

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

Service Appeal No. 1381/2017

Date of Institution... 11.12.2017

Date of decision... 19.09.2018

Jan Azam Khan S/O Pir Badshah,  
R/o Chambai, Kohat, Ex-Constable,  
No. 610 Police Line, Kohat.

... (Appellant)

Versus

1. District Police Officer, Kohat and two others.

.... (Respondents)

----

Mr. Arbab Saif Ul Kamal,  
Advocate

... For appellant.

Mr. Kbairullah Khattak,  
Additional Advocate General

... For respondents.

MR. AHMAD HASSAN,  
MR. MUHAMMAD AMIN KHAN KUNDI,

... MEMBER  
... MEMBER

JUDGMENT

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

FACTS

2. Brief facts of the case are that the appellant was serving as Constable in Police Department. On account of willful absence from duty, disciplinary proceedings were initiated and upon conclusion major penalty of removal from service was imposed on him w.e.f 16.10.2009. He filed departmental appeal on 10.02.2010 which was not responded. That, on 23.11.2016 the appellant submitted second departmental appeal before

respondent no.2 for reinstatement in service which was rejected on 02.12.2016, hence, the instant service appeal.

### **ARGUMENTS**

3. The learned counsel for the appellant argued that on the allegations of absence from duty, he was removed from service. Absence was not deliberate and willful. As his brother was ill so he was forced by the circumstances to go abroad to look after him. Disciplinary proceedings were conducted at the back of the appellant so he was condemned unheard. Reliance was placed on judgment of this Tribunal dated 05.07.2018 passed in service appeal no. 562/16, judgment dated 31.10.2016 in service appeal no. 1570/11, judgment dated 22.01.2018 service appeal no. 660/17 and 2011 PLC(C.S)990..

4. On the other hand, the learned Additional Advocate General argued that all codal formalities were observed before passing the impugned order. He was treated according to law and rules, hence, there was no illegality in the said order. The appeal is not maintainable and be dismissed.

### **CONCLUSION.**

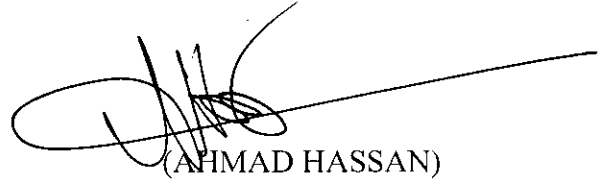
5. The appellant in his departmental appeal dated 10.02.2010 and 13.11.2016 admitted that he went abroad to look after his ailing brother without getting Ex-Pakistan leave, as such, the charge of willful absence from duty against the appellant had proved beyond any shadow of doubt. His departmental appeal was rejected on the sole ground of being time barred. The respondents failed to carefully analyze the contents of impugned order. As the impugned order dated 27.01.2010 was passed with retrospective effect so the same was void and no limitation runs against a void order. It can be safely concluded that his departmental appeal was not decided in accordance with law and rules.

6. As a sequel to above order of the appellate authority dated 24.11.2016 is set aside. Resultantly, the departmental appeal of the appellant shall be deemed pending. Appellate

authority is directed to decide the same through a speaking order within a period of three months from the date of receipt of this judgment. The present appeal is disposed off accordingly. Parties are left to bear their own cost. File be consigned to the record room.



(MUHAMMAD AMIN KHAN KUNDI)  
Member



(AHMAD HASSAN)  
Member

ANNOUNCED  
19.09.2018

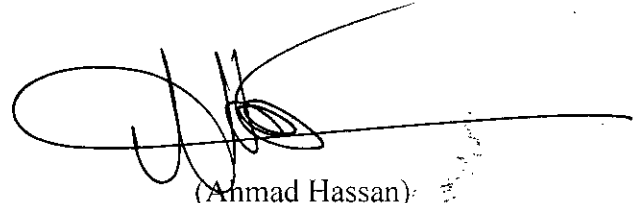
Order

19.09.2018

Mr. Arbab Saif UI Kamal, counsel for the appellants present. Mr. Arif Saleem, ASI alongwith Mr. Kabirullah Khattak, Additional Advocate General for respondents present. Arguments heard and record perused.

Vide detailed judgment of today of this Tribunal placed on file, order of the appellate authority dated 24.11.2016 is set aside. Resultantly, the departmental appeal of the appellants shall be deemed pending. Appellate authority is directed to decide the same through a speaking order within a period of three months from the date of receipt of this judgment. The present appeal is disposed off accordingly. In the circumstances, parties are left to bear their own costs. File be consigned to the record room.

Announced:  
19.09.2018



(Ahmad Hassan)  
Member

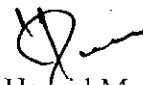
  
(Muhammad Amin Khan Kundi)  
Member

29.05.2018

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Arif Saleem, ASI for respondents present. Rejoinder submitted. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 23.07.2018 before D.B.



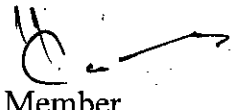
(Ahmad Hassan)  
Member



(M. Hamid Mughal)  
Member

23.07.2018

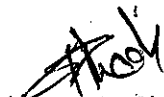
Appellant with counsel and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Arif Saleem, ASI for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 10.09.2018 before D.B.



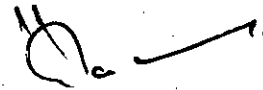
Member

11.09.2018

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Adjournment requested. Adjourned. To come up for arguments on ~~10~~ 11.09.2018 before D.B




(Hussain Shah)  
Member



(Muhammad Hamid Mughal)  
Member

22.02.2018

Clerk of the counsel for appellant and Assistant AG alongwith Mr. Arif Saleem, S.I for the respondents present. Written reply not submitted. Learned Assistant AG requested for further time adjournment. Request accepted. To come up for written reply/comments on 07.03.2018 before S.B.

  
(Gul Zeb Khan)  
Member

07.03.2018

Clerk of the counsel for the appellant & Assistant AG alongwith Mr. Arif Saleem, ASI for the respondent present. Written reply not submitted. Learned Assistant AG requested for adjournment. Adjourned. Last opportunity is granted. To come up for written reply/comments on 20.03.2018 before S.B.

  
Member

21.03.2018

Appellant absent. Counsel present on behalf of appellant. Mr. Kabir Ullah Khattak, Addl: AG alongwith Mr. Arif Saleem ASI (Legal) for the respondents present. Written reply submitted. To come up for rejoinder and arguments on 29.05.2018 before D.B.

  
Member


02.01.2018

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

Learned counsel for the appellant argued that the appellant was appointed as Constable on 02.06.2006 and served the department to the best of his ability and with devotion. That on 13.11.2009, respondent No.1 issued a charge sheet and statement of allegation to the appellant for absence from duty on 16.10.2009. That this charge Sheet was never served upon appellant for submitting reply to the same. Further argued that on the aforesaid allegations, appellant was removed from service by respondent no.1 vide order dated 27.01.2010. That appellant submitted departmental appeal for reinstatement in service on 10.02.2010 which was not responded. Similarly, on 23.11.2016, appellant submitted subsequent application before respondent no.2 for reinstatement in service which was rejected on 02.12.2016. That thereafter appellant submitted revision petition which was also rejected on the ground of time barred.

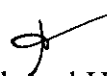
Points raised need consideration. Admitted for regular hearing subject to all legal objections including limitation. The appellant is also directed to deposit security and process fee within (10) days, whereafter notice be issued to the respondents department for written reply/comments on 08.02.2018 before S.B.

Appellant Deposited  
Security & Process Fee

  
(Gul Zeb Khan)  
Member (Executive)



08.02.2018

Counsel for the appellant and Addl: AG alongwith Mr. Arif Saleem, ASI for respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 22.02.2018 before S.B.

  
(Ahmad Hassan)  
Member(E)

Form-A  
FORM OF ORDERSHEET

Court of \_\_\_\_\_  
Case No. 1381/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	14/12/2017	<p>The appeal of Mr. Jan Azam Khan resubmitted today by Mr. Saadullah Khan Marwat 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 14/12/17</p>
2-	15/12/17	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>02/01/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>




The appeal of Mr. Jan Azam Khan son of Pir Badshah r/o Chambai Kohat Ex-Constable No. 610 Police Line Kohat 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- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Annexures of the appeal may be flagged.
- 4- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 5- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2650 /S.T,

Dt. 12/12 /2017


  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

12/12/17

Mr. Saadullah Khan Marwat Adv. Pesh.

Sir, Re submitted after a pleader.





**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

S.A No. 1381 /2017

Jan Azam Khan

versus

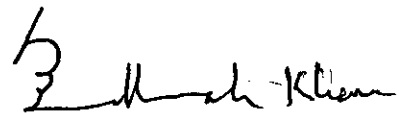
D.P.O & Others

**I N D E X**

S.#	Description of Documents	Anne	Page
1.	Memo of Appeal		1-3
2.	Charge Sheet dated 13-11-2009	"A"	4-5
3.	Removal order dated 27-01-2010	"B"	6
4.	Application for reinstatement, 10-02-10	"C"	7
5.	Subsequent application dated 23-11-2016	"D"	8
6.	Rejection order dated 02-12-2016	"E"	9
7.	Revision Petition dated 28-01-2017	"F"	10
8.	Rejection order dated 13-11-2017	"G"	11

Appellant

Through



Saadullah Khan Marwat  
Advocate

21-A Nasir Mansion,  
Shoba Bazaar, Peshawar.

Ph: 0300-5872676  
0311-9266609

Dated: 11-12-2017

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**S.A.No. 1381 /2017

Jan Azam Khan S/O Pir Badshah,  
R/o Chambai, Kohat, Ex-Constable  
No. 610 Police Line, Kohat . . . . . Appellant

**VERSUS****Khyber Pakhtukhwa  
Service Tribunal**Diary No. 1407Dated 11-12-2017

1. District Police Officer, Kohat.
2. Regional Police Officer,  
Kohat Region, Kohat.
3. Provincial Police Officer,  
KP, Peshawar. . . . . Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT,  
1974 AGAINST OB NO. 93 DATED 27-01-2010 OF  
R. NO. 1 WHEREBY APPELLANT WAS REMOVED  
FROM SERVICE WITH EFFECT FROM 16-10-2009  
OR OFFICE ORDER NO. 14143 / EC DATED 02-12-  
2016 OF R. NO. 2 WHEREBY REPRESENTATION OF  
APPELLANT WAS REJECTED OR OFFICE ORDER NO.  
S / 7266 / 17 DATED 13-11-2017 WHEREBY  
REVISION PETITION OF APPELLANT WAS FILED  
FOR NO LEGAL REASON:**

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**Respectfully Sheweth:**

Short facts giving rise to the present appeal are as under:-

That appellant was appointed as Constable on 02-06-2006 and served the department to the best of his ability and with devotion.

That on 13-11-2009, appellant was served with Charge Sheet and Statement of Allegations that he absented from official duty without

Filed to-day

Registrar

11/12/17

Re-submitted to-day  
and filed.

Registrar  
14/12/17

any leave or permission on 16-10-2009 by R. No. 01, but the aforesaid Charge Sheet was never served upon appellant to submit reply to the same. (Copies as Annex "A")

3. That on the aforesaid allegations, appellant was removed from service by R. No. 01 vide order dated 27-01-2010. (Copy as annex "B")
4. That appellant submitted application before R. No. 2 for reinstatement in service on 10-02-2010 which was not responded. Similarly on 23-11-2016, appellant submitted subsequent application before R. No. 02 for reinstatement in service which was rejected on 02-12-2016. (Copies as annex "C", "D" & "E")
5. That thereafter appellant submitted revision petition before R. No. 03 for the aforesaid purpose which was filed on 13-11-2017 in the aforesaid manner. (Copy as annex "F" & "G")


Hence this appeal, inter alia, on the following grounds:-

### **GROUND S**

- a. That appellant never absented from duty willfully but his brother was ill in abroad to look after him. As no one is near and dearer to brother, so he attended his ill brother there.
- b. That appellant was neither served with any Notice, Charge Sheet, Final Show Cause Notice, so he was condemned unheard.
- c. That neither any enquiry was conducted nor any statement was recorded in presence of appellant nor he was afforded opportunity of cross-examination.
- d. That the impugned order was passed with retrospective effect while on the other hand, no such order could be passed in the aforesaid manner.
- e. That the impugned order is illegal and ab-initio void, so the same was effected retrospectively, so no limitation runs against void order.

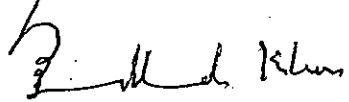
- f. That absence, if any, and that too not willful, does not constitute misconduct. The impugned orders are not per the mandate of Law, so are based on malafide and requires interference.

It is, therefore, most humbly prayed that on acceptance of the appeal, orders dated 27-01-2010, 02-12-2016 and 13-11-2017 of the respondents be set aside and appellant be reinstated in service with all back benefits, with such other relief as may be deemed proper and just in circumstances of the case.



Appellant

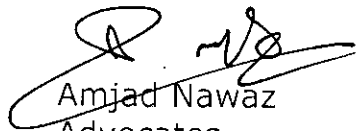
Through



Saadullah Khan Marwat



Arbab Saif-ul-Kamal



Amjad Nawaz  
Advocates,

Dated 11-12-2017

A 4

13-11-09

**CHARGE SHEET**

I, DILAWAR KHAN BANGASH, DISTRICT POLICE OFFICER, KOHAT as competent authority, hereby charge you Constable Jan Azam No.610 while posted at Police Lines, Kohat committed the following irregularities: -

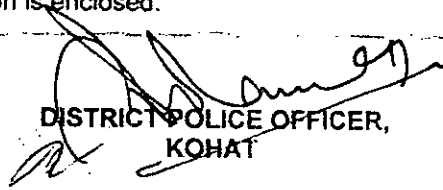
- i. You had absented yourself from official duty without any leave or permission vide Police Lines, Kohat DD No.25 dated 16/10/2009 till todate.

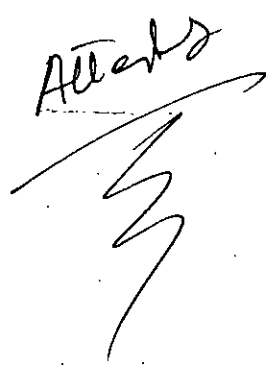
Your above act speaks of your inefficiency, indiscipline being a member of a disciplined force and gross misconduct on your part, punishable under the Removal from Service (Special Powers) Ordinance 2000.

And I, hereby direct you further as laid down in section 60 of the said Ordinance to put in a written defence within 7 days of the receipt of this charge sheet as to why you should not be awarded with one or more Major Punishment including Removal from Service as defined under section 3 (I) (C) of the said Ordinance and also stating at the same time as to whether you desire to be heard in person.

Your written defence, if any, should reach to the Enquiry Officer/ Committees within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex-parte action shall be taken against you.

A statement of allegation is enclosed.

  
DISTRICT POLICE OFFICER,  
KOHAT

*Attended*  


1122/400  
10.11.09DISCIPLINARY ACTIONI, DILAWAR KHAN BANGASH, DISTRICT POLICE

OFFICER, KOHAT, as competent authority, am of the opinion that Constable Jan Azam No.610 himself liable to be proceeded against as he committed the following acts/ omissions within the meaning of section - 3 of the NWFP (Removal from Service) Special Power Ordinance 2000.

STATEMENT OF ALLEGATIONS

You had absented yourself from official duty without any leave or permission vide Police Lines, Kohat DD No.25 dated 16/10/2009 till todote.

1. Your above act speaks of your inefficiency and gross misconduct on your part, punishable under the Removal from Service (Special Powers) Ordinance 2000.
2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an Enquiry Committee consisting of the following is constituted under section-3 of the Ordinance:

i. Mr. Lal Farid Khan, DSP HQ: Kohat


1. The Enquiry Committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make, within 25 days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.
3. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the Enquiry Committee.

  
DISTRICT POLICE OFFICER,  
KOHAT

6879-80  
No. /PA  
Date. 13-11-2009

A copy of the above is forwarded to:-

1. Mr. Lal Farid Khan, DSP HQ: Kohat. The committee for initiating proceedings against the accused under the provisions of the NWFP, Removal from Service (Special Power) Ordinance - 2000.
2. Constable Jan Azam No.610. The concerned official's with the directions to appear before the Enquiry Committee, on the date, time and place



B 6

FEK-176/10  
①

ORDER

This order is passed on departmental enquiry against Constable Jan Azam No. 610. He was charged to the effect that while posted at Police Lines Kohat he absented himself w.e.f. 16.10.2009, till to date with out any leave or permission.

Charge Sheet and summary of allegations were sent to his home through RI Police Lines Kohat but he intentionally did not received the Charge Sheet, make any arrival report at Police Lines Kohat nor attended the enquiry proceedings.


In view of the above, no other option is left except to proceed against Constable Jan Azam No. 610 Ex-parte under the NWFP Removal From Service (Special Powers) Ordinance 2000 and DSP HQrs was appointed enquiry officer who submitted his findings and recommended one of a major punishment of Removal From Service to the defaulter constable.

Since by remaining absent from duty without leave or permission he has proved himself as inefficient, in disciplined, guilty of misconduct and a mere burden on the Police department, therefore, in exercise of the powers conferred by Section 3 of the NWFP Removal From Service (Special Powers) Ordinance 2000, Constable Jan Azam No. 610 is removed from service w.e.f. 16.10.2009.

CB No 93  
Dated 27/1/10

  
DISTRICT POLICE OFFICER,  
KOHAT

30-1-10  
قب  
قب  
قب  
قب  
قب

Attd  




محرم صیبت ڈی مائی بی صیبت بیمار کو علاج پر کھن کو علاج

بھائی بھر ملازمت

بھائی بھائی

گزارش کے سبب مورخہ 26/2 کو پولیس

میں بھرتی ہوا اور خوش اسلوبی سے فرائض منصبی سر انجام دیتا رہے۔

بھائی بھائی۔ سبب کا ایک بھائی بیرون ملک دوستی

میں یکدم کاروبار متھم تھا۔ تم اس دوران اخلایہ دیا گئی کہ

وہ سخت بیمار ہے۔ اور اسکی تیمارداری علاج معالجہ ضروری ہے۔

لہذا سبب کو بلا یا گیا کیونکہ اسکی تیمارداری کا کوئی اور

ذریعہ نہ تھا۔

سبب نے ایکس پاکستان کیونٹری کے درخواست گزار کی

کیونٹری امریکی میں باہر چلا گیا۔ اس دوران سبب کو مورخہ

27/2 کو سرکار سے برطرف کیا گیا۔

بھائی بھائی۔ سبب کے خلاف قانون کے مطابق کارروائی

میں کی گئی لہذا حکم بالذات باطل و غیر قانونی ہے۔

استمعالی کہ حکم بالذات کو کالعدم قرار دے کر سبب کو سرکار

پر بحالی کرنا کا حکم صادر فرمائیں۔ دعا گو رہتا ہوں۔

جان اعظم ولد پیر بادشاہ ساہن چینی کوٹاہ

10/2/10

610 پوسٹ لندن کوٹاہ

Attest

Handwritten signature

بھنور جناب ڈپٹی انسپکٹر جنرل آف پولیس، کوہاٹ ریجن کوہاٹ

عنوان:- اپیل اور خواست برائے بحالی سروس محکمہ پولیس کوہاٹ

جناب عالی!

گزارش کی جاتی ہے کہ سائل مورخہ 02.06.2006 کو محکمہ پولیس میں بھرتی ہو کر ڈیوٹی سرانجام دے رہا تھا اور سائل کا سارا خاندان UAE میں رہائش پزیر تھا۔ ادھر دہی میں بھائیوں کا اپنا کاروبار تھا تو اس دوران ایک بھائی سخت بیمار ہوا جو کام کاج کے قابل نہ رہے تو مجھے دہی بلانا پڑا اور میں نے سابقہ DPO صاحب کو ایکس پاکستان یو کے لیے درخواست دیا جو DPO صاحب نے میری درخواست کو خارج کر دیا تو اسکے بعد سائل بہ امر مجبوری غیر حاضر ہو کر دہی چلا گیا۔ اب بھائی صحت یاب ہو چکا ہے اور میں واپس آچکا ہوں۔

جناب والا!

سائل نے غیر حاضری بہ امر مجبوری کی ہے کیونکہ ادھر دہی میں کام کرنے کے لیے کوئی دوسرا ذمہ دار شخص موجود نہ تھا اس

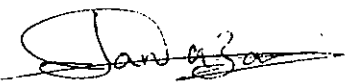
لیے سائل کو دہی جانا پڑا۔

استدعا ہے کہ سائل کو محکمہ پولیس میں سروس بحال کرنے کا حکم صادر فرمایا جاوے۔

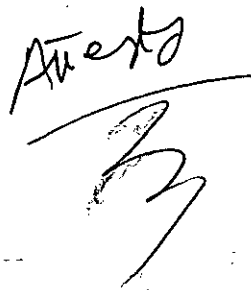
سائل تاحیات آپ صاحب کی ترقی اور اقبال بلندی کے لیے دعا گو رہے گا۔

مورخہ:- 23.11.2016

العارض



سائل EX کا نشیبیل جان اعظم نمبر 610 محکمہ پولیس کوہاٹ



E 9

2-12-16

0

ORDER.

The order will dispose of a departmental appeal, moved by Ex-FC Jan Azam of Kohat district against the punishment order passed by DPO Kohat vide OB No. 93, dated 27.01.2010, whereby he was awarded major punishment of removal from service for the allegations prolonged absence from official duty without any prior permission or leave.

He preferred an appeal to the undersigned, upon which comments were obtained from DPO Kohat and his service record was perused.

I have gone through the available record and came to the conclusion that the allegations leveled against the appellant are proved and the punishment order passed by DPO Kohat is correct. Hence, appeal being badly time-barred about 07-years is hereby rejected.

Order Announced  
24.11.2016

*Awal Khan*

(AWAL KHAN)  
Regional Police Officer,  
Kohat Region.

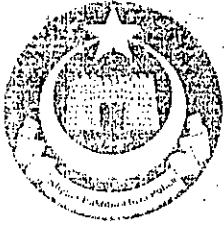
No. 1473 / EC, dated Kohat the 2-12-2016.

Copy to the District Police Officer, Kohat for information and inform the concerned Ex-FC.

*Awal Khan*

(AWAL KHAN)  
Regional Police Officer,  
Kohat Region.

*Adverts*



OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
CENTRAL POLICE OFFICE,  
PESHAWAR.

No. S/ 7266 /17, dated Peshawar the 13 /11 /2017.

To : The Regional Police Officer,  
Kohat Region, Kohat.

Subject: APPEAL (EX-FC JAN AZAM NO. 610)

Memo :

Ex-Constable Jan Azam No. 610 of District Police Kohat had submitted appeal to the Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for reinstatement into service. His appeal was processed / examined at Central Police Office, Peshawar and filed by the competent authority being badly time barred for about 07 years.

The applicant may please be informed accordingly.

*11/8/17*  
*ARIF SHAHBAZ KHAN*  
AIG / Establishment,  
For Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar.

*Attent*  
*[Signature]*



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

---

Service Appeal No. 1381/2017

Jan Azam Ex-Const No. 610

..... **Appellant**

**VERSUS**

District Police Officer, Kohat & others

..... **Respondents**

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.**

**Respectively Sheweth:**

Parawise comments are submitted as under:-

**Preliminary Objections:**

1. That the *appellant* has got no cause of action.
2. That the *appellant* has got no locus standi.
3. That the *appellant* is estopped to file the instant appeal due to his own act.
4. That the appeal is not maintainable in its present form.
5. That the *appellant* has not approached this Honorable Tribunal with clean hands.
6. The appeal is badly time barred.

**Facts:**

1. The *appellant* was habitual absentee. Previously he was awarded a minor punishment of censure for willful absence w.e.from 17.08.2008 to 21.03.2009 vide order dated 09.07.2009. Copy is **annexure "A"**.
2. The *appellant* while posted at Police Line absented himself w.e.from 16.10.2009. Proper departmental proceedings were initiated against him. The charge sheet alongwith statement of allegation was served at his home address through official concerned, which was received by his father named Pir Badshah. The statement of his father and report revealed that the *appellant* had gone abroad for earning livelihood. Copy is **annexure "B"**.
3. The *appellant* neither made his arrival report, nor joined the inquiry proceedings. The inquiry officer vide his finding held guilty of the charge and recommended for major punishment. On completion of formal requirements the *appellant* was awarded a major punishment of removal from service under NWFP Removal From Service (Special Powers) Ordinance 2000, on 27.01.2010.
4. That the *appellant* approached departmental appellate authorities after a laps of about 07 years of his removal from service order. The appeal / application were found without any substance, devoid of merits and badly time barred were rejected.

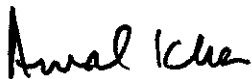
The application filed to respondent No. 3 was properly entertained and being badly time barred was filed.

**Grounds:**

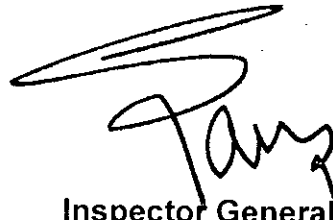
- a. Incorrect, the appellant willfully absented from duty and proceeded abroad without any leave/ permission and procedure. The appellant has admitted to proceeding abroad.
- b. Incorrect, the charge sheet was served at his home address and his father named Pir Badshah submitted statement that the appellant Jan Azam Khan had proceeded abroad for earning livelihood.
- c. Incorrect, proper departmental inquiry was conducted against the appellant through SDPO HQrs Kohat.
- d. Incorrect, proper order was passed by the respondent No. 1.
- e. Incorrect, proper and legal orders are passed by the respondents after observing all codal formalities.
- f. Incorrect, the appellant absented himself willfully and after return from abroad, he approached departmental authorities as well as this Honorable Tribunal after a laps of 07 years.

**Prayer:**

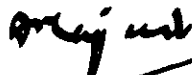
Keeping in view of the above, conduct of appellant, the appeal is devoid of merits, law & rules without any substance and time barred. It is, therefore, prayed that the instant appeal of the appellant may kindly be dismissed with cost.



Dy: Inspector General of Police,  
Kohat Region, Kohat  
(Respondent No. 2)



Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No. 3)



District Police Officer,  
Kohat  
(Respondent No. 1)

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

---

*Service Appeal No. 1381/2017*

*Jan Azam Ex-Const No. 610*

..... **Appellant**

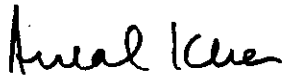
**VERSUS**

District Police Officer, Kohat & others

..... **Respondents**

**COUNTER AFFIDAVIT**

We, the below mentioned respondents, do hereby solemnly affirm and declare on oath that contents of parawise comments are correct and true to the best of our knowledge and belief. Nothing has been concealed from this Hon: Tribunal.



Dy: Inspector General of Police,  
Kohat Region, Kohat  
(Respondent No. 2)



Inspector General of Police,  
Khyber Pakhtunkhwa, Peshawar  
(Respondent No. 3)



~~District Police Officer,  
Kohat  
(Respondent No. 1)~~





پولیس اسٹیشن نظر کا روزنامہ 21<sup>3</sup>/<sub>09</sub> ضلع کوٹا

وردہ: حاضرین از غیر حاضری 50 مرض 21<sup>3</sup>/<sub>09</sub> وقت 08-30 کے  
 اس وقت کنسٹبل جان اعظم 610 بحوالہ درجہ روزنامہ 17<sup>8</sup>/<sub>08</sub> اغیار  
 سے حاضر آکر بیان لکھا کہ سب بحوالہ درجہ 27 روزنامہ 17<sup>8</sup>/<sub>08</sub>  
 کو تحریر کنسٹبل عمل گاہ 500 مکان میں کیا کہ KDA اسٹیشن  
 بطور امدادی ڈیوٹی سرنگا آ رہا تھا کہ وہ صرف 21<sup>3</sup>/<sub>08</sub>  
 کو KDA اسٹیشن سے جین گیا۔ اس کے بعد سرنگا نے  
 گھاٹا در سرنگا کے آگے تھے۔ یہیں وہ حاضر ہوئے  
 چونکہ سرنگا کوئی ڈاکٹر سے مدد نہ کر سکا۔ اب کچھ بیشتر  
 حاضر ہوئے۔ سرنگا حاضر ہوئے۔ اس وقت انگریزی  
 میں مذکورہ کنسٹبل کو حاضر کر کے اسے روزنامہ جاری کر کے  
 نے ڈاکٹر صاحب سے سیرنگل سیرنگل سیرنگل ہے جو کہ  
 ریشی اسٹیشن یا کوئی پتہ نہ مل سکا۔ اس وقت کوٹا  
 کارروائی اسٹیشن یا کوئی پتہ نہ مل سکا۔

جناب عالی  
 نقل مطابق اصل  
 mm/Lines  
 20-3-09

Sir,  
 Forwarded,  
 Ri/Lines

ماریا  
 کنسٹبل کوٹہ 17<sup>8</sup>/<sub>08</sub> تا 21<sup>3</sup>/<sub>09</sub>  
 دن 5-7  
 منتخب ہوا تھا۔ نوڈل سے مراد ہے  
 جسے ڈاکٹر افسار میں اس وقت اسٹیشن کوٹا  
 گاہ کوٹا  
 11/11/09





②

*WJ*

**ORDER**

This order is passed on the departmental enquiry against Constable Jan Azam No. 610 of this District Police under the Removal From Service (Special Powers) Ordinance 2000.

Facts of the departmental enquiry are that the above named official was selected for Elite Course but he had absented himself vide DD No. 7 dated 17/08/2008 and reported his arrival at Police Lines Kohat vide DD No. 6 dated 21/03/2009 without any leave or permission from the competent authority.

He was served with Charge Sheet and Statement of allegations and DSP Legal Kohat was appointed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against him and found him guilty of misconduct and recommended that his absence period may be treated as leave without pay.

Due to apology of the defaulter official during the course of enquiry, therefore, the undersigned take a lenient view and his absence period from 17/08/2008 to 21/03/2009 is treated as leave without pay and awarded a minor punishment of Censure. His pay is released.

OB No. 701  
Dated 9-7-2009

*[Signature]*  
DISTRICT POLICE OFFICER,  
KOHAT

No. 3834-37/A dated Kohat the 09/7 /2009  
Copy to OASI, SRC, Reader and Pay Officer for information and necessary action.

////////



پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار  
آب و درہ نوری سے قائم ہو گئے۔

پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار  
20/1/2010  
JKS

پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار  
آب و درہ نوری سے قائم ہو گئے۔  
پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار

پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار

پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار  
20/1/2010

پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار

پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار

پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار  
آب و درہ نوری سے قائم ہو گئے۔  
پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار

پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار  
آب و درہ نوری سے قائم ہو گئے۔  
پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار

پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار  
20/1/2010

پیرا بیٹا جان اعظم فرزند اکیلا پیر گیار  
20/1/2010

(7) کئی تالیفات و کتابیں  
ان کے بارے میں

اپنی ویرہ ماہ 1992ء اور 2010ء کے درمیان  
20/11/2010  
JKS

میرا بیٹا جان اعظم نے صدر ایوانِ اہل  
آب و ہوا کی سربراہی میں کام کیا ہے۔  
پہلے ہی میں نے اس کی تعریف کی تھی  
تو اب یہ

میرا بیٹا 50 ویں روز کی تقریب میں

میرا بیٹا سہیل حسین  
20/11/2010  
3348281294

جا  
جا

میرا

جا

میرا بیٹا اعظم نے 50 ویں روز کی تقریب میں  
میرا بیٹا سہیل حسین کی تعریف کی تھی  
تو اب یہ

2111-10

میرا بیٹا سہیل حسین کی تعریف کی تھی  
تو اب یہ

2111-10



KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

No. 1928 /ST

Dated 25 /9/ 2018


To

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

Subject: - JUDGMENT IN APPEAL NO. 1381/2017, MR. JAN AZAM KHAN.

I am directed to forward herewith a certified copy of Judgement dated 19.09.2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S. A. No. 1381 /2017

Jan Azam

versus

D.P.O &amp; Others

**REPLICATION****Respectfully Sheweth,****Preliminary Objections:**

All the 06 preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why appellant has no cause of action, locus standi, estoppel, not maintainable, unclean hands and time barred.

**ON FACTS**


1. Not correct. Appellant is not habitual absentee. Previous laxity already dealt with does not form basis for conviction / penalty. The para is not replied to the contents of the para of the appeal.
2. Not correct. When as per the contents of this para of the respondents showing appellant gone abroad then how the proceedings were carried out by serving appellant with Charge Sheet etc.
3. Not correct. It was necessary for the respondents to make publication in two leading newspapers but they failed to do so. More so, the departmental proceedings required under the Law were not carried out as per the mandate of Law. The impugned order is of no legal effect as the same was issued with retrospective effect on 16-10-2009 vide order dated 27-01-2010.
4. Not correct. First departmental appeal was preferred on 10-02-2010, but the same was kept silent thereafter subsequent representation was made which was rejected on 02-12-2016, so no limitation exists.

5. Not correct. Revision petition was not time barred and further more the impugned order was given retrospective effect so not tenable.

**GROUND:**

All the grounds of the appeal are legal and correct while that of the reply are illegal and incorrect. The same are again adopted. And more so, in similar circumstances this hon'ble Tribunal was pleased to accept the appeal's with direction to respondents to reinstate the then appellants into service. (Copies attached)

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



Appellant

Through



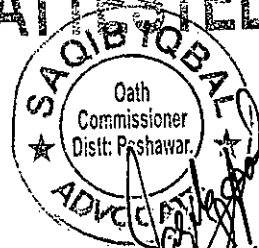
Saadullah Khan Marwat  
Advocate,

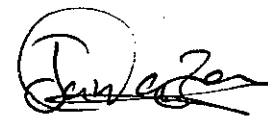
Dated: - -2018

**AFFIDAVIT**

I, **Jan Azam**, appellant do hereby solemnly affirm and declare that contents of the **Appeal & replication** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

**ATTESTED**





DEPONENT



Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
--------	---------------------------	--

1	2	3
---	---	---

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**At Camp Court Swat**

Appeal No. 562/2016

Date of Institution ... 16.05.2016  
Date of Decision ... 05.07.2018

Rahim Ud Din son of Syed Rehman, Resident of Ajoo Talash,  
Tehsil Timregara, district Dir Lower.

**Appellant**

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.

**Respondents**

Mr. Sajjad Ahmad Jan  
Advocate-----

-----**For Appellant**

Mr. Usman Ghani  
District Attorney-----

-----**For Respondents**

Mr. Subhan Sher  
Mr. Muhammad Hamid Mughal

Chairman  
Member

05.07.2018

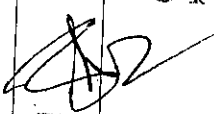
JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: Appellant

with counsel present. Mr. Usman Ghani learned District Attorney  
for the respondents present.

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**

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

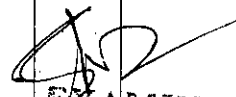
departmental appeal of the appellant was rejected; that the appellant has also challenged the order dated 13.04.2016 of the Review Board whereby departmental appeal/revision filed by the appellant was rejected. Learned counsel for the appellant argued that the appellant could not attend to his duties 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.

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

**ATTESTED**

  
**EXAMINER**  
 Khyber Pakhtunkhwa  
 Service Tribunal,  
 Peshawar

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

Self M. Hamid Nighal,  
Member  
Caf Court Swat

Self Subhan Sher,  
Chairman

Certified to be true copy

INER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar