

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT, ABBOTTABAD.

Appeal No. 1393/2017

Date of institution ... 15.12.2017

Date of decision 17.06.2019

Ex-Constable Atif Bashir No. 274 posted at Police Station Darband Tehsil Oghi
District Mansehra. ... (Appellant)

Versus

The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and two
others. (Respondents)

Present

Mr. Abdul Saboor Khan,
Advocate

... For appellant.

Mr. Muhammad Bilal,
Deputy District Attorney

... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER.

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The relevant facts involved in the appeal in hand are that the appellant was serving as Constable at Police Station Darband, Tehsil Oghi, District Mansehra when he was issued charge sheet on account of absence from duty by respondent No. 3/District Police Officer, Mansehra. A reply to the charge sheet was duly submitted. DSP Shinkiari was appointed as enquiry officer who concluded the proceedings and submitted report to the respondent No. 3. The said respondent was, in turn, pleased to award major penalty of dismissal from service to the appellant vide order dated 08.08.2017. The appellant questioned the impugned order through departmental appeal which was also

rejected on 14.11.2017, hence the appeal in hand. It is noted in the impugned order dated 08.08.2017 that the appellant absented himself from 20.04.2017 to 02.05.2017 and 07.05.2017 to 12.05.2017.

2. We have heard learned counsel for the appellant and learned Deputy District Attorney on behalf of the respondents. The available record has also been examined.

It was the argument of learned counsel that the impugned order reflected the hearing of appellant, in person, in Orderly Room. The hearing of an accused in Orderly Room was provided in Rule 5 of the Khyber Pakhtunkhwa Police Rules, 1975, but for summary proceedings. He explained that in cases entailing major punishment to an accused police official summary proceedings were not to be resorted to and a regular/proper enquiry was necessitated. Learned counsel also emphasized that the total alleged absence of appellant was 19 days, that too, in two different intervals, therefore, the awarded punishment was harsh. In support of his arguments, learned counsel relies on 2006-SCMR-60.

Learned Deputy District Attorney on the other hand, contended that a proper enquiry was held against the appellant wherein he did not care to participate and was proceeded against ex-parte. All codal formalities were fulfilled before passing of impugned penalty, it was added.

3. The record before this Tribunal comprised of copy of charge sheet against the appellant, his reply to the charge sheet, impugned order and order of departmental appellate authority dated 14.11.2017. Out of the said record, the respondents only cared to annex copy of order dated 14.11.2017 with their parawise comments submitted in respect of the appeal in hand. No copy of report of enquiry, if any, nor of the final show cause notice was provided by



the respondents all alongwith the proceedings before the Tribunal. It was admitted at the bar that no final show cause notice was ever issued to the appellant.

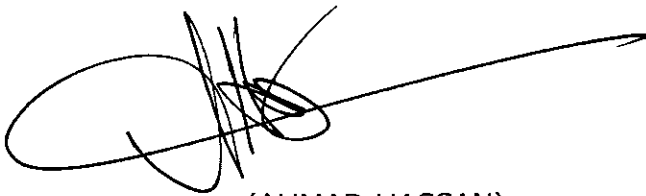
In his reply to the charge sheet the appellant had explained that upon receipt of a call from his home he informed the SHO Police Station, Darband and left to attend his wife who was taken to hospital immediately. Baby boy was born but due to late arrival to the hospital the child could not survive. Thereafter, his wife needed medical care and the appellant had to stay with her. That, in the said regard-he had duly informed the Police Station.

4. In the circumstances of the case, where the proceedings against the appellant were taken in cursory manner and no regular enquiry was conducted against him, so much so, that final show cause notice was never issued to the appellant before imposition of penalty upon him, we agree with the arguments of learned counsel that the appellant was not dealt with in accordance with law. Introduction of new fact and its attribution to the appellant in order dated 14.11.2017, albeit without any documentary evidence, also suggests that the departmental appellate authority was not free from prejudice while dealing with the case of appellant.

We are also of the view that the imposition of major penalty of dismissal from service upon the appellant, in the facts and circumstances of the case, is not commensurate and is harsh in every sense of the word. The appellant was required to resume his duty after the first interval of his alleged absence while the total absence period being 19 days, his case did not call for award of impugned penalty.

5. For what has been discussed above, we allow the appeal in hand and modify the impugned punishment of dismissal from service to that of stoppage of one increment for one year. Resultantly, the appellant is reinstated in service while the intervening period between his dismissal from service and reinstatement is treated as leave of the kind due.

Parties are left to bear their respective costs. File be consigned to the record room.

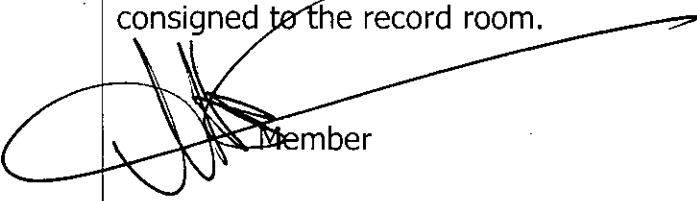



(AHMAD HASSAN)
Member




(HAMID FAROOQ DURRANI)
Chairman
Camp Court, Abbottabad.

ANNOUNCED
17.06.2019

S.No.	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	17.06.2019	<p style="text-align: center;"><u>Present</u></p> <p>Mr. Abdul Saboor Khan, Advocate ... For appellant</p> <p>Mr. Muhammad Bilal, Deputy District Attorney ... For respondents</p> <p>Vide detailed judgment, we allow the appeal in hand and modify the impugned punishment of dismissal from service to that of stoppage of one increment for one year. Resultantly, the appellant is reinstated in service while the intervening period between his dismissal from service and reinstatement is treated as leave of the kind due.</p> <p>Parties are left to bear their respective costs. File be consigned to the record room.</p> <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">  Member </div> <div style="text-align: center;">  Chairman Camp court, A/Abad </div> </div> <p style="text-align: center;"><u>ANNOUNCED</u> 17.06.2019</p>


19.12.2018

Counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Written reply not submitted. Fresh notices be issued to the respondents for written reply/comments. Case to come up for written reply/comments on 21.02.2019 before S.B at camp court, Abbottabad.


Member
Camp Court, A/Abad


21.02.2019

Appellant in person present. Mr. Ikhlq Hussain, Inspector (Legal) alongwith Mr. Muhammad Bilal Khan, Deputy District Attorney for the respondents present. Written reply on behalf of respondents not submitted. Learned Deputy District Attorney requested for further adjournment. Adjourned to 17.04.2019 for written reply/comments before S.B at Camp Court Abbottabad.


(Muhammad Amin Khan Kundi)
Member
Camp Court Abbottabad


17.04.2019

Counsel for the appellant present. Mr. Muhammad Bilal, DDA alongwith Mr. Misal Khan, ASI for respondents present. Written reply/comments submitted which ~~are~~ placed on file. Case to come up for rejoinder and arguments on 17.06.2019 before D.B at camp court Abbottabad.


(Ahmad Hassan)
Member
Camp Court A/Abad


25.05.2018

Neither the appellant nor his counsel present. Adjourned. To come up for preliminary hearing on 31.08.2018 before S.B at camp court A/Abad.


Chairman
Camp court A/Abad

31.08.2018

Due to summer vacations, the case is adjourned .To come up for the same on 17.10.2018 at camp court Abbottabad.



Reader

17.10.2018

Counsel for the appellant Atif Bashir present. Preliminary arguments heard. It was contended by the learned counsel for the appellant that the appellant was serving in Police Department as Constable. It was further contended that during service he was imposed major penalty of dismissal from service vide order dated 08.08.2017 on the allegation of absence from duty. It was further contended that the appellant filed departmental appeal which was rejected on 14.11.2017 hence, the present service appeal on 15.12.2017. It was further contended that the appellant was dismissed from service for 19 days absence therefore, it was contended that the major penalty of dismissal from service is not in commensurate with the charge. It was further contended that neither regular proper inquiry was conducted nor absence notice was issued to the appellant before imposing of major penalty therefore, the impugned order is illegal and liable to be set-aside.




The contentions raised by the learned counsel for the appellant needs consideration. The appeal is admitted to regular hearing subject to deposit of security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments for 19.12.2018 before the S.B at Camp Court, Abbottabad.

Appellant Deposited
Security & Process Fee


Member
Camp court, A/Abad

Form-A
FORM OF ORDERSHEET

Court of _____
Case No. 1393/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	15/12/2017	<p>The appeal of Mr. Atif Bashir received today by post Mr. through Abdul Saboor Khan Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 15/12/17</p>
2-	11-01-2018	<p>This case is entrusted to Touring S. Bench at A.Abad for preliminary hearing to be put up there on <u>22-3-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>
22.03.2018		<p>Counsel for the appellant present. Seeks adjournment. Granted. To come up for preliminary hearing on 25.05.2018 before S.B at camp court, Abbottabad.</p> <p style="text-align: right;"> Chairman Camp court, A/Abad</p>

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

Service Appeal No. 393 of 2017

Ex-Constable Atif BashirAppellant

VERSUS

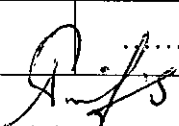
The Inspector General of Police (IGP) Khyber
Pakhtunkhwa, Peshawar and others
.....Respondents

SERVICE APPEAL


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S#	Particulars of documents	Annexure	Pages
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5	Copy of impugned order.	"C"	11
6	Copy of departmental appeal.	"D"	12
7	Copy of the order dated 14.11.2017.	"E"	13
8	Wakalat Nama.	14

Dated 09.12.2017


Ex-Constable Atif Bashir
.....Appellant

Through


ABDUL SABOOR KHAN, /k
Advocate High Court,
Mansehra.

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

Service Appeal No. 1393 of 2017

Ex-Constable Atif Bashir No.274 posted at
police Station Darband, Tehsil Oghi District
MansehraAppellant

Khyber Pakhtunkhwa
Service Tribunal

VERSUS

Diary No. 1429

Dated 15-12-17

1. The Inspector General of Police (IGP) Khyber Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region, Abbottabad.
3. District Police Officer, MansehraRespondents.

**SERVICE APPEAL UNDER SECTION-4
OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDERS
DATED 08.08.2017 PASSED BY
RESPONDENTS NO.3 WHEREBY
APPELLANT WAS AWARDED MAJOR
PUNISHMENT OF "DISMISSAL FROM
SERVICE" AND HIS DEPARTMENTAL
APPEAL WAS TURNED DOWN BY
RESPONDENT NO.2 VIDE ORDER
DATED 14.11.2017.**

Filed to-day
Asad
Registrar
15/12/17

PRAYER: -

On acceptance of the instant appeal, the impugned order dated 08.08.2017 passed by respondent No.3 may graciously be set aside being illegal, unlawful, without lawful authority and of having no legal effect and appellant be reinstated into service with all back benefits admissible under the relevant rules.

Respectfully Sheweth!

1. That, appellant was serving as police constable at police Station Darband, Tehsil Oghi District Mansehra.
2. That, the District Police Officer, Mansehra (Respondent No.3) issued a charge sheet against the appellant for alleged absence from duty which was duly replied by the appellant vide reply to charge sheet dated 29.05.2017.

(Copies of charge sheet and reply are annexed as annexure "A" & "B" respectively).

3. That, Mr. Nazir Khan, DSP Shinkariari was appointed as Inquiry Officer but wherein appellant was not provided

an ample opportunity to explain his position.

4. That, respondent No.3 vide impugned order dated 08.08.2017, awarded major penalty of dismissal from service to appellant.

(Copy of impugned order is annexed as annexure "C").

5. That, the appellant challenged the impugned order dated 08.08.2017 through departmental appeal before respondent No.2 which was rejected vide order dated 14.11.2017.

(Copies of departmental appeal and order dated 14.11.2017 are annexed as annexure "D" & "E").

6. That, feeling aggrieved, appellant having no other alternative remedy except to invoke the appellate jurisdiction of this Honourable Tribunal, inter alia, on the following amongst the other grounds: -

GROUND

- a. That, appellant never absented himself from duty. No evidence was

ever collected/found by the respondents/inquiry officer regarding the willful absence of the appellant from duty.

- b. That, the appellant was dismissed from service only on mere surmises and conjectures without having any solid foundation/proof.
- c. That, no concerned witness was examined by inquiry officer who could depose against the appellant nor any documentary proof was found against the appellant.
- d. That, the appellant was not provided an ample opportunity to explain his position by inquiry officer rather he conducted one sided inquiry at the back of the appellant.
- e. That, neither statement of allegation nor final show cause notice was served upon the appellant and he was straightaway dismissed from service by respondent No.3.
- f. That, the mode and manner provided under the law/rules regarding imposition of major penalty were not observed by the respondents.


- g. That, the punishment awarded is not proportionate to the alleged act done rather it is too harsh and unjust in the circumstances of the case.
- h. That, appellant explained his position in the reply to show cause notice but it was not considered by the respondent No.3 while awarding major penalty of dismissal from service.
- i. That, appellant was not provided an opportunity of personal hearing either by respondents No.2 and 3 and the impugned orders were passed at his back.
- j. That, the impugned order is on its very face value illegal, unjust, harsh and unjustified in the circumstances of the case.

.....**PRAYER**


It is, therefore, most humbly prayed that on acceptance of the instant appeal, the impugned order dated 08.08.2017 passed by respondent No.3 may graciously be set aside being illegal, unlawful, without lawful authority and of having

no legal effect and appellant be reinstated into service with all back benefits admissible under the relevant rules.

Dated 09.12.2017


Ex-Constable Atif Bashir
.....Appellant

Through


ABDUL SABOOR KHAN,
Advocate High Court,
Mansehra.

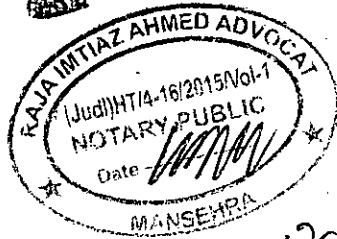
AFFIDAVIT.

I, Ex-Constable Atif Bashir No.274 posted at police Station Darband, Tehsil Oghi District Mansehra, Appellant, do hereby solemnly affirm and declare on oath that the contents of the foregoing Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Dated 09.12.2017

ATTESTED

Ex-Constable Atif Bashir
(DEPONENT)





12/12/07

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

Service Appeal No. _____ of 2017

Ex-Constable Atif BashirAppellant

VERSUS

The Inspector General of Police (IGP) Khyber
Pakhtunkhwa, Peshawar and others
.....Respondents

SERVICE APPEAL

CORRECT ADDRESSES OF THE PARTIES


APPELLANT

Ex-Constable Atif Bashir No.274 posted at
police Station Darband, Tehsil Oghi District
Mansehra.

RESPONDENTS

1. The Inspector General of Police (IGP) Khyber
Pakhtunkhwa, Peshawar.
2. Regional Police Officer, Hazara Region,
Abbottabad.
3. District Police Officer, Mansehra.

Dated 09.12.2017


Ex-Constable Atif Bashir
.....Appellant

Through


ABDUL SABOOR KHAN,
Advocate High Court,
Mansehra.

چارج شیٹ
CHARGE SHEET

I, Ch: Ahsan Saifullah, District Police Officer, Mansehra as Competent Authority, hereby charge you Constable Atif No. 274 PS Darband as follows.

You Constable Atif No. 274 while posted at PS Darband have absented yourself from duty on the following occasions without any leave or permission:

S No	DD No	Absence
1	DD No. 24 dated 20-04-2017 DD No. 17 dated 02-05-2017	20-04-2017 to 02-05-2017
2	DD No. 13 dated 07-05-2017	07-05-2017 till date

It shows that you are indisciplined and inefficient Police Officer and are not taking interest in the discharge of official duty. It amounts to gross misconduct.

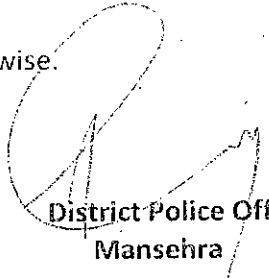
Due to reasons stated above you appear to be guilty of misconduct under Khyber Pakhtunkhawa Police Disciplinary Rules 1975 (amended in 2014) and have rendered yourself liable to all or any of the penalties specified in the said Police Disciplinary Rules.

You are, therefore, required to submit your written defense within 07 days of the receipt of this charge sheet to the enquiry officer.

Your written defense, if any, should reach the enquiry officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case exparte action shall follow against you.

Intimate whether you desire to be heard in person or otherwise.

Statement of allegation is also enclosed.


District Police Officer,
Mansehra

Addressed
9/12/17

25
17

Amir B

f-9

بخدمت جناب ڈسٹرکٹ پولیس آفیسر صاحب ضلع مانسہرہ

عنوان: جواب چارج شیٹ لیٹر نمبر 84-2283 محررہ 18.05.2017 منجانب
کانشیل عاطف نمبر 274 تھانہ در بند مانسہرہ۔

جناب عالی! جواب چارج شیٹ ذیل پیش ہے۔

(1) یہ کہ سائل کی بذریعہ لیٹر نمبری D.D ،D.D No.24 dated 02.04.2017

No.17 dated 02.05.2017 کی غیر حاضری کے جواب میں عرض ہے کہ

مورخہ 20.04.2017 کو پولیو ڈیوٹی ختم کر کے سائل جب تھانہ در بند واپس پہنچا تو

سائل کے گھر سے کال آئی کہ سائل کی بیوی جو حاملہ تھی، سخت بیمار ہے۔ لہذا سائل کو جلد از

جلد گھر پہنچنے کا کہا۔ جس پر سائل نے SHO صاحب در بند کو ٹیلیفون کیا اور ان سے

اجازت مانگی۔ اس کے علاوہ محرر تھانہ کو بھی بتلایا کہ سائل کے گھر ایمر جنسی ہے۔ سائل کو گھر

جانے کی اجازت دی جائے جس پر محرر تھانہ در بند اور SHO صاحب نے سائل کو یہ باور

کروایا کہ آج پانامہ کیس میں سپریم کورٹ آف پاکستان فیصلہ سنائے گی لہذا کسی ایمر جنسی

کی صورت حال کی وجہ سے آپ کچھ دیر تک گھر نہ جائیں فیصلہ آجانے کے بعد حالات

معمول کے مطابق رہے۔ کچھ دیر بعد سائل کے گھر سے دوبارہ ٹیلیفون آیا کہ سائل کی بیوی

کی طبیعت سخت خراب ہے لہذا آپ جلد از جلد گھر پہنچیں جس پر سائل نے تھانہ محرر کو بتا کر

اپنے گھر پہنچا اور اپنی بیوی کو ہسپتال لے کر گیا۔ جہاں پر میرا بیٹا پیدا ہوا۔ ہسپتال لیٹ

پہنچنے کی وجہ سے سائل کا بیٹا جانبر نہ ہو سکا اور پیدائش کے کچھ وقت بعد فوت ہو گیا۔ ہسپتال

دیر سے پہنچنے پر اور بچے کی پیدائش کی وجہ سے سائل کی بیوی کی حالت بھی زیادہ خراب رہی،

جس وجہ سے سائل کو اپنی بیوی کے ہمراہ رہنا پڑا۔ اس نسبت سائل نے تھانہ میں باقاعدہ

طور پر اطلاع دی۔ لہذا سائل کی ڈیوٹی سے غیر حاضری عہد آئے ہے اور سائل جان بوجھ کر

اور بغیر کسی وجہ کے ڈیوٹی سے غیر حاضر نہیں رہا۔

R (10)

(۲) یہ کہ بذریعہ D.D No.13 dated 07.05.2017 کے جواب میں عرض ہے کہ سائل مورخہ 07.05.2017 کو تھانہ میں موجود تھا اور تھانہ محرر سے باقاعدہ چھٹی کی اور اجازت لے کر گھر آیا اور چھٹی کی نسبت سائل نے باقاعدہ طور پر تھانہ میں چھٹی کی درخواست بھی دی۔ چھٹی ختم ہونے پر سائل تھانہ حاضر ہوا تو سائل کے علم میں آیا کہ سائل کو ایک بار غیر پھر SHO صاحب نے غیر حاضر قرار دیا ہے۔

(۳) یہ کہ سائل کی تھانہ غیر حاضری عہد آنہ ہے۔ سائل ایک فرض شناس ملازم ہے اور سائل نے ہمیشہ اپنی تمام تر ذمہ داریاں احسن طریقہ سے سرانجام دی ہیں اور آئندہ بھی سائل اپنی ڈیوٹی احسن طریقہ سے سرانجام دے گا۔ لہذا استدعا ہے کہ واقعات بالا کی روشنی میں سائل کو جاری کردہ چارج شیٹ داخل دفتر فرمائی جائے۔

المرقوم 29.05.2017

عاطف بشیر بیلٹ نمبر 274 متعینہ تھانہ در بند

ATTESTED

Dy: Superintendent of Police,
Circle Shinkhari.

ADMISSIBLE C?



P

11

POLICE DEPARTMENT

MANSEHRA DISTRICT

ORDER

Admitted
9/12/17

This office order will dispose off the departmental enquiry proceeding against Constable Atif Basheer No. 274 was proceeded against departmentally with the allegation that while posted as GD PS Darband has absented himself from duty on the following occasions without any leave or permission:-

S No.	DD No. & dated	Absence period
1.	DD No. 24 dated 20.04.2017 DD No. 17 dated 02.05.2017	20.04.2017 to 02.05.2017
2.	DD No. 13 dated 07.05.2017 DD No. 19 dated 12.05.2017	07.05.2017 to 12.05.2017

The Enquiry Officer i.e. Mr. Nazeer Khan DSP Shinkiri Mansehra after conducting proper departmental enquiry has submitted his report and proved the charges leveled against him. On 08 August 2017, the delinquent Constable Atif Basheer No. 274 was heard in person in orderly room but he could not convince the undersigned in his defense.

I, the District Police Officer, Mansehra, therefore award him major punishment of "Dismissal from service" to the delinquent Constable Atif Basheer No. 274 under Khyber Pakhtunkhwa Police, Disciplinary Rules 1975 (amended in 2014). His period of absence is treated as leave without pay.

Ordered announced.

District Police Officer
Mansehra

OB-133
08-8-2017

ANNEX-1 P (19)

**BEFORE HONORABLE REGIONAL POLICE OFFICER, HAZARA REGION,
ABBOTTABAD**

All set
9/10/17

Subject:- APPEAL AGAINST DECISION AND ORDER BOOK NO. 133
DATED 08.08.2017.

Respected Sir,

Below is the appeal for your kind perusal, please.

1. That, the appellant has been working in Police department as constable No. 274 for 8 years.
2. That, an inquiry regarding absence from duty has been done, resulting major punishment, dismissal from service. (Photocopy of office order is annexed herewith).
3. That, said and above mentioned inquiry has been conducted in the absence of appellant / undersigned in which undersigned has been condemned un-heard. As undersigned is the only source of income of his family and the charge due to which undersigned has been dismissed was not deliberate but in emergency of delivery of wife and undersigned was unable to inform his concerned department.
4. That, the appellant / undersigned is extremely hard working and courageous public servant who has been performing his duty with all required ethics.

Hence, your honorable good self is requested to set side the order of inquiry officer and resume the duty of appellant / undersigned by giving chance of proper hearing

Much Obligated,

Atif Bashir
Ex-constabel Atif Bashir
Mob: 0310-5518007

Attested
AG
9/12/17

P-13
18954
23/11/17
Mansehra

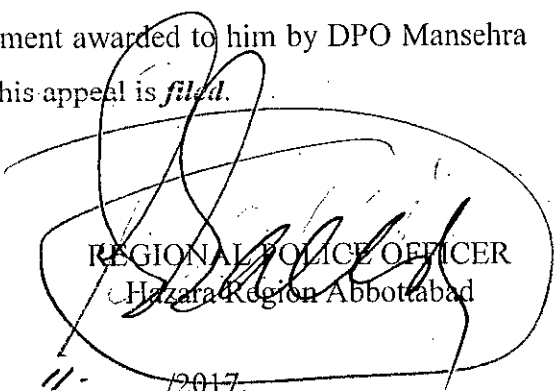
ORDER

Amal - F

This order is hereby passed to dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules 1975 submitted by **Ex-Constable Atif Basheer No: 274** of Mansehra District against the order of major punishment i.e. **Dismissal from service** awarded by the DPO Mansehra vide his OB No.133 dated 08.08.2017.

Facts leading to his punishment are that he while posted at PS Darband as GD absented himself from duty from 20.04.2017 to 02.05.2017 (13 days) and from 07.05.2017 to 12.05.2017 (06 days) without any leave or permission.

After receiving his appeal, comments of DPO were obtained. The comments of DPO were examined /perused and it has been found that he has been dismissed from service twice due to absence. The appellant was called in OR on 18.10.2017 and heard in person where he explained that in his first absence his father was demised and in second his minor kid was died. His this explanation was verified confidentially through Incharge DSB Mansehra who has submitted his report that the father of the applicant is alive and is running a grill shop and the appellant himself is still leading un-matrimonial life, therefore he has tried to hoodwink the undersigned by explaining fictitious story. The undersigned came to the conclusion that the appellant seems to be habitual absentee, so the punishment awarded to him by DPO Mansehra i.e Dismissal from service seems to be genuine, hence his appeal is *filed*.

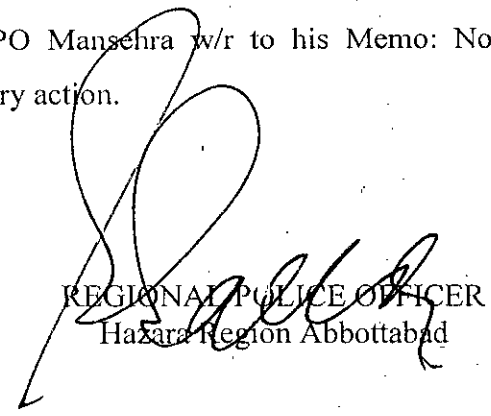

REGIONAL POLICE OFFICER
Hazara Region Abbottabad

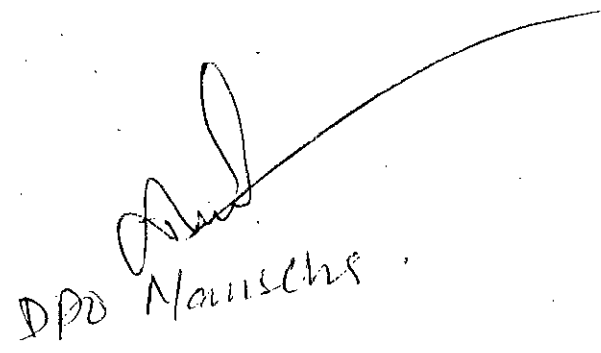
4813

No. /PA Dated Abbottabad the 14- 11- /2017.

Copy of above is forwarded to the DPO Mansehra w/r to his Memo: No: 15470/GB dated 02.10.2017 for information and necessary action.

CHC / SRC
For information and
n/a


REGIONAL POLICE OFFICER
Hazara Region Abbottabad


DPO Mansehra

وکالت نامہ

14

بعدالت جناب عالیہ پشاور ہائی کورٹ بنچ ایبٹ آباد
 عاطف بشیر سابقہ کاٹھیل بنام انسپکٹر جنرل آف پولیس وغیرہ
 دعویٰ یا جرم سروس اپیل منجانب اپیلانٹ

باعث تحریر آنکہ

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی بمقام پشاور ایبٹ آباد کے لئے

عبد الصبور خان ایڈووکیٹ ہائی کورٹ

بدیں شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختیار خاص رد و برودالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہو اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام کچہری کے کسی اور جگہ سماعت ہونے پر یا بروز کچہری کے اوقات کے آگے یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے واسطے کسی معاوضہ ادا کرنے، مختیار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ پرداختہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے، نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرانے کا ہر قسم بیان دینے اور سپرد اثاثی و راضی نامہ و فیصلہ برخلاف کرنے و اقبال دعویٰ کا اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا کٹرفہ درخواست حکم استماعی یا ڈگری قبل از فیصلہ اجرائے ڈگری بھی صاحب موصوف کو بشرط ادا ایگی علیحدہ پیروی مختیار نامہ کرنے کا مجاز ہوگا اور بصورت ضرورت اپیل اور اپیل کے واسطے کسی دوسرے وکیل یا ایئر سٹر کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو، پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختیار نامہ لکھ دیا ہے کہ سندر ہے۔
 مضمون مختیار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔
 المرقوم 09 دسمبر 2017ء

العبد العبد العبد

عاطف بشیر سابقہ سابقہ کاٹھیل نمبر 274 ضلع ماہرہ..... اپیلانٹ

ACCEPTED

ABDUL SABOOR KHAN,

Advocate High Court.

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 1393/2017.

Atif Bashir No. 274Appellant

VERSUS

- 1) Inspector General of police KPK Peshawar.
- 2) Regional Police officer, Hazara Region Abbottabad
- 3) District Police Officer, Mansehra.

..... Respondents

Parawise Comments On Behalf Of Respondents

RESPECTFULLY SHEWETH:-

PRELIMINARY OBJECTION:-

- a) The appeal is not based on facts and appellant has got no cause of action or locus standi.
- b) That appeal is not maintainable in the present form.
- c) The appeal is bad for non-joinder of necessary and mis-joinder of unnecessary parties.
- d) The appellant is estopped by his own conduct to file the appeal.
- e) The appeal is barred by the law and limitation.
- f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1. Pertains to the record.
2. The appellant while posted as GD Police Station Darband absented himself from duty with effect from 20-04-2017 to 02-05-2017 (13 days) and from 07-05-2017 to 12-05-2017(06 days) without any leave or permission. The appellant was properly charge sheeted and he joined the enquiry proceedings by submitting reply to the Charge Sheet.
3. The appellant during the enquiry proceeding, submitted his statement and also awarded proper opportunity to defend his case. The enquiry officer in his finding report proved him guilty.
4. The appellant was also heard in person but he could not convince the competent authority due to which he was

dismissed from service Vide OB No. 133 dated 08-08-2017. It is pertinent to mention that the appellant was also dismissed from service on the ground of absence from duty Vide OB No. 180 dated 02-10-2015 and latter on reinstated in service by the appellate authority Vide Endst: No. 1232/PA dated 29-02-2016.

5. The appellant preferred appeal against the order of dismissal to the Respondent No 2. Who was called for personal hearing by the appellate authority where he explained that at the time of his first absence, his father was demised and at the time of second absence, his minor Kid was died. His explanation was verified confidentially through Incharge District Security Branch Mansehra who reported that the father of the appellant is alive and he is running a shop and the appellant is still bachelor. The appellant tried to defrauded the appellate authority by fictitious story. The appeal of the appellant was rejected on the ground of habitual absentee Vide dated 14-11-2017.
6. The appeal is not maintainable on the following grounds:-

GROUND:-

- A. Incorrect. The appellant absented himself from duty without any leave or permission. The appellant in his reply to the charge sheet stated that he absented himself from duty due to sickness of his wife but when the matter was enquired he was found unmarried. He defrauded and cheated the department.
- B. Incorrect. The appellant was dismissed on solid grounds after fulfillment of all the codal formalities the appellant was found unwilling police official.
- C. Incorrect. The enquiry officer conducted the enquiry in accordance with law and proper opportunity of defense was provided to the appellant.
- D. Incorrect. The appellant joined the enquiry proceedings and he was given full chance to explain his position.
- E. Incorrect. The appellant was heard in person but he could not satisfy the competent authority due to which he was dismissed from service.
- F. Incorrect. Major penalty was imposed upon appellant after following the proper law and rules.
- G. Incorrect. The punishment awarded to the appellant is just and according to the law.

H. Incorrect.

- I. Incorrect . the appellant was heard in person before passing the major punishment of dismissal from service.
- J. Incorrect. The impugned order is legal, just and proper.

PRAYER:

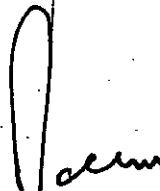
In view of the above mentioned facts, the appeal in hand may kindly be dismissed being devoid of any legal force.



**District Police Officer
Mansehra
(Respondent No. 3)**



**Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 2)**



**Inspector General of Police
KPK Peshawar
(Respondent No. 1)**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 1393/2017.

Atif Bashir No. 274Appellant

VERSUS

- 1) Inspector General of police KPK Peshawar.
- 2) Regional Police officer, Hazara Region Abbottabad
- 3) District Police Officer, Mansehra.

..... Respondents

AFFIDAVIT

We respondents do solemnly affirm and declare that the contents of the reply/comments are true and correct to our knowledge and belief and that nothing has been concealed from this Honorable tribunal.



**District Police Officer
Mansehra
(Respondent No. 3)**



**Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 2)**



**Inspector General of Police
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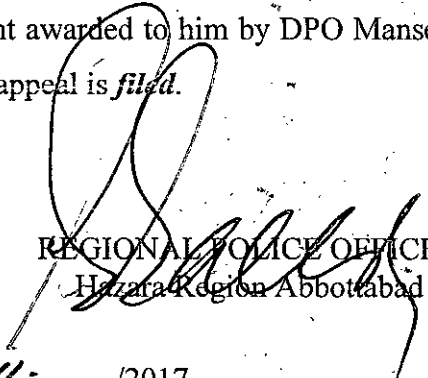
16/11/17
20/11/17

ORDER

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After receiving his appeal, comments of DPO were obtained. The comments of DPO were examined /perused and it has been found that he has been dismissed from service twice due to absence. The appellant was called in OR on 18.10.2017 and heard in person where he explained that in his first absence his father was demised and in second his minor kid was died. His this explanation was verified confidentially through Incharge DSB Mansehra who has submitted his report that the father of the applicant is alive and is running a grill shop and the appellant himself is still leading un-matrimonial life, therefore he has tried to hoodwink the undersigned by explaining fictitious story. The undersigned came to the conclusion that the appellant seems to be habitual absentee, so the punishment awarded to him by DPO Mansehra i.e Dismissal from service seems to be genuine, hence his appeal is *filed*.

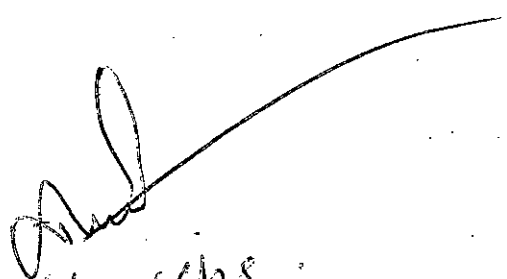

REGIONAL POLICE OFFICER
Hazara Region Abbottabad

No. 4813 /PA Dated Abbottabad the 14- 11- /2017.

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CHC/SRC
For information and
-m/a


REGIONAL POLICE OFFICER
Hazara Region Abbottabad


DPO Mansehra

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PESHAWAR.

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Atif Bashir No. 274Appellant

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5. The appellant preferred appeal against the order of dismissal to the Respondent No 2. Who was called for personal hearing by the appellate authority where he explained that at the time of his first absence, his father was demised and at the time of second absence, his minor Kid was died. His explanation was verified confidentially through Incharge District Security Branch Mansehra who reported that the father of the appellant is alive and he is running a shop and the appellant is still bachelor. The appellant tried to defrauded the appellate authority by fictitious story. The appeal of the appellant was rejected on the ground of habitual absentee Vide dated 14-11-2017.
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I. Incorrect. the appellant was heard in person before passing the major punishment of dismissal from service.


J. Incorrect. The impugned order is legal, just and proper.

PRAYER:

In view of the above mentioned facts, the appeal in hand may kindly be dismissed being devoid of any legal force.


District Police Officer
Mansehra
(Respondent No. 3)


Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 2)


Inspector General of Police
KPK Peshawar
(Respondent No. 1)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

PESHAWAR.

SERVICE APPEL NO. 1393/2017.

Atif Bashir No. 274Appellant

VERSUS


- 1) Inspector General of police KPK Peshawar.
- 2) Regional Police officer, Hazara Region Abbottabad
- 3) District Police Officer, Mansehra.


..... Respondents

AFFIDAVIT

We respondents do solemnly affirm and declare that the contents of the reply/comments are true and correct to our knowledge and belief and that nothing has been concealed from this Honorable tribunal.


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Mansehra
(Respondent No. 3)


Regional Police Officer
Hazara Region Abbottabad
(Respondent No. 2)


Inspector General of Police
KPK Peshawar
(Respondent No. 1)

[Handwritten marks]

ORDER

This order is hereby passed to dispose off departmental appeal under Rule 11-A of Khyber Pakhtunkhwa Police Rules 1975 submitted by Ex-Constable Atif Basheer No: 274 of Mansehra District against the order of major punishment i.e. Dismissal from service awarded by the DPO Mansehra vide his OB No.133 dated 08.08.2017.

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[Signature]
REGIONAL POLICE OFFICER
Hazara Region Abbottabad

4813
No. /PA Dated Abbottabad the 14- 11- /2017.

Copy of above is forwarded to the DPO Mansehra w/r to his Memo: No: 15470/GB dated 02.10.2017 for information and necessary action.

[Signature]
REGIONAL POLICE OFFICER
Hazara Region Abbottabad

[Handwritten notes]
EHC/SRC
For information and
M/A

[Signature]
DPO Mansehra

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

No. 1123 /ST

Dated 26-6-1 2019

To


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

Subject: -

JUDGMENT IN APPEAL NO. 1393/2017, MR. ATIF BASHEER.

I am directed to forward herewith a certified copy of Judgement dated 17.06.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.