

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

Appeal No. 1001/2019

Date of institution ... 31.07.2019  
 Date of decision .... 07.11.2019

Mr. Noor Badshah, Ex-Head Constable No. 436, Police Lines, Timergara,  
 Dir Lower. ... (Appellant)

Versus

The Inspector General of Police, Khyber Pakhtunkhwa Peshawar and one  
 other. ... (Respondents)

Present

Mr. Mir Zaman Safi,  
 Advocate ... For appellant.

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN

JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant is aggrieved of order dated 09.07.2015 passed by respondent No. 2/District Police Officer, Dir Lower at Timergara, whereby, he was awarded major penalty of dismissal from service on account of absence without leave, at different intervals. The period of absence was counted as leave without pay. He is also aggrieved of inaction on the part of respondent No. 1 in responding to his departmental appeal/revision dated 03.04.2019.

2. Learned counsel for the appellant heard and available record gone through.

It was mainly contended that the impugned order of dismissal from service was not communicated to the appellant and upon gaining knowledge the requisite departmental appeal was preferred. He was of



the view that the delay on the part of the appellant in submission of appeal was to be overlooked in the case in hand. Reference was made to 2012-TD(Service)348, PLD 2002-Supreme Court-84 and 2002-PLC(C.S) 218. As an alternative, the appellant was entitled to Compassionate Allowance as provided in Section 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, it was added.

3. On one hand, the contents of departmental appeal dated 03.04.2019 nowhere suggest that the impugned order was conveyed/communicated to the appellant with such enormous delay while, on the other, it is beyond perception that having been dismissed from service in the year 2015 the appellant remained unaware of termination of his service till filing of departmental appeal. Obviously, he was not performing any duty nor was paid any salary during such period. The departmental appeal was clearly and formidably barred by time, therefore, the appeal in hand would not be competent. Guidance is sought from judgments reported as 2006-SCMR-453 and 2012-SCMR-195.

4. In view of the above, the appeal in hand does not merit admission for regular hearing, therefore, is dismissed in limine. The appellant shall, however, be at liberty to seek remedy by way of award of compassionate allowance in accordance with law.

File be consigned to the record.





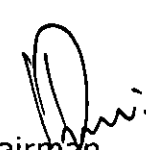
(HAMID FAROOQ DURRANI)  
Chairman

ANNOUNCED  
07.11.2019

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. - 1001/2019

S.No	Date of order proceedings	Order or other proceedings with signature of judge
1	31/07/2019	3
1	31/07/2019	<p style="text-align: center;">The appeal of Mr. Noor Badshah submitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR 31/7/19</p>
2	20/08/19	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>19/09/19</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: center;">Counsel for the appellant present. Learned counsel requests for adjournment in order to further prepare the brief. Adjourned to 07.11.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>
19.09.2019		

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

APPEAL NO. 1001 / 2019

**NOOR BADSHAH**

**VS**

**POLICE DEPTT:**

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**APPELLANT**

**THROUGH:**

**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

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

Khyber Pakhtunkhwa  
Service Tribunal

APPEAL NO. 1001 /2019

Diary No. 1109

Dated 31-7-2019

Mr. Noor Badshah, Ex- Head Constable No. 436,  
Police Lines Timergara, Dir Lower.....

**APPELLANT**

**VERSUS**

- 1- The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
- 2- The District Police Officer, District Dir Lower.

.....**RESPONDENTS**

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 09.07.2015 COMMUNICATED TO THE APPELLANT ON 13.06.2018 WHEREBY MAJOR PENALTY OF DISMISSAL FROM SERVICE WAS IMPOSED ON THE APPELLANT AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS**

**PRAYER:**

That on acceptance of this appeal the impugned order dated 09.07.2015 communicated to the appellant on 13.6.2018 may very kindly be set aside and the appellant may be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

**R/SHEWETH:**

**ON FACTS:**

- 1- That appellant the employee of the respondent Department and has served the Department as Head Constable for more than 13 years quite efficiently and up to the entire satisfaction of his superiors.
- 2- That during service the appellant was absented himself from his lawful duty due to some domestic problems. That when the said domestic problems were resolved the appellant approached the concerned quarter for re-joining his duty but the same was refused to the appellant.
- 3- That lastly the appellant submitted an application before the respondents to give any response to the appellant requests. That on the said request of the appellant the respondents finally handed over the impugned order dated 09.07.2015 communicated to the appellant on 13.06.2018. Copies of the application and impugned order are attached as annexure.....**A & B.**

Filed to-day  
Registrar  
31/7/19

Re-submitted to-day  
and filed.

Registrar

4- That appellant feeling aggrieved from the impugned order dated 09.07.2015 communicated to the appellant on 13.6.2018 filed Departmental appeal but no reply has been received so far. Copy of the Departmental appeal is attached as annexure.....C.

5- That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

**GROUND:**

- A- That impugned orders dated 09.07.2015 communicated to the appellant on 13.06.2018 is against the law, facts, norms of natural justice and materials on record and hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the codal formalities required for the major penalty was not fulfilled by the respondents while issuing the impugned order dated 09-07-2015.
- D- That no charge sheet and statement of allegation has been issued to the appellant by the respondents.
- E- That no show cause notice has been served on the appellant before issuing the impugned order dated 09.07.2015.
- F- That no publication has whatsoever been made by the respondents before issuing the impugned order dated 09-07-2019 which is necessary as per Rule-9 of the Efficiency and disciplinary Rules, 2011.
- G- That, the impugned order dated 09-07-2019 is issued in a hasty manner by the respondents, hence the respondents have acted in an arbitrary & malafide manner.
- H- That, no chance of personal hearing/defense was given to the appellant while issuing the impugned order dated 09-07-2019.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

خدمت جناب ڈسٹرکٹ پولیس آفیسر ڈیپو لوئر قیصر گڑھ

(4) - A

ذخیرت برائے اعزازت نامہ ڈیپوٹی سرانجام دینے

جناب عالی! عدویانہ گزارش ہے کہ میں محلہ پولیس میں بطور ہیڈ کانسٹیبل

ڈیپوٹی سرانجام دے رہا تھا لیکن دوران ڈیپوٹی کچھ گھنٹوں میں مسئلہ کی بنا پر غیر حاضر رہا۔

جناب والا! میں کافی عرصے سے دفتر سے جاکر لگا رہا ہوں تاکہ اپنی ڈیپوٹی دوبارہ جاری

رکوسٹوں لیکن دفتر نہ اسے مجھے کوئی خاطر خواہ جواب نہیں مل رہا۔ حسب تاقابل

پولیس محکمہ ناخاندان بیوی بھونڈی اس وقت میری غفلت کوئی حکیمانہ وعینہ جاری نہیں

ہو گیا۔ اور نہ ہی مجھے نوٹس کی سے ممانعت کیا گیا ہے۔ اس لئے کہ میری دلی خواہش

ہے کہ میں ڈیپوٹی سرانجام کے اس عہدے پر اپنے ملک و قوم کی خدمت کروں

اور اکثرہ حسباً صاحبان کو کسی قسم کی شکایت کا موقع نہیں دوں گا۔ جو

پیارے ملک کی برائیوں پر اصرار ہے مجھے ڈیپوٹی سرانجام دینے کا موقع فراہم کیا جائے

سپرڈار صاحبان سے استیصالی عناصر انہماک سے ہے کہ مجھے ڈیپوٹی جاری

رکھنے کا موقع کم دستور فرمادے۔ ہمیشہ دعا گو رہوں گا۔

المترقوم : 5/6/2018

احمد شاہ

9

العارض

نور بادشاہ

میٹر کانسٹیبل نمبر 436

ڈیپوٹی قیصر گڑھ

OFFICE OF THE DISTRICT POLICE OFFICER, DIR LOWER AT TIMERGARA


ORDER

This order will dispose of the departmental enquiry conducted against Head Constable Noor Badshah No.436, who while posted at Police Lines Timergara absented himself from his lawful duty with effect from 03/01/2015 to 22/01/2015 (19 days), 27/03/2015 to 01/04/2015 (04 days), 04/04/2015 to 08/04/2015 (04 days) and from 16/05/2015 to date, therefore he was served charge sheet coupled with statement of allegation and Mr. Aqiq Hussain DSP HQrs. was appointed as enquiry officer to conduct proper departmental enquiry and submit his finding.

The enquiry officer during the course of enquiry recorded the statement of all concerned, as well as the delinquent official. The Enquiry Officer in his finding report recommended him for major Punishment and also suggested that his absence period may be counted is leave without pay.

Therefore, I Qasim Ali (PSP), District Police Officer, Dir Lower in exercise of power vested to me under (E & D) Rules 1975 with amendment 2014, agree with the finding report of the enquiry officer, and awarded him a major punishment of Dismissal from service with immediate effect and the period of absence with effect from 03/01/2015 to 22/01/2015 (19 days), 27/03/2015 to 01/04/2015 (05 days), 04/04/2015 to 08/04/2015 (04 days), 16/05/2015 to 24/06/2015 (38 days) and 02/07/2015 to date is counted as leave without pay.

ORDER ANNOUNCED

  
District Police Officer,  
Dir Lower at Timergara

OB No. 627 /EC.  
Dated 9-7-2015.

*Attested*  




صوبہ صوبائی ڈیپارٹمنٹ اور صوبہ جی ڈی سی ڈی ایچ

درخواست گزار کی طرف سے فراہم کردہ معلومات

(3)

ضامی 1

C-6

گزارش جس کا سائیل نمبر 13 جولائی 2000ء  
کا حقیقہ ہے۔ سائیل نمبر 13 جولائی 2000ء  
کا حقیقہ ہے۔ سائیل نمبر 13 جولائی 2000ء  
کا حقیقہ ہے۔ سائیل نمبر 13 جولائی 2000ء

2015/9/2  
OB 627  
ضامی 1  
سائیل نمبر 13 جولائی 2000ء  
کا حقیقہ ہے۔ سائیل نمبر 13 جولائی 2000ء  
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سائیل نمبر 13 جولائی 2000ء  
کا حقیقہ ہے۔ سائیل نمبر 13 جولائی 2000ء  
کا حقیقہ ہے۔ سائیل نمبر 13 جولائی 2000ء  
کا حقیقہ ہے۔ سائیل نمبر 13 جولائی 2000ء

03/04/2019

السید

Attested

دعا ہے کہ اس کے ساتھ ساتھ 436 نمبر کے ساتھ ساتھ  
HE/BDU

0344-9474709

**VAKALATNAMA**

*At the KP Service Tribunal Peshawar*

No. \_\_\_\_\_/2019

*Noor Badshah*

(APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

*Police Department*

(RESPONDENT)  
(DEFENDANT)

I/We *Noor Badshah*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, 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 cost. 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.

Dated. \_\_\_\_/\_\_\_\_/2019

*N*  
\_\_\_\_\_  
**CLIENT**

*N*  
**ACCEPTED**

**NOOR MOHAMMAD KHATTAK**

*Shahzullah Khan*  
**SHAHZULLAH KHAN YOUSAFZAI**

**&**

*Mir Zaman Safi*  
**MIR ZAMAN SAFI  
ADVOCATES**

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