Officer DHQ hospital Mardan also advised me to take complete bed rest/ Medical leave, though I have reported for duty during intervening period (28/02/2018 to 07/03/2018 photocopies attached herewith).
2. I was issued show cause notice, in response to which I have submitted a well convincing reply but it was not paid due consideration.
3. I had served the Department for about 10 years.
4. I am the only dependent of a large family including my aged/ailing mother and an in constant tension and financial hardships.
5. Due to poverty, I have taken debt from my relatives and friends for my treatment.
6. I have no source of income and am facing difficulties.
7. Delay in submission of appeal is due to the fact that I was lying on bed, which may be condoned.

I, therefore, approach your good self to kindly accept my appeal and accord an order regarding my reinstatement in service by sanctioning medical leave, for which I shall be highly obliged.

I will pray for your long life and prosperity.

Your Obediently,

Sd/-

**Asif Khan Ex-Constable 1377
R/O Village Sherpao District Charsadda
0300-5635635**

**No. 1794/ES,
Dt: 01/03/019**

Annex: D, ②

OFFICE OF THE DISTRICT POLICE OFFICER,
NOWSHERA
GROUND OF ACTION

That FC Asif No. 1377 while posted at PS, Akora committed the following misconducts:-

Remained absent from duty without any leave or permission of the competent authority vide DD No.27 dated 07.01.2018, PS, Akora till date.

By reasons of above you have rendered yourself liable to be proceeded under Khyber Pakhtunkhwa Police Rules, 1975, hence these grounds of action.

No 53 /PA,

Dated 2/2 /2018


District Police Officer,
Nowshera.

SHOW CAUSE NOTICE

(Under Rule 5 (3) KPK Police Rules, 1975)

1. That you FC Asif No. 1377 while posted at PS, Akora have rendered yourself liable to be proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct:-

Remained absent from duty without any leave or permission of the competent authority vide DD No.27 dated 07.01.2018, PS, Akora till date.

2. That by reasons of above, as sufficient material is placed before the undersigned; therefore it is decided to proceed against you in general Police proceeding without aid of enquiry officer.
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force;
4. That your retention in the Police force will amount to encourage inefficiency and unbecoming of good Police officers;
5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules.
6. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
7. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex-parte action shall be taken against you.
8. You are further directed to inform the undersigned that you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.

Received by

1377

Dated: 26/02 /2018


District Police Officer,
Nowshera.

1377
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