

27.06.2018

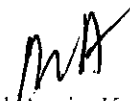
Appellant absent. Junior to counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Junior to counsel for the appellant seeks adjournment on the ground that learned senior counsel for the appellant is busy before the Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 15.08.2018 before D.B.



(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

15.08.2018

Clerk to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Due to general strike of the bar, the case is adjourned. To come up on 10.10.2018 before D.B.


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

10.10.2018

Learned counsel for appellant and Mr. Kabirullah Khattak learned Additional Advocate General present. Learned counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 27.11.2018 before D.B.


Member



Member

27.11.2018

Nemo for appellant.

The instant appeal was called for hearing more than ~~once~~ today. It is already 2.15 P.M and no one is present on behalf of the appellant.

Dismissed for non-prosecution. File be consigned to the record room.



Member



Chairman

Announced:
27.11.2018

17.10.2017

Counsel for the appellant present. Mr. Zia Ullah, Deputy District Attorney for the respondents present. Learned Deputy District Attorney seeks adjournment due to his illness. Adjourn. To come up for arguments on 28.12.2017 before D.B.


(Ahmad Hassan)
Member (E)


(Muhammad Hamid Mughal)
Member (J)


28.12.2017

Counsel for the appellant and Addl: AG for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 22.02.2018 before D.B.


Member

22.02.2018

Due to none availability of D.B the case is adjourned. To come up on 16.04.2018 before D.B


Member

16.04.2018

Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 27.06.2018 before D.B.


(Ahmad Hassan)
Member


(M. Amin Khan Kundi)
Member

1368/2013

19.01.2017

Counsel for appellant and Mr. Muhammad Jan, GP for respondents present. Learned counsel for appellant requested for adjournment. Adjournment granted. To come up for arguments on 22.05.2017. before D.B.



(AHMAD HASSAN)
MEMBER


(ASHFAQUE TAJ)
MEMBER

22.05.2017

Counsel for the appellant and Mr. Muhammad Adeel Butt Additional AG for the respondent present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 12.09.2017 before D.B.



(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

12.09.2017

Counsel for the appellant and Adll: AG for the respondents present. Appellant seeks adjournment as his counsel is not in attendance. Adjourned. To come up for arguments on 17.10.2017 before D.B.

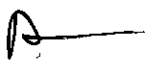

Member
(Executive)


Member
(Judicial)

09.03.2016

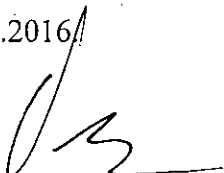
Agent to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Due to general strike of the bar, counsel for the appellant is not available. Therefore, the case is adjourned to 08.03.2016 for arguments.

13.05.2016


Member


Member


Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Rejoinder submitted to come up for arguments on 23.9.2016.

Member 


Member

23.09.2016

Clerk to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to general strike of the Bar. To come up for arguments on 19.01.2017.


Member


Member

24.7.2014

Counsel for the appellant present. Respondents are not present despite their service through concerned officials. However, Mr. Ziaullah, GP is present on behalf of the respondents and would be contacting them for written reply/comments on 28.11.2014.


Chairman

28.11.2014

No one is present on behalf of the appellant. Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for written reply/comments on 11.03.2015.


Reader

11.03.2015

Counsel for the appellant and Mr. Ihsanullah, ASI on behalf of respondents alongwith Addl: A.G present. Written reply submitted. The case is assigned to D.B for rejoinder and final hearing for 1.10.2015.


Chairman

01.10.2015

Junior to counsel for the appellant and Mr. Ziaullah, GP for respondents present. Enquiry report be requisition from the respondent-department. To come up for arguments on

9-3-16


Member


Member

3
17.12.2013

Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing on 30.01.2014.


Member

30.01.2014

Counsel for the appellant present. Preliminary arguments heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the order dated 28.02.2013, the appellant filed departmental appeal on 29.04.2013, which has not been responded within the statutory period of 90 days, hence the present appeal on 11.09.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notice be issued to the respondents for submission of written reply on 24.04.2014.


Member

30.01.2014

This case be put before the Final Bench P for further proceedings.



Chairman

24.4.2014

Counsel for the appellant (Arbab Saif-ul-Kamal, Advocate) present. Notices to the respondents could not be issued due to non-deposit of security and process fee. The learned counsel for the appellant requested for further time to deposit security and process fee. Security and process^{fee} be deposited within a week, whereafter notices be issued to the respondents for written reply/comments on 24.7.2014.


Member



Appellant Deposited
Security & Process Fee
Rs. 106/- Bank
Receipt is Attached with File.



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1368/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25/09/2013	<p>The appeal of Mr. Rehmat Ali resubmitted today by Mr. Saad Ullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	30-9-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>17-12-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Rehmat Ali Khan Constable No. 2100 received today i.e. on 11/09/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Appeal may be got signed by the counsel.
- 2- Law under which appeal is filed is not mentioned.
- 3- Annexures of the appeal may be attested.
- 4- Index of the appeal may be prepared.
- 5- Copies of charge sheet, show cause, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 6- The annexures referred, to in the memo of appeal are not attached with the appeal which may be placed on it.
- 7- Annexures of the appeal are illegible which may be replaced by legible one.
- 8- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1281 /S.T.

Dt. 12/9 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Saadullah Khan Adv. Pesh.

sir

Resubmitted. As far as obj. No. 5 is concerned, the same are not needed in this Petition

submitted for further action by

by

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A. No. 1368/2013

Rehmat Ali

Versus

Commandant & others

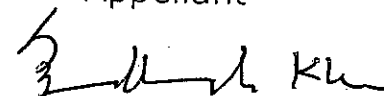
I N D E X

S.No	Documents	Annex	P.No.
1.	Memo of Appeal		1-3
2.	Removal order, 18.02.2009	"A"	4
3.	Rejection order, 22.10.2009	"B"	5
4.	Judgment, 18.06.2010	"C"	6-7
5.	Removal order,	"D"	8
6.	Representation, 21.01.2011	"E"	9-11
7.	Appeal to Tribunal, 30.03.2011	"F"	12-18
8.	Judgment, 22.10.2012	"G"	19-21
9.	Penalty of A/I and 189 days without pay, 28.02.2013	"H"	22
10.	Representation, 29.04.2013	"I"	23-24
11.	Vakalat Nama.		25

Dated. 25.09.2013

Through

Appellant



Saad Ullah Khan Marwat
Advocate.

21-A Nasir Mension,
Shoba Bazar, Peshawar.

Ph: 0300-5872676

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR.

Service Appeal No. 1368 /2013

G.W.F. Peshawar
Case No. 1338
Date 11-9-13

Rehmat Ali son of Shah Wazir Khan

Constable No.2100, Police Line, Peshawar..... Appellant

Versus

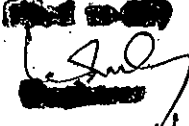
- 1) Deputy Commandant, FRP, Peshawar.
- 2) The Commandant, Frontier Reserve Police,
KPK, Peshawar..... Respondents

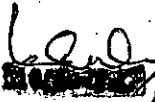
U/S 4 of STA, 1974

Appeal / against order No.146-49 dated
28.02.2013 of Respondent No.1 whereby
punishment of forfeiture of one annual
increment was awarded and absence period
was treated as without pay for no legal
reason.

Respected Sir,

- 1) That appellant was enlisted as constable on 02.11.2004 in police force and was posted at P.S. Ghaligai, Swat.
- 2) That appellant was deputed for emergency duty of Dak to Swat but in the meanwhile kidnapped by miscreants.
- 3) That first appellant filed departmental appeal against order of dismissal dated 18.02.2009 which was rejected on 22.10.2009 and then Service Appeal before the Service Tribunal which was accepted on 18.06.2010 with condition to conduct denovo inquiry in the matter. (Copies as Annex: "A , B and C").


11/9/13
re-submitted to ~~403~~
and filed.


15/9/13

- 4) That no proper denovo enquiry was conducted, so again appellant was dismissed from service vide order No.Nil dated Nil. (Copy as Annex: "D").
- 5) That again appellant submitted departmental appeal on 21.01.2011 before the authority which was not decided within target period and then filed 2nd appeal before Service Tribunal which was accepted on 22.10.2012 with condition to reinstate me with all back benefits. (Copies as Annex: "E, F and G").
- 6) That on 28.02.2013 unique order was passed. Appellant was awarded the punishment of forfeiture of one Annual Increment and his absence period of 189 days was treated as leave without pay. His reinstatement was w.e.f. 02.01.2013. (Copy as Annex: "H").
- 7) That on 29.04.2013, appellant filed representation before Respondent No.2 which met dead response till date. (Copy as Annex: "I").

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

GROUND:

- a. That since 18.02.2009, appellant was confronted with unending agonies for no legal reasons.
- b. That despite the fact that appellant was twice reinstated by the Service Tribunal in service but the department did not act in accordance with the spirit of the judgments and illegal orders were passed time and again.
- c. That in judgment dated 28.02.2013, appellant was reinstated in service with all back benefits but the aforesaid order is totally against the spirit of the same.
- d. That in similar circumstances, another constable who was equally and similarly placed was reinstated in service with all back benefits, so appellant also deserves the same treatment.

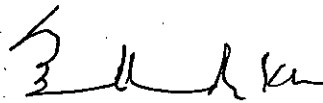
- 3
- e. That appellant was awarded with double punishment (1) forfeiture of Annual Increment and 2nd treating the period in question without benefits, so much so, the intervening period between the two qualifying services was not regularized.
- f. That the impugned order is not based on legal footing.

It is, therefore, most humbly prayed that on acceptance of this appeal, order dated 28.02.2013 of Respondent No.1 be modified to the extent of punishment (double) and the same be made with all back benefits as is held in the judgment of the hon'ble Tribunal.



Appellant

through



Saadullah Khan Marwart



Arbab Saif-ul-Kamal



Miss. Rubina Naz
Advocates, Peshawar.

Dated 25/09/2013

O.R.D.E.R

4
18-2-09

This office order relates to the disposal of formal departmental enquiry against Constable Rehmat Ali, No.4060 of FRP/HQrs: Peshawar, while deployed for special duty at District Swat remained absent w.e.from 12-08-2008 to 09-09-2008 & 09-09-2008 till-to date without taking any leave/permission of the competent authority.

In this connection he was issued Charge Sheet & Summary of Allegations and RI/FRP/HQrs was nominated as Enquiry Officer to conduct enquiry and submit his findings. Upon the findings of Enquiry Officer he was issued Final Show Cause Notice on his home address to which he received but he failed to submit reply of the said notice within the stipulated period of (14) days.

Keeping in view the recommendation of the Enquiry Officer and other material available on record it has become crystal clear that his further retention in service is no more required in the discipline force. Therefore, in exercise of Powers vested to me under the NWFP, Removal from Service (Spl: Powers) Ordinance 2000. Constable Rehmat Ali, No.4060 of FRP/HQrs, is hereby Removed from Service with immediate effect. The period of absence is treated as leave without pay.

Order announced.

Awal Khan

(AWAL KHAN)

Dy: Commandant,
Frontier Reserve Police,
NWFP, Peshawar.

18/02/2009.

No. 280-83/PA/FRP/HQrs: dated Peshawar, the

Copy of the above is forwarded to:-

1. The OSI/ FRP/HQrs: Peshawar
2. The Accountant /FRP/HQrs: Peshawar.
3. The SRC/FRP/HQrs: Peshawar
4. The FMC/ FRP/HQrs: Peshawar with original enquiry file.

FRP, HQ
O.B. No. 330
Date 19-2-09

*Attested
by*

C 6 18-6-10
BEFORE THE K.P.K SERVICE TRIBUNAL PESHAWAR

Appeal No. 24/2010

Date of intution - 04.01.2010

Date of decision - 18.06.2010

Rehmat Ali Ex-Constable No. 4060, FRP Peshawar..... (Appellant)

VERSUS

1. Deputy Commandant, Frontier Reserve Police, N.W.F.P Peshawar.
2. Commandant FRP, N.W.F.P, Peshawar.
3. I.G.P. NWFP Peshawar..... (Respondents)

Appeal against the order dated 18.2.2009 whereby the appellant was removed from service.

Mr. Saadullah Khan, Advocat..... For Appellant
Mr. Sher Afgan Khattak, A.A.G..... For Respondents

MR. ABDUL JALIL MEMBER
SYED MANZOOR ALI SHAH MEMBER

JUDGMENT

ABDUL JALIL, MEMBER: This appeal has been filed by the appellant against the order dated 18.2.2009 whereby the appellant was removed from service and his departmental appeal dated 22.10.2009 was rejected.

2. Arguments heard and record perused.
3. The learned counsel for the appellant argued that the appellant was serving in the police force to the best of his ability and to the entire satisfaction of his superiors. The Swat valley was completely under control of Taliban and the police was non-functional. At that time the appellant was serving at Ghaligai Police Station. He was allowed Shabashi leave and he left for home. On return from home to Police Station he was kidnapped by miscreants and released by the efforts of Jirga with the pledge that he will not serve the police in future.
4. Counsel for the appellant argued that the absence of the appellant was not willful but because of deteriorated situation in Swat. In view of that the absence from

ATTESTED
EXAMINER
NWFP SERVICE TRIBUNAL
Peshawar.

Attested
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duty did not constitute any mis-conduct. He referred 2008-SCMR-1666. In that case the incumbent was absent for a long period of 12 years. He was re-instated in service by the Service Tribunal and the judgment was up-held by the Hon'ble Supreme Court of Pakistan.

5. He further argued that the appellant was not charge sheeted, no show cause notice was ever served on him and he was not associated with the inquiry proceedings, as at that time postal services were completely collapsed in the limit of Swat District. The absence of the appellant was not published in 2 leading newspapers as per rules.

6. The AAP argued that the appeal is time barred. The appellant remained absent from duty w.e.f. 21.8.2008 to 9.9.2008 and from 9.9.2008 till the date of his removal from service. Proper inquiry was initiated and the Inquiry Officer was nominated. He was summoned time and again but he refused to appear before the Inquiry Officer. His absence was willful. He failed to inform his superiors regarding his absence. Charge sheet and statement of allegations were issued and served through special messenger on his home address which was received by his Father and his signature was obtained.

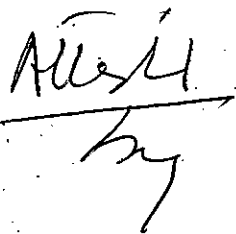
7. In view of the above, it appears that proper inquiry was not conducted against the appellant. He was not given the opportunity to defend himself. The appeal is therefore, remanded to the respondent department for denovo inquiry. The appellant may not be re-instated in service for the purpose of inquiry. The out-come of inquiry will determine further cause of action against the appellant. No order as to costs. File be consigned to the record.

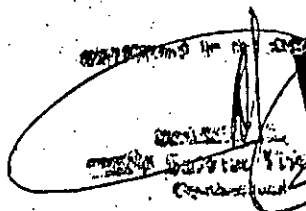
ANNOUNCED.
18.6.2010.


(SYED MANZOOR ALI SHAH)
MEMBER.


(ABDUL JALIL)
MEMBER.

18/6/10
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6-7-10
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ORDER


Ex-Constable Rahmat Ali No. 4060 was removed from service vide this office order No. 280-83 dated 18.08.2009 due to his prolong absence. He submitted a service appeal before the service tribunal Peshawar against the order of his removal from service.

The honorable service tribunal was accepted his appeal and directed this department to conduct denove enquiry against him without Re-instatement in service.

The decision of the honorable tribunal has implemented and denove enquiry was initiated against him. Charge Sheet and statement of allegation were already been issued and served upon him accordingly.

During the denove Enquiry proceeding, the statement of the defaulter Ex-Constable has been recorded by the enquiry Officer. The enquiry officer held him guilty of the charges. The defaulter Ex-Constable also failed to submit any proof to defence himself regarding his absence from duty.

Keeping in view of the above circumstances his removal order from service issued from this office mentioned above, is legal/justified as per law/rules and still stand.


DEPUTY COMMANDANT
FRONTIER RESERVE POLICE
KPK PESHAWAR

*Enquiry Report along with other
submitted before the Tribunal today
1. e. 07.01.11*

ky

Attest
ky

To,

The Commandant FRP,
Khyber Pukhtunkhwa,
Peshawar.

Subject: APPEAL AGAINST OFFICE ORDER NO.NIL,
DATED NIL RECEIVED ON THE DATE OF
HEARING FROM THE TRIBUNAL ON 07.01.2011
WHEREBY ORDER OF REMOVAL DATED
18.02.2009 OF APPELLANT FROM SERVICE WAS
TERMED LEGAL/ JUSTIFIED AS PER LAW/ RULE
AND STILL STAND BY DEPUTY COMMANDANT
FRP, PESHAWAR.

Respected Sir,

1. That appellant filed appeal before the Honourable Tribunal on 04.01.2010, which was admitted to regular hearing and after serving respondents with notices, reply was submitted by them. Replication was also submitted by the appellant for rebuttal.
2. That on 18.06.2010, the case was decided and appeal was remanded to the respondents Department for de-novo inquiry.
3. That on 06.07.2010, the said judgment was transmitted to the respondents Department for holding of de-novo inquiry.
4. That appellant submitted application to the Honourable Tribunal for correction and implementation of judgment and after service, respondents Department submitted

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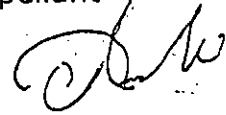
inquiry report as well as order of removal from service on 07.01.2011 before the Honourable Tribunal by the representative of the Department which copies were supplied to counsel for appellant on the said date as per order sheet of the Tribunal.

5. That as directed in the judgment dated 18.06.2010 of the Honourable Tribunal to hold de-novo inquiry but no de-novo inquiry was conducted as per the mandate of the Ordinance and order without any number and any date was issued and submitted before the Honourable Tribunal on the date fixed.
6. That the respondents Department prepared self-made report but was neither served appellant with any fresh charge sheet or show cause notice, being mandatory.
7. That no legal order was ever passed by the respondents Department and shortcut way was adopted for removal of appellant from service.
8. That even then, no notice was served upon appellant by the respondents to participate de-novo inquiry proceeding.
9. That not only the action in hand but the earlier action was also not in accordance with law and rules, so are based on malafide.
10. That facts and grounds of earlier representation as well as of appeal before the Honourable Tribunal be treated as integral part of this appeal for grant of relief.

11. That not only the Department but this Honourable Tribunal had also reinstated servants absent from duties with all back benefits.

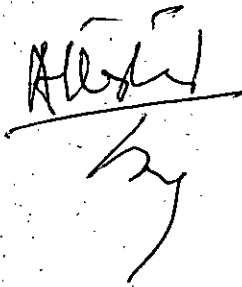
It is, therefore, most humbly requested that order received on 07.01.2011 from the Tribunal and 18.02.2009 of Deputy Commandant FRP, Peshawar be set aside and appellant be reinstated in service with all back benefits.

Appellant



Ex-Constable No.4060,
FRP Peshawar
R/O Village Alam Ganj,
P.O & Tehsil Char Bagh
District Swat.

Dated: 21.01.2011



BEFORE THE SERVICE TRIUBNAL, K.P.K, PESHAWAR

12 / 30-8-11
Service Appeal No. 669/2011

Rehmat Ali S/O Shah Wazir
R/O Alam Guang, P.O. Charbagh,
Tehsil & District Swat
Ex.C.No.4060, FRP, Peshawar.Appellant

Versus

1. Deputy Commandant,
Frontier Reserve Police,
Peshawar.
2. Commandant FRP, Peshawar.
3. Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.Respondents

<=>⇔<=>=>⇔<=>=>⇔<=>

**APPEAL AGAINST ENDST.NO.208-23/PA/
FRP/HQRS, DATED 18.02.2009, O.B.NO.330,
DATED 19.02.2009 OF RESPONDENT NO.1
WHEREBY APPELLANT WAS REMOVED FROM
SERVICE OR OFFICE ORDER NO. 7830-32/EC,
DATED 22.10.2009 OF RESPONDENT NO.2
WHEREBY REPRESENTATION OF APPELLANT
WAS REJECTED AND ALSO ORDER NO. NIL
DATED NIL OF RESPONDENT NO.1 WHEREBY
ORDER DATED 18/19.02.2009 WAS
MAINTAINED FOR NO LEGAL REASON.**

Respectfully Sheweth:

1. That appellant was appointed/enlisted as constable by District Police Officer, Swat vide order dated 02.11.2004 after observing the due codal formalities. (Copy as annex "A").
2. That appellant was serving the force to the best of the ability and to the entire satisfaction of the superiors, yet at the same time, the country was in the clutches of Taleban, especially the Swat valley where Govt. machinery was totally collapsed/failed. The area was not in control of law of Enforcing Agencies. Hundreds and thousands Govt. officials/officers were either killed or beheaded or were made helpless to perform their official duties by giving them threaten of dire consequences of lives and families. All the police stations were either blownup or were made under their own control. In such like situations, no one was able to perform the official duties.
3. That at the relevant time, appellant was serving at P.S. Ghaligai when he was allowed 'Shabashi' leave and left for home and on return from home to P.S., he was kidnapped by miscreants and was then released through jirga with commitment that he will not serve the department in future.

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13. That in the meanwhile, after completion of de-novo proceedings, representative of the department submitted inquiry report as well as illegal order without any No. and date NIL before this Hon'able Tribunal which copy was received by the counsel of appellant from the Tribunal on the date of hearing of the case on 07.01.2011. (Copy as annex "N" & "O" respectively).
14. That on 21.01.2011, appellant submitted representation before respondent No.2 against the fresh order which is not decided within the stipulated period of 60 days. (Copy as annex "P").

Hence, this appeal, inter alia, on the following grounds;

GROUND S:

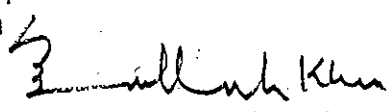
- A. That absence of appellant from duty was not willful but was due to the deteriorated situation of the Swat Valley wherein Govt. machinery was totally collapsed from up to bottom, so appellant also became victim of the aforesaid situation.
- B. That in the aforementioned circumstances, the absence from duty did not constitute any misconduct and as per the verdict of the apex S.C. of Pakistan, an incumbent was absent from duty for long 12 years. He was not only

reinstated in service by the Service Tribunal but the judgment was also upheld by the apex S.C. of Pakistan 2008 SCMR 1666.

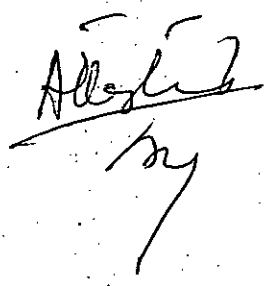
- C. That no charge sheet, no show notice was ever served upon the appellant as at the same time, the Dak system was totally collapsed what to speak of his association in the inquiry proceedings.
- D. That the impugned orders are ab-initio void, so are based on malafide. Apart from this, the absence was not published in two leading newspapers for resumption of duty.
- E. That on 18.06.2010, the Hon'able Tribunal directed respondents to hold de-novo inquiry into the matter as per the mandate of law/ ordinance but again the I.O set in room, prepared self-made report and submitted the same to the authority wherein without number and date, order was passed by respondent No.1 which shall not be termed as legal one.
- F. That it was mandatory for I.O to record statements of witnesses in presence of appellant and to afford him opportunity of cross-examination and thereafter to serve him with final show cause notice, to provide him opportunity of self-defence but all in vain, so the impugned orders are of no legal effect.

- G. That not only appellant but hundreds of other similarly constables were dismissed from placed services on account of absence from duty yet all of them were reinstated in their services but appellant was left for no legal reason, thus discriminated.
- H. That the proceedings carried out by the respondents in the case, speaks the highhandedness of them, so are based on malafide as appellant was never called for to even appear before the I.O for inquiry.

It is, therefore, most humbly prayed that on acceptance of the appeal, the impugned office order dated 18.02.2009 of respondent No.1 or 22.10.2009 of respondent No.2 and order No. and date NIL of respondent No.1 be set-aside and appellant be reinstated in service with all back benefits.

Appellant
Through 
Saadullah Khan Marwat
Advocate,

Dated: 28.03.2011



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 660/2011

Date of Institution. ... 30.03.2011
Date of Decision ... 22.10.2012



Rahmat Ali S/O Shah Wazir,
R/O Alam Guang, Post office Charbagh,
Tehsil & District Swat. Ex-C.No. 4060 FRP, Peshawar.

(Appellant)

VERSUS

1. Deputy Commandant, Frontier Reserve Police, Peshawar.
2. Commandant, FRP, Peshawar.
3. Inspector General of Police, Khyber Pakhtunkhwa. (Respondents)

APPEAL AGAINST ENDST. NO. 208-23/PA/FRP/HQRS, DATED 18.2.2009,
OB NO. 330, DATED 19.2.2009 OF RESPONDENT NO.1 WHEREBY
APPELLANT WAS REMOVED FROM SERVICE OR OFFICE ORDER NO.
7830-32/EC, DATED 22.10.2009 OF RESPONDENT NO.2 WHEREBY
REPRESENTATION OF APPELLANT WAS REJECTED AND ALSO ORDER
NO. NIL DATED NIL OF RESPONDENT NO.1 WHEREBY ORDER DATED
18/19.2.2009 WAS MAINTAINED.

MR. SAADULLAH KHAN MARWAT,
Advocate.

For appellant

Mr. SHERAFGAN KHATTAK,
Addl. Advocate General

For respondents.

SYED MANZOOR ALI SHAH,
MR. NOOR ALI KHAN,

MEMBER
MEMBER

ATTESTED

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER.- This appeal has been filed
by Rehmat Ali, the appellant against the orders dated 18.2.2009 & 19.2.2009,
whereby he was removed from service against which his departmental appeal
has also been rejected on 22.10.2009. Vide order dated Nil, respondent No. 1
also maintained order dated 18/19.2.2009. It has been prayed that on
acceptance of the appeal, the impugned orders may be set aside and the
appellant may be reinstated into service with all back benefits.

2. Brief facts of the case are that the appellant was appointed/enlisted as Constable by District Police Officer Swat vide order dated 2.11.2004 after observing all the codal formalities. During the relevant time, the appellant was allowed Shabashi leave and left for ohom and on return from home to P.S Ghaligai, he was kidnapped by miscreants and was then released through jirga with commitment that he will not service the department in future. After reporting of absence of appellant from duty, departmental proceedings were ordered to be conducted against him. Muhammad Tahir Khan, Reserve Inspector was appointed as Enquiry Officer. Charge sheet was issued to the appellant on 24.9.2008, which was received by his father on 28.1.2009, which could not be replied in the circumstances. The appellant was recommended for ex-parte action and vide order dated 18.2.2009, the appellant was removed from service. After release the appellant submitted departmental appeal before respondent No. 2 which was rejected on 22.10.2009. Feeling aggrieved, the appellant filed Service Appeal No. 24/2009 before this Tribunal, which was remanded on 18.6.2010 with the direction to the respondent department to conduct denovo enquiry against the appellant. The appellant may not be reinstated in service for the purpose of inquiry. The word "not" has inadvertently been written in the operation part of the judgment, so the appellant submitted an application before the Tribunal for correction, which was under process, when the representative of the respondents submitted report of denovo enquiry, which was without any number and date, copy of which has been received to the appellant through the Tribunal on 7.1.2011. On 21.1.2011, the appellant the appellant submitted representation before respondent No.2, which has not been decided within the statutory period of sixty days, hence the present appeal.

3. The appeal was admitted to regular hearing and notices were issued to the respondents. The respondents have filed their joint written reply and contested the appeal. The appellant also filed rejoinder in rebuttal.

4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that absence of the appellant was not wilful but he was kidnapped during insurgency in district Swat. The respondents must wait for return of the appellant but ex-parte proceedings were initiated against him and he was removed from service without holding proper enquiry. He further argued that when the case of the

appellant has been remanded to the respondent department for conduct of denovo enquiry, they should implement the judgment but vide impugned order number nil dated nil, respondent No. 1 maintained earlier orders dated 18/19.2.2009 in a slip-shod manner. He requested that the appeal may be accepted as prayed for.

6. The learned AAG argued that the appellant failed to produce any documentary proof that he was kidnapped by Taliban. Proper enquiry was conducted against him and his wilful absence proved by the enquiry officer. He further argued that on the direction of this Tribunal denovo enquiry was conducted against the appellant. He was summoned, his statement was recorded. The enquiry officer found him again guilty of the charges levelled against him.

7. The Tribunal observes that the appellant was removed from service during insurgency in district Swat. After exhausting departmental remedy, he filed appeal No. 24/2010, before this Tribunal. Since he was not given proper opportunity of defence, vide judgment dated 18.6.2010, the case was remanded to the respondent department for conduct of devovo enquiry against the appellant. The department again without conduct of proper departmental enquiry maintained earlier removal order of the appellant vide order number and dated nil in a slip-shod manner.

8. In view of the above, the appeal is accepted, the impugned orders are set aside and the case is remanded to the respondent department for conduct of denovo enquiry against the appellant strictly in accordance with the law within two months. The appellant is reinstated into service for the purpose of enquiry. The question of back benefits is left for the outcome of enquiry. In case, the respondents failed to conduct or complete denovo enquiry against the appellant within the stipulated time, the appellant will be reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record.

Certified Copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ANNOUNCED
22.10.2012.

(NOOR ALI KHAN)
MEMBER

(SYED MANZOOR ALI SHAH)
MEMBER

Ali

22/ 28-2-13

O.R.D.E.R

This office order relates to the disposal of Donove departmental proceeding against Constable Rahmat Ali No. 2100. He was enlisted in Police department on 02.11.2004. He was deputed for emergency duty at FRP Swat remained absent w.e from 12.08.2008 to 18.02.2009 for a total period of (189) days, resulting which he was removed from service vide this office order/Indst: No.280-83/PA dated 18.02.2009.

In this connection he preferred an appeal before the honorable Court of Service Tribunal vide Service appeal No.607/2011 which was accepted vide judgment dated 22.10.2012. In compliance with the decision of honorable Court he was re-instated in Service vide this office Order No. 44-46/SI legal dated 02.01.2013 with the direction to conduct proper Denove departmental proceeding against him.

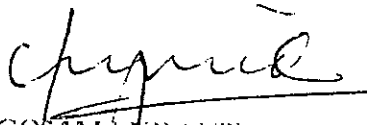
Accordingly he was Charge Sheeted and SI Legal/FRP IQrs: was nominated as Enquiry Officer to conduct enquiry into the matter and submit findings. After completion of all codal formalities the enquiry officer submitted his finding wherein he mentioned that the defaulter constable Rahmat Ali No.2100 remained absent from emergency duty w.e. from 12.8.2008 to 18.02.2009 for a total period (189) days resulting which he was removed from service. He was re-instated in service with a plea that he was kidnapped by the mis-creants while he was on the way to his home and remained more than two hundred days in their custody. The plea that he mentioned is totally baseless and also failed to advance any cogent/poseful proof. Therefore he was found guilty of the charges of intentional fault of absence i.e. (189) days without any shadow of doubts.

Upon the findings of the Enquiry Officer Constable Rahmat Ali No.2100 has been issued Final Show.Cause Notice, for which his reply received found not convincing. He was summoned for personnel hearing before the undersigned. He was hard in person but failed to advance any cogent reason about his absence.

Keeping in view the findings/recommendation of the enquiry officer and other material available on record the accused official Constable Rahmat Ali No.2100 held responsible for his intentional fault of prolong absence.

In view of the above circumstances the delinquent Constable Rahmat Ali No. 2100 is hereby awarded the punishment of forfeiture of his one Annual increment without cumulative effect & his absence period i.e. (189) days treated as leave without pay. Moreover he is already been re-instated in service by Addl: IGP/Commandant FRP vide his Order/Indst: No. 44-46/SI/legal dated 02.01.2013.


Order announced.


DEPUTY COMMANDANT
FRONTIER RESERVE POLICE
KHYBER PAKHTUNKHWA
PESHAWAR

No. 146-49 /PA/FRP/IQrs: dated Peshawar, the 28/02/2013.

Copy of the above is forwarded for information & n/action to:-

1. The Accountant /FRP/IQrs: Peshawar.
2. The SRC/FRP/IQrs: Peshawar.


Attested
by

To

The Commandant,
Frontier Reserve Police,
KPK, Peshawar.

Appeal against order dated 28.02.2013

Respected Sir;

- 1) That I was enlisted as constable on 02.11.2004 in police force and was posted at P.S. Ghaligai.
- 2) That I was deputed for emergency duty of Dak to Swat but in the meanwhile kidnapped by miscreants.
- 3) That first I filed departmental appeal against order of dismissal dated 18.02.2009 which was rejected on 22.10.2009 and then Service Appeal before the Service Tribunal which was accepted on 18.06.2010 with condition to conduct denovo inquiry in the matter.
- 4) That no proper denovo enquiry was conducted, so again I was dismissed from service vide order No.Nil dated Nil.
- 5) That again I submitted departmental appeal on 21.01.2011 before the authority which was not decided within target period and then filed 2nd appeal before Service Tribunal which was accepted on 22.10.2012 with condition to reinstate me with all back benefits.
- 6) That on 28.02.2013 unique order was passed. I was awarded the punishment of forfeiture of one Annual Increment and my absence period of 189 days was treated as leave without pay. My reinstatement was w.e.f. 02.01.2013.

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

GROUNDS:

- a. That since 18.02.2009, I was confronted with unending agonies for no legal reasons.

- 24
- b. That despite the fact that I was twice reinstated by the Service Tribunal in service but the department did not act in accordance with the spirit of the judgments and illegal orders were passed time and again.
- c. That in judgment dated 28.02.2013, I was reinstated in service with all back benefits but the aforesaid order is totally against the spirit of the same.
- d. That in similar circumstances, another constable who was equally and similarly placed was reinstated in service with all back benefits, so I also deserves the same treatment.
- e. That I was awarded with double punishment (1) forfeiture of Annual Increment and 2nd treating the period in question without benefits, so much so, the intervening period between the two qualifying services was not regularized.
- f. That the impugned order is not based on legal footing.

It is, therefore, most humbly requested that, order dated 28.02.2013 of the worthy Deputy Commandant FRP, Hqr Peshawar be modified to the extent of punishment (double) and the same be made with all back benefits as is held in the judgment of the hon'ble Tribunal.



Yours obedient servant.

Rehmat Ali
C.No.2100,
Police Line, Peshawar.

Dated 29.04.2013

Attested
by

یعدالت چٹا سروس ٹریبونل سوپر گریڈ پشاور

مہتاب اسٹریٹ

بنام کارپوریشن

رحمت علی

دعویٰ اسٹریٹ

باعضرت شریک ایٹک

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکیل کاروائی متعلقہ آن مقام پشاور کیلئے سعد اللہ خان سرور سے ایڈووکیٹ ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے راضی نامہ و تقریر ثالث و فیصلہ برحلف دینے جواب دہی اور اقبال دعویٰ اور بھرتی ڈگری کرنے اجراء اور وصولی چیک و رپریہ اور مرضی دعویٰ اور درخواست ہر قسم کی تقدیرات اور اس پر دستخط کرنے کا اختیار ہوگا نیز بصورت عدم پیروی یا ڈگری بیکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز وارڈ کرنے اپیل نگرانی و نظرتانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی سے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تقریر کا اختیار ہوگا اور صاحب مقدمہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پر واختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ و پر جانہ التواء مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و فرجہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام درجہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ دیکھ دیا کہ سند ہے۔

المرقوم

العبد العبد العبد

11
ارباب نیف انکال
ایڈووکیٹ

سعد اللہ خان سرور
ایڈووکیٹ

Pabna

مس روینہ ناز
ایڈووکیٹ

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1368/2013.

Rehmat Ali S/o Shah Wazir Ex- Constable No. 2100/FRP/Peshawar.....

.....(Appellant)

VERSUS

1. Commandant FRP/Khyber Pakhtunkhwa Peshawar.....

2. Deputy Commandant FRP/KPK.....(Respondents)

Subject:- **COMMENTS ON BEHALF OF RESPONDENTS.**

Respectfully Sheweth!

Preliminary Objections:-

1. That the appeal is badly time barred.
2. That the appellant has not come to this Honorable Tribunal with clean hands.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
4. That the appellant has no cause of action and locus stand.
5. That the appellant is estopped due to his own conduct to file instant Service appeal.
6. That the appellant has concealed material facts from Hon'ble Tribunal

FACTS:-

- 1) Para No. 1 pertains to the record needs no comments.
- 2) Incorrect, the appellant was absented himself from Lawful duty w. e. from 12.03.2008 to 09.09.2008 and from 09.09.2008 till the date of his removal from service i. e 18.02.2009. Departmental proceedings were initiated against him and an enquiry officer was nominated, he was issued charge sheet along with statement of allegation and served upon the Father of the appellant at his home address. The appellant was time and again summoned to appear before the enquiry officer to defend himself but the appellant failed to submit his reply and the enquiry officer submitted his findings in which he recommended him for ex-parte action.
- 3) The Para relate to record need no comments.
- 4) Incorrect, it was a clear-cut mistake and after rechecking dispatch No. 475/Pa, dated 02.12.2011 has ordered.
- 5) Incorrect, that the appellant failed to submit departmental appeal before the appellant authority, the remaining para pertains to the appellant record.
- 6) Incorrect, the competent authority re-instated the appellant in service by taking lenient view, however the punishment of forfeiture of one annual increment without cumulative effect currently passed by the competent authority, moreover, while the appellant absented himself from law full duties for a total period of (189)-days with out prior permission or leave and for larger interest of state, he is not entitled for benefits of such period as he has not performed official duties. It is pertinent to mention here that leave with out pay is not declare penalty in the eyes of law.

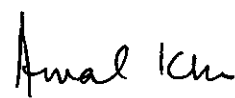
- 7) . Incorrect, the appellant did not bother to submit departmental appeal before the appellant authority and in this regard his case is time barred as well as bad for law and worth to be dismissed.


GROUND:-

- (A) Incorrect, the allegations are false and baseless, the appellant absented himself from law full duties with out prior permission of his superiors and during the enquiry proceedings he failed to advance any cogent reason before the enquiry officer or competent authority, however the appellant is held here responsible for the situation i. e his intentional fact of prolong absence.
- (B) Incorrect, that the first service appeal of the appellant was remanded to the department with out re-instated for denove enquiry and his 2th service appeal again remanded to the department for denove enquiry, both of judgment were implemented in letter and sprit and after fulfilled of all codal formalities, correct and legal order were passed by the respondents which is commensurate with the gravity of the appellant gross mis- conduct.
- (C) Incorrect, the appellant is trying to mislead the Honorable Tribunal, that the appellant was re-instated in service by the Honorable Tribunal with out back benefits subject to denove enquiry and the back benefits were lift for respondent to decided it after denove enquiry.
- (D) Incorrect, the allegations are false and baseless and it is for the appellant to prove.
- (E) Incorrect, that the removal order of the appellant is converted to forfeiture one annual increment to which by taking lenient view while leave with out pay is not considered a punishment as explained in the proceedings Paras of the instant reply.
- (F) Incorrect, the order is legally justified and in accordance with law/Rules.

PRAYERS:

Keeping in view of the above mentioned facts/submission the instant appeal may very kindly be dismissed with cost.


**Commandant,
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.**
Yusuf Insi Legal (Respondent No. 1)


**Deputy Commandant,
Frontier Reserve Police
Khyber Pakhtunkhwa, Peshawar.**
Yusuf Insi Legal (Respondent No. 2)

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A. No. 1368/2013

Rehmat Ali

Versus

Commandant & others

REPLICATION

Respectfully Sheweth,

PRELIMINARY OBJECTION.

All the 6 preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why appeal is time barred, appellant has not come to the hon'ble Tribunal with clean hands, appeal is bad for mis and non-joinder of necessary parties, appellant has no cause of action and locus standi, he has estopped by his own conduct to file the instant appeal and has concealed the material facts from hon'ble Tribunal.

ON FACTS

1. Needs no comments.
2. Not correct. Appellant never absented from law full duty but due to the law and order situation in the area, the Govt. functionaries were totally flopped.
3. Admitted correct by the respondents as appeal of appellant was accepted on 18.06.2010 with direction to department to conduct de novo enquiry but they failed.
4. Not correct. The order attached with the appeal bearing no number and date shows the inefficiency of the respondents.
5. Not correct. The departmental appeal dated 21.01.2011 is attached with the appeal in hand. The appeal was accepted with all back benefits on 22.10.2012.
6. Not correct. Due to the in action of the respondents in the matter, appellant was not liable to any punishment either of forfeiture of annual increment or 189 days leave without pay.

7. Not correct. Representation date 29.04.2013 is the ample proof.

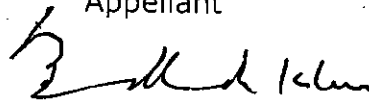
GROUNDS:

All the grounds of the appeal are correct and legal while that of the reply are illegal and incorrect.

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

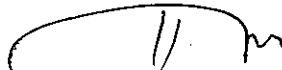
Through

Appellant

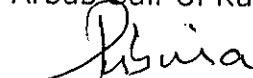


Saadullah Khan Marwat

Dated: .05.2016.



Arbab Saif Ul Kamal



Miss Rubina Naz
Advocates,

AFFIDAVIT

I, Rehmat Ali, 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 and that of the reply are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.

DEPONENT

