

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1682/2020

Date of Institution ... 02.03.2020

Date of Decision ... 10.01.2022

Habib Shah, No. 1710 S/o Rahim Shah R/o Haji Mian Kalay, Jehangir Abad P/o Kalpani Railway Station, Tehsil Takht Bhai, District Mardan.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary, Home & Tribal Affairs, Civil Secretariat, Peshawar and three others.

... (Respondents)

Taimur Ali Khan,
Advocate

... For Appellant

Muhammad Adeel Butt,
Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

...
...

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

Brief facts of the

case are that the appellant joined Police Department as Constable in 2011. During the course of his service, the appellant was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 03-11-2016. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide order dated 31-03-2017. The appellant filed revision petition, which was also rejected vide order dated 17-07-2018, hence the instant service appeal with prayers that the impugned orders dated 03-11-2016, 31-03-2017 and 17-07-2018 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the impugned appellate order dated 17-07-2018 was communicated to the appellant on 20-02-2020 and just after communication of the order, the appellant filed the instant service appeal on 03-03-2020, hence the delay in filing service appeal was not intentional; that aggrieved civil servant could prefer representation to prescribed authority or appeal to Tribunal from the date of communication of the impugned order. Reliance was placed on 2011 SCMR 1111; that in the impugned order of dismissal, absence period of the appellant was treated as leave without pay, thus his absence period was regularized and there remains no ground to further penalize the appellant; that the appellant has not been treated in accordance with law, as no proper inquiry was conducted, thus the appellant was condemned unheard; that absence of the appellant was not intentional but was due to compelling reason of his illness and such stance had already been taken by the appellant in his departmental appeal, but such aspect of the appellant was not taken into consideration; that the penalty so awarded is harsh, which does not commensurate with gravity of the guilt.

03. Learned Additional Advocate General for official respondents has contended that the appellant has properly been proceeded against by issuing him charge sheet/statement of allegations and the same were received by the appellant himself on 05-09-2016; that the appellant willfully absented himself from lawful duty without permission of the competent authority; that proper inquiry was conducted by DSP Headquarters and during the course of inquiry, the appellant was afforded appropriate opportunity of defense; that the appellant was issued show cause notice but the appellant failed to prove his innocence; that departmental appeal of the appellant was rejected being devoid of merit.

04. We have heard learned counsel for the parties and have perused the record.

05. Record reveals that the appellant while performing duty with a Polio team, was attacked by miscreants on 19-05-2015 and the appellant sustained firearm injuries, who was shifted to the hospital, where he was under treatment for quite long time, which is evident from the letter dated 03-08-2015 of District Police Officer addressed to Medical Superintendent regarding health condition of the appellant. After resuming duty, the appellant was posted at a station, where he was allegedly found absent and the appellant was proceeded against and was ultimately dismissed from service vide order dated 05-01-2016. The appellate authority however, vide order dated 24-02-2016 re-instated him into service by converting his major penalty into minor penalty of stoppage of two increments.

06. In the meanwhile, a letter was received from Public Prosecutor Anti-Terrorist Court vide his letter dated 19-01-2016 that the appellant had denied his statement in the court of law in a case, in which the appellant had sustained firearm injuries. Upon such allegations, explanation dated 29-02-2016 of the appellant was called followed by a show cause notice issued on 10-03-2016. The appellant responded to the show cause that the appellant could not recognize the culprits as he was injured and was not in his senses; hence, he had given correct statement in the court of law. Record is silent as to whether the appellant was further proceeded or not in that case, but the appellant was again transferred to the same station, where the appellant was earlier proceeded on the charges of absence. Again, the appellant was proceeded against on the charges of absence and was issued charge sheet/statement of allegations and inquiry was conducted. The appellant in response to the show cause notice had submitted his reply reiterating the stance that absence of the appellant was not willful but was due to his illness and also submitted his medical prescriptions, which were checked by the inquiry officer but were not taken into consideration. The appellant in reply to show cause notice had pointed out that he was not absent from duty on the

second occasion but the respondents wanted to penalize me for a fault, for which I had already been penalized.

07. We have observed that absence of the appellant was neither so long nor willful but was due to compelling reason of his illness, which however was not taken into consideration. Even otherwise absence on medical grounds without permission of the competent authority does not constitute gross misconduct entailing major punishment of dismissal from service. The appellant was not guilty of charges of gross misconduct or corruption, therefore, extreme penalty of dismissal from service for the charge of absence is on higher side hence, quantum of the punishment needs to be reduced. Reliance is placed on 2006 SCMR 1120.

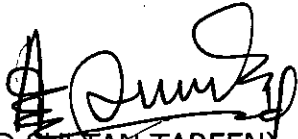
We have noted that vide the impugned order of dismissal the absence period of the appellant is treated as leave without pay, hence the authority had itself condoned the period of absence by allowing him leave without pay, hence there is no justification with the authority to penalize the appellant for such absence which had been regularized. Wisdom to this effect is derived from judgment of Supreme Court of Pakistan reported as 2006 SCMR 434 and 2012 TD (Service) 348. The appellant was once dismissed from service on the charges of absence but was re-instated soon and again his dismissal on the same charges creates doubts about the credibility of the proceedings conducted so far.

08. We are of the opinion that the appellant has not properly been treated departmentally. It is an admitted fact that the appellant was absent from duty due to his illness, which has already been admitted by the inquiry officer in his report. In this view of the matter, while taking into account the absence period of the appellant, his length of service and the fact that the appellant is a low paid employee, this Tribunal is of the view that the punishment awarded to the appellant appears to be harsh. Moreover this Tribunal had already granted relief in numerous cases of similar nature.

09. As a sequel to the above, the instant appeal is partially accepted. The impugned orders are set aside and the appellant is re-instated in service by converting the penalty of dismissal from service into stoppage of two increments. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

10.01.2022



(AHMAD SULTAN TAREEN)
CHAIRMAN



(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

ORDER

10.01.2022


Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, learned Additional Advocate General alongwith Mr. Noor Daraz Khan, Inspector for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the instant appeal is partially accepted. The impugned orders are set aside and the appellant is re-instated in service by converting the penalty of dismissal from service into stoppage of two increments. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED

10.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

12.10.2021

Appellant present in person.

Muhammad Riaz Khan Paindakheil learned Assistant Advocate General for respondents present.

Former made a request for adjournment as his counsel is not available today; granted. To come up for arguments on 07.01.2022 before D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

07.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Noroz Khan SI (Legal) for respondents present.

Arguments could not be heard, due to paucity of time. Adjourned. To come up for arguments before the D.B on 10.01.2022.

(Atiq-Ur-Rehman Wazir)
Member (E)

12.10.2021

Counsel for the appellant present

1682/2020

14.07.2021

Appellant present in person. Preliminary arguments heard.

As far as the impugned order dated 03.11.2016 is concerned, it reflected that the appellant has been dismissed from service on account of his willful absence from duty vide order dated 03.11.2016. Further, his absence period was treated as leave without pay. Let the respondents come up and rebut that whether a dismissal from service is proper on account of willful absence and whether the procedure provided in the rules for dealing a case of willful absence of a Government servant was complied with before issuance of the impugned order. Unless the said facts are rebutted by the respondents, the impugned order on its face is a void order, making the question of limitation immaterial. Therefore, this appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 12.10.2021 before the D.B.

Appellant Deposited
Security & Process Fee

14/7/21


Chairman

28.10.2020

Appellant present in person.

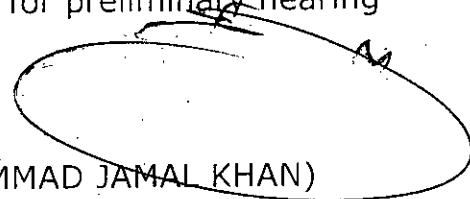
Lawyers are on general strike, therefore, case is adjourned to 12.01.2021 for preliminary hearing, before S.B.



(Rozina Rehman)
Member (J)

12.01.2021

Neither appellant nor anyone else representing him has appeared despite having been called time and again, therefore, appellant as well as his respective counsel be noticed for 07.04.2021 on which date file to come up for preliminary hearing before S.B.



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

07.04.2021

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 14.07.2021 for the same as before.





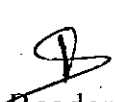
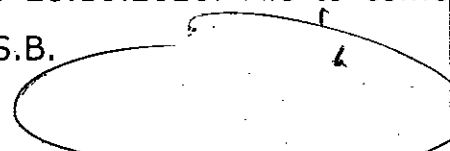
READER

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1082 /2020

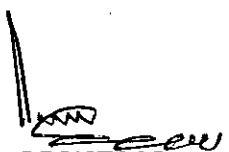
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/03/2020	<p>The appeal of Mr. Habib Shah resubmitted today by Mr. Amjid Ali Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR 12/13/2020</p>
2-	19/03/20.	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30/04/2020.</u></p> <p style="text-align: right;"> MEMBER</p>
	04.05.2020	<p>Due to COVID-19, the case is adjourned to 05.08.2020 for the same, before S.B.</p> <p style="text-align: right;"> Reader</p>
05.08.2020		<p>Appellant Habib Shah is present in person. Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned to 28.10.2020. File to come up for preliminary hearing before S.B.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER</p>

The appeal of Mr. Habib Shah No. 1710 son of Rahim Shah r/o Haji Mian Kalay Jehangir Abad Mardan received today i.e. on 02.03.2020 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal and revision petition mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 2- Annexures-C & E of the appeal are illegible which may be replaced by legible/better one.

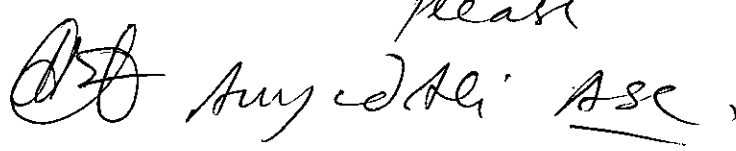
No. 502 /S.T,

Dt. 03-03 /2020.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Amjid Ali Adv. Mardan.

fn

The objection has been removed
Please

Amjid Ali Adv.

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

Service Appeal No. 1682/2020

Habib Shah.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through
Secretary, Home & Trimble Affairs, & others ,... Respondents

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4.	Copy of show cause notice	B	7
5.	Copy of order dated 03.11.2016	C	8
6.	Copy of appeals/order dated 31.03.2017	D	9-11
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9.	Wakalatnama		24

Appellant

Through

Amjad Ali (Mardan)

Advocate

Supreme Court of Pakistan

Cell: 0321-9882434

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 1682/2020

Khyber Pakhtunkhwa
Service Tribunal

Case No. 1428

02/03/2020

Habib Shah, No.1710
S/o Rahim Shah R/o Haji Mian Kalay, Jehangir Abad
P/o Kalpani Railway Station, Tehsil Takht Bhai, District
Mardan.

.....Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Secretary,
Home & Trimble Affairs, Civil Secretariat,
Peshawar.
2. Inspector General of Police, KP Peshawar.
3. Deputy Inspector General Mardan Division,
Mardan
4. District Police Officer, Mardan

....Respondents

~~Filed to day~~

~~Registrar~~
2/3/2020

Re-submitted to day
and filed.

~~Registrar~~
12/03/2020

**SERVICE APPEAL U/S 4 OF KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE ORDER
DATED 17.07.2018 BY RESPONDENT
NO.2 (RECEIVED ON 20.2.2020),
ORDER DATED 03.11.2016 BY
RESPONDENT NO.4, ORDER DATED
31.03.2017 PASSED BY D.I.G,
MARDAN WHICH ARE ILLEGAL
AGAINST LAW AND FACTS.**

PRAYER

2

On acceptance of this appeal, the order dated 17.07.2018, 31.03.2017 and 03.11.2016 may please be set-aside and appellant may please be reinstated in service with all back benefits.

Respectfully Sheweth:-

Appellant humbly submits as under:-

- 1) That appellant was appointed in the year 2011.
- 2) That appellant has not been served with charge sheet and show cause notice, although placed on record. (Copy of charge sheet is Annex "A", while show cause notice is Annex "B")
- 3) That appellant has not been associated with any inquiry.
- 4) That appellant has been dismissed vide order dated 03.11.2016. (Copy of order dated 03.11.2016 is Annex "C")
- 5) That departmental appeal has been dismissed vide order dated 31.03.2017. (Copy of appeal /order dated 31.03.2017 is Annex "D")
- 6) That review petition has been dismissed vide order dated 17.07.2018 (received on 20.20.2020). (Copy

of order dated 17.07.2018 received on 20.01.2019
is Annex "E")

(3)

- 7) That impugned orders are illegal, against law and facts on the following grounds:-

GROUND.

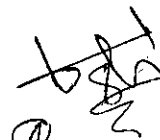

- A. Because, the impugned orders are illegal, against law and facts.
- B. Because appellant is innocent and falsely charged.
- C. Because appellant has been condemned unheard.
- D. Because appellant has been victimized only as appellant was not giving false statements in criminal case. (Relevant documents of case are Annex "G")
- E. Because appellant has satisfactory service.
- F. Because Police Rules has not been followed.
- G. Because appellant has not been associated with Inquiry proceedings.
- H. Because neither any witness has been examined in presence of appellant nor any opportunity of cross examination has been given to appellant.
- I. Because even the Inquiry proceedings have not been provided to appellant, which has prejudiced case of appellant.

4

It is therefore, humbly prayed that on acceptance of this appeal, the order dated 17.07.2018, 31.03.2017 and 03.11.2016 may please be set-aside and appellant may please be reinstated in service with all back benefits.

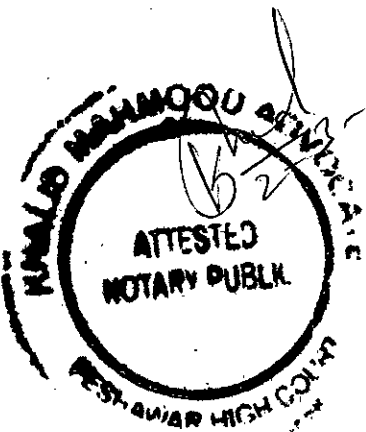

Any other relief which this hon'ble court deems appropriate in the circumstances of the case though not specifically asked for may kindly also be granted.

Dated:

Appellant 
Through 
Amjad Ali (Madan)
Advocate
Supreme Court of Pakistan

AFFIDAVIT

I, do hereby affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

 
Deponent

(5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. _____/2020

Habib Shah.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through
Secretary, Home & Trimble Affairs, & others ,...Respondents

ADDRESSES OF PARTIES

APPELLANT

Habib Shah, No.1710
S/o Rahim Shah R/o Haji Mian Kalay, Jehangir Abad
P/o Kalpani Railway Station, Tehsil Takht Bhai, District
Mardan.

RESPONDENTS

1. Govt. of Khyber Pakhtunkhwa through Secretary,
Home & Trimble Affairs, Civil Secretariat,
Peshawar.
2. Inspector General of Police, KP Peshawar.
3. Deputy Inspector General Mardan Division,
Mardan
4. District Police Officer, Mardan

Appellant 

Through

Amjad Ali (Mardan)
Advocate
Supreme Court of Pakistan

Hand-A
(6)

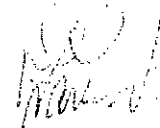
CHARGE SHEET UNDER KPK POLICE RULES 1975

I, **Faisal Shahzad** District Police Officer, Mardan as competent authority hereby charge you **FC Habib Shah No. 1710**, as follows.

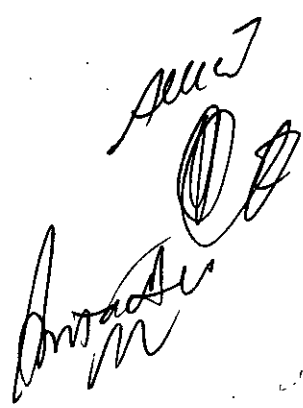
That you FC, while posted at Police Station Rustam, was transferred to PP Jabby PS Rustam vide OB No. 1708 dated 19.07.2016 but you deliberately absented yourself from lawful duty vide DD No. 23 dated 28.07.2016 to-date.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section -6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in persons.



(Faisal Shahzad) PSP
District Police Officer,



FINAL SHOW CAUSE NOTICE

Ann-B

I, Faisal Shahzad, District Police Officer, Mardan as competent authority under Police Rules 1975, do hereby serve you Constable Habib Shah No. 1710 while posted at Police Post Jabai Kandao Police Station Rustam, Mardan as follows:-

(7)

i) That consequent upon the completion of enquiry conducted against you through inquiry Officer, however, you have been found guilty.

ii) On going through the findings and recommendations of the enquiry Officer, the material on record and other connected papers including your defence before the said enquiry Officer.

I am satisfied that you have committed, a gross misconduct as defined in Rules 2 (iii) of KP Police disciplinary Rules 1975.

Whereas, you Constable Habib Shah No. 1710, while posted at Police Post Jabby Kandao Police Station Rustam Mardan, was transferred to PP Jabby PS Rustam vide OB No. 1708 dated 19.07.2016, but you deliberately absented yourself from the lawful duty vide DD No. 23 dated 28.07.2016 to-date without any leave/permission of the competent authority.

1. As a result there of I, Faisal Shahzad, District Police Officer, Mardan as competent authority issue you a final show cause is to why major punishment of dismissal may not be imposed upon you, your reply should reach to this office within 05 days.
2. If no reply to this notice is received within 05 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in this case an ex-parte action shall be taken against you.
3. Copy of the findings of the enquiry officer is enclosed.

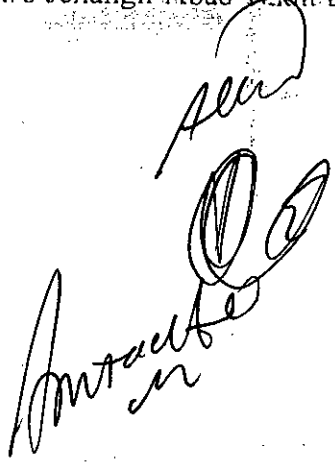


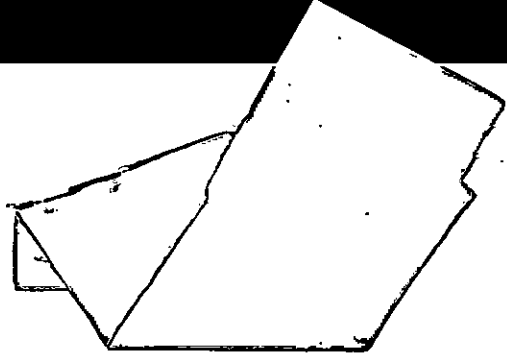
District Police Officer,
Mardan

No. 306 /R/FSCN

Dated 23/9 /2016

Habib Shah s/o Rahim Shah r/o Jehangir Abad Takht Bhai.





POLICE DEPARTMENTMARDAN DISTRICT**ORDER**

This order will dispose of the departmental inquiry, which is concluded against Constable Habib Shah no.1710, while posted at Police Post Jabai Kandao Police Station Rustam Mardan deliberately absented himself from the lawful duty without any leave/ permission vide DD No.23 dated 19.07.2016 to date. His this attitude adversely reflected on his performance. While discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.

In this connection, Constable Habib Shah No.1710, was issued charge sheet vide this office No.275/R. dated 31.08.2016, and proceeded against departmentally through the Ikhteraz Khan DSP/HQrs: Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No.357/R dated 16.09.2016 also served with final show cause notice vide this office No.306 dated 23.9.2016 as the allegations have been established against him and recommended him for major punishment.

After going through inquiry file the undersigned reached to the conclusion that the alleged Constable Habib Shah no.1710, is hereby dismissed from service, while his absence period treated as leave without pay in exercise of power vested in me under the above quoted rules.

Order announced

O.B No.2662

Dated 03.11.2016

(Faisal Shahzad) PSP

District Police Officer,

Mardan

No.9864-69/ dated Mardan the 7-11-2016

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/ HQrs: Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OSI (DPO) Mardan.

ORDER

This order will dispose of the departmental inquiry, which is conducted against Constable Habib Shah No. 1710, while posted at Police Post Jabat Kandao Police Station Rustam Mardan, deliberately absented himself from the lawful duty without any leave/permission vide ID No.23 dated 19.07.2016 to-date. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.

In this connection, Constable Habib Shah No. 1710, was issued charge sheet vide this office No. 275/R, dated 31.08.2016, and proceeded against departmentally through the Ihteraz Khan DSP/HQrs: Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 357/R dated 16.09.2016, also served with final show cause notice vide this office No. 306 dated 23.09.2016, as the allegations have been established against him and recommended him for major punishment.

After going through inquiry file the undersigned reached to the conclusion that the alleged Constable Habib Shah No. 1710, is hereby dismissed from service, while his absence period treated as leave without pay in exercise of the power vested in me under the above quoted rules.

Order announced

O.B.No. 266A

Dated 03.11.2016

No. 9864-69/ dated Mardan the 7-11/2016

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-I, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs: Mardan.
4. The Pay Officer (DPO) Mardan.
5. The I.C (DPO) Mardan.
6. The OSI (DPO) Mardan.

(Faisal Shahzad) PSP
District Police Officer,
Mardan

8
fhs - e

To,

Deputy Inspector General of Police,
Mardan

**Subject: DEPARTMENTAL APPEAL AGAINST
THE IMPUGNED DISMISSAL ORDER
DATED 03.11.2016**

Am-D

(9)

[Handwritten signature]
[Handwritten signature]
[Handwritten signature]
1

Respectfully Sheweth:-

Appellant humbly submits as under:-

- 1) That appellant was appointed in the year 2011.
- 2) That appellant has not been served with charge sheet and show cause notice, although placed on record.
- 3) That appellant has not been associated with any inquiry.
- 4) That appellant has been dismissed vide order dated 03.11.2016.
- 5) That impugned order is illegal, against law and facts on the following grounds:-

GROUND.

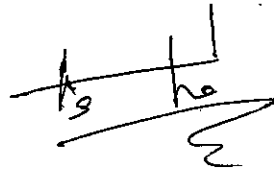
- A. Because, the impugned orders are illegal, against law and facts.
- B. Because appellant is innocent and falsely charged.
- C. Because appellant has been condemned unheard.

(9/A)

- D. Because appellant has been victimized only as appellant was not giving false statements in criminal case.
- E. Because appellant has satisfactory service.
- F. Because Police Rules has not been followed.
- G. Because appellant has not been associated with Inquiry proceedings.
- H. Because neither any witness has been examined in presence of appellant nor any opportunity of cross examination has been given to appellant.
- I. Because even the Inquiry proceedings have not been provided to appellant, which has prejudiced case of appellant.

It is therefore, humbly prayed that on acceptance of appeal, the impugned dismissal order dated 03.11.2016 may please be set-aside and appellant may please be reinstated in service with all back benefits.

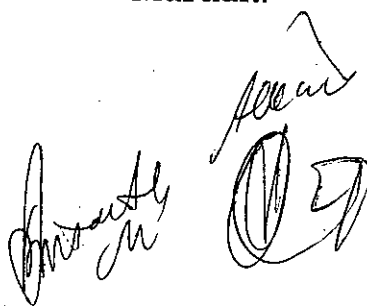
Dated: 28.11.2016



Appellant

Through

Habib Shah, No.1710
S/o Rahim Shah R/o Haji
Mian Kalay, Jehangir Abad
P/o Kalpani Railway Station,
Tehsil Takht Bhai, District
Mardan.



To,

Inspector General of Police,
Khyber Pakhtunkhwa

**Subject: DEPARTMENTAL APPEAL/ REVIEW
PETITION AGAINST THE ORDER
DATED 31.03.2017, WHEREBY
DEPARTMENTAL APPEAL FILED BY
APPELLANT AGAINST HIS
IMPUGNED DISMISSAL ORDER
DATED 03.11.2016 WAS DISMISSED**

10

Sum
Mirza

Respectfully Sheweth:-

Appellant humbly submits as under:-

- 1) That appellant was appointed in the year 2011.
- 2) That appellant has not been served with charge sheet and show cause notice, although placed on record.
- 3) That appellant has not been associated with any inquiry.
- 4) That appellant has been dismissed vide order dated 03.11.2016.
- 5) That appellant filed departmental appeal dated 28.11.2016 to the D.IG, Mardan, which has been rejected vide order dated 31.03.2017.
- 6) That impugned order is illegal, against law and facts on the following grounds:-

GROUND.

- A. Because, the impugned orders are illegal, against law and facts.
- B. Because appellant is innocent and falsely charged.

(10)A

- C. Because appellant has been condemned unheard.
- D. Because appellant has been victimized only as appellant was not giving false statements in criminal case.
- E. Because appellant has satisfactory service.
- F. Because Police Rules has not been followed.
- G. Because appellant has not been associated with Inquiry proceedings.
- H. Because neither any witness has been examined in presence of appellant nor any opportunity of cross examination has been given to appellant.
- I. Because even the Inquiry proceedings have not been provided to appellant, which has prejudiced case of appellant.

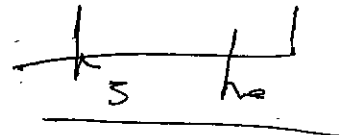
It is therefore, humbly prayed that on acceptance of appeal, the impugned impugned order dated 31.03.2017 passed by DIG, Mardan and dismissal order dated 03.11.2016 may please be set-aside and appellant may please be reinstated in service with all back benefits.

Dated:

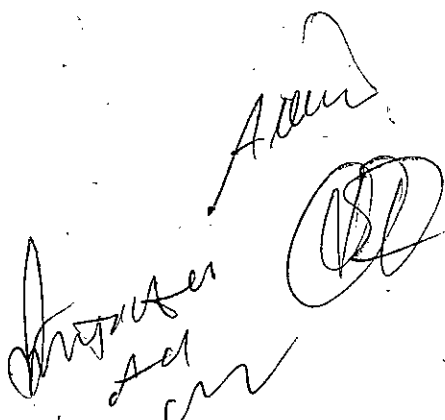
26-4-2017

Appellant

Through



Habib Shah, No.1710
S/o Rahim Shah R/o Haji
Mian Kalay, Jehangir Abad
P/o Kalpani Railway Station,
Tehsil Takht Bhai, District
Mardan.



(11) *Am-1*

ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Habib Shah No. 1710 of Mardan District Police against the order of District Police Officer, Mardan; wherein he was awarded Major punishment of dismissal from service vide District Police Officer, Mardan OB No. 2662 dated 03.11.2016.

Brief facts of the case are that, the appellant while posted at Police Post Jabi Kandoa Police Station, Rustam, deliberately absented himself from lawful duty vide DD No. 23 dated 19.07.2016 till the date of his dismissal. Consequently he was proceeded against departmentally through Mr. Ikhtiraz Khan, Acting DSP/HQrs: Mardan, who after fulfilling necessary process, submitted his findings to the District Police Officer, Mardan, recommending him for major punishment. The District Police Officer, Mardan agreed with the findings of the enquiry officer and awarded him major punishment of Dismissal from Service.

He was called in orderly room held in this office on 29.03.2017 and heard him in person. The appellant did not produce any cogent reason for his absence. Besides the appellant was also dismissed from service for absence from duty in the year 2016 but he did not give off his indiscipline conduct of absence. Therefore, I find no grounds to intervene the order passed by District Police Officer, Mardan. **Appeal is rejected.**

ORDER ANNOUNCED.

of (Muhammad Alam Shinwari)PSP
Regional Police Officer,
Mardan

No. 2492 /ES, Dated Mardan the 31-3- /2017.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office
Memo: No. 1204/LB dated 22.03.2017. The Service Roll is returned herewith.

(*****)

Amir
Amir

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
GENERAL POLICE OFFICE,
PESHAWAR.

No.S/2950/18, dated Peshawar the 17.07.2018

To

The Regional Police Officer,
Mardan Region, Mardan.

SUBJECT: **APPEAL (EX-FC HABIB SHAH NO.1710)**

Memo:

Ex-Constable Habib Shah no.1710 of District Police Mardan had submitted appeal to the Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for reinstatement into service. His appeal was processed at Central Police Office, Peshawar.

Perusal of appeal revealed that the appellant was dismissed from service on 08.11.2016 and his appeal was rejected by RPO Mardan on 31.03.2017. His appeal is badly time barred for about 01 year and 08 months. Therefore his appeal is hereby filed being badly time barred.

The applicant may please be informed accordingly.

Irfan Ullah Khan PSP
AIG/ Establishment.
For Inspector General of Police
Khyber Pakhtunkhwa Peshawar.



Annex-E

OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE,
PESHAWAR.

(12)

No. S/ 2950 /18, dated Peshawar the 17/07/2018.

To: The Regional Police Officer,
Mardan Region, Mardan.

Subject: APPEAL (EX-FC HABIB SHAH NO. 1710)

Name:

Ex-Constable Habib Shah No. 1710 of District Police Mardan had submitted appeal to the Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for reinstatement into service. His appeal was processed at Central Police Office, Peshawar.

Perusal of appeal revealed that the appellant was dismissed from service on 08.11.2016 and his appeal was rejected by RPO-Mardan on 31.03.2017. His appeal is badly time barred for about 01 year and 08 months. Therefore his appeal is hereby filed being badly time barred.

The applicant may please be informed accordingly.

(IRFAN ULLAH KHAN) PSP,
AIC / Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

[Handwritten signatures and initials]

OFFICE OF THE
DISTRICT POLICE OFFICER,
MARDAN

(14)

No. 6672 /PC
Dated 3/8/2015

To The Medical Superintendent,
Mardan Medical Complex,

Subject: INJURY SHEET.

896
3/8/2015

Memo:

Constable Habib Shah No. 1710 was injured during official duty
vide case FIR No. 50, dated 19.05.2015 u/s 324/353/7ATA/148/149 PS Saddar (CTD)
District Mardan.

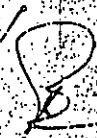
It is, therefore, requested that the above mentioned Constable may
please be examined whether his injury is grievous or simple.

Copy of FIR & Injury sheet is attached herewith, please.


District Police Officer,
Mardan

DMS AYB

Conced. CMO

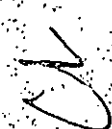
F. No. 10


3-8-15

According to the patient wound condition

& opinion the wound is grievous.

Regards

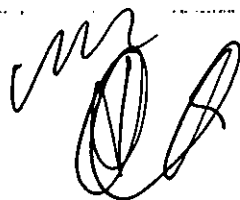

CMO
A & E Department
MMCTH, Mardan

Amrta 25.8.15

M. Inam Khan

CMO, A & E Dept.

MMCTH, Mardan



1710

15

POLICE DEPARTMENT

MARDAN DISTRICT

ORDER

This order will dispose of the departmental inquiry, which is conducted against **Constable Habib Shah No. 1710**, while posted at Police Post Jabai Kandao Police Station Rustam Mardan, deliberately absented himself from the lawful duty without any leave/permission vide DD No.25 dated 23.11.2015 to-date. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.

In this connection, **Constable Habib Shah No. 1710**, was issued charge sheet vide this office No. 681/R, dated 27.11.2015 and also proceeded against departmentally through the **Fazle Wahid Khan DSP/Rural Mardan**, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 1140/R dated 17.12.2015 as the allegations have been established against him and recommended him for minor punishment.

After going through inquiry file the undersigned reached to the conclusion that the alleged **Constable Habib Shah No. 1710**, is hereby **dismissed** from service, while his absence period treated as leave without pay in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 64
Dated 5 / 1 / 2016

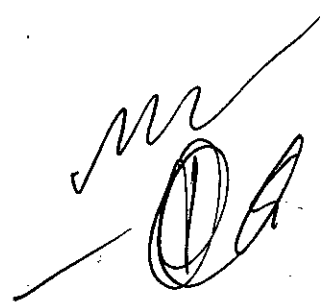


(Faisal Shahzad)PSP
District Police Officer,
Mardan

No. 120 / dated Mardan the 6-1- /2016

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs: Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan.



(16)

از دفتر ۵۵۵
26.2.16

گرفت بکری صاحب RI طرابلس

وای حکیم 1575 ES قبا DIG حدود ریحان درون
24.2.16

اور علی 499 به کیش صیب 1715 در کامروان مال
26.2.16

بحال صوبه و کیش و لیبیا ادرت یا جائه کیش
حافظه در کیش و کیش و کیش و کیش و کیش
رضی رضا کیش

NEA

Handwritten signature and scribble at the bottom of the page.

FC Habib Shah No. 1710,

The then PS City.

No. / PA

Dated

29/2/2016.

(17)

Subject:

EXPLANATION.

A letter was received from Senior Public Prosecutor Anti-Terrorism Court Mardan vide his office letter No. 79 dated 19.01.2016, in which he stated that you Constable was denied his Statement in the Court of law, in codicil a case vide FIR No. 50 dated 19.05.2015 u/s 324/353/148/149 PPC/7ATA PS CTD Mardan Region was body suffered. This is negligence on your part.

Your above act shows that you are irresponsible and take no interest in the performance of your official duties. You are hereby called upon to explain your position within three days of this reference, in case of un-satisfactory reply strict departmental action will be taken against you.

Head of investigation,
Mardan

No. 909 /PA/Inv.

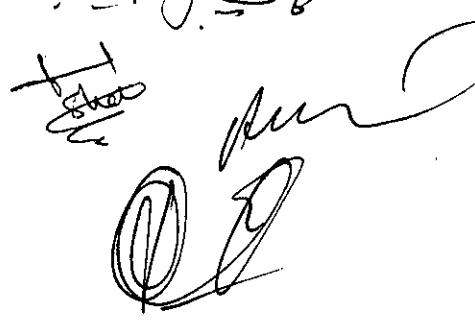
Copy to the: -

1. Senior Public Prosecutor Anti-Terrorism Mardan w/r to his office letter No. quoted above.
2. SHO PS Takht Bhai to deliver upon the explanation to FC Habib Shah No. 1710 r/o Jahandai Mohallah Bashir Khan Nazim.

Head of investigation,
Mardan

الوہی
 سجادہ مشہور شوکارز ٹرسٹ جاریہ P.S.P. 20 صحت منظرہ کتبہ نمبر 1144 3/16
 مریض ملک کو سالی حورہ 15/2 کو جسٹس کالینل مردان پولیس کا معری
 شدہ ہے اور اپنی ڈیوٹی پناہ پناہ اندازاً سے انجام دے رہا ہے۔
 1955 کو جب C.F. ڈپارٹمنٹ لائیو ریورڈ کیا جسکے ایڈورسٹل کارڈ لائیو ریورڈ
 کو رخ ہو گیا ہے، اچانک ہم پر نا اہل ہو گیا جسکے طور پر اس درجہ طرز امتحان
 پر تک کر کے ہوش ڈکڑا کر اسے پیسے لے جا رہا تھا وہیں پر راج
 کیجھوئی نے سن کسان سمیان شہب قتل شدہ جہانزیب P.O. بدستور اور دلہ
 گرفتار شدہ کے خلاف عدالت عدالت 50/5 19/5 سے 324/353 عدالت CTD
 مردان درج کر کے عدالت سے دستخط لیا گیا۔ میں کئی دنوں تک پیسے میں آ رہا
 عدالت رقم بیان تک کہ 5140 سے لیکر بالادستان تک کوئی بھی میری بجا
 یہی لکھتا تھا اور مزید مالہ حاصل کرنے میں سے 49 ہزار روپے
 کے علاج پر خرچ کیا گیا جو ملزمان کے ہاتھ سے لائی علم نہیں تھا۔
 جسے D.P.O. صاحب کو پیش کرنا پڑا وہیں نے مجھے جیل لگا کر اسے گرفتار
 کیا اور مجھے غیر شوکارز ٹرسٹ والی عدالت کا درجہ کے حکم سے برطرف
 کیا حالانکہ میں ٹرولٹی پر موجود تھا۔ برضا مستی کے بعد میں گھر پر موجود
 تھا کہ عدالت سے حورہ 19.10.16 کو لکھ بیان دینے کے بعد اطلاع موصول
 ہوئی۔ میں عدالت جا کر اپنا بیان دے دیا۔ چونکہ میں نے برضا مستی
 نے خلاف D.I.G. صاحب کو اس میں بھی جو انہوں نے خیال حبیبی رنڈری
 نمبر 1575 حورہ 2/24 کو مجھے کمالی کر کے اور ساتھ ہی دو سالہ
 increments شرافت کرنے اور last warning کی سزا اور

عمر صافری مددخواہ تصویر کی
 عمر سے آفیسری افسانہ نہ ملنے کی شرافت کرائی تھا اور نہ ہی کوئی
 بیان سنایا صحیح لگا تھا، عدالت میں بھی ایک دفعہ ہی حورہ میں سزا دی گئی
 لہذا استدعا ہے کہ ٹرولٹی پناہ پناہ اندازاً سے انجام دے کر لکھ جائے۔

حورہ 2/17
 کالینل صاحب شاہ نمبر 1716
 تحفہ پولیس کورٹ مردان


Constable Habib Shah No. 1710.

Police Line Mardan.

No 1144, PA

Dated 10 / 3 / 2016.

19


Subject: SHOW CAUSE NOTICE.

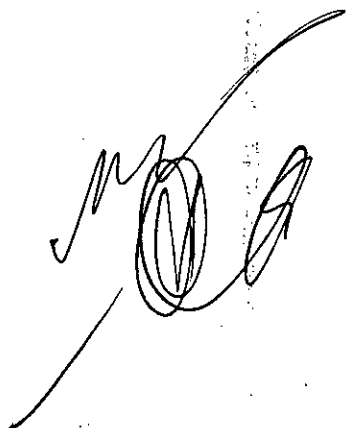
WHEREAS You the then constable PS City, A letter was received from Senior Public Prosecutor Anti-Terrorism Court Mardan vide his office letter No. 79 dated 19.01.2016, in which he stated that you Constable was denied his Statement in the Court of law, in codicil a case vide FIR No. 50 dated 19.05.2015 u/s 324/353/148/149 PPC/7ATA PS CTD Mardan Region was body suffered. This is negligence on your part.

All this is your negligence and misconduct and render you liable for punishment under the KPK Police Rules, 1975.

THEREFORE, I, Shahid Ahmad Khan, Superintendent of Police, Investigation Mardan hereby calls upon you to explain your position as to why you should not be punished under the above mentioned Rules.

Your reply should reach this office within seven days of the receipt of this notice.


(Shahid Ahmad Khan)
SP Investigation Mardan



20

SUMMARY OF ALLEGATIONS


It is alleged that you the then Constable PS City, a letter was received from Senior Public Prosecutor Anti-Terrorism Court Mardan vide his office letter No. 79 dated 19.01.2016, in which he stated that you Constable was denied his Statement in the Court of law, in codicil a case vide FIR No. 50 dated 19.05.2015 u/s 324/353/148/149 PPC/7ATA PS CTD Mardan Region was body suffered. This is negligence on your part.

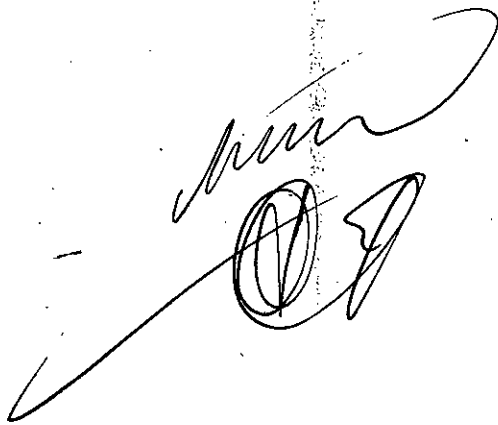
All this amounts to misconduct on your part and warrant proper departmental enquiry as defined in the KPK Police Rules, 1975.

THEREFORE, I, Shahid Ahmad Khan, Superintendent of Police, Investigation Mardan hereby calls upon you to explain your position as to why you should not be punished under the above mentioned Rules.

Your reply should reach this office within seven days of the receipt of this allegation. You also filed to submit reply to the Show Cause Notice,

Mr: Ijaz Khan Inspector/OH PS Par Hoti is hereby appointed to conduct proper departmental enquiry into the allegations and submit findings within 15 days positively.

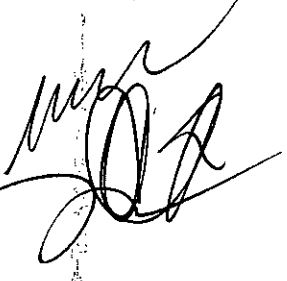

(SHAHID AHMAD KHAN)
Superintendent of Police,
Investigation Mardan.



سین کانسٹیبل صیبت شاہ 1710 پولیس ڈیپن مردان -

سین صیبت شاہ 210 کو پختہ کانسٹیبل مردان پولیس میں عمرتی تہہ ایک
 تقریباً 4 سال ڈیوٹی بنات ایما نڈاری سے انجام دیا مورخ 1955
 کو عہدہ کانسٹیبل و مار لوئیڈ ٹرولڈی سے ہمراہ پولیس وارم کارڈن موجود تھا کہ اجانگ م
 ہر فائرنگ ہوئی میں دریں طرف نشانہ کر فریبن میں کراچی جی اور خورانی
 مویشی چڑا۔ بے پریشی کی حالت میں مجھے ہتھیار لے جا رہا تھا درمیان میں ایک شخص نے
 3 گان مھون شیب (مقتول) جانز میں 90 (بہتور) ولید کھڑا تھا کہ مختلف
 FIR نمبر 50 مورخ 1955 ص 324/353 حکام CTD مردان مرد مسلح قتل کر کے
 مجموعے بے پریشی کی حالت میں مرد مسلح دستخط لیا گیا۔ میں گئی دفین میں
 زیر عدالت رہا حکم پولیس نے میرا کوئی علاج نہ کیا گیا اور نہ ہی کوئی
 انٹرنیٹ آکر میری مزاج ٹیڑھی کی بلکہ سائل نے اپنی صیبت سے مبلغ 49
 ہزار روپے اپنے علاج کو لیم پر خرچ کیا۔ چونکہ مجھے ملزمان کے بارے میں
 کوئی معلومات نہیں تھی مجھے DPQ دیا گیا کہ میں کراہا اور انہوں نے وہی وہی
 پر ہیے کئی در رسیم کرا لیا گیا۔ پھر مجھے لنگر جا رہا کہ جو ملازمتوں
 ہ لنگر کی حکم نامہ کارڈوں کے مجھے ہر طرف کر دیا کہ ملازمہ میں ڈیوٹی پر
 موجود تھا پھر میرے نام عدالت موصوف سے مورخ 1956 کو ہانڈ لیا گیا
 اہلکار موصوف کی عدالت سے عدالت جا کر درست واقعات عدالت سے
 بیان کئے۔ حالانکہ میں نے DA سے کوئی جوابی کلمہ نہیں کہا تھا۔ کراہوں
 نے مجھے مجال کیا۔ چونکہ مجموعے بے پریشی میں دستخط لیا گیا تھا اس لئے ان کو
 عدالت سے میرے ساتھ ملنے تک نہیں میں دن کی شناخت نہیں کر سکتا۔
 اور نہ ہی کفایتی افران نے ان کی شناخت کر سکی کراہی ہے حالانکہ مردان
 کی ذمہ داری تھی اگر عدالت میں وکیل ملزم سے مجھے ملزم کے بارے میں
 دریافت کرتا تو میں کیا جواب دیتا۔ میں نے کبھی حضور علی ہونے کو کہ
 صیبت میں لنگر کے لہذا تو کس تہا بلکہ عدالت داخل دست فرمایا جا کے اور
 ہر تہہ کلمے کے مطابق

صیبت شاہ نمبر 1710
 کانسٹیبل صیبت شاہ
 مردان



(gg) 11

ORDER.

This order will dispense-off the appeal preferred by Ex-Constable Babib Shah No. 1710 of Mardan District Police against the order of his dismissal from service passed by the District Police Officer, Mardan vide OB: No. 64 dated 05.01.2016.

Brief facts of the case are that he while posted at Police Post Jabai Kando Police Station Rustam, deliberately absented himself from the lawful duty without any leave/permission vide daily diary No. 25 dated 23.11.2015 to the date of dismissal. His this attitude adversely reflected on his performance, while discharging his official duty which is an indiscipline act and gross misconduct on his part. In this connection he was issued charge sheet and also proceeded against departmentally through Deputy Superintendent of Police Rural, Mardan, who after fulfilling necessary process, submitted his findings to the District Police Office, Mardan as the allegations have established against him and recommended him for minor punishment. After going through inquiry file the District Police Officer, Mardan reached to the conclusion to the dismissal of alleged from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 17.02.2016. Due to his pathetic family condition, he is reinstated in service with immediate effect and awarded punishment of stoppage two increments with cumulative effect, the intervening period to be treated as leave without pay and given last warning.

ORDER ANNOUNCED.

(Signature)
MUMTAZ SAEED)PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

No. 275 /ES, Dated Mardan the 24/02 /2016.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 79/LB dated 08.02.2016. His service roll is returned herewith for record in your office.

(*****)
OB/PO/081
M. M. Khan
DPO Mardan
24/2/16

OB 499
26-2-16

(Signature)

23
KHYBER PAKHTUNKHWA POLICE



COMMENDATION CERTIFICATE

CLASS III

GRANTED BY

Che Afzal Khan

District Police Officer Mardan

To *FC Habib Shah No. 1700*

Son of

District

Mardan

in Recognition of

*Good performance in uploading FIR
(2009 to date) within a period of 45
days.*

O.B No. *1205*

Dated *22.05.2014*

[Signature]
District Police Officer

Mardan.

[Signature]

بعدالت سروس ٹریبونل لاہور

(24)

2020ء منجانب ایس اے مٹ

2/3/2020

مورخہ:

مقدمہ:

دعویٰ:

جرم:

بنام:

حبیب سہا

حکومت / 16P

سروس ایس اے
باعث تحریر آفندہ

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام کیلئے امجد علی ایڈووکیٹ، سپریم کورٹ آف پاکستان اسلام آباد

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ

برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں 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 بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و جانہ

التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے کہ پیروی مذکور کریں۔

لہذا وکالت نامہ لکھ دیا کہ سنڈ رہے۔

المرقوم:

2

گواہ

2020ء

العبد

کے لیے منظور ہے۔

Amjad Ali
ADVOCATE

SUPREME COURT

03219882434

Be 105506

حبیب سہا

Handwritten signature

امجد علی ایڈووکیٹ سپریم کورٹ آف پاکستان، ڈسٹرکٹ کورٹس، مردان

0321-9882434 0321-9870175

C

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1682/2020

Habib Shah Ex Constable No.1710 s/o Rahim Shah r/o Haji Mian Kalay Jehangir Abad
Post office Kalpani Railway Station Tehsil Takht Bhai District Mardan

.....Appellant

VERSUS

The Inspector General of Police , Khyber Pakhtunkhwa, Peshawar and others.

.....Respondents

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4.	Copy of Enquiry report	B	8-11
5.	Copy of Rejection Order	C	12
6.	Copy of bad entries & previous order	D&E	13-17
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①
**BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.**

Service Appeal No. 1682/2020

Habib Shah Ex Constable No.1710 s/o Rahim Shah r/o Haji Mian Kalay Jehangir Abad
Post office Kalpani Railway Station Tehsil Takht Bhai District Mardan

.....Appellant

VERSUS

The Inspector General of Police , Khyber Pakhtunkhwa, Peshawar and others.

.....Respondents

Para-wise comments on behalf of respondents:-

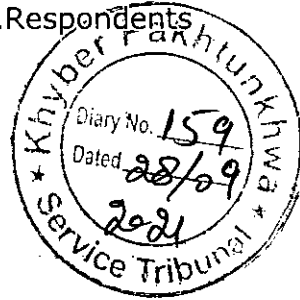
Respectfully Sheweth,

PRELIMINARY OBJECTIONS

1. That the appellant has not approached this Hon'ble Tribunal with clean hands.
2. That the appellant has concealed the actual facts from this Hon'ble Tribunal.
3. That the appellant has got no cause of action or locus standi to file the instant appeal.
4. That the appellant is estopped by his own conduct to file the instant Service Appeal.
5. That appeal of the appellant is badly time barred.
6. That the appeal is unjustifiable, baseless, false, flawless and vexatious and the same is liable to be dismissed with special compensatory cost in favour of respondents.

REPLY ON FACTS

1. Para to the extent of enlistment in Police Department of appellant pertains to record needs no comments.
2. Incorrect. Stance taken by the appellant is totally false and baseless, because he has been properly proceeded against departmentally by issuing him Charge Sheet with Statement of Allegations and the same were received by the appellant himself on 05.09.2016 and duly signed the photo copy as token of its receipt (Copy of serving charge sheet with statement of allegations is annexed as annexure "A").
3. Incorrect. Plea taken by the appellant is not plausible, because the appellant while posted at Police Post Jabai Kandao, Police Station Rustam willfully and deliberately absented himself from his lawful duty. On the said allegations he has been properly proceeded against departmentally by issuing him Charge Sheet with Statement of Allegations which was received by the appellant himself on 05.09.2016 and duly signed the photo copy as token of its receipt. The enquiry was entrusted to the then DSP HQrs. Moreover, during the course of enquiry the enquiry officer provided full-fledged opportunity to the appellant for defending himself but he bitterly failed to produce even a single iota of



evidence therefore, plea taken by the appellant has no legal footing to stand on, besides the above, the appellant was also issued Final Show Cause Notice but this time too he failed to justify his innocence. Thus he was awarded major punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant (Copy of enquiry report is annexed as annexure "B").

- 4. Correct to the extent that the appellant was dismissed by the then DPO Mardan due to his absence from lawful duty without any leave/permission of the competent authority.
- 5. Correct to the extent that the appellant preferred departmental appeal which was also decided on merit because he was provided full-fledged opportunity of defending himself by the appellate authority but he bitterly failed to produce any cogent reasons in his defense. The same was rejected (Copy of rejection order is attached as annexure "C")
- 6. Correct to the extent that the appellant preferred review petition to the Inspector General of Police Khyber Pakhtunkhwa Peshawar. The revisionary authority by taking a lenient view and decided the review petition on merit. Therefore, the same was rejected being devoid of any merit and badly time barred.
- 7. That appeal of the appellant is liable to be dismissed on the following grounds amongst the others.

REPLY ON GROUNDS:


- A. Incorrect. Plea taken by the appellant is not plausible the orders passed by the competent authority as well as appellate authority are legal, lawful hence, liable to be maintained.
- B. Incorrect. As the appellant has been dismissed on the allegation of willful absence, which has no concern with the stance taken by the appellant.
- C. Incorrect. Plea taken by the appellant is not plausible, because he has been properly proceeded against departmentally by issuing him Charge Sheet with Statement of Allegations and Final Show Cause Notice. However, during the course of enquiry the appellant was summoned and heard in person on 09.09.2016, but he failed to present any plausible reasons in his defense.
- D. Incorrect. Stance taken by the appellant is baseless, because he was dismissed from service due to absence from lawful duty without any leave/permission of the competent authority.
- E. Incorrect. Plea taken by the appellant is not plausible because appellant's performance was not satisfactory as previously he had been awarded major punishment of dismissal from service vide order book No. 64, dated 05.01.2016. Later on, he was reinstated by the then DIG Mardan. Moreover, the perusal of service record of the appellant revealed that due to his lethargic attitude his entire service record is tainted with bad entries

(Copy of list of bad entries with previous dismissal order are attached as Annexure "D & E").

- F. Incorrect. KP Police Rules 1975 are applied to Police Officer/Official and the same was duly followed.
- G. Incorrect. Plea taken by the appellant is not plausible, because he has been properly proceeded against departmentally by issuing him Charge Sheet with Statement of Allegations and enquiry was entrusted to the then DSP HQrs, which was received by the appellant himself on 05.09.2016 and duly signed the photo copy as token of its receipt. Moreover, during the course of enquiry, the enquiry officer provided full-fledged opportunity to the appellant for defending himself but he bitterly failed to produce even a single iota of evidence therefore, plea taken by the appellant has no legal footing to stand on, besides the above, the appellant was also issued Final Show Cause Notice but this time too he failed to justify his innocence. Thus he was awarded major punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant.
- H. Incorrect. Proper enquiry was conducted wherein all the opportunities of defence/hearing were provided to appellant.
- I. Incorrect. All the public documents have been provided to appellant under the rules.

PRAYER:-

It is therefore, most humbly prayed that on acceptance of above submissions, appeal of the appellant may very kindly be dismissed being a badly time-barred and devoid of merits.


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


**Regional Police Officer,
 Mardan**
 (Respondent No. 02)


**District Police Officer,
 Mardan.**
 (Respondent No. 03)

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

Service Appeal No. 1682/2020

Habib Shah Ex Constable No.1710 s/o Rahim Shah r/o Haji Mian Kalay Jehangir Abad
Post office Kalpani Railway Station Tehsil Takht Bhai District Mardan

.....Appellant

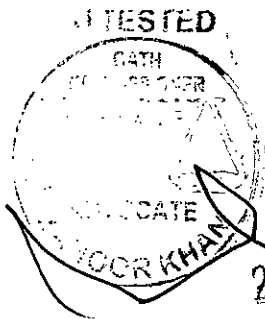
VERSUS

The Inspector General of Police , Khyber Pakhtunkhwa, Peshawar and others.

.....Respondents

COUNTER AFFIDAVIT

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.



[Signature]
**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**
(Respondent No. 01)

[Signature]
**Regional Police Officer,
Mardan**
(Respondent No. 02)

[Signature]
**District Police Officer,
Mardan.**
(Respondent No. 03)

Amme'le "A" B

(5)

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 275 /R/D.A-P.R-1975.

Dated 31-08-2016

DISCIPLINARY ACTION UNDER KPK POLICE RULES - 1975

I, **Faisal Shahzad** District Police Officer, Mardan as competent authority am of the opinion that **FC Habib Shah No. 1710**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02. (iii) of KPK Police Rules 1975.

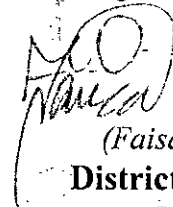
STATEMENT OF ALLEGATIONS

That **FC Habib Shah No. 1710**, while posted at Police Station Rustam, was transferred to PP Jabby PS Rustam vide OB No. 1708 dated 19.07.2016 but he deliberately absented himself from lawful duty vide DD No. 23 dated 28.07.2016 to-date.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Ikhtiraz Khan DSP/HQrs: Mardan** is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the Enquiry Officer.



(Faisal Shahzad) PSP
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 275 /R, dated Mardan the 31-08-2016.

Copy of above is forwarded to the:

1. DSP/HQrs: Mardan for initiating proceedings against the accused official / Officer namely **FC Habib Shah No. 1710**, under Police Rules, 1975.
2. **FC Habib Shah No. 1710**, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

***** !!! *****

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CHARGE SHEET UNDER KPK POLICE RULES 1975

I, **Faisal Shahzad** District Police Officer, Mardan as competent authority hereby charge you **FC Habib Shah No. 1710**, as follows.

That you FC, while posted at Police Station Rustam, was transferred to PP Jabby PS Rustam vide OB No. 1708 dated 19.07.2016 but you deliberately absented yourself from lawful duty vide DD No. 23 dated 28.07.2016 to-date.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the KPK Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the KPK Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in persons.



(Faisal Shahzad) PSP
District Police Officer,



مستورد
بجاریت لقمه کلاه فولد کلا

۱۰۰۰

۵-۹-۱۶

0300-5783405

Annexure B (8)

OFFICE OF THE DEPUTY SUPERINTENDENT OF POLICE
HEADQUARTER & TRAFFIC MARDAN.

Inquiry Report conducted video Order No.275 /R/D.A-P.R-1975 dated 31.08.2016.

BRIEF HISTORY:-

Constable **Habib Shah No. 1710** while posted at Police Station Rustam Mardan, was transferred to Police Post Jabby PS Rustam vide OB No. 1708 dated 19.07.2016 but he deliberately absented himself from his lawful duty vide DD No. 23 dated 28.07.16 to-date (Total period of absence is **43 days he is still absent**) without any leave/permission of the competent authority.

FINDINGS:-

In this connection enquiry proceedings were initiated and the alleged constable Habib Shah No. 1710 was summoned to appear. Wherein, his absence from orderly room was entered into daily diary vide DD No. 38 dated 07.09.16 Police Lines Mardan. Today on 09.09.2016, the alleged constable appeared before the undersigned and stated no valid reason regarding his absence from PS as well as orderly room. Written statement of the alleged constable was also recorded (Enclosed herewith). He was earlier dismissed from service by worthy District Police Officer, Mardan vide OB No. 64 dated 05.01.2016 and then was reinstated into service by Worthy Deputy Inspector General of Police Mardan Region-I, Mardan vide OB No. 499 dated 26.02.2016 (he was issued last warning and reinstated). The alleged constable is fit both mentally and physically and during in person statement he stated that he is not happy about his posting at PS Rustam and he is still absent from his lawful duty, also he is reluctant to obey the orders of worthy District Police Officer, Mardan. He further stated that he is no more interested in police department. The alleged constable Habib Shah No. 1710 appears to be a clear imposter. Having said that he produced medical documents which were not attested by the MS. The alleged constable is simply playing with the officers and the department. His previous record reflects **02 bad entries with one Major punishment (Dismissal from service)** and issued with last warning.

RECOMMENDATIONS:-

Keeping in view the above facts, the alleged constable seems to be fed-up from his service. He is no more interested in police department. He does not deserve to be the part of a discipline force, a habitual absentee, indiscipline, inefficient and off-course a great burden on a force that is fighting hard against terrorism.

It is therefore, recommended that, the alleged constable may kindly be awarded **Major Punishment (Dismissal from Service)**, if agreed.

(IKHTRAZ KHAN)

Deputy Superintendent of Police.

جایگاہ

Q

جنوبی مشرقی جانب سے دو طرفہ سے

سال 1952ء میں لکھنؤ میں پورے ملک میں دوران

میں ڈیڑھ گھنٹے کے لیے۔ سال 1957ء کو

یوم بیماری کے لیے وقت رہتا۔ دوران رخصت

سال 1957ء میں بیماری - اور 8/16 اگر دوران

میں عمل کیلئے میں درج ہے۔ جلی ڈسٹریکٹ

یکے میں لکھا ہے۔ سال 1957ء میں

تندرستی میں Bed Rest کی - فارسی

اور سال 1957ء میں بیماری - سال 1957ء کو

جس میں لکھا ہے۔ سال 1957ء کو

تھکنے میں فارسی کی - اس وقت موجود

کریکٹ میں لکھا ہے۔ اس میں لکھا ہے

فارسی میں لکھا ہے۔

جس میں لکھا ہے۔

سال 1957ء میں لکھا ہے۔

سال 1957ء میں لکھا ہے۔

سال 1957ء میں لکھا ہے۔

سال 1957ء میں لکھا ہے۔

16/10/57

Handwritten signature

16/10/57

FINAL SHOW CAUSE NOTICE

I, Faisal Shahzad, District Police Officer, Mardan as competent authority under Police Rules 1975, do hereby serve you **Constable Habib Shah No. 1710** while posted at Police-Post Jabai Kandao Police Station Rustam, Mardan as follows:-

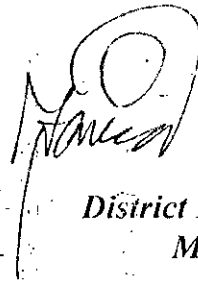
i) That consequent upon the completion of enquiry conducted against you through enquiry Officer, however, you have been found guilty.

ii) On going through the findings and recommendations of the enquiry Officer, the material on record and other connected papers including your defence before the said enquiry Officer.

I am satisfied that you have committed a gross misconduct as defined in Rules 2 (iii) of KP Police disciplinary Rules 1975.

Whereas, you Constable Habib Shah No. 1710, while posted at Police Post Jabby Kandao Police Station Rustam Mardan, was transferred to PP Jabby PS Rustam vide OB No. 1708 dated 19.07.2016, but you deliberately absented yourself from the lawful duty vide DD No. 23 dated 28.07.2016 to-date without any leave/permission of the competent authority.

1. As a result there of **I, Faisal Shahzad**, District Police Officer, Mardan as competent authority issue you a final show cause is to why major punishment of dismissal may not be imposed upon you, your reply should reach to this office within 05 days.
2. If no reply to this notice is received within 05 days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and in this case an ex-parte action shall be taken against you.
3. Copy of the findings of the enquiry officer is enclosed.

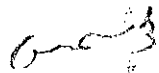


**District Police Officer,
Mardan**

No. 306 /R/FSCN

Dated 23 / 9 /2016

Habib Shah s/o Rahim Shah r/o Jehangir Abad Takht Bhai





POLICE DEPARTMENT

MARDAN DISTRICT

ORDER

This order will dispose of the departmental inquiry, which is conducted against **Constable Habib Shah No. 1710**, while posted at Police Post Jabai-Kandao Police Station Rustam Mardan, deliberately absented himself from the lawful duty without any leave/permission vide DD No.23 dated 19.07.2016 to-date. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.

In this connection, **Constable Habib Shah No. 1710**, was issued charge sheet vide this office No. 275/R, dated 31.08.2016, and proceeded against departmentally through the **Ikhteraz Khan DSP/HQrs: Mardan**, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 357 R dated 16.09.2016, also served with final show cause notice vide this office No. 306 dated 23.09.2016, as the allegations have been established against him and recommended him for major punishment.

After going through inquiry file the undersigned reached to the conclusion that the alleged **Constable Habib Shah No. 1710**, is hereby **dismissed** from service, while his absence period treated as leave without pay in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 2662

Dated 7-11-2016

(Faisal Shahzad)PSP
District Police Officer,
Mardan

No. 9864-69 dated Mardan the 7-11-2016

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-I, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs: Mardan.
4. The Pay Officer (DPO) Mardan.
5. The I.C (DPO) Mardan.
6. The OSI (DPO) Mardan.

Annexure C (12)

ORDER.

This order will dispose-off the appeal preferred by Ex-Constable Habib Shah No. 171 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was awarded Major punishment of dismissal from service vide District Police Officer, Mardan OB No. 2662 dated 03.11.2016

Brief facts of the case are that, the appellant while posted at Police Post Jabi Kando Police Station, Rustam, deliberately absented himself from lawful duty vide DD No. 23 dated 19.07.2016 till the date of his dismissal. Consequently he was proceeded against departmentally through Mr. Ikhtiraz Khan, Acting DSP/HQrs: Mardan, who after fulfilling necessary process, submitted his findings to the District Police Officer, Mardan, recommending him for major punishment. The District Police Officer, Mardan agreed with the findings of the enquiry officer and awarded him major punishment of Dismissal from Service.

He was called in orderly room held in this office on 29.03.2017 and heard him in person. The appellant did not produce any cogent reason for his absence. Besides the appellant was also dismissed from service for absence from duty in the year 2016 but he did not give off his indiscipline conduct of absence. Therefore, I find no grounds to intervene the order passed by District Police Officer, Mardan. Appeal is rejected.

ORDER ANNOUNCED.

(Muhammad Alam Shinwari)PSP
Regional Police Officer,
Mardan

No. 2492 /ES, Dated Mardan the 31-3- /2017.

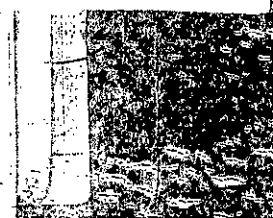
Copy to District Police Officer, Mardan for information and necessary action w/r to his office

Memo: No. 1204/LB dated 22.03.2017. The Service Roll is returned herewith.

(*****)

OB/EC/OSI, Mardan
for notation

DPD, Mardan
31/3/17



Serial No.

ORDER

Due to his pathetic financial condition, he is re-instated in S with immediate effect and award

closed to pol and misconduct

OB No. 1 dt 2/1/16

Punishment of stoppage two increments with accumulative effect the intervening period to be treated as 23.11.15 to 24.2.16 leave w/o pay and given best warning vide Dig/Mardan order E

Service, as leave the power

OB

No. 1575/Es, dt. 24-2-16
Pay fixed Rs. 8345/Pm
OB No. 499

M O
Mardan

District Police Officer
Mardan

dt 26.2.16

OB

Sev

As

vide

15. CENSURES AND PUNISHMENTS.

ORDER,

He is hereby suspended and closed to police lines for their ill discipline and misconduct with immediate effect.

OB No. 199
dt 21.1.14

DPo/ML

DPo/ML

ORDER

He is hereby dismissed from Service, while his absence period treated as leave without pay in exercise of the power vested under PR-1975.

OB No 64
5/1/16

DPo/ML

ORDER

He is hereby Dismissed from Service, while his absence period treated as L.W. Pay in exercise of the power vested under Police Rules-1975.

OB No. 2662
3-11-16

DPo/ML

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23.11.15 to
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order E

Police Officer
of rank

115

CHARACTER ROLL OF

15. CENSURES AND PUNISHMENTS. --- Contd.

Serial No.

ORDER

His appeal rejected by DIG,
Mandla vide order Sndst. no. 2432,
ES, dt. 31-3-17.
(copy attached).
A. K. Singh
Sd/-
Sd/-

No. 171 of
awarded N
2662 dated

Kandao P
19.07.201
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Police O

ORDER AND

No. 2

16

16. LEAVE, ABSENCE AND BREAKS IN SERVICE.
All Periods not counting as "approved service" to be entered in red ink.

1.		2.			3.	4.
Date		Extent			No. Of District Order	Description of leave i.e privilege hospital, sick leave or of absence, or forfeiture of approved service.
To	Years	Months	Days			
				①	1983 23-9-14	Leave w/o pay - DPT/MR

POLICE DEPARTMENT

MARDAN DISTRICT

ORDER

This order will dispose of the departmental inquiry, which is conducted against **Constable Habib Shah No. 1710**, while posted at Police Post Jabai Kandao Police Station Rustam Mardan, deliberately absented himself from the lawful duty without any leave/permission vide DD No.25 dated 23.11.2015 to-date. His this attitude adversely reflected on his performance, while discharge his official duty which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975.


In this connection, **Constable Habib Shah No. 1710**, was issued charge-sheet vide this office No. 681/R, dated 27.11.2015 and also proceeded against departmentally through the **Fazle Wahid Khan DSP/Rural Mardan**, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 1140/R dated 17.12.2015 as the allegations have been established against him and recommended him for minor punishment.

After going through inquiry file the undersigned reached to the conclusion that the alleged **Constable Habib Shah No. 1710**, is hereby dismissed from service, while his absence period treated as leave without pay in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 64

Dated 5 / 1 / 2016


(Faisal Shahzad)PSP
District Police Officer,
Mardan

No. 120 / dated Mardan the 6-1- /2016

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations, Mardan.
3. The DSP/HQrs: Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan.

(18)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 1682/2020

Habib Shah Ex Constable No.1710 s/o Rahim Shah r/o Haji Mian Kalay Jehangir Abad
Post office Kalpani Railway Station Tehsil Takht Bhai District Mardan

.....Appellant


VERSUS

The Inspector General of Police , Khyber Pakhtunkhwa, Peshawar and others.

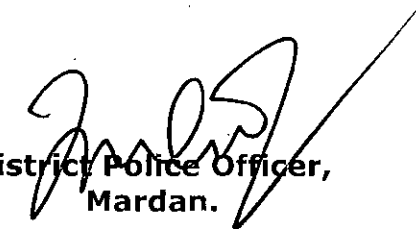
.....Respondents

AUTHORITY LETTER.

Mr. Khyal Roz Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.


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


Regional Police Officer,
Mardan
(Respondent No. 02)


District Police Officer,
Mardan.
(Respondent No. 03)

قیمت
50 روپے

111280



ایڈویکٹ: حیدر علی خان

بار کونسل / ایسوسی ایشن نمبر:

رابطہ نمبر:

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

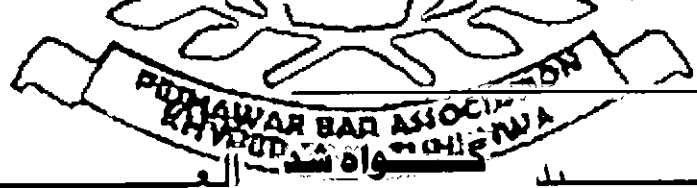
منجانب: <u>صیب شاہ</u>	دعویٰ: <u>اجیل</u>
	علت نمبر: _____
	مورخہ: _____
	جرم: _____
	تھانہ: _____

باعث تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کارروائی متعلقہ

آن مقام پشاور کے حیدر علی خان ایڈووکیٹ 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 کرہے و تقرر ثالث و فیصلہ برحلف دینے جو اب 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 گزرائی 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 ہزارہ یا اپنے بچے کے لیکر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داخستہ 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

Accepted & Admitted



الرقوم:

الع
الع
مقام

کے لیے منظور ہے۔

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