

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1385/2017

Date of Institution ... 11.12.2017

Date of Decision ... 29.01.2019

Aurangzeb Ex-Constable No. 390 District Buner. ... (Appellant)

VERSUS

The Regional Police Officer, Malakand Saidu Sharif, Swat and another.
... (Respondents)

Present.

Miss Uzma Syed & S.Nauman Ali Bukhari,
Advocates ... For appellant

Mr. Muhammad Riaz Paindakhel,
Asstt. Advocate General ... For respondents.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN
MR. HUSSAIN SHAH, ... MEMBER(E)

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. Appellant is aggrieved of orders dated 30.05.2009 and 29.11.2017 passed by the respondents No. 2 and 1, respectively. The former order pertains to dismissal of service of appellant while the latter is regarding rejection of his departmental appeal.

2. The facts, as gatherable from record, are that the appellant, while posted at Kingargalai was found absent from duty w.e.f. 05.05.2009. He

was, therefore, proceeded against departmentally and the order dated 30.05.2009 was passed under the provisions of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Pertinently, the enquiry proceedings were dispensed with in the matter. The departmental appeal of appellant was rejected on the sole ground of being bared by time.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General on behalf of the respondents.

It was the contention of learned counsel for the appellant that the impugned order of dismissal from service, though passed on 30.05.2009, was given effect from the date of absence of appellant i.e. 05.05.2009. In her view the order was, therefore, void and the delay in submission of departmental appeal was not to be counted to the detriment of appellant. It was further contended that admittedly no enquiry was conducted against the appellant, however, he was awarded major punishment of dismissal from service and there was consistent view of the Apex Court requiring holding of proper enquiry in similar matters. She relied on judgments reported as 2000-SCMR-1743 and 2008-SCMR-609.

On the other hand, learned Asstt. Advocate General argued that the departmental appeal of appellant was hopelessly time-barred and in view of the travel history of appellant starting from 20.08.2009 and ending on 15.06.2017, his appeal was rightly dismissed.

4. It is conspicuously noted that proceedings against the appellant were held under the erstwhile Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 which, no doubt, contained provisions for dispensing with the enquiry but ^{for} reasons to be recorded in writing. At the same time, the provisions contained in Section 3 of the Ordinance *ibid* made it mandatory for the departmental authority to issue order in writing and inform the accused of the action proposed to be taken with regard to him and the grounds of the action. Reasonable opportunity of showing cause against the proposed action was also to be given to the accused under the law *ibid*. The exceptions to the said mandatory provisions were in terms that where the competent authority was satisfied that in the interest of security of Pakistan or any part thereof it was not expedient to give such opportunity or in cases where a person, being proceeded against upon conviction by a court of law, was sentenced to imprisonment or fine.

In the case in hand the enquiry proceedings were admittedly not held against the appellant while the dispensing with of such proceedings was not supported by reasons as required by the law. It is also a fact that no show cause notice, as obligated by Section 3 of Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 was served upon the appellant before imposing major penalty of dismissal from service. In the circumstances, it can be safely held that the illegality on the part of departmental authority was not curable without setting aside the impugned orders regardless the delay in submission of departmental appeal.

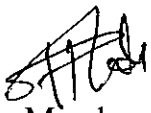

5. In view of the above facts and also following the judgment of this Tribunal passed in Appeal No. 264/2012, decided on 06.10.2017, we allow the appeal in hand and remit the matter to departmental appellate authority for re-deciding the appeal of appellant, within three months, on its merits and in accordance with law.

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


(HUSSAIN SHAH)
MEMBER(E)


(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
29.01.2019

No.	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
1	2	3
	29.1.2019	<p><u>Present.</u></p> <p>Miss Uzma Syed & S.Nauman Ali Bukhari, Advocates .. For appellant</p> <p>Mr. Muhammad Riaz Painsa Khel, Asstt.A.G .. For respondents with Nosherawan, Inspector (Legal)</p> <p>Vide our detailed judgment of today, we allow the appeal in hand and remit the matter to departmental appellate authority for re-deciding the appeal of appellant, within three months, on its merits and in accordance with law.</p> <p>Parties are left to bear their respective costs. File be consigned to the record room.</p> <p> Member</p> <p> Chairman</p> <p><u>ANNOUNCED</u> 29.1.2019</p>

24.10.2018

Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 10.12.2018.


Reader

10.12.2018

Appellant in person and Mr. Riaz Paindakhel Asstt. AG for the respondents present.

A request for adjournment is made on account of in-disposition of learned counsel.


Adjourned to 29.01.2018 for hearing before D.B.


Member


Chairman

21.05.2018

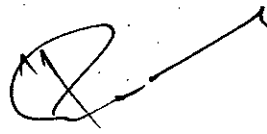
Clerk to counsel for the appellant and Mr. Ziaullah, DDA for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on ~~16.07~~ 16.07.2018 before D.B.


(Muhammad Amin Kundi)
Member

16.07.2018

Clerk to counsel for the appellant present. Mr. Murad Ali, Supdt alongwith Mr. Sardar Shoukat Hayat, Addl: AG for respondents present. Arguments could not be heard due to general strike of the Bar. Adjourned. To come up for arguments on 04.09.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

04.09.2018

Appellant with counsel and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Hussain Zada Inspector for the respondents present. Upon query by this Tribunal, appellant stated that he was in Saudi Arabia but settled back in Pakistan one (01) year back. Representative of the respondents seeks adjournment to furnish IBM Travel History of the appellant. Adjourned. To come up for further proceedings/arguments on 23.10.2018 before D.B.


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

Service Appeal No. 1385/2017


12.02.2018

Clerk of the counsel for appellant present. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Nowsherwan, S.I (legal) for the respondents also present. Written reply not submitted. Learned Additional AG requested for further adjournment. Adjourned. To come up for written reply/comments on 27.02.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member (J)


27.02.2018

Counsel for the appellant and Addl: AG alongwith Mr. Noshewan, SI (Legal) for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply on 12.03.2018 before D.B.


(Ahmad Hassan)
Member (E)

12.03.2018

Counsel for the appellant present. Mr. Riaz Paindakhel, Assistant AG alongwith Nowsherwan, S.I (Legal) for the respondents also present. Written reply submitted. To come up for rejoinder and arguments on 21.05.2018 before D.B.


(Muhammad Amin Khan Kundi)
Member

27.12.2017

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

Learned counsel for the appellant argued that the appellant was employee of the Police Force at District Buner. That the appellant was dismissed from service by the respondent No. 2 from the date of absence vide order dated 30.05.2009. That neither any show cause, charge sheet, statement of allegation was provided nor any regular inquire was held. That appellant was also not provided any opportunity of defense. That neither any publication has ever been made calling him for assumption of his duty. That appellant's departmental appeal against the impugned order has been rejected vide order dated 29.11.2017 for no good reason. That the impugned order was retrospective order which was void in the eye of law and also void in terms of the Judgment reported as 2002 SCMR 1129, 2006 PLC 221 and Khyber Pakhtunkhwa Service Tribunal Judgment titled Abdul Shakoor Vs Government of Khyber Pakhtunkhwa.

Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is also directed to deposit security and process fee within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 12.02.2018 before S.B.

Appellant Deposited
Security & Process Fee


(Gul Zeb Khan)
Member

Form-A
FORM OF ORDERSHEET

Court of _____
Case No. 1385 /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. Aurang Zeb 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><i>[Signature]</i> REGISTRAR 15/12/17</p>
2-	15/12/17.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/12/17</u>.</p> <p><i>[Signature]</i> CHAIRMAN</p>

The appeal of Mr. ~~Aamir~~ Ex-Constable no. 390 Distt. Buner received today i.e. on 11.12.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.


- 1- 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.
- 2- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 3- Annexure-A of the appeal is illegible which may be replaced by legible/better one.
- 4- The authority whose order is challenged has not been made a party.
- 5- The appeal title is Aamer Ullah but the documents attached with the appeal are not matching with the title appeal.

No. 2651 /S.T,

Dt. 12/12 /2017


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Uzma Syed Adv. Pesh.


all objections 1 to 5 were removed

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1385 /2017

Aurangzeb

V/S

Police Deptt:

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5.	Vakalat Nama	-----	08

Nauf. 2
APPELLANT

THROUGH:

Uzma
(UZMA SYED)

37
SYED NOMAN ALI BUKHARI
(ADVOCATES, PESHAWAR)

(1)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1385 /2017

Khyber Pakhtunkhwa
Service Tribunal

Aurang Zeb, EX- Constable, No.390
Distt: Buner.

Diary No. 1399

Dated 11-12-2017

.....(Appellant)

VERSUS

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

.....(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 30.05.2009 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE ORDERS DATED 29.11.2017 AND 30.05.2009 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.

Filed to-day
Registrar

11/12/17

Re-submitted to -day
and filed.

Registrar

15/12/17

RESPECTFULLY SHEWETH:**FACTS:**

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

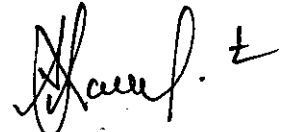
1. That the appellant was the employee of the police and was on the strength of the police force Buner.
2. That during Taliban Militancy in Buner appellant was dismissed from the service by the respondent no.2 vide order dated 30.05.2009. **Copy of impugned order is attached as Annexure-A.**
3. That, 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.

GROUND:

- 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.



4

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



APPELLANT
Aurangzeb

THROUGH:


(UZMA SYED)
(SYED NOMAN ALI BUKHARI)
ADVOCATES, PESHAWAR

Anex - A

5

Phone # 0939-510470
Fax # 0939-510501

ORIGINAL

Where is you FC. Antang 26 390. While posted CP. Kintalgalai according to the report received in this office vide D D No: 6 dated 5/5 /2009 you left the place of duty with out valid cause and intimation to your office in charge, since then you have been un authorized absence from duty that is from this constitute misconduct on your part and a such you are liable to action under section 5 sub section(4) of the removal from service (Special Power ordinance 2000)(Amended) Ordinance 2001.

I have come to the conclusion that either the accused police officer has ceased to be efficient and exhibit cowardice or reasonably suspected of being associated with those engaged in subversive activities during operation of the militants in Buner District.

I, as competent authority, am, therefore, satisfied to proceed under section (5) of sub section (4) of the removal from service (Special power ordinance 2000) (Amendment ordinance 2001 and dispense with the enquiry proceeding as laid down in the said ordinance and am further satisfied that there is no need of holding departmental enquiry, since the accused Police official Antang 26 390 has been found guilty of gross misconduct as defined in the ordinance, I, Mr. ABDUR FASHID D. P. O. Buner as competent authority, therefore impose major penalty by dismissing him from service from the date of his absence.

Date

DISTRICT POLICE OFFICER
BUNER.

OB No. 56

DATE 30 5 /2009

OB

Date

BETTER COPY

Better copy

Annexure-A

ORDER

Where is you FC, Aurangzeb,390, while posted CP, Kingargalai according to the report received in without valid cause and I intimation to your office in charge, since then you have been un-authorized absence from duty that is from this constitute mis-conduct on your part and a such you are liable to action under section 5 sub section(4) of the removal from service (Special Power Ordinance 2000) Amended Ordinance 2001.

I have to conclusion that either the accused police officer has ceased to be efficient and exhibit cowardher or reasonably suspected of being associated with those engaged in subversive activities during operation of the militants in Bunner District.

I, as competent authority, am therefore, satisfied to proceed under section (5) of sub section (4) of the removal from service (Special power ordinance 2000) (Amendment ordinance 2001 and dispense with the inquiry proceeding as laid down in the said ordinance and am further satisfied that there is no need of holding departmental inquiry since the accused police official Aurangzeb, 390has been found guilty of grass misconduct as defined in the ordinance. I, Mr. Abdur Rashid D.P.O Bunner as Competent Authority, therefore, impose major penalty by dismissing him from service from the date of his absence.

**DISTRICT POLICE OFFICER
BUNER.**

ORDER

Amir B
6

WHEREAS as per the approval of the Provincial Police Officer, Khyber Pukhtunkhwa a Committee had been constituted vide this office No: 106 1-35 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 Shaikat Ali No. 418
4.	Ex-Constable Said Nawab Shah No. 158
5.	Ex-Constable Nawab Ali No. 188
6.	Ex-Constable Naeem 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 Ghani No. 502
15.	Ex-Constable Said Imran Shah No. 529
16.	Ex-Constable Shah Aurang Zeb No. 593

Order announced.

Amir B
AHC

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

SAIF

under
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.

Annex 7 1/2



OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND

AT SAIDU SHARIF SWAT.

Ph: 0946-9240381-83 & Fax No. 0946-9240396

Email: digmalakand@yahoo.com

ORDER:

The following Ex-Constables / Ex-SPF of the Districts noted against 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. 1710	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	01/08/2014
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 Shar Wali No. 1050	Dir Upper	01/07/2016
13	Ex-Constable (SPO) Nihar Muhammad No. 351	Buner	15/08/2015
14	Ex-Constable (SPO) Inayat 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	11/01/2012
19	Ex-Constable (SPO) Muhammad Rafiq No. 152	Dir Lower	09/02/2016
20	Ex-Constable (SPO) Shah Fahad No. 245	Dir Lower	11/01/2017
21	Ex-Constable (SPO) Naik Ajmal No. 217	Dir Lower	16/09/2016
22	Ex-Constable (SPO) Rahmatullah No. 359	Dir Lower	03/02/2017
23	Ex-Constable (SPO) Muhammad Hanif No. 395	Dir Lower	24/02/2017
24	Ex-Constable (SPO) Nadeem 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

Annex 7 1/2

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) Hadi 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.

Handwritten signature
Please.

Handwritten signature
(AKHTAR HAYAT KHAN)
Regional Police Officer,
Malakand, at Saidu Sharif Swat
20/11

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.

36	AKBER ALI No.291	Nowshera	23.09.2017	26.09.2017	03 Days
		Nowshera	24.09.2017	26.09.2017	02 Days

VAKALAT NAMA

Appeal NO. 1385 /2017

IN THE COURT OF Ko Polk, Service Tribunal, Peshawar

Aurangzeb

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Deptt:

(Respondent)
(Defendant)

I/We, Aurangzeb

Do hereby appoint and constitute **Syed Noman Ali Bukhari and Uzma Syed, Advocates Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

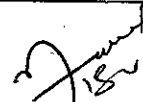
I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20



(CLIENT)

ACCEPTED



SYED NOMAN ALI BUKHARI
Advocate, Peshawar.



UZMA SYED
Advocate, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1385/2017

Aurang Zeb Ex- Constable No. 390 District Buner.

----- (Appellant)

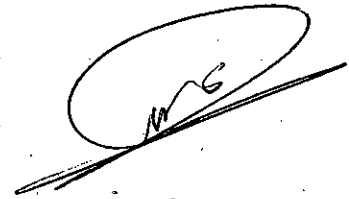
Versus

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

----- (Respondents)

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**Nowsherwan
SI Legal Buner
Rep: for Respondents**

①
BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 1385/2017

Aurang Zeb Ex- Constable No. 390 District Buner.

----- (Appellant)

Versus

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

----- (Respondents)

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS

Respectfully Sheweth.

PRELIMINARY OBJECTION :-

1. That the service appeal is badly time barred.
2. That the service appeal is not maintainable.
3. That the appellant has got no cause of action and locus standi to file the instant appeal.
4. That the present appeal is bad due to mis-joinder and non-joinder of necessary parties.
5. That the instant appeal is bad in the present form and liable to be dismissed.

FACTS:-

1. Para No. 01 relates to the service record of the appellant, therefore need no comments.
2. Correct.
3. There was no need of holding enquiry against the appellant, therefore no charge sheet and show cause notice were issued against the appellant.
4. Incorrect those Police personnel who applied for re-instatement in service were considered, whereas the appellant did not apply, therefore he could not be re-instated.
5. Incorrect the appellant had not been preferred departmental appeal at that time.
6. Para No. 06 is correct to the extent that the appellant has filed department appeal after along time more than seven (07) years, which was rejected due to long time barred.
7. The appellant has got no good grounds to prefer to instant appeal.

GROUND:-

- A. Incorrect the appellant has been treated in accordance with law, rules and policy on the subject, whereas no provision of law and constitution has been violated.
- B. Incorrect the impugned order is legal and appropriate in circumstances.

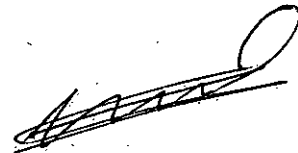
- ②
- C. Incorrect the departmental appeal of the appellant was rightly rejected by the competent authority.
 - D. Incorrect the appellant has not been discriminated.
 - E. There was no need of charge sheet, statement of allegation and show cause notice as the same were not mandatory under RSO-2000.
 - F. Incorrect the appellant has not been treated contrary to law and rules.
 - G. The willful absence of the appellant was an admitted fact, therefore personnel hereing was not mandatory.
 - H. The respondents also seek the permission of this honorable tribunal to adduce more points /grounds at the time of arguments.

PRAYER:-

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



**REGIONAL POLICE OFFICER,
MALAKAND REGION AT SAIDU SHARIF SWAT
(RESPONDENT NO. 01)
Regional Police Officer,
Malakand at Saidu Sharif, Swat.**



**DISTRICT POLICE OFFICER,
BUNER
(RESPONDENT NO. 02)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 1385/2017.

Aurang Zeb Ex- Constable No. 390 District Buner.

----- (Appellant)

Versus

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

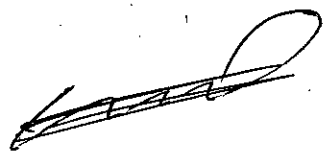
----- (Respondents)

Affidavit:-

We the above respondents do hereby solemnly affirm and state on oath that the whole contents of the parawise comments are true and correct to the best of our knowledge and belief and nothing has been concealed from this honorable Court.



**REGIONAL POLICE OFFICER,
MALAKAND REGION AT SAIDU SHARIF SWAT
(Respondent No. 01)
Regional Police Officer,
Malakand at Saidu Sharif, Swat.**



**DISTRICT POLICE OFFICER,
BUNER
(Respondent No. 02)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 1385/2017

Aurang Zeb Ex- Constable No. 390 District Buner.

----- (Appellant)

Versus

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

----- (Respondents)

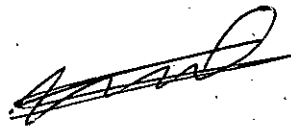
AUTHORITY LETTER

We the above respondents do hereby authorize and allow Mr. Nowsherwan Sub Inspector Legal Buner to attend the court on our behalf on each date fixed and do whatever is needed in the court.



**REGIONAL POLICE OFFICER,
MALAKAND REGION AT SAIDU SHARIF SWAT**

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



**DISTRICT POLICE OFFICER,
BUNER**

(Respondent No. 02)

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 199 /ST

Dated 01 / 02 / 2019

To


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

Subject: -

JUDGMENT IN APPEAL NO. 1385/2017, MR. AURANGZEB.

I am directed to forward herewith a certified copy of Judgement dated 29.01.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Sl. No. Date of
order/
proceeding

1 2

Order or other proceedings with signature of Judge or Magistrate

3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 26-I/2012

Date of Institution ... 21.02.2012

Date of Decision ... 06.10.2017

Amanat Khan Ex-Constable No. 115/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

06.10.2017

dated 20.08.2013 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.

Handwritten signature/initials on the left margin.

4

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.

From:- The District Police Officer,
Buner

To:- The Deputy Director/IBMS
FIA, Islamabad

No. 5093 / Legal, dated Daggar the 24 / 09/2018

Subject: SERVICE APPEAL NO.1385/2017 OF EX-CONSTABLE
AURANG ZEB NO.390

Memo:

It is submitted that the above captioned Service Appeal is pending before the Service Tribunal Peshawar. On previous date of its hearing the honorable Tribunal has directed that the traveling history to abroad of the above named appellant having CNIC No.15101-5568143-1 be produced on next date i-e 25-10-2018.

It is therefore, requested that same may kindly be provided that the orders of the honorable Tribunal could be complied, please.


DISTRICT POLICE OFFICER,
BUNER

OFFICE OF THE DIRECTOR / IBMS
FEDERAL INVESTIGATION AGENCY (HEADQUARTERS)
ISLAMABAD

No. FIA/IBMS/Police/Query/ 527/

Dated: 01 October, 2018

SUBJECT: SERVICE APPEAL NO.1385/2017 OF EX-CONSTABLE AURANG ZEB NO.390.

Refer to your letter No. 5093/legal dated 24-09-2018 and addl:Dir/Diary No.2433 dated 28-09-2018 regarding travel information of following person.

CNIC No: 1510155681431

2. As per PISCES / IBMS database, travel history on above mentioned particular is **found** in System, and R11 Form is attached for ready reference.
3. This is a system generated Information based upon given particulars.

[Signature]
01-10-18
ASSISTANT DIRECTOR
Reporting/IBMS
FIA (HQ), Islamabad

(District Police Officer)
Buner

*Si legal
for information
m/s.*

5552
08/10/2018

Address:

OFFICE OF THE DISTRICT POLICE OFFICER
BUNNER.

DP/Buner

*Si legal
for information
m/s.*

FEDERAL INVESTIGATION AGENCY
 INTEGRATED BORDER MANAGEMENT SYSTEM
 FIAHQ G-9/4 PESHAWAR MOR, ISLAMABAD
 FaxNo:051-9107225, Tel-No:051-90412210
 R-11(TRAVEL HISTORY)



TRAVEL HISTORY FOUND ON: 1510155681431

Required By: District Police Officer Buner

Department: POLICE

Diary No: 2433 28-09-18

Letter Number: 5093/Legal

Request Date: 24-Sep-2018

Query Date: 01-Oct-2018

TRAVELER'S CNIC/NIC

1510155681431

PERSONAL INFORMATION:

NAME AURANG ZEB N

BIRTH DATE 01-FEB-1986

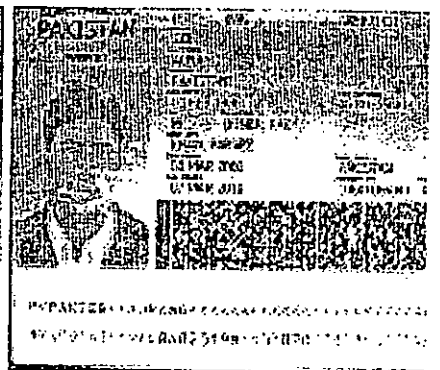
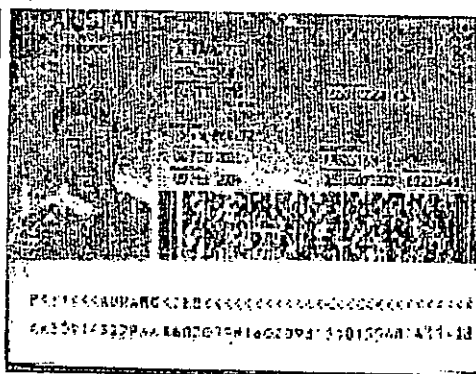
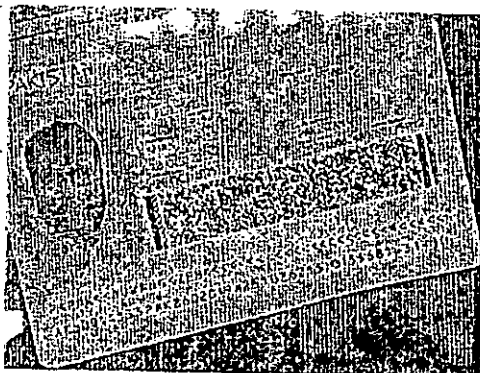
FATHER/HUSBAND NAME PERVEZ KHAN

NATIONALITY Pakistan



TRAVEL DETAILS:

S.NO	TRAVEL DATE	FLIGHT NO	TRAVEL STATUS	PASSPORT NO	SITENAME	DESTINATION
1	20-Aug-09 14:36:57	SV893	departing	AK5091431	Benazir Bhutto International Airport Islamabad	
2	4-Sep-11 6:47:04	PK3756	arriving	AK5091432	Peshawar International Airport	
3	24-Feb-12 20:46:35	PK755	departing	AK5091432	Peshawar International Airport	Riyadh
4	23-Dec-13 8:54:58	PK756	arriving	AK5091432	Peshawar International Airport	Riyadh
5	10-Jun-14 16:06:04	SV793	departing	AK5091432	Peshawar International Airport	Riyadh
6	11-Feb-16 16:00:14	NL724	arriving	AK5091433	Peshawar International Airport	Riyadh
7	15-Jul-16 4:10:02	NL723	departing	AK5091433	Peshawar International Airport	Riyadh
8	15-Jun-17 11:16:53	SV726	arriving	AK5091433	Benazir Bhutto International Airport Islamabad	Riyadh



CHECKED BY: _____

show cause

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 905/2016

Date of Institution... 24.08.2016

Date of decision... 20.02.2018



Mr. Muhammad Banaras PSHT, GPS, Shah Kot, Circle, Mansehra.
... (Appellant)

Versus

1. The Secretary, Education (E&SE) Khyber Pakhtunkhwa, Peshawar and two
others. (Respondents)

Syed Noman Ali Shah,
Advocate ... For appellant.

Mr. Kabirullah Khattak,
Addl. Advocate General ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD HAMID MUGHAL, ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was reduced in rank on 11.06.2014, against which he filed
departmental appeal on 14.06.2014 which was rejected on 27.07.2016 and thereafter, he
filed the present service appeal within time.

ARGUMENTS

3. The learned counsel for the appellant argued that no show cause notice was
issued to the appellant. That there was no charge sheet and statement of allegations

ATTES

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served upon the appellant. That an enquiry officer was appointed without charge sheet and statement of allegations. That on the basis of report of the enquiry officer, the penalty was imposed. That no copy of enquiry report was given to the appellant nor was he heard personally.

On the other hand, the learned Addl. Advocate General argued that the charge against the appellant was very grave. That the proceedings were initiated on the complaint of one Noor Hussain. That a questionnaire was served on the appellant in which he admitted his guilt. That the statement of one Shafaat Khan Chowkidar was also recorded who also supported the complaint.

CONCLUSION.

There is no show cause notice nor any charge sheet and statement of allegations were served upon the appellant. In the absence of these, no penalty at all could have been awarded to the appellant. The whole proceedings are illegal. The appeal is accepted and the penalty is set aside. The department is however, at liberty to hold denovo proceedings within a period of 90 days from the date of receipt of this judgment. The issue of back benefits shall be subject to final outcome of denovo proceedings and the rules on the subject. Parties are left to bear their own costs. File be consigned to the record room.

Announced
20.02.2018

sd/- Niaz Muhammad Khan,
Chairman
Camp Court A/Abd.

sd/- M. Hamid Mughal
Member

Certified to be true copy

Kh. [Signature]
Service Journal,
Peshawar

Date of Presentation of Application 15-5-18
Number of Words 800
Copying Fee 6
Urgent 2
Total 8
Name of C [Signature]
Date of C 15-5-18
Date of Delivery of Copy 15-5-18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
CAMP COURT SWAT.



Service Appeal No. 960/2016

Date of Institution ... 04.08.2016

Date of Decision ... 06.09.2018

Riaz S/o M. Ayub Khan, R/O Charbagh, Swat, Ex-Constable No. 1017, Police Line,
Swat. (Appellant)

VERSUS

District Police Officer, Swat and 2 others. (Respondents)

Mr. Arbab Saif Ul Kamal,
Advocate

For appellant.

Mr. Usman Ghani,
District Attorney

For respondents

MR. AHMAD HASSAN,
MR. SUBHAN SHER

MEMBER (Executive)
CHAIRMAN


JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

FACTS

2. The brief facts are that appellant was appointed as Police Constable in 2007. Disciplinary proceedings on account of willful absence from duty were initiated against him and culminated in imposition of major penalty of removal from service w.e.f 19.07.2008 till 18.02.2009 vide order dated 27.06.2008. Feeling aggrieved the appellant filed departmental appeal which was rejected on 11.03.2013. Subsequently, the appellant submitted review petition which was also rejected on 10.05.2016, hence, the instant service appeal.

ATTESTED


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ARGUMENTS

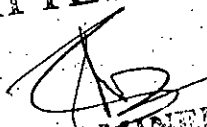
3. Learned counsel for the appellant argued that during the height of militancy in Malakand Division government functionaries were forced by the militants to stay away from duty and refusal resulted in brutal killings. The appellant was also a victim of the same circumstances. On account of absence from duty major penalty of removal from service was imposed on him. However, learned counsel for the appellant contended that absence was not deliberate and willful. His case was also considered and rejected by the review board. That vide order dated 30.11.2010 and 07.02.2012. Similarly placed person were reinstated in service by the respondents. Reliance was placed on judgment of this Tribunal dated 02.05.2016 rendered in service appeal no. 588/2012.

4. Learned District Attorney argued that on account of willful absence from duty, the appellant was awarded major penalty of removal from service. The appellant failed to submit application for reinstatement in time which was a sufficient proof of conduct. All codal formalities were observed before imposition of major penalty of removal from service on him.

CONCLUSION.

5. We have examined this case from two angles. Firstly disciplinary proceedings were carried out by the respondents at the back of the appellant. No valid proof was produced during the hearing by the respondents that the appellant was properly associated with the enquiry proceedings in these circumstances it can be safely inferred that elements of due process and opportunity of fair trial were denied to him, rather he was condemned unheard. This aspect of the case has also been deliberated in the judgment of this Tribunal dated 02.05.2016. Secondly, going

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,

by the principle of consistency there is a strong ground for treating the case of the appellant of the analogy of similarly placed persons already reinstated by the respondents. As impugned order was passed with retrospective effect so limitation in this case would not affect the cause of action.

6. As a sequel to the above discussion, the appeal is accepted, the impugned order dated 27.06.2008, 11.03.2013 and 10.05.2016 are set aside. The respondents are at liberty to conduct departmental proceedings against the appellant afresh within a period of three months. That plea of the appellant in respect of reinstatement of similarly placed persons in service shall also be taken into account during the enquiry proceedings. In case de-novo enquiry is not conducted by the respondents, the period of absence and intervening shall be treated as leave without pay. Parties are left to bear their own costs. File be consigned to the record room.

Announced

*Edf Ahmad Hassan,
Member
Caf court Swat
Edf Subhan Sher,
Chairman*


Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 8-10-18
Number of Pages 1200
Copying Fee 8-00
Urgent 2-00
Total 10-00
Name of Officer [Signature]
Date of Completion 8-10-18
Date of Delivery of Case 8-10-18




Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
		<p style="text-align: center;">BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL At Camp Court Swat</p> <p style="text-align: center;">Appeal No. 562/2016</p> <p style="text-align: right;">Date of Institution ... 16.05.2016 Date of Decision ... 05.07.2018</p> <p>Rahim Ud Din son of Syed Rehman, Resident of Ajoo Talash, Tehsil Timregara, district Dir Lower.</p> <p style="text-align: right;">Appellant</p> <ol style="list-style-type: none">1. Inspector General of Police, Khyber Pakhtunkhwa.2. D.I.G, Malakand Region Saidu Sharif Swat.3. D.P.O, Lower Dir.4. D.S.P headquarter, Timergara Lower dir. <p style="text-align: right;">Respondents</p> <p>Mr. Sajjad Ahmad Jan Advocate-----For Appellant</p> <p>Mr. Usman Ghani District Attorney-----For Respondents</p> <p>Mr. Subhan Sher Mr. Muhammad Hamid Mughal</p> <p style="text-align: right;">Chairman Member</p> <p>05.07.2018</p> <p style="text-align: center;">JUDGMENT</p> <p>MUHAMMAD HAMID MUGHAL, MEMBER: Appellant</p> <p>with counsel present. Mr. Usman Ghani learned District Attorney for the respondents present.</p> <ol style="list-style-type: none">2. Learned counsel for the appellant stated that the appellant has filed the present service appeal against the order dated 20.08.2009 whereby he was dismissed from service on the ground of absence from duty and against the order dated 31.10.2012 vide which the

ATTESTED


MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

departmental appeal of the appellant was rejected; that the appellant has also challenged the order dated 13.04.2016 of the Review Board whereby departmental appeal/revision filed by the appellant was rejected. Learned counsel for the appellant argued that the appellant could not attend to his duties for a few months due to circumstances beyond his control as the mother of the appellant was severely ill. Learned counsel for the appellant argued that the appellant was met with discriminatory treatment as some of the colleagues of the appellant who were also dismissed under similar circumstance were reinstated either by the Appellate Authority or by the Review Board. Further argued that original impugned order of punishment of dismissal was also awarded to the appellant with retrospective effect hence being a retrospective punishment the original impugned order is a void order and no limitation runs against the same. Learned counsel for the appellant in support of his contention regarding discriminatory treatment submitted copies of reinstatement order of F.C Muhammad Yar No.2118, Constable Noor Khan No.462, Constable Jawad Hassan No.2111, Constable Atta Ullah No. 2240, Constable Waheed Khan No.4886 of FRP, Constable Muhammad Shahid 4890 of FRP etc.

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

3. As against learned District Attorney resisted the present service appeal and defended the impugned orders on the ground mentioned therein.

4. Arguments heard. File perused.

5. Admittedly the impugned punishment of dismissal from

service was imposed upon the appellant with retrospective effect hence the original order of dismissal from service is void and no limitation would run against the same.

6. On the other hand, the Departmental Appellate Authority simply filed/regretted the departmental appeal of the appellant on the ground of limitation, which did not exist anymore as observed in the preceding para.

7. Learned District Attorney remained unable to rebut the contention of the learned counsel for the appellant that many other colleagues of the appellant who were also dismissed from service on the ground of absence from duty were reinstated either by the Appellate Authority or by the Review Board.

8. In the stated circumstances of the case, the order dated 31.10.2012 of the Appellate Authority and the order dated 13.04.2016 of the Review Board are hereby set aside. Resultantly the departmental appeal of the appellant shall be deemed pending. Appellate Authority/respondent No.2 is directed to decide the same afresh with speaking order within a period of three (03) months of the receipt of this judgment. The present service appeal is disposed off accordingly. Parties are left to bear their own costs. File be consigned to the record room.

Announced
05-07-2018

Sp. M. Hamid Nigral
Nawab
Chief Justice Swat

Sp. Subhan Shier
Chairman

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No. 831/2016

Date of Institution... 08.08.2016

Date of decision... 07.12.2017

Yasin Ur Rehman son of Aziz Ur Rehman R/O Umarzai, Tehsil and District
Charsadda/Patwari Halq Upper Dir. ... (Appellant)

Versus

1. Senior Member Board of Revenue, Khyber Pakhtunkhwa Peshawar and 2
others. ... (Respondents)

MR. AFROZ AHMAD,
Advocate

...

For appellant.

MIAN AMIR QADAR,
District Attorney

...

For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD HAMID MUGHAL,

...

...

CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was awarded minor penalty of forfeiture of two years service,
stoppage of three annual increments and not fit for further promotion on
14.09.2015. Against which he filed departmental appeal on 21.09.2015. The
appellate authority modified the order on 31.3.2016 by converting the penalty to
unfit for further promotion for three years.

ARGUMENTS

3. The learned counsel for the appellant argued that the appellant had moved a complaint to the Senior Member Board of Revenue against the appointing authority and three others on 28.05.2015. That due to this complaint the whole proceedings were initiated against the appellant malafidely. That a show cause notice was issued to the appellant on 09.6.2015 regarding absence only. That no charge sheet and statement of allegations was issued to the appellant. That the whole proceedings were illegal and not sustainable in the eyes of law.

4. On the other hand the learned District Attorney argued that the proceedings were initiated against the appellant on the complaint of one Ishtiaqur Rahman and many others for demanding some money as bribe. That the appellant wanted to give the cover of malafide to the action taken against him under the umbrella of complaint against appointment authority and others. That the whole proceedings were taken in accordance with the law.

CONCLUSION

5. Going through the impugned order, it is crystal clear that the allegations of bribe etc. were levelled against the appellant but no formal enquiry was ordered by the competent authority. No charge sheet and statement of allegations were issued to the appellant nor any show cause notice was given to him. He was not even personally heard. The order dated 14.09.2015 shows that the authority considered the enquiry report of Tehsildar Dir and also mentioned some enquiry conducted by the Incharge of Anticorruption which has no concern with the departmental proceedings. All in all the whole proceedings are illegal.

6. Consequently, the instant appeal is accepted and the penalty against the appellant is set aside. Parties are left to bear their own costs. File be consigned to the record room.

Sl. No

Date of order/ proceeding

Order or other proceedings with signature of Judge or Magistrate

5

2

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

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.

Dr. M. I. Khan

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.

Down

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/illegality 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

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.