

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.111/2019

Date of Institution ... 24.01.2019
Date of Decision ... 13.10.2021

Lal Shehzad S/O Wali Khan, Ex-Police Constable R/O Darvezi
Palosa P.O Tehsil & District Hangu.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa; through Secretary Home,
Civil Secretariat Peshawar and three others.

... (Respondents)

Muhammad Ilyas Orakzai, ... For appellant.
Advocate

Kabir Ullah Khattak, ... For respondents.
Additional Advocate General

Rozina Rehman ... Member (J)
Atiq Ur Rehman Wazir ... Member (E)

JUDGMENT

Rozina Rehman, Member (J): Briefly stating the facts necessary for the disposal of the lis in hand are that appellant was appointed as Constable in the Police Department at District Hangu. He was removed from service on the allegations of absence. He filed departmental appeal which was dismissed, hence, the present service appeal.

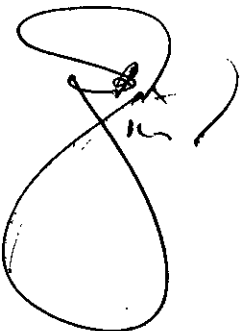
2. We have heard Muhammad Ilyas Orakzai Advocate for appellant and Kabir Ullah Khattak, learned Additional Advocate General for the respondents and have gone through the record and the proceedings of the case in minute particulars.



3. Muhammad Ilyas Orakzai Advocate learned counsel appearing on behalf of appellant, inter-alia, contended that both the orders are illegal, unlawful and void-ab-initio, therefore, ineffective upon the rights of appellant. He argued that the appellant was not treated in accordance with law and rules and as such, they violated Article-4 & 25 of the Constitution of Islamic Republic of Pakistan, 1973. He contended that no regular inquiry was conducted and no charge sheet and statement of allegations were ever issued to the appellant.

4. Conversely, learned A.A.G submitted that appellant was recruited on 07.06.2007 and just after about a month, he willfully absented himself from duty without leave or permission from the concerned officer. He contended that he was proceeded against departmentally and accordingly was removed from service who filed departmental appeal after about 11 years without any explanation for delay which was filed by R.P.O Kohat being badly time barred.

5. From the record it is evident that appellant was enlisted as Constable in the year 2007. He absented himself from duty/training program without obtaining proper permission or leave and thus committed a deliberate absence from duty, therefore, he was issued charge sheet alongwith statement of allegations and proper inquiry was initiated against him, thereafter, a final show cause notice was served upon the appellant. The Government servant becomes liable for disciplinary action after seven days of his willful absence. If he in pursuance to the lawful process does not come up to explain the reasons of his absence, the ex-parte decision against him is the




requirement of law irrespective of any factual position under which he absented himself from attendance of the duty.

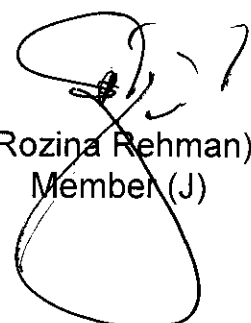
6. In the instant case, appellant was recruited on 07.06.2007 and just after about a month, he absented himself from Police Lines, Hangu on 21.07.2007, therefore, he was removed from service from the date of absence vide O.B No.71 dated 26.08.2008. He filed departmental appeal on 04.12.2018 which was dismissed being badly time barred on 13.12.2018. Travelling history of the appellant was also placed on file by the respondents which shows his travelling from Pakistan to United Arab Emirates.

7. It is well-entrenched legal proposition that when an appeal before departmental authority is time barred, the appeal before Service Tribunal would be incompetent. In this regard reference can be made to cases titled Anwarul Haq v. Federation of Pakistan reported in 1995 SCMR 1505, Chairman, PIAC v. Nasim Malik reported in PLD 1990 SC 951 and State Bank of Pakistan v. Khyber Zaman & others reported in 2004 SCMR 1426.

8. Having considered the matter from all angles in the light of material available on file, we do not find any merit in the instant service appeal which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED.
13.10.2021


(Atiq Ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)


02.09.2021

Appellant alongwith is counsel Mr. Muhammad Ilyas Orakzai, Advocate, present. Mr. Abdur Rauf, Head Constable alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that he has not met preparation for arguments. Adjourned. To come up for arguments before the D.B on 13.10.2021.



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



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Order

13.10.2021

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General alongwith Mazhar Abbas Stenographer for respondents present.

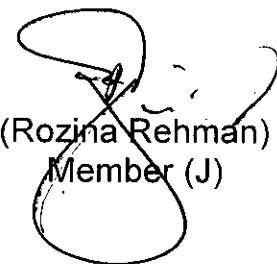
Vide our judgment of today of this Tribunal placed on file, we do not find any merit in the instant service appeal which is hereby dismissed. Parties are left to bear their own costs. File be consigned to the record room.

Announced.

13.10.2021



(Atiq ur Rehman Wazir)
Member (E)



(Rozina Rehman)
Member (J)

18.11.2020

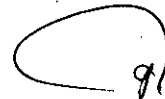
Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Former requests for adjournment as issue involved in the present case is pending before Larger Bench of this Tribunal. Adjourned. To come up for arguments on 12.02.2021 before D.B.



(Atiq ur Rehman Wazir)
Member (E)



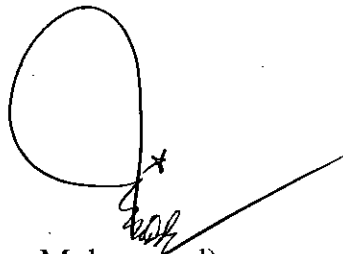
(Rozina Rehman)
Member (J)

12.02.2021

None for the appellant present. Adl: AG alongwith Mr. Zahid Ur Rehman, Inspector for respondents present.

Arguments could not be heard due to general strike of the Bar.

Adjourned to 04.05.2021 for arguments before D.B.



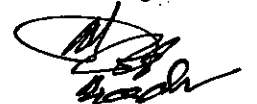
(Mian Muhammad)
Member (E)



(Muhammad Jamal Khan)
Member (J)

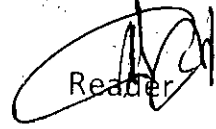
4.5.21

Due to COVID-19, the case is adjourned to 2.9.2021 for the same.



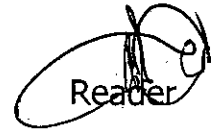
7.5 .2020

Due to COVID19, the case is adjourned to
27/ 7/2020 for the same as before.


Reader

27.07.2020

Due to COVID-19, the case is adjourned. To come
for the same on 17.09.2020 before D.B.



Reader


17.09.2020

Counsel for appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate
General alongwith Zahid-ur-Rehman Inspector for
respondents present.

Counsel for appellant requested for adjournment.
Adjourned. To come up for arguments on 18.11.2020
before D.B.


(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

06.01.2020

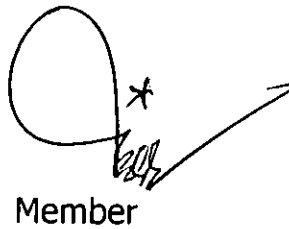
Appellant in person present. Mr. Muhammad Jan, DDA for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourn. To come up for arguments on 10.03.2020 before D.B.


Member


Member

10.03.2020

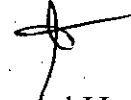
Counsel for the appellant present. Asst: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 07.05.2020 before D.B.


Member


Member

11.06.2019

Counsel for the appellant and Addl: AG alongwith Mr. Zahid Ur Rehman, Inspector for respondents present. Written reply/comments submitted which is placed on file. Case to come up arguments on 05.08.2019 before D.B.



(Ahmad Hassan)
Member

05.08.2019

Learned counsel for the appellant present. Mr. Muhammad Jan learned Deputy District Attorney alongwith Zahid ur Rehman Inspector present. Learned counsel for the appellant submitted rejoinder which is placed on file and seeks adjournment. Adjourn. To come up for arguments on 29.10.2019 before D.B.



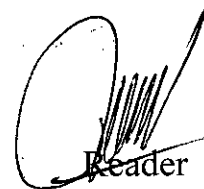
Member



Member

29.10.2019

Due to incomplete bench the case is adjourned. To come up for the same on 06.01.2020 before D.B.




Reader

07.03.2019

Counsel for the appellant present. Preliminary arguments heard.

It was contended by learned counsel for the appellant that the appellant was removed from service vide order dated 26.02.2008 on the allegation of absence. The appellant filed departmental appeal on 04.12.2018 which was rejected on 13.12.2018 and the present service appeal file on 24.01.2019. Learned counsel for the appellant further contended that the impugned order was passed retrospectively therefore the same is void and no limitation run against the same order. It was further contended that proper proceeding was not be adopted therefore the impugned order is illegal and to be set aside.

The contention raise to learned counsel for the appellant need consideration. The appeal is admitted for regular hearing subject to limitation and all legal objections. The appellant is direction to deposit security and process fee within Ten (10) days. Thereafter notice be issued to the respondents for written reply/comments on 17.04.2019 before S.B


Appellant Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi
Member

17.04.2019

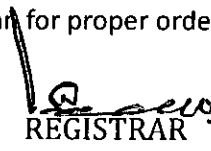

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Zahid Rehman Inspector present. Written reply not submitted. Representative of the respondent department seeks time to furnish written reply/comments. Granted. To come up for written reply/comments on 11.06.2019 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 111/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 24/1/2019 | <p>The appeal of Mr. Lal Shehzad presented today by Mr. Muhammad Ilyas Orakzai 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 24/1/19</p> |
| 2- | | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>7-3-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> |

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Service Appeal No 111 2019

Lal Shehzad

V E R S U S

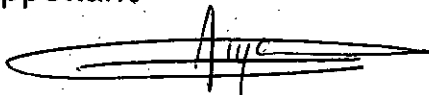
Government of KP and others

I N D E X

| S NO | DESCRIPTION OF DOCUMENTS | ANNEX | PAGE |
|------|--|-------|-------|
| 1. | Grounds of Appeal alongwith Affidavit | - | 1-5 |
| 2. | Application for condonation of delay with affidavit | - | 6-8 |
| 3. | Addressed of the parties | - | 9 |
| 4. | Copy of the impugned order dated 26 th February, 2008 | - | 10 |
| 5. | Copy of the departmental appeal and impugned Appellate order dated 13 th December, 2018 | - | 11-12 |
| 6. | Wakalat Nama (in original) | - | 13 |

LAL Shehzad
Appellant

Through:


(MUHAMMAD ILYAS ORAKZAK)
Advocate,
High Court, Peshawar
Cell # 0333-9191892

Dated: -23-01-2019

①

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR.

Khyber Pakhtunkhwa
Service Tribunal

In Re: Service Appeal No 111 / 2019

Diary No. 99

Dated 24/01/2019

Lal Shehzad S/O Wali Khan, Ex-Police Constable R/O Darvezi
Palosa P.O Tehsil and District Hangu.....(Appellant)

V E R S U S

1. Government of Khyber Pakhtunkhwa through Secretary Home, Civil Secretariat Peshawar
2. Inspector General of Police, Khyber Pakhtunkhwa at Peshawar
3. Regional Police Officer, Kohat Region at Kohat
4. District Police Officer, District Hangu(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974 R/W Khyber Pakhtunkhwa E&D Rule 2011 against the impugned order No 71 dated 26-02-2008 of Respondent No 4 and impugned Appellate order No 1284 dated 13-12-2018, whereby the Appellant has been removed from his service

Filed to-day
Registrar
24/1/19

PRAYER IN APPEAL:-

On acceptance of this Appeal, the impugned order as well as impugned Appellate order may please be set aside and Appellant be reinstated his service with all back wages and benefits with such other relief as may deemed fit in the circumstances of the case may also be granted.

Respectfully Sheweth:-

- 1) That the Appellant was appointed as constable Police Department at District Hangu in the year 2007.
- 2) That the Appellant was performing his duties with honesty with devotion.
- 3) That due to sudden death of the father of Appellant, the Appellant was remained absent from his duty for some days.
- 4) That the Appellant was removed from his service by Respondent No 4 vide impugned office order No 71 dated 26-02-2008. (Copy of the impugned order dated 26-2-2008 is attached herewith).
- 5) That against the impugned order, the Appellant submitted his departmental appeal to Respondent No 3, which was dismissed through order No 1284 dated 13-12-2018. (Copy of the departmental appeal and order dated 13-12-2018 is attached herewith).
- 6) That the Appellant feeling aggrieved from the orders, filed instant appeal before this Honourable Tribunal on the following grounds inter-alia:-

GROUNDS:-

- A) That the impugned dismissal order from service as well as the impugned Appellate order are illegal, unlawful, void ab-initio and ineffective upon the right of Appellant, hence liable to be set aside.

- B) That the impugned order is illegal, against the law, void ab-initio as the Executive/Departmental Authority has no power to pass the order with retrospective effect. On this score alone the impugned orders are liable to be set aside.
- C) That both the impugned orders of the Respondents are illegal, non-speaking orders, ambiguous, vague; as the Appellant was not served with any show cause notice nor proper/regular inquiry was conducted, so the Appellant was condemned unheard.
- D) That the impugned orders are void, hence no limitation would run against the void order and the void order can be challenge at anytime.
- E) That both the impugned dismissal orders from service are against the principle of natural justice.
- F) That both the impugned orders are in violation of Section 25-A of the General Clauses Act, as the competent authority has failed to cite any reason or justification in said orders.
- G) That it is well established principle of natural justice, enshrined in the precedent of superior Courts as well, that where the competent authority is going to impose the penalty of removal/dismissal etc. The regular inquiry to that effect is necessary.
- H) That all the proceedings initiated against the Appellant were mala-fide and malicious and purportedly were

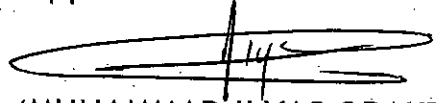
initiated in order to displace the Appellant from his post and appoint any other blue eyed.

- I) That the punishment was imposed is too harsh and is a major one.
- J) That no one shall be condemned unheard.
- K) That the other grounds not here specifically may also graciously be allowed to be raised at the time of arguments.

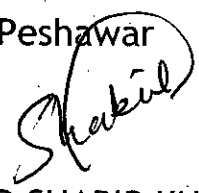
It is, therefore, most respectfully prayed that on acceptance of this Appeal, the impugned order as well as impugned Appellate order may please be set aside and Appellant be reinstated his service with all back wages and benefits with such other relief as may deemed fit in the circumstances of the case may also be granted.

Alshehzad
Appellant

Through:



(MUHAMMAD ILYAS ORAKZAI)
Advocate,
High Court Peshawar
&

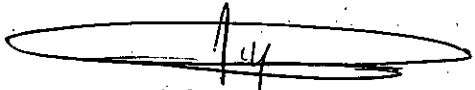


(MUHAMMAD SHABIR KHALIL)
Advocate,
High Court Peshawar

Dated:-23-01-2019

NOTE:-

No such appeal for the same Appellant has earlier been filed by me before this Honourable Tribunal prior to instant one.



Advocate

5

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Lal Shehzad

VERSUS

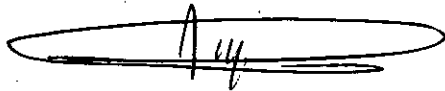
Government of KP and others

AFFIDAVIT

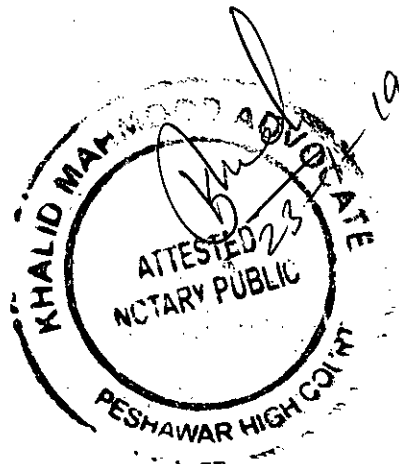
I, Lal Shehzad S/O Wali Khan, Ex-Police Constable R/O Darvezi Palosa P.O Tehsil and District Hangu, do hereby solemnly affirm and declare on oath that all the contents of accompanying Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.

Lal Shehzad
DEPONENT

Identified by:-



(MUHAMMAD ILYAS ORAKZAI)
Advocate
High Court, Peshawar



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Lal Shehzad

VERSUS

Government of KP and others

APPLICATION FOR CONDONATION OF DELAY, IF ANY

Respectfully Sheweth:-

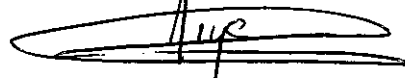
- 1) That the Applicant/Appellant is filing the instant appeal, in which no date of hearing has yet fixed.
- 2) That the Appellant was not willfully absent from his duty, but due to sudden death of father of the Appellant, due to which the Applicant/Appellant was remained absent for some days.
- 3) That the removal order of the Applicant/Appellant was passed with retrospective effect, which is void in the eyes of law, hence no limitation would run against the void order.
- 4) That the delay if any in filing of instant appeal would be due of the above reason and not intentionally and willfully.
- 5) That the law favours at cases should be decided on merits not on technicalities.

7

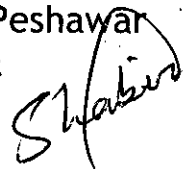
It is therefore, most humbly prayed that on acceptance of this Application, the delay in filing of appeal may kindly be condoned in the best interest of justice.

LAL Shehzad
Applicant/Appellant

Through:


(MUHAMMAD ILYAS ORAKZAI)
Advocate
High Court, Peshawar

&


(MUHAMMAD SHABIR KHALIL)
Advocate,
High Court, Peshawar

Dated: -23-01-2019

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Lal Shehzad

VERSUS

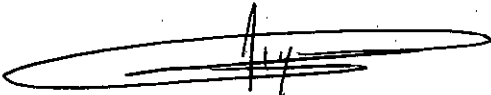
Government of KP and others

AFFIDAVIT

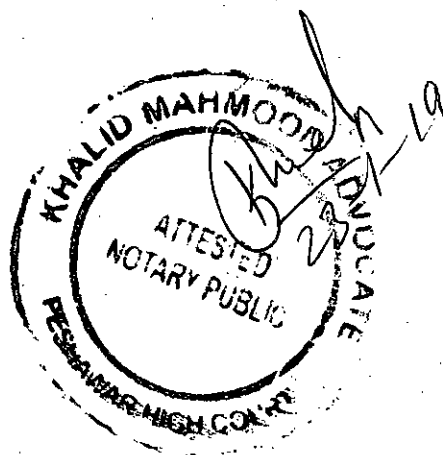
I, Lal Shehzad S/O Wali Khan, Ex-Police Constable R/O Darvezi Palosa P.O Tehsil and District Hangu, do hereby solemnly affirm and declare on oath that all the contents of accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed OR withheld from this Honourable Court.

LAL Shehzad
DEPONENT

Identified by:-



(MUHAMMAD ILYAS ORAKZAI)
Advocate
High Court, Peshawar



BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PUKHTUNKHWA,
PESHAWAR

Lal Shehzad

VERSUS

Government of KP and others

ADDRESSES OF THE PARTIES

APPELLANT

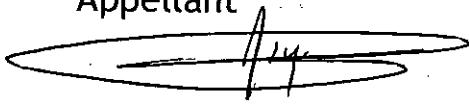
Lal Shehzad S/O Wali Khan, Ex-Police Constable R/O Darvezi
Palosa P.O Tehsil and District Hangu

RESPONDENTS

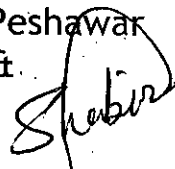
1. Government of Khyber Pakhtunkhwa through Secretary Home,
Civil Secretariat Peshawar
2. Inspector General of Police, Khyber Pakhtunkhwa at Peshawar
3. Regional Police Officer, Kohat Region at Kohat
4. District Police Officer, District Hangu

Appellant

Through:


(MUHAMMAD ILYAS ORAKZAI)
Advocate,
High Court Peshawar

&


(MUHAMMAD SHABIR KHALIL)
Advocate,
High Court Peshawar

Dated:-23-01-2019

(10)

ORDER.

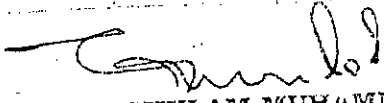
This order will dispose off the inquiry initiated against Recruit Constable Lal Shehzad No. 552 on the basis of allegations that he remained absent from duty/training programme without obtaining proper permission or leave and thus committed a deliberate absence from duty.

He was served with Charge Sheet and Statement of Allegations to which he failed to reply. Mr. Akbar Ali DSP Legal Hangu and SI Jehangir Khan Incharge Complaint Cell were appointed as Enquiry Committee to conduct Departmental Enquiry against him under N.W.F.P Removal from Service (SPECIAL POWER) Ordinance, 2000. The Enquiry Committee submitted his finding on 29.1.2008 and held the defaulter recruit constable guilty of the charges.

Thereafter, a Final Show Cause Notice was served upon the defaulter but the reply received by him was found unsatisfactory.

Keeping in view of the finding of the Inquiry Committee and having gone through available record, I, Mian Ghulam Muhammad, District Police Officer, Hangu in exercise of the power conferred upon me awarded him major punishment of Removal from service from the date of his absence.

OB No. 71
Dated: 26/2/2008.


(MIAN GHULAM MUHAMMAD)
DISTRICT POLICE OFFICER,
HANGU.

OFFICE OF THE DISTRICT POLICE OFFICER, HANGU.

No. 316-20 /PA, Dated: Hangu, the 26/2/2008.

Copy of above is submitted to the Deputy Inspector General of Police, Kohat Region, Kohat for favour of information please.

2. PO / SRC / OHC / Reader for necessary action.


(MIAN GHULAM MUHAMMAD)
DISTRICT POLICE OFFICER,
HANGU.

Accepted
[Signature]

بخدمت جناب ڈپٹی انسپکٹر جنرل صاحب کوہاٹ ریجن کوہاٹ
عنوان: درخواست برادر خلاف برخاستگی بحالی سرویس

جناب جان!

۹۲۱۵

گزارش ہے کہ سائل مسیحیت منشیہل مورخہ 06 01 2007 کو تلفظہ پاپیس ضلع ختلو میں بھرتی ہوا۔
سائل ۱۵ برس صاحب ذلت ٹھوسہ اور بد طیف اور اس وقت بھی اس کے پاس پاپیس میں ایک کوئی اور سائل بھی
نہیں ہے۔ اور سائل سربراہ ہے۔ پاپیس امریکہ کے۔ جج صاحبہا لکھ جوں خدمت وغیرہ سائل اپنی اپنی سے فیہ حاضر ہے۔
سائل مسیحیت اور دار فرزند کی بھجوری نوکری خند سے فیہ حاضر ہے۔ سائل سے خلاف مکتانہ کاروائی کی
جسے سائل کو نسبت مکتانہ کاروائی ہے کوئی باضابطہ طور پر اطلاع نہیں ہوئی تھی جب سائل ختلو پاپیس میں گیا تو سائل کو بتایا گیا
کہ آپ ڈائری سے اس وقت پاپیس۔

سائل نے پاپیس میں ایک کوئی اور سائل بھی نہیں ہے۔ پاپیس میں ایک کوئی اور سائل بھی نہیں ہے۔
نہیں ہوتے سائل بچوں میں وہ ایک ہے۔

مکتانہ کاروائی کی درخواست پر سائل نے فوراً جواب دیا۔ سائل نے پاپیس میں ایک کوئی اور سائل بھی نہیں ہے۔
سائل کو نسبت پاپیس۔

میں نوازش ہوں۔

مورخہ 04 12 2018

appeal is fully imputed
and should be filed.

اس سائل سابقہ منشیہل خان عمر نمبر 562 سندھ روڈ میں پاپیس ضلع ختلو

0332-9532397

intended
for

DIS-POLICE
KOHAT

Phone No: 9260112.
Fax No: 9260114.

F1 - 16/1/19

12

From: - The Regional Police Officer,
Kohat Region, Kohat.

To: - The District Police Officer, Hangu.

No. 1206 /EC, Dated Kohat the 13/12 /2018.

Subject: - APPEAL.

MEMO:

An appeal, preferred by Ex-FC Lal Shahzad No. 562 of Hangu district Police in connection with his reinstatement into service, was examined and filed by W/RPO Kohat being badly time-barred about 11-years.

He may be informed accordingly please.




[Signature]
Regional Police Officer,
Kohat Region

Ru
FC
16/1/19

Attested
[Signature]

← AFTER COVER IS OPENED OR UNIT OVERHEATS THIS P

DIG POLICE
KOHAT

| | | | | |
|--|------|---|--|---|
| قیمت 5 روپے | 1477 |  |  |  |
| ایڈوکیٹ: | | پشاور بار ایسوسی ایشن، خیبر پختونخواہ | | |
| بار کونسل / ایسوسی ایشن نمبر: BC No. 10-3471 | | | | |
| رابطہ نمبر: 0333-9191892 | | | | |

بعدالت جناب: سر جسٹس گلبرگ چیئرمین کونسل پشاور

| | |
|------------------------|-------------------|
| مخاطب: ایڈووکیٹ | دعویٰ: سپریم کورٹ |
| لعل شہزاد | علت نمبر: |
| بنام | مورخہ: |
| گورنمنٹ گلگت و بلتستان | جرم: |
| | تھانہ: |

بابت تحریر آنکہ

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

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

المرقوم: 23-1-2019

الع بد گواہ شد الع بد

مقام پشاور کے لیے منظور ہے۔

Accept

(Signature)

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

ALShehjad

لعل شہزاد

گورنمنٹ گلگت و بلتستان



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

Service Appeal No. 111/2019
Lal Shehzad, Ex-Const:

..... Appellant.

VERSUS

Government of Khyber Pakhtunkhwa, & others

..... Respondents.

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectively Sheweth:-

Parawise comments are submitted as under:-

Preliminary Objections:-

- a. That the appellant has got no cause of action.
- b. That the appellant has got no locus standi.
- c. That the appeal is not maintainable in the present form.
- d. That the appeal is bad for misjoinder and not-joinder of parties.
- e. That the appellant has not come with clean hands to this Honorable Tribunal.
- f. That the appellant, after about one month of his recruitment, willful, absented himself from duty vide DD No. 21 dated 21.07.2007 till his dismissal from service which proved his disinterest to serve. Hence, the appellant is estopped to file the instant appeal for his own conduct. Copy of DD is annexure "A".
- g. That the appellant after a laps 11 years from the date of his dismissal approached the departmental appellant forum in this Honorable Tribunal, which proved willful lack of his disinterest, to serve.
- h. That for such a willful unexpanded prolong delay (11 years); the appeal is badly time barred and liable to be dismissed in limine.

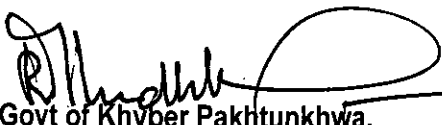
Facts:-

1. Pertains to record.
2. Incorrect, the appellant was recruited on 07.06.2007 and after about a month, the appellant had willfully absented himself from Police Lines Hangu on 21.07.2007. Furthermore, the appellant had also not undergone basic recruit course.
3. Incorrect, the appellant had willfully absented himself from duty, left his place of posting without any leave or permission from his senior/concerned officer.
4. On the above willful absence, during his initial stage of recruitment, the appellant was proceeded with departmentally. The charge leveled against the appellant was proved beyond any shadow.
5. The appellant slept over his right, if any and did not bother to resort to remedial proceedings in time. The appellant had filed appeal after a laps of about 11 years without any explanation of such a prolong willful delay.
6. The appellant is estopped to file instant appeal for his own conduct.


Grounds:-


- A. Incorrect, the competent authorities has passed legal order in accordance with law & rule.
- B. Incorrect, legal orders were passed in accordance with law & rules. The appellatant deliberately neither joint the enquiry proceedings, nor appeared before the respondent No. 03 till the disposal of enquiry. The appellatant had only about 01 month service. Furthermore, the impugned order is under cover of above law.
- C. Incorrect, a legal orders were passed by the competent authority.'
- D. Incorrect, the appellatant having only one month service, willfully absented himself and after a laps of about 11 years, he approached in departmental/service appeal. Hence, there is numerous delay in lodging of appeals without any good reason for such a willful prolong delay.
- E. Incorrect, the orders were passed in accordance with law/rules.
- F. Incorrect, the appellatant was proceeded under the law/rules.
- G. It is submitted that the regular enquiry was conducted, with appointment of enquiry committee. Copy of charge sheet and statement of allegations of annexure "B & C".
- H. Incorrect, the proceedings against the appellatant were conducted in according to law & rules. Furthermore, all appointments are followed by law & rules.
- I. The appellatant had heard only one month service, during which he absented himself and did not return till the disposal of enquiry. Furthermore, the appellatant found inefficient at the very initial stage of recruitment.
- J. As replied in the above paras, the appellatant deliberately avoided to join the enquiry proceeding and there was no hope of return back, therefore, there was no other option except to decide the enquiry in accordance with rules.
- K. The respondent through representative may also be allowed to advance argument during the hearing.

In view of the above, short span of appellatant service (about 01 month) numerous delay for about 11 years in filling departmental appeals, the instant appeal is not maintainable. Furthermore, the appeal is devoid of merits, without any substance, badly time barred may graciously be dismissed with cost.


Govt of Khyber Pakhtunkhwa,
through Secretary Home & TAs Deptt
(Respondent No. 1)


District Police Officer,
Hangu
(Respondent No. 4)


Inspector General of Police,
Khyber Pakhtunkhwa
(Respondent No. 2)


Regional Police Officer,
Kohat
Deputy Inspector General of Police
(Respondent No. 3)
Regional Police Officer
Kohat Region

Annexure 'A'

کولمبیا ہائیڈرو پاور پراجیکٹ
تقریباً 21 جولائی 2007ء

مر 21 ڈیڑھ گھنٹہ کے اندر 20 جولائی 2007ء تک 1580
کلو میٹر فی گھنٹہ کی رفتار سے سفر کیا گیا ہے۔
پتھر بھرا گاڑیوں میں سفر کیا گیا ہے۔
پتھر بھرا گاڑیوں میں سفر کیا گیا ہے۔
پتھر بھرا گاڑیوں میں سفر کیا گیا ہے۔
پتھر بھرا گاڑیوں میں سفر کیا گیا ہے۔

تقریباً 21 جولائی 2007ء
28/7/07

29/10/19

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

In Re: Service Appeal No III/2019

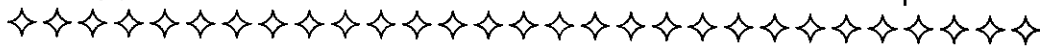
Lal Shahzad

Versus

Govt: of KPK & other

..... Appellant

..... Respondents



**REJOINDER TO COMMENTS ON BEHALF
OF APPELLANT**

Respectfully Sheweth:-

Objections to Preliminary Objections:-

*All the preliminary objections from Para A to Para H
are illegal, misconceived and misleading*

Objections to Factual Objections:-

1. *Para No 1 needs no rejoinder.*
2. *Para No 2 of the comments is correct to the extent of recruitment of appellant, rest of the Para is denied, because the appellant was absent for few days due to sudden death of father of appellant.*

3. *Para No 3 of the comments is incorrect, detailed reply has given in Para No 2.*
4. *Para No 4 of the comments is incorrect, no codal and legal formalities was fulfilled in the appellants case.*
5. *Para No 5 of the comments is incorrect, appellant was removed from service in order with retrospective effect, which was void in the eye of law, hence no limitation would run against the void order.*
6. *Para No 6 of the comments is incorrect, the detailed answer has been given in the above Paras.*

Objections to Reply on Grounds:-

- A) *Para A of grounds of comments is incorrect, the grounds taken in the appeal is correct, whereas the grounds taken by the respondents is incorrect.*
- B) *Para B of grounds of comments is incorrect, no codal and legal formalities were fulfilled in the appellants case, so the appellant is remained unheard and entitled for all back benefits*
- C) *Para C of grounds of comments is incorrect, the detailed reply is given in the above Paras.*

- D) *Para D of grounds of comments is incorrect, the impugned removal order was not passed in accordance with law, because, the departmental/executive authority has no right o passed the order with retrospective effect, order passed with retrospective effect as void one, so no limitation would run against the void order.*
- E) *Para E of grounds of comments is incorrect, detailed answer has been given in the above Paras.*
- F) *Para F of grounds of comments is also incorrect.*
- G) *Para G of grounds of comments is incorrect, misleading, no show cause notice was personally served upon the appellant nor regular inquiry was conducted against the appellant.*
- H) *Para H of grounds of comments is incorrect.*
- I) *Para I of grounds of comments is incorrect, detailed reply has given in the above Paras.*
- J) *Para J of grounds of comments is incorrect, the appellant was not personally heard, so the appellant remained unheard, which is against the natural justice.*

K) That the appellant with prior leave of this Honourable Tribunal, seeks permission to take other grounds as and at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this Rejoinder, the appeal of the appellant with any other relief may kindly be allowed as prayed for and the reply of respondents may be ignored.

Dated:- 05/08/2019

Dad
Appellant

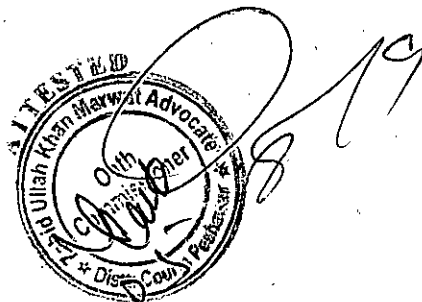
Through:-

Muhammad Ilyas Orakzai
Muhammad Ilyas Orakzai
Advocate, Peshawar.

AFFIDAVIT

I, Lal Shahzad, do hereby solemnly affirm and declare on oath that the contents of the Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Dad
DEPONENT



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

In Re: Service Appeal No III/2019

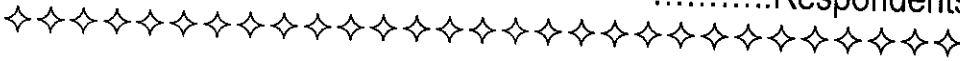
Lal Shahzad

Versus

Govt: of KPK & other

..... Appellant

..... Respondents



**REJOINDER TO COMMENTS ON BEHALF
OF APPELLANT**

Respectfully Sheweth:-

Objections to Preliminary Objections:-

*All the preliminary objections from Para A to Para H
are illegal, misconceived and misleading*

Objections to Factual Objections:-

1. *Para No 1 needs no rejoinder.*
2. *Para No 2 of the comments is correct to the extent of recruitment of appellant, rest of the Para is denied, because the appellant was absent for few days due to sudden death of father of appellant.*

3. *Para No 3 of the comments is incorrect, detailed reply has given in Para No 2.*
4. *Para No 4 of the comments is incorrect, no codal and legal formalities was fulfilled in the appellant's case.*
5. *Para No 5 of the comments is incorrect, appellant was removed from service in order with retrospective effect, which was void in the eye of law, hence no limitation would run against the void order.*
6. *Para No 6 of the comments is incorrect, the detailed answer has been given in the above Paras.*

Objections to Reply on Grounds:-

- A) *Para A of grounds of comments is incorrect, the grounds taken in the appeal is correct, whereas the grounds taken by the respondents is incorrect.*
- B) *Para B of grounds of comments is incorrect, no codal and legal formalities were fulfilled in the appellant's case, so the appellant is remained*unheard and entitled for all back benefits*
- C) *Para C of grounds of comments is incorrect, the detailed reply is given in the above Paras.*

- D) *Para D of grounds of comments is incorrect, the impugned removal order was not passed in accordance with law, because, the departmental/executive authority has no right o passed the order with retrospective effect, order passed with retrospective effect as void one, so no limitation would run against the void order.*
- E) *Para E of grounds of comments is incorrect, detailed answer has been given in the above Paras.*
- F) *Para F of grounds of comments is also incorrect.*
- G) *Para G of grounds of comments is incorrect, misleading, no show cause notice was personally served upon the appellant nor regular inquiry was conducted against the appellant.*
- H) *Para H of grounds of comments is incorrect.*
- I) *Para I of grounds of comments is incorrect, detailed reply has given in the above Paras.*
- J) *Para J of grounds of comments is incorrect, the appellant was not personally heard, so the appellant remained unheard, which is against the natural justice.*

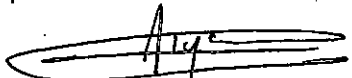
K) That the appellant with prior leave of this Honourable Tribunal, seeks permission to take other grounds as and at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this Rejoinder, the appeal of the appellant with any other relief may kindly be allowed as prayed for and the reply of respondents may be ignored.

Dated:- 05/08/2019

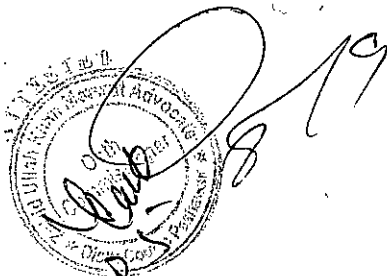
D ad
Appellant

Through:-


Muhammad Ilyas Orakzai
Advocate, Peshawar.

AFFIDAVIT

I, Lal Shahzad, do hereby solemnly affirm and declare on oath that the contents of the Rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.



D ad
DEPONENT