

Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u>		
Service Appeal No. 1399/2017		
Date of Institution 30.11.2017 Date of Decision 17.10.2018		
Zubair Shah son of Ghafoor Khan R/O P.O Utmanzai, Mohallah Sultan Abad, Utman Zai Tehsil & District Charsadda.		
Appellant		
Versus		
<ol style="list-style-type: none"> 1. Superintendent of Police Head Quarter, Peshawar. 2. Chief Capital Police Officer, Peshawar Central Police Office Peshawar. 3. Inspector General of Police Khyber Pakhtunkhwa Central Police Office, Peshawar. 		
Respondents		
17.10.2018	Mr. Muhammad Hamid Mughal-----Member	
	Mr. Hussain Shah-----Member	
<u>JUDGMENT</u>		
<u>MUHAMMAD HAMID MUGHAL, MEMBER: - Appellant</u>		
with counsel and Mr. Kabir Ullah Khattak learned Additional Advocate General for the respondents present.		
<p>2. The appellant (Ex-Constable) has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 24.08.2017 whereby he was dismissed from service on the ground/charge of absence from duty w.e.f 23.09.2015 to 15.02.2016 (04-moths & 23-days). The appellant has also challenged the order dated 27.10.2017 through which his</p>		

departmental appeal against the original impugned order was rejected.

3. Learned counsel for the appellant argued that the impugned order is not tenable under the law. Learned counsel for the appellant argued that the appellant got seriously ill and therefore he was unable to join his duties. Further argued that the absence of the appellant was not intentional and legal requirements were not observed prior to the issuance of impugned order. Learned counsel for appellant mainly argued that the appellant had more than nineteen (19) years of service at his credit when the impugned punishment was awarded to him hence the impugned punishment order is extremely harsh and excessive.

4. As against that learned Additional Advocate General argued that the appellant remained absent without any application and permission and that all the codal formalities and legal requirements were observed and thereafter the punishment was awarded to the appellant.

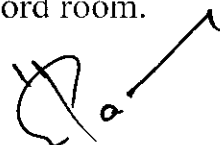
5. Arguments heard. File perused.

6. Admittedly the appellant remained absent from duty without any permission and resultantly he was dismissed from service vide original impugned order dated 24.08.2017. Documents in the shape of charge sheet, statement of allegation, report of inquiry officer, Final Show Cause Notice and reply to Final Show Cause Notice are available on file. In the circumstances of the case learned counsel for the appellant could not demonstrate that the appellant was

wrongly punished. However there is also no dispute that the appellant had already served for nineteen (19) years and that there is no allegation of corruption against him moreover the plea of the appellant is that due to serious illness he could not attend to his duties. In the stated circumstances, when the appellant is a low paid employee, the argument of learned counsel for appellant that the major penalty of removal from service is extremely harsh and excessive, carries weight. Consequently, for the safe administration of justice, the impugned major penalty of removal from service is modified and converted into major penalty of reduction to lower stage in time scale for a period of five (05) years. Resultantly the appellant is reinstated in service. The absence period and the intervening period shall be treated as leave without pay. The present service appeal is accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room.


(Hussain Shah)
Member

ANNOUNCED
17.10.2018




(Muhammad Hamid Mughal)
Member

Form-A

FORM OF ORDERSHEET

Court of _____

Case No. 1399/2017

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	19/12/2017	<p>The appeal of Mr. Zubair Shah resubmitted today by Mr. Muhammad Arif Jan 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 19/12/17</p>
2-	22/12/17	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>03/01/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

03.01.2018


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 in Police Department on 29.04.1999 at District Peshawar. That the appellant performed his duty with utmost obedience and given no chance of displeasure to his superiors. Further argued that the appellant got ill and was advised by his doctor to take rest for some time. That in this respect a colleague of appellant was informed telephonically, but the department without proper procedure and fulfilling the codal formalities conducted ex-parte inquiry, giving no chance of defense to the appellant and later on dismissed the appellant from service vide impugned order dated 24.08.2014 by treating the absence period as ^{leave} without pay. That the appellant was not associated with the inquiry nor allowed to cross examine the witnesses appearing against him. That there was no need of dismissing the appellate from service as the absence was converted into leave without pay. That the appellant has more than 19 years of service at his credit. That the appellant moved departmental appeal to the appellate authority who ignored the relevant provisions of law and dismissed the departmental appeal vide order dated 27.10.2017, which order was never communicated to the appellant and the appellant got copy of the same from the office on 01.11.2017.

(1/1) P

Appellant Deposited
Security & Process Fee

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 19.02.2018 before S.B.


(Gul Zeb Khan)
Member (Executive)

19.02.2018


Appellant in person and Assistant AG 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 06.03.2018 before S.B.



(Gul Zeb Khan)
Member

17.04.2018 Appellant in person and Addl: AG alongwith Mr. Muhammad Raziq, H.C for the respondents present. Written reply submitted. To come up for rejoinder, if any, arguments on 03.07.2018 before D.B.


Member

03.07.2018 Appellant in person and Mr. Ziaullah, Deputy District Attorney for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for rejoinder and arguments on 08.08.2018 before D.B.


(Ahmad Hassan)
Member


(Muhammad Amin Kundi)
Member

08.08.2018

Appellant: Mr. Zubair Shah in person present. Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Appellant submitted rejoinder which is placed on file. To come up for arguments on 04.10.2018 before the D.B


Member


Chairman

04.10.2018

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Arguments heard. To come up for order on 17.10.2018 before D.B

Member


Member

06.03.2018

Clerk of the counsel for appellant present. Mr. Riaz Painsa Khel, Assistant AG alongwith Aziz Shah, H.C for the respondent present. Written reply not submitted. Learned Assistant AG requested for further time adjournment. Request accepted. To come up for written reply/comments on 20.03.2018 before S.B.


(Gul Zeb Khan)
Member

20.03.2018

Appellant in person present. Mr. Kabir Ullah Khattak, Addl: AG alongwith Mr. Aziz Ullah Shah, H.C for the respondent present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply and comments on 02.04.2018 before S.B.


Member

02.04.2018

Appellant in person and Additional: AG alongwith Muhammad Raziq, H.C for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. Last opportunity granted. To come up for written reply/comments on 17.04.2018 before S.B.



(Ahmad Hassan)
Member

The appeal of Mr. Zubair Shah son of Abdul Ghafoor khan post office Urtman Zai Mohallah Sultan Abad Distt. Charsadda received today i.e. on 30.11.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- Annexures of the appeal may be flagged.
- 3- Addresses of respondent No. 2 and 3 are incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 4- The authority to whom the departmental appeal was preferred has not been made a party.
- 5- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
- 6- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2592 /S.T,

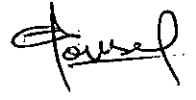
Dt. 04/12 /2017


REGISTRAR - 4/12/17
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Arif Jan Afridi Adv. Pesh.

Respected Sir

Resubmitted after
necessary completion. Therefore,
the instant appeal may kindly
be fixed before the tribunal.

YOUSAF IMRAN
Advocate


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

Service Appeal No. 399 /2017

Zubair Shah **Appellant**

VERSUS

Superintendent of Police & Others **Respondents**

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-4
2.	Affidavit		5
3.	Addresses of Parties		6
4.	Copy of the Service Card	A	7
5.	Copy of Order of Dismissal dated 24-08-2017	B	8
6.	Copy of Departmental Appeal dated 30-08-2017 and Rejection Order dated 27-10-2017	C-D	9-10
7.	Copy of Charge Sheet	E	11
8.	Copy of Statement of Allegation	F	12
9.	Copy of final show cause notice	G	13
10.	Copy of inquiry report	H	14
11.	Copy of reply	I	15
12.	Wakalat Nama		16

Appellant

Through



Muhammad Arif Jan Afridi

Cell: 0333-8807676

&



Yousaf Imran

Arbab Arshad Saeed

Advocates, Peshawar

Date: 30.11.2017

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

Service Appeal No. 1399 /2017

Khyber Pakhtukhwa
Service Tribunal

Diary No. 1371

Dated 30-11-2017

Zubair Shah S/o Abdul Ghafoor Khan, R/o P.O Utman Zai,
Mohalla Sultan Abad, Utman Zai Tehsil & District
Charsadda **Appellant**

VERSUS

1. Superintendent of Police, Head Quarter, Peshawar
2. Chief Capital police officer, Peshawar Central Police office Peshawar
3. Inspector General of police Khyber Pakhtunkhwa Central Police Office, Peshawar

.....**Respondents**

**SERVICE APPEAL U/S 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974, AGAINST THE ORDER DATED
27/10/2017 WHEREBY DEPARTMENTAL
APPEAL AGAINST THE ORDER DATED
24/08/2017 DISMISSING THE
APPELLANT FROM SERVICE WAS
REJECTED/FILED.**

Filed to-day

Registrar
30/11/17

Re-submitted to -day
and filed.

Registrar

Respectfully Sheweth:-

1. That the appellant was appointed on dated 29-04-1999 as constable in Police Department, Distt:

Peshawar (**Copy of the Service Card as annexed as A**).

2. That since his appointment till the date of his dismissal of appellant from service, the appellant performed his duty with utmost obedience and given no chance of displeasure to his superiors.
3. That the appellant got ill and was advised by his doctor to take rest for some time, in this regard the colleges of appellant was informed telephonically, but the department without proper procedure and fulfilling the codel formalities conducted ex-parte inquiry giving no chance of defence to the appellant and later on dismissed the appellant from service, vide order dated 24/08/2014. (**Copy of order of dismissal dated 24-08-2017 is hereby annexed as B**).
4. That the appellant moved departmental appeal to the appellate authority who also ignored the relevant provisions of law and dismissed the departmental appeal vide order dated 27/10/2017, which order was never communicated to the appellant and the appellant got the same for the office of R.No. 2 on 1/11/2017 hence this Appeal on the following grounds: (**Copy of Departmental**

Appeal dated 30-08-2017 and Rejection Order dated 27-10-2017 is Annexed as C and D respectively).

5. That having no other way the appellant compelled to knock the door of this Hon'ble Court on the following grounds:-

GROUND S:-

- A. That the impugned order dated 27-10-2017 is wrong, illegal, malafide based on nepotism hence is untenable in the eye of law.
- B. That the order of dismissal in such like circumstances is Harsh and does not commensurate with the guilt in question.
- C. That the appellant is not associated with the inquiry nor allowed to cross examine the witnesses appearing against him.
- D. That the absence period is treated leave without pay so there was no need of dismissing, the appellante from service.
- E. That the appellant has more than nineteen years of service at his credit and by dismissing the appellant, he has been deprived of his service benefits.

- F. That the appellant reserves the right to agitate any other grounds at the time of hearing.
- G. That any other ground, document or any case law will be produced at the time of arguments if needed.

It is, therefore, most humbly prayed that on acceptance of this appeal, the order of Respondent No. 2 dated 27/10/2017 and original order of Respondent No. 1 dated 24/8/2017 may graciously be set aside and the appellant may kindly be reinstated into his service with all back benefits.

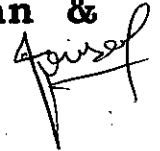


Appellant

Through



**Muhammad Arif Jan
Afridi, Yousaf Imran &
Arbab Arshad Saeed**
Advocates, Peshawar



Date: 30.11.2017

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

Service Appeal No. _____/2017

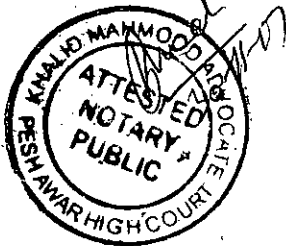
Zubair Shah **Appellant**

VERSUS

Superintendent of Police & Others **Respondents**

A F F I D A V I T

I, Zubair Shah S/o Abdul Ghafoor Khan R/o P.O Utman Zai, Mohalla Sultan Abad, Utman Zai Tehsil & District Charsadda, do hereby solemnly affirm and declare on oath that the contents of the accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



Zubair
DEPONENT

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

Service Appeal No. _____/2017

Zubair Shah **Appellant**

VERSUS

Superintendent of Police & Others **Respondents**

ADDRESSES OF PARTIES

APPELLANT

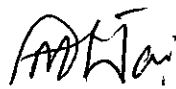
Zubair Shah S/o Abdul Ghafoor Khan, R/o P.O Utman Zai, Mohalla Sultan Abad, Utman Zai Tehsil & District Charsadda

RESPONDENTS

1. Superintendent of Police, Head Quarter, Peshawar
2. Chief Captial police officer, Peshawar Central
Police office Peshawar
3. Inspector General of police Khyber Pakhtunkhwa
Central Police Office, Peshawar

Appellant

Through


Muhammad Arif Jan Afridi, Yousaf Imran & Arbab Arshad Saeed
 Advocates, Peshawar

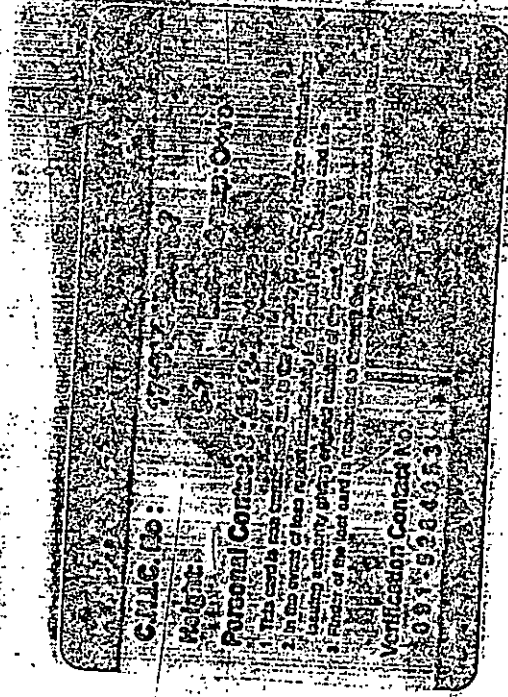
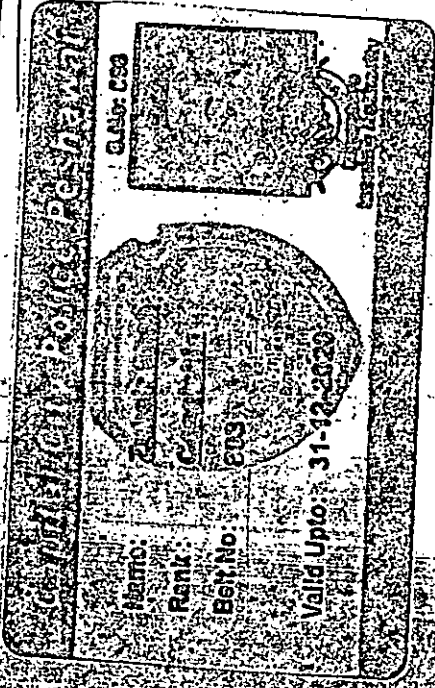
Date: 30.11.2017

7

Annexure 'A' Just
ATTESTED

Attested to
be true copy

Official



ORDER

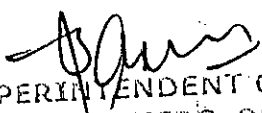
This office order relates to the disposal of formal departmental enquiry against Constable Zubair No.803 of Capital City Police Peshawar on the allegations that he while posted at Police Lines, Peshawar absented himself from lawful duty w.e.f 23.09.2015 to 15.02.2016 (04-months & 23-days) without taking permission or leave.

In this regard, he was issued charge sheet and summary of allegations. SDPO Rural was appointed as Enquiry Officer. He conducted the enquiry and submitted his report that defaulter official did not attend the enquiry proceedings. The E.O further recommended for taking ex-parte decision against defaulter official vide Enquiry Report No.722/S dated 17.03.2017.

Upon the finding of Enquiry Officer, he was issued final show cause notice which he received & replied. He was called & heard in person. His explanation found un-satisfactory.

In the light of recommendations of E.O & other material available on record, the undersigned came to conclusion that the alleged official found guilty of prolong absence. Therefore, he is hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect. Hence, the period he remained absent from 23.09.2015 to 15.02.2016 is treated without pay.

Enc (46)


SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

OB. NO. 3228 / Dated 23/8 /2017

No 4231-37 /PA/SP/dated Peshawar the 24/8 /2017

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

- ✓ Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office, OASI, CRC & FMC along-with complete departmental file.
- ✓ Officials concerned.

57
16

(8)

Annexure - B
fused

ATTESTED

9) خدمت کیپٹن ٹی پولیس آفیسر پشاور

Annexure - 1

گورنمنٹ درخواست برآمد بحالی دوبارہ نوکری

ATTESTED

Dy: No. 270 PA-CCPO
Dt: 28.8.2017
Encl: 1

No 122-LB of 3070812017

گزارش ہید سٹل کر خباب SP صاحب ہید ڈکٹریٹ بوج غیر عارضی
محکم پولیس سے علیحدہ کیا ہے۔ سائل کی غیر عارضی قصداً

بہن تھی بلکہ بوج بیماری (گردوں میں درد) کی وجہ سے سرزد ہوئی

گردوں میں تکلیف کی وجہ سے سائل کو آپریشن ڈیوٹی

سراخام دینے میں وقت گھسکی جو تھی تھی اسلئے غیر عارضی

سرزد ہوئی۔ خباب والا سائل غریب آدمی ہے بالکلے دار

جے ادر پولیس کی تنخواہ سے اپنا ادراہوں کا پیٹ پالنا تھا

نذریع درخواست استدعا ہید سائل ایب آفزا چالان

کے اعمال کرنے سے مشورہ نہ مائیں جو عمر سائل کی

مور 28.8.2017

العارضی

FME put up record

نمبر 803 سال دس ستمبر

03059489421

Dy. Supt: Police
Legal, CCI/Peshawar

30708117

DSP-L
Per Comments Pl.

Handwritten signature



OFFICE OF THE
CAPITAL CITY POLICE OFFICER,
PESHAWAR

Phone No. 091-9210989

Fax No. 091-9212597

Amirune - 10
ATTESTED

ORDER

This order will dispose off departmental appeal preferred by ex-constable Zubair Shah No. 803 who was awarded the major punishment of **Dismissal** from service under P.R 1975 vide O.B No. 3228 dated 23.08.2017 by SP-HQrs: Peshawar.

2 The allegation leveled against him were that he while posted at Police Lines Peshawar absented himself from duty w.e.f 23.9.2015 to 15.2.2016 (**4-months & 23-days**)

3 Proper departmental proceedings were initiated against him and SDPO Rural was appointed as enquiry officer. Who in his findings mentioned that the defaulter official did not attend the enquiry proceedings. The enquiry officer found him guilty of the allegations leveled against him. On receipt of the findings of the enquiry officer, the SP-HQrs: Peshawar issued him FSCN which he replied. The same was perused and found unsatisfactory by SP-HQrs: Peshawar as such awarded him the above major punishment.

4 The relevant record has been perused along and also heard him in O.R on 25.10.2017. The enquiry papers were perused in detail. He was provided opportunity to defend himself but he failed to offer any plausible explanation in his favour. The allegations leveled against him stand proved. There is no need to interfere in the order passed by SP-HQrs: Peshawar, therefore, the appeal is **rejected/filed**

(MUHAMMAD TAHIR) PSP
CAPITAL CITY POLICE OFFICER,
PESHAWAR

No. 1354-58 /PA dated Peshawar the 27/10 /2017.

Copies for information and n/a to the:-

1. SP/HQs: Peshawar.
2. PO/OASI/CRC (along with complete Service Roll for making necessary entry),
3. FMC (Along with complete F.M)
4. Official concerned.

CHARGE SHEET

P-11

Annex - E
ATTESTED
J. J. J.

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Zubair No.803 of Capital City Police Peshawar with the following irregularities.

"That you Constable Zubair No.803 while posted at Police Lines, Peshawar were absent from duty w.e.f. 23.09.2015 till date, without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

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

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

16/2

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Zubair No.803 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

P- (12)
Annex - F
ATTESTED
[Signature]

STATEMENT OF ALLEGATION

"That Constable Zubair No.803 while posted at Police Lines, Peshawar absented himself from duty w.e.f 23.09.2015 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

(2)

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPo Rural is appointed as Enquiry Officer.

2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.
3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

[Signature]
SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR *[Signature]*

No. 57 /E/PA, dated Peshawar the 16/02 /2016

1. SDPo, Rural is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.
2. Official concerned

FINAL SHOW CAUSE

E

4P

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6

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Zubair No.803 the final show cause notice.

Annex -
fares
ATTESTED

The Enquiry Officer, SDPO Rural, after completion of departmental proceedings, has recommended you for ex-parte decision for you Constable Zubair No.803 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Zubair No.803 deserve the punishment in the light of the above said enquiry reports.

I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

Basir

SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

No. 57/4 /PA; SP/HQrs: dated Peshawar the 28/3 /2017.

Copy to official concerned

ایس ایف ڈی کے لئے کاپی ارسال شد

Basir

8/5/17

TP - (14) H
Answer
forwarded
ATTESTED

From: The Sub-Divisional Police Officer,
Rural Peshawar.

To: The Superintendent of Police,
Headquarters, Peshawar.

Subject: DISCIPLINARY ACTION AGAINST CONSTABLE ZUBAIR NO. 803 OF POLICE STATION
BADABER, PESHAWAR.

Kindly refer to your office No. 57/E-PA dated 16.02.2016 on the subject cited above.

ALLEGATIONS:

Constable Zubair No. 803 while posted at police station Badaber, Peshawar was absent from the lawful duty without taking any leave or permission from his senior officer vide DD No. 17 dated 23.09.2015 to till date. In this regard, he was issued charge sheet and statement of allegations by the worthy SP Headquarters, Peshawar and the undersigned was appointed as E.O to scrutinize the conduct of the said official.

PROCEEDINGS:

Accordingly the alleged FC was called several times through this office parvanas No.662/S dated 08.03.2017 and No. 492/S dated 22.02.2017 to attend the office of the undersigned but he did not attend the enquiry proceedings by reasons known to him.

FINDINGS/RECOMMENDATIONS:

During the course of enquiry conducted so far, I am of the opinion that the alleged constable Zubair No. 803 may kindly awarded the major punishment on grounds of ex-parte decision, if approved please.

Submitted for your kind orders.

(4)

No. 722/S

17-3-17

encl(12)

ENQUIRY OFFICER
SUB-DIVISIONAL POLICE OFFICER
RURAL PESHAWAR

Issue proved
show cause notice

[Signature]
SP HQMT
17/03/17

(12)

پا (بڈکوائٹرز) صاحب عکلمہ پولیس پشاور

مخبریت جناب

15
Annex
48
ATTACHED

جناب عالی!

57/E/PA-SP/HQ's:سوالہ چھی نمبر ہے کہ سائل بحوالہ چھی نمبر

سوفہ 28.3.17 کہ عرض رساں ہے کہ مذکورہ چھی ٹیجے 10.5.17 کو

سہولت ہوئی۔ میں بیمار تھا اور گرجوں کے عارفے میں مبتلا

ہوتے کی وجہ دفتر حاضر نہیں سکا۔ بدھ پیر تھانے میں دوران

دیوٹی گھر سے آنے میں سیرنگی سیرنگی کے پیشہ کہیں کہیں گئے

آپ سے ملحق ہوں کہ مذکورہ بالا حقائق کی روشنی میں

سائل کو صاف فرمایا جائے۔ سائل آئندہ محتالار ہے گا۔

عین نواز شہرگی

Ref



التماس

AMJS متعینہ

Handwritten signature

803

17-5-17

قیمت 50 روپے	 	17344
ایڈوکیٹ:	پشاور بار ایسوسی ایشن، خیبر پختونخواہ	
بار کونسل ایسوسی ایشن نمبر:	BC-145066	
رابطہ نمبر:	03338807676	

بجالت جناب: Before K.P.K Services Tribunal

مخانب: Appelant	دعویٰ: سر و سب ایل
زبیر شاہ	علت نمبر: ایل نمبر 1399/2017
بنام	مورخہ:
سپرٹنڈنٹ پولیس ٹھیکہ	جرم:
	تھانہ:

باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کارروائی متعلقہ
آن مقام پشاور کیلئے عارف جان آفریدی، لوسٹو پاران کو وکیل مقرر
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 30/11/2017

المقام: _____ واہ شد _____

مقام: _____ کے لیے منظور ہے۔

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Attest

Attested & accepted

Attested & accepted
Fazal

زبیر شاہ ولد عبدالغفور خان لکھنے طالبہ اعجازی
وکیل و ضلع کارگل

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

Service Appeal No.1399/2017

Zubair Shah Ex-Constable No. 803, s/o Abdul Ghafoor R/O Mohallah Sultan
Abad Utmanzai District Charsadda.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs: Peshawar.....Respondents.

Reply on behalf of Respondents No. 1, 2, & 3.

Respectfully shewth:.

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has not come to this Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant concealed the material facts from Honorable Tribunal.
7. That the appellant got no locus standi and cause of action to file the instant appeal.
8. That the appeal is not maintainable in its present form.

FACTS:-

- 1- Para No.1 pertains to record, hence needs no comments.
- 2- Para No.2 is incorrect and denied. In fact the appellant is a habitual absentee and this is his second major punishment of dismissal on willful absence.(previous punishment order is annexure "A")
- 3- Para No.3 is totally incorrect. In fact the appellant while posted at Police Lines, Peshawar absented himself from his lawful duty w.e.from 23.09.2015 to 15.02.2016 (Total 04 Months & 23 days) without taking permission or leave. In this regard, he was issued charge sheet and summary of allegations. SDPO/Rural was appointed as enquiry officer. He summoned time and again but he did not bother to attend the enquiry proceedings. Upon the finding of enquiry officer he was issued

Final Show Cause Notice to which he received and replied. He was called and heard in person, but his explanation found unsatisfactory. As the charges of deliberate absence were stood proved against him, hence he was awarded major punishment of dismissal from service. (Copy of charge sheet, statement of allegations, enquiry report and final show cause notice are annexed B, C, D, and E).

- 4- Para No. 4 is incorrect. The appellant preferred a departmental appeal before the appellate authority, which after due consideration was filed/rejected, because the charges of deliberate absence were stood prove against him. It is worth to mention here that prior to this he was also awarded major punishment of dismissal from service for willful absence which shows that he is not interested in his lawful duty.
- 5- The appeal of the appellant being devoid of merits may kindly be dismissed of following grounds.

GROUND:-

- A- Incorrect. The punishment order is legal as per law/rules.
- B- Incorrect. The appellant was treated as per law and rules. All the codal formalities were fulfilled. The appellant was given proper opportunity of personal hearing and defense before passing the impugned orders.
- C- Incorrect. The appellant was properly associated with the enquiry proceedings. He was called time and again to defend himself but he did not turn up. After fulfilling all codal formalities he was recommended for major punishment.
- D- Incorrect. The punishment order is just, legal and have been passed in accordance with law and rules.
- E- Para pertains to record, hence needs no comments.
- F- That the respondent also seeks permission of this Honorable Service Tribunal to raise additional grounds at the time of arguments.
- G- That the respondent may also be allowed to advance any additional ground/documents at the time of hearing the appeal.

PRAYERS:-

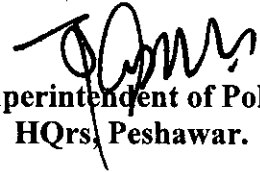
It is therefore most humbly prayed that in light of above stated facts/ submissions, the appeal of the appellant may kindly be dismissed being devoid of merit and baseless.



**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**



**Capital City Police Officer,
Peshawar.**



**Superintendent of Police,
HQrs. Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.1399/2017.

Zubair Shah Ex-Constable No. 803, s/o Abdul Ghafoor R/O Mohallah Sultan Abad Utmanzai District Charsadda.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs: Peshawar:.....Respondents.

AFFIDAVIT.

We respondents No. 1,2 & 3 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.



Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.



Capital City Police Officer,
Peshawar.



Superintendent of Police,
HQrs, Peshawar.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No.1399 /2017

Zubair Shah Ex-constable

VERSUS

Provincial Police Officer,
KPK Peshawar & others

Appellant's rejoinder

Respectfully Sheweth:

Preliminary Objections:

All the Preliminary objections raised by the respondents are illegal and incorrect no reason has been given as to why and how the appeal is time barred, bad for misjoinder and non-joinder, unclean hands, no cause of action, estoppel, concealment of facts, locus standi and non-maintainable..

ON FACT:

- 1- Needs no comments.
- 2- Para No.2 of the comments is denied. Previous punishment should not come in way of

Place on file
9/9/2018

substantial justice, beside the wrong doing is condoned by the competent authority.

3- Para No.3 of the comments is denied, the absence was not willful but due to severe illness and sufficient amount of leave was available in credit of appellant, therefore, the punishment is harsh and does not commensurate with the guilt, beside ex parte proceeding conducted and the appellant is not allowed to participate in the proceedings, thereby nullifying the whole proceedings.

4- Para No.4 of the comments denied. The appellate authority did not considered genuine ground of the departmental appeal and fail to arrive at a just decision in accordance with law, moreover, the appellate order is violation of service rules and 24-A of General Causes Act.

5- Para No.5 of the comments denied the appeal of appellant is genuine and based on merits

Grounds:

Reply to grounds, all grounds of the appeal are legal and genuine and the reply of respondents are incorrect and grounds of appeal retreated.

It is, therefore, humbly prayed that on acceptance of appeal by setting aside both the impugned orders the appellant be reinstated in service with all back service benefits.

Note: That the appellant has been dismissed and the period of absence has been treated without pay so he should not have been dismissed as absence period was condemned unheard by the authority. Moreover the appellant has move the 19 years, so he should have been given pensionary benefits for the rendered services.

Dated: 06/08/2018



Appellant

Through



Muhammad Arif Jan Afridi

Yousaf Imran Khatki
Advocates, Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No.1399 /2017

Zubair Shah Ex-constable

VERSUS

Provincial Police Officer,
KPK Peshawar & others

Affidavit

I, Zubair Shah, Ex-Warder Constable do hereby solemnly affirm and state on oath that all contents of appeal and rejoinder are true and correct to the best of my knowledge and belief and nothing wrong has been stated by me in the matter.

Zubair Shah

DEPONENT

ATTESTED

