

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Service Appeal No. 2411/2021

Date of Institution ... 26.01.2021

Date of Decision ... 16.02.2023

Gul Zarif Khan (Ex-Constable No. 3065 of FRP Headquarters Peshawar.

... (Appellant)

VERSUS

Inspector General of Police Khyber Pakhtunkhwa Peshawar and 02 others.

... (Respondents)

MS. NAILA JAN,
Advocate

--- For appellant.

MR. MUHAMMAD RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precise facts as gleaned out from the record are that the appellant, who was serving as Constable, was proceeded against departmentally on the allegations of absence from duty with effect from 17.07.2008 without any leave/permission of the competent Authority. On conclusion of the inquiry, the appellant was removed from service vide order dated 20.01.2009. Feeling aggrieved from the order dated 20.01.2009, the appellant filed




department appeal, which was rejected vide order dated 13.08.2010, hence the instant service appeal.

2. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions raised by the appellant in his appeal.

3. Learned counsel for the appellant has addressed his arguments supporting the grounds agitated by the appellant in his service appeal. On the other hand, learned Assistant Advocate General for the respondents has controverted the arguments of learned counsel for the appellant and has supported the comments submitted by the respondents.

4. Arguments heard and record perused.



5. A perusal of the record would show that the appellant was enlisted as Constable FRP in the year 2006. During course of his service, disciplinary action was taken against the appellant on the allegation of absence from duty. On conclusion of the inquiry, the appellant was removed from service vide order dated 20.01.2009. The same was challenged by the appellant through filing of departmental appeal, which was rejected on 13.08.2010. The appellant there-after remained in deep slumber and filed the instant service appeal on 26.01.2021 i.e after a delay of about 10 years and 05 months. The appellant in his application for condonation of delay has mainly alleged that as the impugned order dated 20.01.2009 was void, therefore, no limitation would run against the same, which approach of the appellant

is misconceived. August Supreme Court of Pakistan in its judgment dated 03.10.2022 titled "Chief Engineer, Gujranwala Electric Power Company (GEPCO), Gujranwala Versus Khalid Mehmood and others" passed in Civil Appeals No. 1685 to 1687 of 2021 reported as 2023 SCMR 291 has held as below:-

"12. The law of limitation reduces an effect of extinguishment of a right of a party when significant lapses occur and when no sufficient cause for such lapses, delay or time barred action is shown by the defaulting party, the opposite party is entitled to a right accrued by such lapses. There is no relaxation in law affordable to approach the court of law after deep slumber or inordinate delay under the garb of labeling the order or action void with the articulation that no limitation runs against the void order. If such tendency is not deprecated and a party is allowed to approach the Court of law on his sweet will without taking care of the vital question of limitation, then the doctrine of finality cannot be achieved and everyone will move the Court at any point in time with the plea of void order. Even if the order is considered void, the aggrieved person should approach more cautiously rather than waiting for lapse of limitation and then coming up with the plea of a void order which does not provide any premium of extending limitation period as a vested right or an inflexible rule. The intention of the provisions of the law of limitation is not to give a right where there is none, but to impose a bar after the specified period, authorizing a litigant to enforce his existing right within the



period of limitation. The Court is obliged to independently advert to the question of limitation and determine the same and to take cognizance of delay without limitation having been set up as a defence by any party. The omission and negligence of not filing the proceedings within the prescribed limitation period creates a right in favour of the opposite party."

6. The appellant was required to have explained delay of each and every day, however he has not mentioned any sufficient cause in his application for condonation of delay. We are of the view that the appeal of the appellant is badly time barred, therefore, in view of numerous rulings of august Supreme Court of Pakistan, this Tribunal cannot discuss the merits of the appeal.

7. For what has been discussed above, the appeal in hand stands dismissed being time barred. Parties are left to bear their own costs.

File be consigned to the record room.

ANNOUNCED

16.02.2023



(KALIM ARSHAD KHAN)
CHAIRMAN



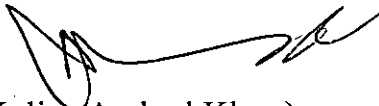
(SALAH-UD-DIN)
MEMBER (JUDICIAL)


ORDER
16.02.2023

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Painsdakhel, Assistant Advocate General for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
16.02.2023


(Kalim Arshad Khan)
Chairman


(Salah-Ud-Din)
Member (Judicial)

20.07.2022

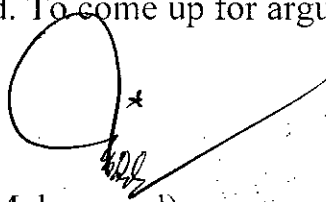
Proper Bench is not available, therefore, case is adjourned to 19.10.2022 for the same as before.



Reader

19.10.2022

Appellant in person present. Mr. Muhammad Jan, District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 29.11.2022 before the D.B.


(Mian Muhammad)
Member (E)


(Salah-Ud-Din)
Member (J)

29.11.2023 Due to rush of work. This case has been deleted. To come up for the same as before on 16.02.2023.


Reader.

14.12.2021

None for the appellant present. Mr. Noor Zaman Khattak,
District Attorney for respondents present.

Written reply/comments not submitted. Learned District
Attorney seeks time to contact the respondents for submission of
written reply/comments on the next date. To come up for written
reply/comments on 23.02.2022 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

23.02.2022

Due to retirement of the Hon'able Chairman, the case is
adjourned to 9.05.2022 for the same before D.B.


Reader

09.05.2022

Appellant present through counsel.

Kabir Ullah Khattak learned Additional Advocate
General alongwith Ihsan Ullah SI (Legal) for respondents
present.

Representative of respondents submitted written
reply/comments. Copy of the same was handed over to the
learned counsel for appellant. To come up for rejoinder, if
any, and arguments on 20.07.2022 before D.B.

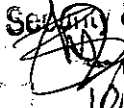

(Rozina Rehman)
Member (J)

04.08.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted for hearing subject to all legal objections including that of limitation to be determined during full 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 14.12.2021 before the D.B.

Appellant Deposited
Security & Process Fee


7/8/21

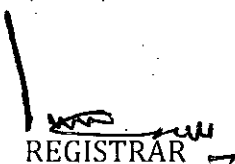



Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 2411 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	08/02/2021	<p>The appeal of Mr. Gul Zarif resubmitted today by Naila Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>16/04/21</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>16.04.2021</p> <p>Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 04.08.2021 for the same as before.</p> <p style="text-align: right;"> Reader</p>

The appeal of Mr. Kamram Ex-Constable No. 3065 of /FRP Headquarters Peshawar received today i.e. on 26/01/2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Appeal has not been flagged/marked annexures' marks.
- 4- Annexures of the appeal may be attested.
- 5- Annexures C&D of the appeal are missing.
- 6- Copy of departmental appeal is not attached with the appeal which may be placed on it.
- 7- Copy of order dated 13.8.2010 is illegible which may be replaced by legible/better one.
- 8- Annexures- F and G are missing.


No. 202 /S.T,

Dt. 28/01 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Naila Jan Adv. Pesh.

*Resubmitted by
and Remand by
all the objections
while departmental appeal
is not available with the
appellant may be re-visit
from the depart ment.*


08/02/2021

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

APPEAL NO...../2021

Gul Zarif khan

VERSUS

IGP KPK Peshawar & Others


INDEX

S#	Description of Documents	Annexure	Pages
1.	Appeal		1-5
2.	Application for Condonation of Delay		6-7
3.	Affidavit		8
4	Addresses of the Parties		9
5	copy of the medical prescriptions	"A"	10-16
6	Copies of the Charge sheet along with statement of allegations and inquiry report	"B & C"	17-19
7	copy of the Impugned order 20/01/2009	"D"	20
8	Copy of appellate/ final order dated 13/08/2010	"E"	21
9	Copies of Judgments	"F & G"	22
10	Wakalat Nama		

Dated: 26/01/2021


Appellant

Through


Naila Jan
Advocate, High Court
Peshawar.

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

APPEAL NO. 2411/2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1639

Date 26/1/2021

Gul Zarif Khan (Ex Constable No 3065 of /FRP Headquarters
Peshawar

.....Appellant

Vs

1. Inspector General of Police Khyber Pukhtunkhwa Peshawar
2. Additional Inspector General/Commandant Frontier Reserved
Police Peshawar.
3. Deputy Commandant Frontier Reserved Police Peshawar.

APPEAL UNDER SECTION 4 OF THE KHYBER
PUKHTUNKHWA SERVICE TRIBUNAL ACT 1974
AGAINST THE IMPUGNED ORDER DATED
20/01/2009 OF RESPONDENT NO 3 WHEREBY
THE APPELLANT WAS REMOVED FROM HIS
SERVICES WITH RETROSPECTIVE EFFECT, AND
13/08/2010 WHEREBY RESPONDENT NO 2
REJECTED DEPARTMENTAL APPEAL OF THE
APPELLANT ON NO GOOD GROUND WHICH IS
UTTER VIOLATION OF LAW, RULES AND
PRINCIPLES OF NATURAL JUSTICE.

Filed to-day

Registrar

26/01/2021

Re-submitted to -day
and filed.

Registrar

8/2/2021

PRAYERS:

ON ACCEPTANCE OF THE INSTANT APPEAL
BOTH THE IMPUGNED ORDERS DATED
20/01/2009 AND APPELLATE ORDER DATED
13/08/2010 MAY KINDLY BE DECLARED
ILLEGAL VOID ABI NATIO, SET ASIDE THE
IMPUGNED ORDERS AND THE APPELLANT MAY

2

**KINDLY BE REINSTATED INTO SERVICE WITH
ALL BACK BENEFITS.**

Respectfully Sheweth;

1. That the appellant was enlisted in the year 2006 as constable in the FRP HQRs: Peshawar and since his appointment the appellant performed his duties with full devotion ,enthusiasm and to the entire satisfaction of the respondents
2. That the appellant while serving the appellant fell ill due to which the appellant could not continue his duty and was under treatment .(copy of the medical prescriptions is annexed as A)
3. That the appellant was issued a charge sheet along with statement of allegations however the same was never communicated to the appellant and thereafter a fact finding one sided inquiry was conducted under RSO 2000 however in utter violation of the provision of RSO 2000, without providing any opportunity of defense to the appellant. (Copies of the Charge sheet along with statement of allegations and inquiry report are annexed as annexure B&C)
4. That after the so called one sided inquiry a show cause Notice was issued to the appellant however till date the same has not been served or provided to the appellant and thereafter the Respondent No 3 without any opportunity of personal hearing and defense removed the appellant with retrospective effect and the absence period was treated as leave without pay vide order dated 20/01/2009 however the same was never communicated to the appellant. (copy of the Impugned order 20/01/2009 is annexure D)

5. That feeling aggrieved from the impugned order the appellant FILLED A departmental appeal before Respondent No 2 however the same was rejected vide order dated 13/08/2010 in violation of law and rules (copy of the departmental appeal is not available with the appellant may be requisitioned from the respondent and appellate/final order dated 13/08/2010 is annexed as annexure E)
6. That the appellant feeling aggrieved from the impugned orders having no other adequate remedy hence filing the instant appeal on the following grounds

GROUNDS

- A. That the impugned order is against the law, rules and Principles of natural justice vide ab-initio hence liable to be set aside.
- B. That no opportunity of personal hearing or defense has been provided to the appellant hence the appellant has been condemned unheard.
- C. That no charge sheet along with statement of allegation or show cause notice had been issued/served on the appellant which are mandatory under RSO 2000.
- D. That similar Nature Appeal No 985/2012 decided on 13/02/2015 was accepted by this honorable Tribunal. Another similarly placed police constable namely Wali Ayaz was reinstated vide order dated 31/01/2019 by the respondents on the basis of another judgment of this honorable Tribunal in Appeal No 369/2012 hence as per judgment of the supreme court reported as 2009 SCMR 01 being

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similarly placed person the appellant is also entitled for similar treatment.(Copies of the same are F & G)

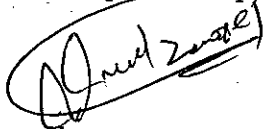
- E. That all similarly placed employees who were dismissed during insurgency in swat have been reinstated hence the appellant is also entitled for the same relief.
- F. That the inquiry officer neither recorded statement of any witness nor did the appellant was provided opportunity of cross examination.
- G. That opportunity of FAIR TRAIL, as guaranteed by art 10 A of the constitution has not been provided to the appellant.
- H. That the appellant has not been treated in accordance with Art 4&25 of the constitution.
- I. That the appellant has been awarded the punishment with retrospective effect which is void order as per judgment 2002 SCMR 1124.
- J. That the period of absence has been treated as leave without pay hence regularized the absence period then there lift no charge of absence against the appellant.
- K. That the absence of the appellant is not willful but due to the reason of illness which does not amount to misconduct.
- L. That since the impugned order the appellant is jobless and facing hardship.

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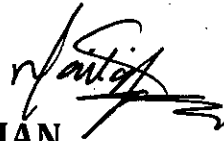
M. That the appellant sought permission of this honorable tribunal to adduce other ground during final hearing of the instant appeal.

It is therefore requested that the appeal may kindly be accepted as prayed for.

Dated: 26/01/2021


Appellant

Through


NAILA JAN
Advocate High Court
Peshawar.

6

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

APPEAL NO...../2021

Gul Zarif khan (Ex Constable No 3065 of /FRP Headquarters
Peshawar

.....Appellant

Vs

1. Inspector General of Police Khyber Pukhtunkhwa Peshawar
2. Additional Inspector General/Commandant Frontier
Reserved Police Peshawar.
3. Deputy Commandant Frontier Reserved Police Peshawar...

.....Respondents

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth;

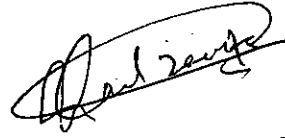
1. That the above titled appeal is filing today in which
no date has been fixed so far.
2. That the impugned order has been given
retrospective effect as well as the absence period has
been regularized by treating it leave without pay
which render the impugned order to be void order
and as per dictum laid down by superior court no
limitation runs against void order reference is made
to 2019 SCMR 648,2019 PLCCS S.C 928
3. That the Supreme Court also laid down the dictum
that cases are to be decided on merit rather than
technicalities.

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4. That the impugned order is against the constitution as well as the RSO 2000
5. That valuable rights of the appellant is involved which may not be take away on the basis of technicalities

It is therefore requested that the delay in filing the instant appeal may kindly be condoned for the end of justice.

Dated: 26/01/2021



Appellant

Through



NAILA JAN

Advocate High Court
Peshawar.

8

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

APPEAL NO...../2021

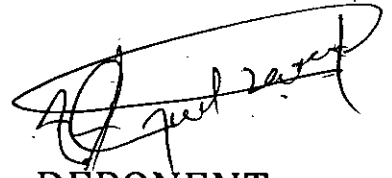
Gul Zarif khan

VERSUS

IGP KPK Peshawar & Others

AFFIDAVIT

I, Gul Zarif khan (Ex Constable No 3065 of /FRP Headquarters Peshawar, do hereby solemnly affirm & declare on oath that all contents of instant service appeal are true & correct to the best of my knowledge & belief and nothing has been kept concealed or misstated from this Hon'ble Tribunal.



DEPONENT

Identified by

Naila Jan
Advocate, High Court,
Peshawar.





9

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

APPEAL NO...../2021

Gul Zarif khan

VERSUS

IGP KPK Peshawar & Others

ADDRESSES OF THE PARTIES

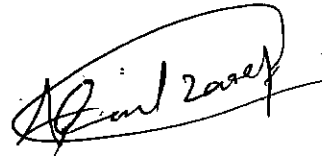
APPELLANT

Gul Zarif khan (Ex Constable No 3065 of /FRP Headquarters
Peshawar

RESPONDENTS

1. Inspector General of Police Khyber Pukhtunkhwa Peshawar
2. Additional Inspector General/Commandant Frontier Reserved
Police Peshawar.
3. Deputy Commandant Frontier Reserved Police Peshawar

Dated: 26/01/2021



Appellant

Through



Naila Jan
Advocate, High Court,
Peshawar.

Name

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Medical Superintendent
D.H.O. Teaching Hospital
Bannu

WKS
D.H.O. Hospital Bannu

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Name

Dr. O. C. Singh

Age/Sex

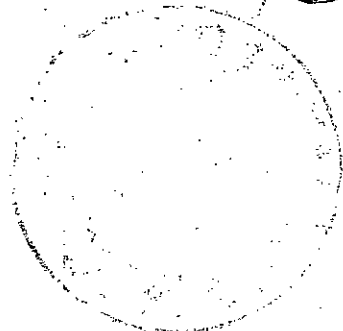
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P. No



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Admission Rest for

Dr. O. C. Singh

Signature

Medical Officer

M. O. 31/7/08
D:H:Q: Hospital
Bannu

Signature

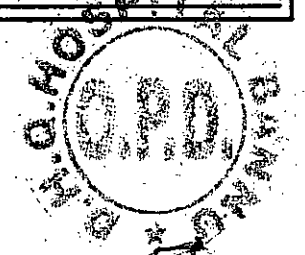
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Adv ...

Shera ...
Medical Superintendent
DHQ. Teaching Hospital

Specialist
O.M.C. Hospital
15/8/08

[Signature]

D.H.Q. HOSPITAL BANNU

No: 26901

Date

Name

Age/Sex

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NOTE
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Bannu

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D.H.Q. HOSPITAL BANNU

No: 27756

Date 28/8/08

Name طریف سن Age/Sex _____
 Address: _____

ڈاکٹر عتیق الرحمن
 پیچارج ڈیپارٹمنٹ
 ڈی. ایچ. او. ہسپتال بانوں

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 D.H.Q. Hospital

[Signature]

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انچارج فیزیو تھراپسٹ
ڈی۔ ایچ۔ کیو ہسپتال خوں

D.P.H.N NOT For Court purposes.

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- Tal. Univap. 7
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Signature

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MC MD

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Medical Superintendent
DHQ Teaching Hospital

M.O
D.H.Q. Hospital
Rannu

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5 10/5/05
Hantak B

CHARGE SHEET.

I, Raja Naseer Ahmed, Deputy Commandant, FRP, NWFP, Peshawar as competent authority, hereby charge you Constable Gull Zarif No.3065, FRP/IQrs Peshawar.

That you while posted in FRP/IQrs have committed the following misconducts:-

(a) (Attached allegations)

2. By reason of the above, you appear to be guilty of the charge/misconduct under the NWFP Removal from Service (Special Powers) Ordinance 2000 and have rendered yourself liable to all any of the penalties specified in section-3 of the said Ordinance ibid.

3. You are therefore, required to submit your defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer/Committee, as the case may be.

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

5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

Deputy Commandant,
Frontier Reserve Police,
N.W.F.P Peshawar.

Handwritten Urdu text, likely a copy of the charge sheet or a related document.

06/11/05
Handwritten signature and text in Urdu.

Handwritten signature at the bottom of the page.

FRP, NWFP
Gull Zarif
committed
guilty of
sexual

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SUMMARY OF ALLEGATIONS

1, Raja Naseer Ahmed, Deputy Commandant, FRP, NWFP, Peshawar as competent authority, am of the opinion that Constable Gull Zarif, No.3065, of FRP/HQrs, Peshawar, has rendered himself liable to be proceeded against as he committed the following misconduct within the meaning of section-3 of the NWFP Removal from service (Special Powers) Ordinance, 2000:-

STATEMENT OF ALLEGATIONS

Whereas you Constable Gull Zarif, No.3065, of FRP/HQrs, Peshawar, while deputed for Special duty at District Swat, remained absent w. e. from 17.07.2008 without taking any leave/permission of the competent authority.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an enquiry committee consisting of the following is constituted under section-5 of the Ordinance:-

Mr. Muhammad Tahir Khan, I.O/FRP/HQrs.

3. The Enquiry Committee shall, in accordance with the provision of the Ordinance provide reasonable opportunity of hearing to the accused. record its findings and make within fifteen days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the enquiry committee.

Dy: Commandant,
Frontier Reserve Police,
N.W.F.P Peshawar.

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29/7

O.R.D.E.R

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Handwritten initials

This office order relates to the disposal of formal departmental enquiry against Constable Guli Zarif, No.3065 of FRP/HQrs: Peshawar, remained absent from duty w. c. from 17-07-2008 till-to date without any leave/permission of the competent authority.

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

From the perusal of official record it came to light that he was enlisted in Police Department on 20-05-2006 and thus his total service comes to (01)year and (05) months only.

Keeping in view the recommendation of the Enquiry Officer and other material available on record it has become crystal clear that his further retention in service is no more required in the discipline force. Therefore, in exercise of Powers vested to me under the NWFP, Removal from Service (Spl: Powers) Ordinance 2000. Guli Zarif, No.3065 of FRP/HQrs, is hereby Removed from Service with immediate effect. The period of absence is treated as leave without pay.

Order announced.

Handwritten signature

(AWAL KHAN)
Dy: Commandant,
Frontier Reserve Police,
NWFP, Peshawar.

No. 152-54/PA/FRP/HQrs: dated Peshawar, the 20/01/2009.

Copy of the above is forwarded to:-

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

FRP, HQ

O.B. No. 121
Date 20/1/2009

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ORDER.

20 *Hafiz E*

This order shall dispose off on the appeal of Ex-Constable Gul Zarif No.3065 of FRP HQrs against the orders of Deputy Commandant FRP Peshawar wherein he was removed from service.

Brief fact of the case is that he absented himself from duty with effect from 17.07.08 till the date of removal from service without any leave/permission of the competent authority for a total period of 06 months and 13 days. He was issued charge sheet/statement of allegation and I.O./FRP HQrs Peshawar was appointed as enquiry officer. After conducting enquiry, the enquiry officer submitting findings wherein the above named official was recommended for ex-parte action.

Due to his absence as well as recommendation of enquiry officer he was removed from service from the date of his absence by order of Deputy Commandant FRP Peshawar vide his OB No.121 dated 20.01.2009.

However, from the perusal of record and findings of Enquiry Officer, there are no cogent reasons to interfere in the order of Deputy Commandant FRP KPK Peshawar. Therefore his appeal is rejected.

[Signature]

Addl: Inspector General of Police

/Commandant Frontier Reserve Police

PKhyber Pakhtunkhwa Peshawar.

10-8

/EC dated Peshawar the 13/08/10.

5770-71

Copy of above is forwarded for information and in/3 to:

SRC/FRP HQrs: Peshawar.

Gul Zarif Khan No.3065 S/o Noor Muhammad BR/6
Siema Sikander Khel Police Station Saiddar District Bannu

[Signature]

Better Copy-21

This order shall dispose of on the appeal of Ex-Constable Gulzarif No.3065 of FRP HQrs: against the order of Deputy Commandant FRP Peshawar wherein he was removed from service.

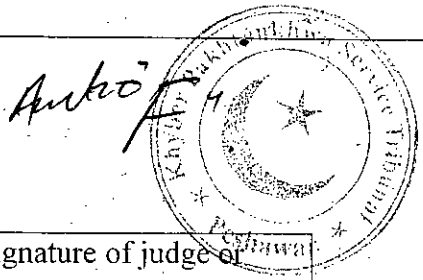
Brief fact of the case is that he absented himself from duty with effect from 17.07.2008 till the date of removal from service without any leave/permission of the competent authority for a total period of 6 months and 03 days he was issued charge sheet / statement of allegation and IO/FRP HQRs : Peshawar was appointed as inquiry officer after conducting inquiry the inquiry officer submitting findings wherein the above name official was recommended for Ex-party action.

Due to his absence as well as recommendation of inquiry officer he was removed from service from the date of his absence by the Deputy Commandant FRP Peshawar vide his copy No.121 dated 20.01.2009.

However from the perusal of the record and findings the inquiry officer there are no cogent reason to interfere in the order of Deputy Commandant FRP KPK Peshawar. therefore his appeal is rejected.

No.5770/71 /EC dated Peshawar 13/08/2010

22



S.No.	Date of order/ proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	13.02.2015	<p align="center"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p align="center">Service Appeal No. 985/2012, Zahid Ullah Khan Versus Commandant, FRP, KPK, Peshawar etc.</p> <p align="center"><u>PIR BAKHSH SHAH, MEMBER.</u>- Appellant</p> <p>with counsel (Arbab Saiful Kamal, Advocate) and Mr. Muhammad Jan, GP with Ihsanullah, H.C for the respondents present.</p> <p>2. The appellant Zahidullah filed the instant appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 26.3.2012 whereby the appellant was awarded the major penalty of removal from service. His departmental appeal dated 1.04.2012 was rejected by the Commandant, FRP Khyber Pakhtunkhwa vide his order dated 11.06.2011, hence this appeal before the Tribunal.</p> <p>3. Arguments heard and record perused.</p> <p>4. During the course of arguments, it was asserted by the learned counsel for the appellant that without going into merits of the case, the impugned order is liable to be set aside solely on the technical ground that charge sheet and statement of allegations were issued to the appellant vide order dated 16.11.2011 and the proceedings were made against the appellant under the Khyber Pakhtunkhwa Removal from Service (Special Powers)</p>

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Ordinance, 2000 which had been repealed on 15th September, 2011. It was further submitted that vested rights of the appellant have been damaged by mis-application of law. The learned counsel for the appellant lastly argued that this Tribunal has already remanded cases on the basis of mis-application of law. Reliance was placed on 2006-SCMR-1000, 2003 PLC(C.S.)600, 2008 PLC(C.S.)1227, 2007 PLC (C.S) 251, & 2007-SCMR-229.

5. The Tribunal is of the considered opinion that charge sheet and statement of allegations were issued to the appellant under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 which was not in the field and had been repealed. Since the cases of similar nature have already been remanded to the respondent-department for conducting proper denovo enquiry, the appellant is also entitled to the same treatment under Article 4 of the Constitution of Islamic Republic of Pakistan.

6. For the said reasons, we are of the considered view to set aside the impugned orders, the appellant is reinstated in service for the purpose of enquiry and to remit the case back to the respondent No. 3 with the direction to initiate fresh disciplinary proceedings against the appellant under relevant law/rules and if the charges are established, penalty duly in accordance with

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

the law be imposed upon him. Back benefits etc. will be subject to the outcome of fresh disciplinary proceedings. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED.
13.2.2015

(PIR BAKHSH SHAH)
MEMBER

(ABDUL LATIF)
MEMBER

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

Date of Presentation of Application 8-2-2025
Number of Words 1600
Copying Fee 18
Urgent -
Total 18
Name of Copyist J
Date of Completion of Copy 8-2-2025
Date of Delivery of Copy 8-2-2025

23

Amir



Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	10.09.2018	<p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p align="center">Appeal No. 369/2012</p> <p>Date of Institution ... 16.03.2012</p> <p>Date of Decision ... 10.09.2018</p> <p>Wali Ayaz Khan, Ex-constable No.682 R/O zul-qadar Mandan P.O. Khawaga-mad Mandan Tehsil and District Bannu.</p> <p align="right">-----Appellant</p> <p>1. District Police Officer, Bannu.</p> <p>2. Regional Police Officer, Bannu Region, Bannu.</p> <p>3. The Inspector General of Prision Khyber Pakhtunkhwa.</p> <p align="right">-----Respondent</p> <p>Mr. Hussain Shah.....Member</p> <p>Mr. Muhammad Hamid Mughal.....Member</p> <p align="center"><u>JUDGMENT</u></p> <p><u>HUSSAIN SHAH, MEMBER:</u> - Appellant, learned counsel for the appellant and Mr. Kabirullah Khattak, Learned Additional Advocate General on behalf of the official respondents present.</p> <p>2. Appellant Wali Ayaz Khan has filed the present appeal u/s 4 of the Khyber Pakhtunkhwa Service Tribunal Act being aggrieved against the order of respondents No.1 dated 30.06.2010 the appellant was dismissed from service from the date of absence. The appellant has also contested the rejection orders of the</p>

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

departmental appeal by the respondents No.2 dated 27.11.2010.

3. The Learned counsel for the appellant stated that the impugned orders are against the law, facts and very harsh punishment was awarded to the appellant. Further argued that the appellant remained absent from duty for 27 days which was neither willful nor intentional, but behind his control due to severe illness. Further argued that the inquiry was conducted without giving him the opportunity of defense. He also placed on record the departmental appeal to respondent No.2 wherein facts of his illness and dismissal for service without giving him the opportunity of defense mentioned. Learned counsel for the appellant argued that the impugned punishment was awarded retrospectively hence no limitation run against the same being void order. Learned counsel for the appellant prayed for setting aside the impugned orders and re-instatement of the appellant.

4. Against that the learned AAG argued that the competent authority dismissed the appellant from his service after completion of formalities under the relevant law and the reason for his absence and pre-planned after thoughts. Further argued that the appellant did not bother to inform the competent authority about his illness

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

27

and neither he appeared before the inquiry officer.

5. Arguments heard. File perused.

6. Charge against the appellant was that he absented himself for recruit training program for more than twenty Seven (27) days and was returned as unqualified by the commandant PTC hangu vide his signal No. 191-92/GC dated 0902.2009. There is no Cavil to the proposition that if punishment is awarded to a Civil Servant with retrospective effect the no limitation would run against the same being void. From the perusal of the record and arguments of the parties it transpired that there is no dispute that the appellant remained absent from duty without permission. However learned counsel for the appellant has taken the plea that the appellant was absent being severely ill. The appellant mentioned the fact of ^{his} severe illness not only the present service appeal but also in his departmental appeal. Learned counsel for the appellant referred to the judgments reported in 2008 S C M R 214 & 2006 S C M R 1120. In view of the back ground of the case and the above mentioned judgments of the Hon'able Supreme court the punishment of dismissal from service appears to be excessive and harsh.

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ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

7. Consequently the present appeal is partially accepted and the major punishment of dismissal from service is modified and converted into withholding of Three (3) annual increments for a period of Five (5) years. Absent period and Intervening period shall also be treated as extraordinary leave without pay. In case the appellant is found still adamant not to qualify the recruit course, the respondent department is at liberty to proceed against him in accordance with law. The Present appeal is partially accepted in the above terms. Parties are left to bear their own costs. File be consigned to the record room after its completion.

Shah

Shah

(HUSSAIN SHAH)
MEMBER

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

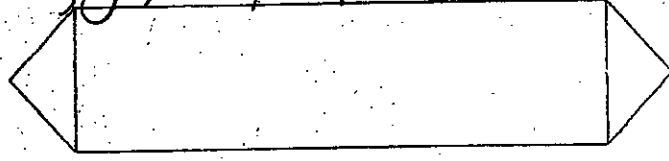
Shah

(MUHAMMAD HAMID MUGHAL)
MEMBER

ANNOUNCED
10.09.2018

Date of Presentation of Application 8-2-21
 Number of Pages 2000
 Copying Fee 22
 Urgent 45
 Total 26-0
 Name of Applicant Shah
 Date of Completion of Copy 8-2-2021
 Date of Delivery of Copy 8-2-2021

بعدالتصا^ط کرسٹل پینل ریشما



املا نڈ
کرسٹل

2^{جہ} منجانب
مل طرفہ بنام

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

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

آن مقام ریشما و ^{کینے} نامک جان

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دینے جو اب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہ 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 سندر ہے۔

مل طرفہ
(Appellant)

Shid zar

2021ء

ماہ جنوری

المرقوم 19

العبد گواہ العبد

کے لئے منظور ہے۔

مقام
ریشما
Accepted
ATTESTED

Signature

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2411/2021.

Gul Zarif Khan (Ex-FC No. 3065) of / FRP Head Quarter PeshawarAppellant.

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGES
1.	Para-wise Comments		04
2.	Charge Sheet	"A "	01
3.	Enquiry Report	"B"	01
4.	Copy of Final Show Cause Notice	"C"	01
5.	Removal Order	"D"	01
6.	Rejection Order	"E"	01
7.	Advertisement	"F"	02
8.	Affidavit		01
9.	Index		01
Total			13


RESPONDENTS

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2411/2021.

Gul Zarif Khan (Ex-FC No. 3065) of / FRP Head Quarter PeshawarAppellant.

VERSUS

Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.

PARAWISE REPLY BY RESPONDENTS.

RESPECTFULLY SHEWETH.

PRELIMINARY OBJECTIONS

1. That the appeal is badly barred by law & limitation.
2. That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
3. That the appellant has no cause of action and locus stands to file the instant appeal.
4. That the appellant has not come to this Honorable Tribunal with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That the appellant is trying to conceal the material facts from this Honorable Tribunal.

FACTS:-

1. Correct to the extent that the appellant was initially appointed as constable, but subsequently, he was found an indisciplined person as he remained absent from his lawful duty for a long period of 05 months & 03 days, without any leave or prior permission from the competent authority.
2. Incorrect. The appellant remained absent from lawful duty with effect from 17.07.2008 till the date of his removal from service i.e 20.01.2009 for a long period of 05 months and 03 days without any leave or prior permission of the competent authority.
3. Incorrect. Proper departmental enquiry was initiated against the appellant as he was issued Charge Sheet with Summary of allegations and Enquiry Officer was nominated to conduct enquiry against him. The Charge Sheet was served upon the father of the appellant through special messenger on his home address, but he deliberately failed to submit his reply of Charge Sheet. The Enquiry Officer found him guilty of the charges leveled against him and submitted his findings report. (Copy of Charge Sheet is attached herewith as annexure "A"). Besides, he was called time and again for personal hearing, but he failed to appear before the Enquiry Officer or before the competent authority to defend himself.
4. Incorrect. As explained above the appellant was dealt with proper departmental enquiry and after completion of enquiry, the enquiry officer

submitted his findings report, wherein the appellant was found guilty of the charges leveled against him. (Copy of enquiry report is attached herewith as annexure "B") Upon the finding report of Enquiry Officer, he was issued/served with Final Show Cause Notice, but he failed to submit his written reply or appear before the competent authority. (copy of Final Show Cause Notice attached herewith as annexure "C"). After fulfillment of all codal formalities, the appellant was awarded major punishment of removal from service as per law/rules. (Copy of removal order attached herewith as annexure "D").

5. Incorrect. Departmental appeal submitted by the appellant was thoroughly examined as per law/rules and rejected on sound grounds and a copy of the same was also endorsed to the appellant on his home address vide office order No. 5770-71/EC, dated 13.08.2010. (Copy of rejection order attached herewith as annexure "E").
6. Incorrect. The appellant has no cause of action to file the instant appeal and he wrongly arrayed the respondents in unsound appeal. It is worth mentioning here that after lapse of more than 13 years, now the appellant desired for reinstatement in service in very belated stage.

GROUND:-

- A. Incorrect. The orders passed by the respondents in the case of appellant are legally justified and in accordance with law/rules as the same were passed after fulfillment of all codal formalities required as per law/rules.
- B. Incorrect. The appellant was absolutely treated in accordance with law within the meaning of Article 4 of the constitution by giving him sufficient and proper opportunities at every level of defence.
- C. Incorrect. On the allegations of willful absence, the appellant was issued Charge Sheet with Summary of Allegations which was served upon his father through special messenger on his home address, but he failed to submit his reply within stipulated period. Upon the finding report of Enquiry Officer, he was issued/served with Final Show Cause Notice, but he again failed to submit his written reply or appeared before the enquiry officer or before the competent authority, despite the facts, that he was summoned time and again, but he failed to do so.
- D. Incorrect. The cases mentioned by the appellant in the Para, as well as the Judgment of Superior Court are not applicable to the case of appellant as the same was not at par with the case of appellant.
- E. Incorrect. The appellant alongwith others, while posted at Platoon No. 31, and deputed for emergency duty at District Swat, absented himself from lawful duty without any leave or prior permission of the competent authority.

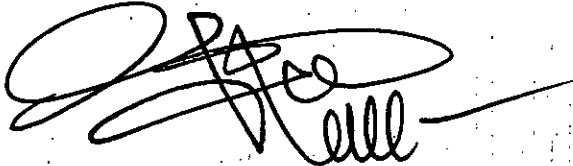
Thus he did not join the emergency duty at District Swat and deliberately disappeared from his lawful duty by showing extreme cowardice act. Hence the cases of the other officials mentioned by the appellant are not at par with the case of the appellant. Moreover, it is pertinent to mention that government issued notification/advertisement against the employees who were dismissed due to absence during insurgency with the directions to report back for duty up to 20.02.2009. (Copy of advertisement attached herewith as annexure "F").

- F. Incorrect. The allegations are false and baseless. A sufficient opportunity for defense, being heard in person in the light of natural justice at every level was already provided to the appellant, but he failed to avail this opportunity meaning thereby that he was no more interested in the service of police department. Moreover, the entire proceedings were carried out in accordance with existing laws and rules.
- G. The entire enquiry proceedings were also initiated by the Enquiry Officer in accordance with law/rules.
- H. Incorrect. The appellant was absolutely treated in accordance to law/rules within the meaning of Article 4 of the constitution by giving him sufficient and proper opportunities at every level of defense and that the entire proceedings were carried out in accordance with existing laws and rules.
- I. Incorrect. The punishment awarded to the appellant by the competent authority is in accordance with law/rules. Moreover, the judgment of Supreme Court of Pakistan mentioned by the appellant is not at par with the case of the appellant.
- J. Incorrect. The competent authority has correctly treated the absence period of the appellant as absence from duty without pay as he did not perform any official duty in such period. Moreover, the willful absence from duties and that too at a critical time was absolutely unwarranted and contrary to Police law and Police Rules read with Police disciplinary Rules 1975.
- K. Incorrect. The plea taken by the appellant regarding his illness is a propounded story and he was required to have taken this plea before the Enquiry Officer or before the competent authority during the course of enquiry.
- L. Incorrect. The appellant alongwith other officials were deputed for emergency duty at District Swat, but he disappeared/absented himself from his lawful duty while on the other hand his other colleagues were bravely facing the situation by performing their assigned duties at District Swat. However, the appellant was dealt with departmentally and after fulfillment of all codal formalities, he was awarded major punishment of removal from service, otherwise the respondents have no grudges with him.

M. The respondents may also be permitted to raise additional grounds at the time of arguments.

PRAYERS:-

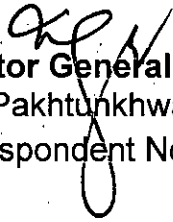
Keeping in view the above facts and circumstances, it is most humbly prayed that the instant service appeal being not maintainable, may kindly be dismissed with costs please.



Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 03)



Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)



Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)

5
9/5/81
(6)

CHARGE SHEET.

I, Raja Naseer Ahmed, Deputy Commandant, FRP, NWFP, Peshawar as competent authority, hereby charge you Constable Gull Zarif, No.3065, FRP/HQrs Peshawar.

That you while posted in FRP/HQrs have committed the following misconducts:-

(a) (Attached allegations)

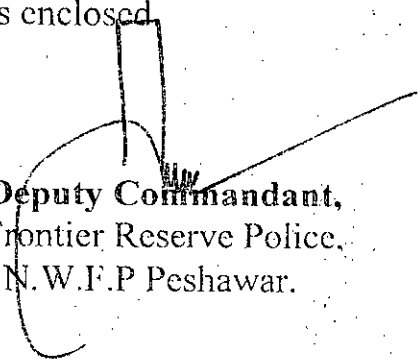
2. By reason of the above, you appear to be guilty of the charge/misconduct under the NWFP Removal from Service (Special Powers) Ordinance 2000 and have rendered yourself liable to all any of the penalties specified in section-3 of the said Ordinance ibid.

3. You are therefore, required to submit your defence within seven days of the receipt of this Charge Sheet to the Enquiry Officer/Committee, as the case may be.

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

5. Intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed


Deputy Commandant,
Frontier Reserve Police,
N.W.F.P Peshawar.

میں نے اپنے دستخطوں کے ساتھ
مذکورہ بالا کیس کے بارے میں
مذکورہ بالا کیس کے بارے میں

06/11/81
Raja Naseer Ahmed
Deputy Commandant
FRP/HQrs Peshawar



6
5

SUMMARY OF ALLEGATIONS

I, Raja Naseer Ahmed, Deputy Commandant, FRP, NWFP, Peshawar as competent authority, am of the opinion that Constable Gull Zarif, No.3065, of FRP/HQrs, Peshawar, has rendered himself liable to be proceeded against as he committed the following misconduct within the meaning of section-3 of the NWFP Removal from service (Special Powers) Ordinance, 2000:-

STATEMENT OF ALLEGATIONS


Whereas you Constable Gull Zarif, No.3065, of FRP/HQrs, Peshawar, while deputed for Special duty at District Swat, remained absent w. e. from 17.07.2008 without taking any leave/permission of the competent authority.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, an enquiry committee consisting of the following is constituted under section-5 of the Ordinance:-

Mr. Muhammad Tahir Khan, LO/FRP/HQrs.

3. The Enquiry Committee shall, in accordance with the provision of the Ordinance provide reasonable opportunity of hearing to the accused, record its findings and make within fifteen days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join the proceedings on the date, time and place fixed by the enquiry committee.


Dy: Commandant,
Frontier Reserve Police,
N.W.F.P Peshawar.

O.R.D.E.R

This office order relates to the disposal of formal departmental enquiry against Constable Gull Zarif, No.3065 of FRP/HQrs: Peshawar, remained absent from duty w. e. from 17-07-2008 till-to date without any leave/permission of the competent authority.

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

From the perusal of official record it came to light that he was enlisted in Police Department on 20-05-2006 and thus his total service comes to (01)year and (05) months only.

Keeping in view the recommendation of the Enquiry Officer and other material available on record it has become crystal clear that his further retention in service is no more required in the discipline force. Therefore, in exercise of Powers vested to me under the NWFP, Removal from Service (Spl: Powers) Ordinance 2000. Gull Zarif, No.3065 of FRP/HQrs, is hereby **Removed from Service with immediate effect**. The period of absence is treated as leave without pay.

Order announced.

Awal Khan

(AWAL KHAN)

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

No. 152-54 /PA/FRP/HQrs: dated Peshawar, the 20/01/2009.

Copy of the above is forwarded to:-

1. The OSI/ FRP/HQrs: Peshawar
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بریل بر (10) در دو روز
AR

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2411/2021.


Gul Zarif Khan (Ex-FC No. 3065) of / FRP Head Quarter PeshawarAppellant.


VERSUS

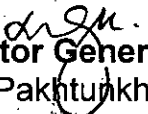
Inspector General of Police, Khyber Pakhtunkhwa, Peshawar & others.....Respondents.

AFFIDAVIT

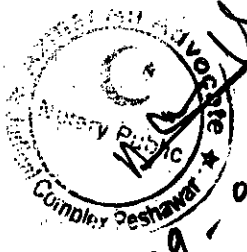
We respondents No. 1 to 3 do hereby solemnly affirm and declare on oath that the contents of the accompanying Para-wise Comments is correct to the best of our knowledge and belief that nothing has been concealed from this Honorable Court.


Deputy Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 03)


Commandant FRP,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 02)


Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar
(Respondent No. 01)

ATTESTED


09-05-2022