

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 666/2019

Date of Institution ... 22.05.2019

Date of Decision ... 17.09.2019

Muhammad Waqar Khan son of Torullah Khan R/O Tordhair, Tehsil Lahor District Swabi. ... (Appellant).

VERSUS

Inspector General of Police Khyber Pakhtunkhwa, Peshawar and others. ... (Respondents)

Present.

Mr. Rahmanullah,
Advocate. ... For appellant

MR. HAMID FAROOQ DURRANI, ... CHAIRMAN

JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

1. The appellant is aggrieved of order dated 05.11.2015 passed by District Police Officer Swabi whereby major punishment of dismissal from service was imposed upon him. He is also aggrieved of the order passed on his departmental appeal by Regional Police Officer Mardan on 22.01.2019. Through the order the departmental appeal was rejected also being barred by time.

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

3. As per record the appellant was transferred from National High Way/Motor Way Police to District Police Swabi and was due to report for duty on 17.01.2015. He, however, did not report and remained absent till the passing of impugned order dated 05.11.2015. In his departmental appeal the appellant has submitted that due to animosity in the village and also the fact that he was not given

posting upon transfer he left his village and the proceedings were taken in his absence.

Obviously, when the appellant had left his available address and did not inform the respondents about his whereabouts, he was to be proceeded against ex-parte, more particularly, when the appellant failed to submit any reply to the show cause notice.

4. It is also a fact that the departmental appeal by the appellant was delayed by years and was rejected on that score also. It is equally pertinent to note that after rejection of his departmental appeal on 22.1.2019 the service appeal in hand was preferred on 22.05.2019, which was also clearly beyond the period of limitation provided for the purpose.

5. In light of the above the appeal in hand does not merit admission for regular hearing and is dismissed in limine.

File be consigned to the record room.



(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
17.09.2019

02.08.2019

Learned counsel for the appellant present submitted application for condonation of delay, placed on file. The appellant was awarded major punishment of dismissal from service vide order dated 05.11.2015 on the ground of absence from duty. The departmental appeal undated was rejected on merits as well as being time barred vide order dated 22.01.2019. Learned counsel for the appellant seeks adjournment to assist this Tribunal on the issue of limitation/maintainability. Adjourn. To come up for preliminary hearing on 17.09.2019 before S.B.



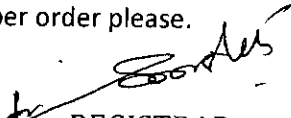


Member

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 666/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/05/2019	<p>The appeal of Mr. Muhammad Waqar Khan presented today by Mr. Rehmanullah 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</p>
2-	23/05/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>24/06/19</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	24.06.2019	<p>Learned O counsel for the appellant present and seeks adjournment. Adjourn. To come up for preliminary hearing on 02.08.2019 before S.B</p> <p style="text-align: right;"> Member</p>

IN THE SERVICE TRIBUNAL, K.P.K PESHAWAR

Service Appeal No. 666 /2019

Muhammad Waqar Khan S/o tor ullah Khan R/o tor dhair, Tehsil Lahor District Swabi

.....Appellant

VERSUS

Inspector General of Khyber PukhtoonKhwa & Others

.....Respondents

INDEX

S.NO	Description Of Documents	Annex	Pages
1	Grounds of Service Appeal		1-2
2	Affidavit		3
3	Addresses of Parties		4
4	Copy of Order Dated 05-11-2015	A	5
5	Copy of Appeal	B	6
6	Copy of order dated 22-01-2019	C	7
7	Wakalatnama		8


Appellant

Through


Rahman Ullah

And


ASIM KHAN

Advocate Peshawar

①

IN THE SERVICE TRIBUNAL, K.P.K PESHAWAR

Service Appeal No 666 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 799

Dated 22/5/2019

Muhammad Waqar Khan S/o tor ullah Khan R/o tor dhair, Tehsil Lahor District Swabi

.....Appellant

VERSUS

1. Inspector General of Khyber PukhtoonKhwa, Central Police Officer, Peshawar
2. Regional Police Officer Mardan.
3. Deputy Inspector General Mardan Mardan
4. District Police Officer Swabi

.....Respondents

SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 AGAINST THE ORDER VIDE
O.B NO 1440 DATED 05-11-2015 OF DISTRICT POLICE OFFICER
SWABI AND ORDER VIDE NO 607/ES DATED 22-01-2019 OF
REGIONAL POLICE OFFICER MARDAN

Prayer in Appeal:

Filed to-day

Registrar

ON ACCEPATNCE OF THIS APPEAL THE ORDER VIDE O.B NO 1440 DATED 05-11-2015 OF DISTRICT POLICE OFFICER SWABI AND ORDER VIDE NO 607/ES DATED 22-01-2019 OF REGIONAL POLICE OFFICER MARDAN MAY KINDLY BE SETASIDE AND THE APPELLANT MAY GRACIOUSLY BE REINSTATED WITH ALL BACK BENEFIT

Respectfully Sheweth:

1. That the appellant was appointed as constable in Police Department on 12-02-2008.
2. That the appellant was performing his services with the entire satisfaction of their high-ups.
3. That the appellant was transferred to DPO Swabi from NH&MP on 31-12-2014 and he reported to the office concern immediately but he was not adjusted by the DPO swabi due to no vacant vacancy.
4. That by awarding major punishments, the appellant was removed/dismissed from the services vide order O.B No.1440 Dated 05-11-2015.
5. That the appellant had filed departmental appeal before the respondents which was dismissed vide order No.607/ES Dated 22-01-2019.

2

That being aggrieved from the said orders passed, Approached this Honourable Tribunal on the following Grounds.

GROUND:

- A. That the impugned orders are illegal, unlawful and against natural justice.
- B. That after transfer to DPO Swabi, the appellant immediately reported the office of DPO Swabi.
- C. That the appellant waiting for his adjustment for a long time and lastly he left his village for some earning.
- D. That the impugned orders are totally unfair, biased and not according to circumstances of the case in hand.
- E. That the allegation against appellant is baseless and without any proof but awarding major punishment which is against the basic principles of service rules.
- F. That no proper inquiry has conducted by the respondents.
- G. That the appellant was not properly adopted the way of inquiry and no final show cause was issued to the appellant which is unjust and against the law.
- H. That the harsh punishment awarded by respondent is not according to the Law and it is nowhere mentioned in either police or other service rules.
- I. That the appellant has not been treated in accordance with law as provided and guaranteed under the constitution of 1973.
- J. That any other ground may be forwarded at the time of arguments with the kind permission of this Hon, ble court.

It is therefore humbly prayed that on Acceptance Of This Appeal The Order Vide O.B No 1440 Dated 05-11-2015 Of District Police Officer Swabi And Order Vide No 607/Es Dated 22-01-2019 Of Regional Police Officer Mardan May Kindly Be Set-a-side And The Appellant May Graciously Be Reinstated WITH ALL BACK BENEFIT

AND Any other remedy which the court deems fit & proper may also be granted in favour of the petitioner against the respondents with cost.



Appellant

Through



RAHMAN ULLAH

&

ASIM KHAN

Advocates

IN THE SERVICE TRIBUNAL ,K.P.K PESHAWAR

Service Appeal No. _____/2019

Muhammad Waqar Khan S/o tor ullah Khan R/o tor dhair, Tehsil Lahor District Swabi

.....Appellant

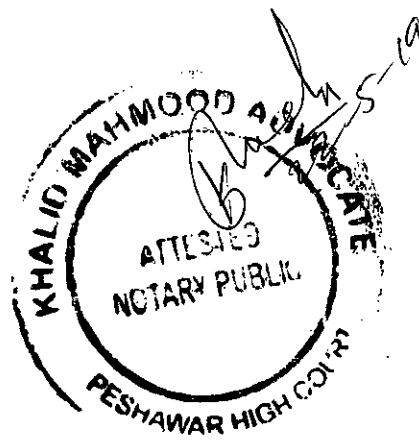
VERSUS

Inspector General of Khyber PukhtoonKhwa & Others

.....Respondents

Affidavit

I, Amjid Muhammad Waqar Khan S/o tor ullah Khan R/o tor dhair, Tehsil Lahor District Swabi, do hereby solemnly declare on oath that contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.



DEPONENT

IN THE SERVICE TRIBUNAL ,K.P.K PESHAWAR

Service Appeal No. _____/2019

Muhammad Waqar Khan S/o tor ullah Khan R/o tor dhair, Tehsil Lahor District Swabi

.....Appellant

VERSUS

Inspector General of Khyber PukhtoonKhwa & Others

.....Respondents

APPELLANT

Muhammad Waqar Khan S/o tor ullah Khan

R/o tor dhair, Tehsil Lahor District Swabi

RESPONDENTS:

1. Inspector General of Khyber PukhtoonKhwa,
Central Police Officer, Peshawar
2. Regional Police Officer Mardan.
DPO Office, Mardan
3. Deputy Inspector General Mardan
Mardan
4. District Police Officer Swabi
DPO Office, Swabi



Appellant

Through



Rahman Ullah

Advocate Peshawar

(374)

A (5)

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI

ORDER

It is alleged that that Constable Waqar Khan No.374, while under transfer to District Police Swabi from NH&MP, was due to report for duty on 17.01.2015, but he did not report till date, which is highly against the discipline and amounts to gross mis-conduct.

Therefore, he was served with Charge Sheet and Summary of allegations. DSP, H.Qrs Swabi was appointed as Enquiry Officer. The Officer conducted proper departmental enquiry, collected evidence and recorded statements of all concerned. He submitted his findings wherein he found Constable Waqar Khan No.374, guilty for the mis-conduct and recommended him for Major punishment. The undersigned perused the enquiry papers, findings and by agreeing with the Enquiry Officer served him Final Show Cause Notice through local Police on 25.09.2015. He was clearly directed to submit his reply to the Final Show Cause Notice within seven days, but he failed to submit the same. He was also informed through Newspaper, but he did not appear before the undersigned, which means that he has nothing to offer in his defence and deserve ex-parte action.

Therefore, I, **Javed Iqbal, PSP**, District Police Officer, Swabi, in exercise of the powers vested in me under Khyber Pakhtunkhwa Police Rules 1975, hereby award Constable Waqar Khan No.374 Major Punishment of Dismissal from service from the date of his absence.

C.B No. 1140
Dated 05.11.2015

(Signature)
(JAVED IQBAL) PSP
District Police Officer, Swabi.

OFFICE OF THE DISTRICT POLICE OFFICER, SWABI.

No 2236-38/PA, dated Swabi, the 6-11-2015.

Copies to the: -

1. Pay Officer.
2. Establishment Clerk.
3. Fauji Missal Clerk.

ATTESTED

(Signature)
PIO
District Police Officer, Swabi.

ATTESTED
To Be True Copy

(Signatures)

(6) B

بخدمت جناب انسپکٹر جنرل آف پولیس کے۔ پی۔ کے
جناب عالی!

گزارش ہے کہ میں موٹروے پولیس میں ڈیپوٹیشن
پر تعینات تھا۔ لہذا ڈیپوٹیشن سے واپسی پر ڈی۔ پی۔ او ہوائی
کے دفتر میں رپورٹ کرنے حاضر ہوا۔ لیکن دفتر والوں نے یہ کہہ
کر مجھے رخصت کیا کہ ہمارے پاس کوئی اسامی غلطی نہیں۔ اسلئے
آپ کو انتظار کرنا پڑے گا۔ لہذا مجبوراً مجھے انتظار ہی کرنا پڑا۔
لیکن کوئی شنوائی نہ ہوئی۔

جناب عالی! گاؤں میں دشمنی ہونے کی وجہ سے گزارا وقت
بہت مشکل سے چلا رہا تھا۔ ایک طرف دشمنی کا خطرہ تھا۔ اور
دوسری طرف بیٹھے بیٹھے معاشی مسائل جنم لے رہے تھے۔ اسلئے
تذکرہ آفری کارٹھنٹ منزدوری کھلے گاؤں چھوڑنا پڑا اور
پھر پیری ٹیپ موجودگی میں ڈی۔ پی۔ او صاحب ہوائی نے آرڈر
نمبر 1440 مورخہ 2015-11-05 کے تحت مجھے نوکری سے برخواست کیا۔

جناب عالی! اسلئے آپ سے بزدلوں، در خواست اسٹریٹ
پے۔ کہ میرے اور میرے بچوں کے حال پر رحم کر کے مجھے اپنی
نوکری پر بحال کرنے کا حکم صادر فرمادیں۔ جسکے لیے میں تاحیات
دعا لورے ہوں گا۔

العارض

ایکس کا نسٹیل محمد وقار خان C-374 تعیناتی ضلع ہوائی
موبائل نمبر 0302-5774206

ATTESTED
To Be True Cop,

7


ORDER.

This order will dispose-off the departmental appeal preferred by Ex-Constable Waqar Khan No. 374 of Swabi District Police against the order of District Police Officer, Swabi, wherein he was awarded Major Punishment of dismissal from service by the District Police Officer, Swabi vide his office OB: No. 1440 dated 05.11.2015

Brief facts of the case are that the appellant was transferred from Motorway Police to Swabi District was due to report for duty on 17.01.2015 but he did not report till date, which is highly against the discipline and amounts to gross misconduct. He was Charge Sheeted and Summary of allegations and DSP/HQrs: Swabi was appointed as Enquiry Officer. The Officer conducted proper departmental enquiry collected evidence and recorded statements of all concerned. The Enquiry Officer submitting his findings wherein he found the appellant guilty for the misconduct and recommended him for Major Punishment. The District Police Officer, Swabi perused the enquiry papers, findings and by agreeing with the Enquiry Officer served him Final Show Cause Notice through local Police on 25.09.2015. He was clearly directed to submit the same. He was also informed through News papers, but he did not appear before the District Police Officer, Swabi which means that he has nothing to offer in his defence and deserve ex-parte action. Therefore the appellant was dismissed from service from the date of his dismissal.

The appellant has not appeared twice in Orderly Room on 08.01.2018 & 15.01.2019 and his appeal is also badly time barred, hence appeal is rejected/fled.

ORDER ANNOUNCED.


o/c (MUHAMMAD ALI KHAN) PSP
Regional Police Officer,
Mardan.

No. 607 /ES,

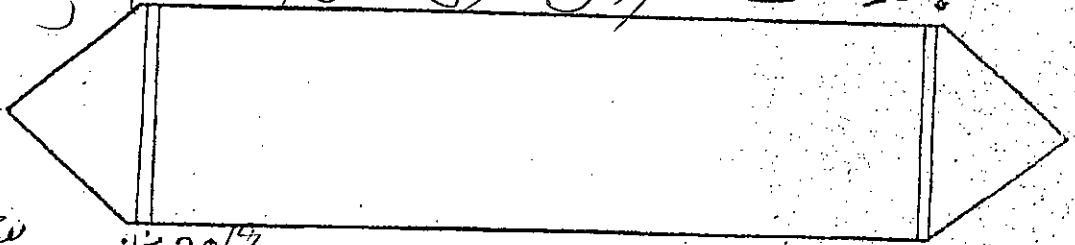
Dated Mardan the 22/01 /2019.

Copy to District Police Officer, Swabi for information and necessary action w/r to his office Memo: No. 259/Insp: Legal dated 28.12.2018. The Service Record is returned herewith.

(*****)

ATTESTED
To Be True Copy


بعدالت سرویس لٹرائچی یونٹ، کراچی



2019ء پنجاب
بنام انسپکٹر جنرل ٹریفک
پولیس

محمد طارق خان

22-05-2019

Appeal

موزونہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکھ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
 آن مقام لسٹ اجرا کیلئے (رجان اللہ، عام خلاف العملہ کیلئے)
 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 ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
 بسورت ڈگری کرنے اجراء اور وصولی چیک در و پیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بسورت ضرورت مقدمہ مذکور
 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 بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
 پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے وہدگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکور کریں۔ لہذا ادکالت نامہ لکھد یا کہ سند ہے۔

Attest
Accepted

الرتوم 22 ماہ 5 2019

بمقام
 کے لئے منظور ہے۔
 Karim
 G. S. I. A.
 Pabain

1-0591911-7764650-1
Qay 17201-7764650-1

IN THE SERVICE TRIBUNAL ,K.P.K PESHAWAR

Service Appeal No. _____/2019

Muhammiad Waqar Khan S/o tor ullah Khan R/o Tor Dhair, Tehsil Lahor District Swabi

.....Appellant

VERSUS

Inspector General of Khyber PukhtoonKhwa & Others

.....Respondents

APPLICATION FOR CONDONATION OF DELAY

Respectfully shweth;

1. That the above titled appeal is pending before this honourable tribunal.
2. That by awarding major punishments, the appellant was removed/dismissed from the services vide order O.B No.1440 Dated 05-11-2015.
3. That the appellant had filed departmental appeal before the respondents which was dismissed vide order No.607/ES Dated 22-01-2019 thereafter appellant approached this honourable tribunal.
4. That due to some unavoidable situation mentioned in the appeal the appellant was not challenged the impugned order before the departmental authority and before this honourable tribunal within time.
5. That the appellant was transferred to DPO Swabi from NH&MP on 31-12-2014 and he reported to the office concern immediately but he was not adjusted by the DPO swabi due to no vacant vacancy.
6. That the appellant waiting for his adjustment for a long time and lastly he left his village for some earning.
7. That any other ground may be forwarded at the time of arguments with the kind permission of this Hon, ble court.

It is therefore humbly prayed that on Acceptance Of This application the delay may kindly be condoned for the sake of justice.

Appellant

Through

ASIM KHAN

Advocate, High Court