BEFORE THE PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT.

Service Appeal No. 1546/2022.

Muhammad Ali Computer Operator BPS-16 District Police Office, District Swat.

..... **Appellant**

VERSUS

The Provincial Police Officer, Khyber Pukhtunkhwa, Peshawar & others.

.....**Respondents**

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District Police Officer, Swat
(Respondent No.03)

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

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PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Shewith,

Preliminary Objections.

1. That the appellant has got no cause of action and locus standi to file the present appeal.
2. That the appeal is bad due to misjoinder and nonjoinder of necessary parties.
3. That the appeal is barred by law & limitation.
4. That the appellant has not come to the Tribunal with clean hands.
5. That this Hon'ble Tribunal has got no jurisdiction to entertain the present appeal.
6. That the instant appeal is not maintainable in its present form.
7. That the appellant has concealed the material facts from this Hon'ble Tribunal.

FACTS:

i. Correct to the extent the appellant was initially appointed as Constable in the year 2009 and was later on upgraded to the post of Computer Operator. The appellant had never performed his duty to the best of his abilities and remained absent from duty on many occasions.

ii. Incorrect. The appellant has not performed his duty to the utter satisfaction of the authorities and remained absent from duty on many occasion without prior permission of approved leave of his high ups.

iii. Incorrect. The appellant committed gross misconduct by absenting himself from lawful duty for 91 days without prior permission or approved leave of his high ups, consequently, proper departmental enquiry was conducted in the matter, wherein he was issued charge sheet coupled with statement of allegations and Additional SP Lower, Swat, DSP Legal Swat and Office Superintendent were appointed as Enquiry Officers to conduct proper Departmental Enquiry against him. The Enquiry Officers conducted proper departmental enquiry against the above named delinquent Computer Operator, and recorded statements of all

concerned. The Enquiry Officers have provided ample opportunity to the delinquent Computer Operator to defend the charges leveled against him but he failed to defend the charges leveled against him. After conducting proper departmental enquiry, the Enquiry Officers submitted his findings report wherein they intimated that having gone through the available record of biometric system and after personnel hearing of Computer Operator Muhammad Ali, the enquiry committee reached to the conclusion that he was posted as Incharge OG/PG and missing person Branch on dated 14/10/2021 and remained absent for 91 days as proved and available record. The enquiry officers further revealed that it reflects that the delinquent computer operator Muhammad Ali is a habitual absentee, and did not take keen interest in the performance of his lawful duty. The allegations leveled against him were proved during course of enquiry in light of available record. Further the Enquiry Officers stated that the delinquent Computer Operator Muhammad Ali is no more interested in his job, hence recommended him for major punishment and in light of the recommendation of enquiry officer, the appellant was dismissed from service **(Copy of Enquiry report annexed "A")**,, however later on, the appellant filed an appeal before the Regional Police Officer Malakand Region which was accepted and punishment of dismissal from service was modified into forfeiture of three 03 years approved service vide Order No.11778/E dated 22/10/2022.

(Copy of Order annexed "B")

iv. Incorrect. The appellant had not submitted any application or any other medical certificate regarding Biometric attendance. The Biometric attendee machine of the office is working properly since its installment and no such error has been found where the machine did not recognized the thumb impression of the officials. The appellant willfully absented himself from official duty for long time i.e 91 days without prior permission or approved leave and now in the honorable tribunal making lame excuses.

v. Incorrect. As stated above the appellant willfully and deliberately absented himself from official duty without any permission or approved leave, wherein regular departmental enquiry was conducted in the matter by providing all the opportunity of personal hearing and self defence, however the appellant failed to produce any cogent reason in his defence.

vi. Incorrect. This Para explained above in detail.

vii. Incorrect. As stated above, regular enquiry has been conducted in the matter wherein charge sheet along with statement of allegation was issued to the appellant. **(copy of charge sheet along with statement of allegation is annexed as "C")**

viii. Incorrect. That there is no malafide on the behalf of enquiry officers as they conducted enquiry as per law/rule.

ix. Incorrect. This Para explained at Para No.iii in detail.

x. That departmental appeal of the appellant was thoroughly examined by the competent authority wherein his punishment of dismissal from service was converted into forfeiter of three years approved service.

xi. Correct. Pertain to record, no comments.

xii. The appellant has wrongly challenged the legal and valid orders of the respondents before the honorable tribunal through unsound reasons/grounds.

GROUNDS:

a. Incorrect. That the appellant has been treated in accordance with law/rules.

b. Incorrect. The appellant has been provided all opportunities of personal hearing and self defense during departmental probe, however he failed to produce any cogent reason to defend the charges leveled against him.

c. Incorrect. That the order of the respondent is legal, lawful and in accordance with law/rules.

d. This Para explained in detail at preceding Paras,

PRAYER:

It is therefore requested that the appeal of appellant may kindly be dismissed with cost being devoid of merits and without any legal substance.

Provincial Police officer
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)

Regional Police Officer
Malakand Region
(Respondent No. 02)

Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.

District Police Officer, Swat
(Respondent No. 03)

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.....**Respondents**

AUTHORITY LETTER

We, the above respondents do hereby authorize Mr. Naeem Hussain DSP/Legal Swat to appear before the Tribunal on our behalf and submit reply etc in connection with titled Service Appeal.

Provincial Police Officer,
KPK, Peshawar
(Respondent No. 01)

Regional Police Officer,
Malakand Region
(Respondent No. 02)

Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.

District Police Officer Swat
(Respondent No. 03)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

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AFFIDAVIT

We, the above respondents do hereby solemnly affirm on oath and declare that the contents of the appeal are correct/true to the best of our knowledge/ belief and nothing has been kept secret from the honorable Tribunal.

Provincial Police officer,
Khyber Pukhtunkhwa, Peshawar
(Respondent No. 01)

ATTESTED

KHWAJA YASIR ABBAS ADVOCATE
OATH COMMISSIONER
District Courts Swat.
No 300
Date 7.2.2023

Regional Police Officer
Malakand Region
(Respondent No. 02)

Regional Police Officer,
Malakand Region,
Saidu Sharif, Swat.

District Police Officer,
Swat
(Respondent No. 03)