

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT ABBOTTABAD

Service Appeal No. 791/2015

Date of Institution... 10.07.2015

Date of decision... 17.01.2018

Imdad Hussain Shah LHC No. 369, District Police Haripur R/o Village Kailig,
Tehsil and District Haripur. ... (Appellant)

Versus

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and 2 others.
... (Respondents)

MR. MOHAMMAD ASLAM TANOLI,
Advocate

... For appellant.

MR. MUHAMMAD BILAL,
Deputy District Attorney

... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: Arguments of the learned
counsel for the parties heard and record perused.

FACTS

2. The appellant was dismissed from service on 25.03.2015 due to charge of absence, against which he filed departmental appeal on 02.04.2015 which was decided on 16.06.2015. In the appellate order the penalty was converted into forfeiture of approved service for two years.

ARGUMENTS


3. The learned counsel for the appellant argued that the very order of dismissal was given retrospective effect which was a void order in light of so many judgments of this Tribunal and the Superior Courts. That the appellate authority while converting the penalty also legalized absence by converting the same into leave without pay. That in such situation neither original order nor the appellate order has got any legal force.

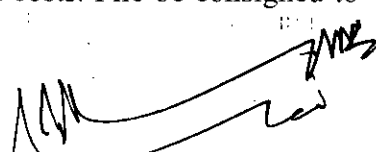
4. The learned Deputy District Attorney argued that the appellant remained absent for 186 days. That he was proceeded in accordance with law and rules. That proper charge sheet etc. were issued to him and departmental enquiry was also conducted.

CONCLUSION.

5. The original order of dismissal was given retrospective effect which is a void order in view of so many judgments of this Tribunal passed on the basis of a judgment of the august Supreme Court of Pakistan reported as 1985 SCMR 1178. The appellate authority by converting the period of absence into leave without pay went a step ahead. In view of so many judgments delivered by this Tribunal on the basis of judgment reported as 2006 SCMR 434 that when the absence is converted into any type of leave the same becomes legalized.

6. As a nutshell of the above discussion, the present appeal is accepted and the appellate order is set aside. Parties are left to bear their own costs. File be consigned to the record room.


(AHMAD HASSAN)
Member


(Niaz Muhammad Khan)
Chairman
Camp Court, A/Abad

ANNOUNCED

17.01.2018


25.05.2017

Since tour programme to camp court, Abbottabad for the month of May, 2017 has been cancelled by the Worthy Chairman, therefore, case to come up for the same on 21.11.2017 at camp court, Abbottabad. Notices be issued to the parties for the date fixed accordingly

21.11.2017

Counsel for the appellant and Mr. ~~Kabeerullah~~ Khabeeerullah Khattak, Registrar Addl. AG alongwith Israr Shah, H.C for the respondents present. Rejoinder submitted. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 17.01.2018 before the D.B at camp court, Abbottabad.


Member

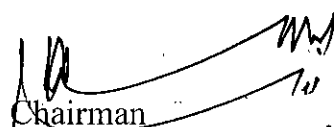

Chairman
Camp court, Abbottabad.

17.01.2018

Counsel for the appellant and Mr. Muhammad Bilal, Deputy District Attorney alongwith Mr. Israr Shah, H.C for the respondents present. Arguments heard. Record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman
Camp court, A/Abad,

ANNOUNCED
17.01.2018

16.03.2016

Appellant in person and Mr. Muhammad Zahoor, Inspector (legal) alongwith Mr. Muhammad Siddique, Sr. GP for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 22.6.2016 before S.B. at Camp Court A/Abad.


Chairman

Camp Court A/Abad

22.06.2016

Appellant with counsel and Mr. Abdur Rashid, ASI (Legal) alongwith Mr. Muhammad Siddique Sr.GP for the respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 20.12.2016 at camp court, Abbottabad.


Chairman

Camp court, A/Abad,

20.12.2016

Counsel for the appellant and Mr. Israr Shah, Reader alongwith Mr. Muhammad Siddique, Sr.GP for the respondents present. Due to non-submission of rejoinder and incomplete bench arguments could not be heard. To come up for rejoinder and final hearing on 16.05.2017 before D.B at camp court, Abbottabad.


Chairman

Camp court, A/Abad

Appellant Deposited
Security & Process Fee



14.9.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was serving as LHC when subjected to inquiry on the allegations of wilful absence and dismissed from service vide impugned order dated 25.3.2015 regarding which he preferred departmental appeal on 2.4.2015 which was partially allowed vide order dated 16.6.2015 and appellant reinstated in service but approved service for two years was forfeited and, additionally, absence period was treated as leave without pay.

That the impugned order is against facts and law and two penalties imposed for one offence. Places reliance on case-law reported as 2006 SCMR 434 and PLJ 2015 Tr.Cases (S) 76.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 14.12. 2015 before S.B at Camp Court A/Abad.


Chairman
Camp Court A/Abad

14.12.2015

Appellant with counsel and Mr.Israr Shah, HC alongwith Mr.Muhammad Siddiqué, Sr.G.P for respondents present. Requested for adjournment. To come up for written reply/comments on 16.3.2016 before S.B at Camp Court A/Abad.


Chairman
Camp Court A/Abad

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 791/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	10.07.2015	<p>The appeal of Mr. Imdad Hussain Shah presented today by Mr. Muhammad Aslam Tanoli Advocate, may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2	10-7-15	<p>This case is entrusted to Touring Bench A.Abad for preliminary hearing to be put up thereon <u>24-7-15</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
3	24.7.2015	<p><i>None present on behalf of the appellant. The appeal be relisted for preliminary hearing for 14.9.2015 before S.B at Camp Court A/Abad.</i></p> <p style="text-align: right;"><i>[Signature]</i> Chairman Camp Court A/Abad</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal no. 791/2015

Imdad Hussain Shah LHC No.369, District Police Haripur R/O Village Kailig, Tehsil & District Haripur.

Appellant

VERSUS

1. The Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. The Regional Police Officer, Hazara Region, Abbottabad.
3. The District Police Officer, Haripur.

Respondents

SERVICE APPEAL
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3.	Copies of leave application and request dated 10-06-2014.	"B&C"	12-13
4.	Copy of daily diary dated 22-09-2014.	"D"	14
5.	Copy of D.D. dated 10-02-15 when appellant resumed duty after leave.	"E"	15
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Through

Imdad Hussain Shah
Appellant
M. Aslam Tanoli
(Mohammad Aslam Tanoli)
Advocate High Court
at Haripur

Dated: 10-07-2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No. 791/2015

Imdad Hussain Shah LHC No.369, District Police Haripur R/O Village Kailig, Tehsil & District Haripur.

VERSUS

Appellant
a. W. F Province
Service Tribunal
Diary No. 819
Dated 10-7-2015

1. The Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. The Regional Police Officer, Hazara Region, Abbottabad.
3. The District Police Officer, Haripur.

Respondents

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST ORDER DATED 16-06-2015 TO THE EXTENT OF PUNISHMENTS OF FORFEITURE OF APROVED SERVICE FOR 02 YEARS AND PERIOD OF ABSENCE AS WELL AS PERIOD DURING WHICH APPELLANT REMAINED OUT OF SERVICE TREATED AS LEAVE WITHOUT PAY AWARDED BY THE REGIONAL POLICE OFFICER HAZARA REGION ABBOTTABAD IN DEPARTMENTAL APPEAL OF THE APPELLANT.

PRAYER: ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL THE PUNISHMENTS OF FORFEITURE OF APPROVED SERVICE FOR 02 YEARS AND PERIOD OF ABSENCE AS WELL AS PERIOD DURING WHICH APPELLANT REMAINED OUT OF SERVICE AWARDED VIDE ORDER DATED 16-06-2015 MAY GRACIOUSLY BE SET ASISE.

Respectfully sheweth,

That the Regional Police Officer, Hazara Region, Abbottabad vide order impugned dated 16-06-2015 has awarded the appellant in his departmental appeal with the punishments of forfeiture of

Filed to 427
10/7/15

approved service for 02 years and the period of absence as well as period during which appellant remained out of service as leave without pay which is illegal, unlawful, against the facts & circumstances and passed in utter violation of departmental rules and regulations; hence liable to be set aside.

(Copy of order dated 16-06-2015 is attached as annex-A).

FACTS:

1. That due to serious illness of his father, the appellant applied for 02 months leave by way of written application dated 10-06-2014 and solicited permission for his personal appearance before the District Police Officer Haripur as per request dated 10-06-2014 in connection with said leave which was allowed by the worthy ASP Headquarter Haripur to appear before the District Police Officer Haripur who permitted the appellant to proceed on leave.

(Copies of leave application and request dated 10-06-2014 are attached as annex-"B & C").

2. That though the appellant was granted and allowed the said leave by the District Police Officer, Haripur yet the appellant's Immediate Boss did not relieve him to proceed on leave till 07-08-2014 due to administrative reasons. However, ultimately and that too with the permission of his Immediate Boss, the appellant proceeded to avail his sanctioned leave with effect from 08-08-2014 thus was due to resume his duty after expiry of leave on 07-10-2014.
3. That on 21-09-2014 during the leave, the appellant was telephonically called to attend his duty. Appellant joined his duty on 21-09-2014. While on duty on 22-09-2014,

appellant was again telephonically informed that his father was serious and needed to be taken to the Hospital. Appellant requested his Immediate Boss for leave, he was allowed and with the permission of his Boss the appellant left for home on 22-09-2014, when he reached the house, he found his father unconscious. Appellant immediately took his father to the doctor and provided medical treatment. Instead of recording his departure in the Daily Diary, he was marked absent vide Mad No. 21 of D.D. dated 22-09-2014 but appellant was never informed about his marking as absent from duty.

(Copy of daily diary dated 22-09-2014 is attached as "D").

4. That on 22-09-2014 as the appellant had requested for extension of further 02 months leave and similarly once again for more 02 months due to illness of father and other domestic problems, the entire leave was allowed. The appellant resumed his duty on 10-02-2015.

(Copy of D.D. dated 10-02-15 is attached as annex-E).

5. That on 12-02-2015 the appellant was served with a Final Show Cause Notice dated 29-12-2014 which was duly replied stating all facts and circumstances.

(Copies of Show Cause Notice and its reply are attached as annex-"F & G").

6. That on 25-03-2015 while performing his duties as Guard Commander at District Headquarter Hospital, Haripur the appellant was called on phone at 1300 hours by Moharrir, Police Line Haripur and told him that he had been dismissed from service by the District Police Officer Haripur

and was directed to give up his duties. **(Copy of D.D. dated 25-03-15 is attached as annex-H).**

7. That on 26-03-2015 the appellant requested the District Police Officer, Haripur through his written application for the provision of dismissal order dated 25-03-2015.
(Copies of application dated 26-03-3015 and dismissal order dated 25-06-2015 are attached as annex-"I &J").
8. That while awarding penalty of dismissal from service the District Police Officer Haripur did not consider the fact that the appellant was present on his duties on 21-09-2014 and from 10-02-2015 to 25-03-2015 yet dismissed him illegally and against the fact with effect from 08-08-2014 when the appellant proceeded on his sanctioned leave.
9. That neither any Charge Sheet was served upon the appellant nor was he provided with the opportunity of personal hearing before awarding major penalty of dismissal from service by the District Police Officer, Haripur vide order dated 25-03-2015.
10. That appellant has always performed his assigned duties with zeal, zest, devotion, dedication, dexterity, honestly, actively, efficiently and to the entire satisfaction of his superiors/officers and never provided them with a chance of reprimand.
11. That in recognition of his tremendous services that appellant has been awarded with Commendation Certificates and Cash Awards even by High-ups of Police Department on different occasion. **(Copies of**

5

Commendations Certificates are attached herewith as K-1 to K-6).

12. That appellant always earned good and very good ACRs and has meritorious rather exemplary service record at his credit. Appellant has more than 15 years service at his credit.
13. That sufficient leave balance is available at the credit of appellant and either type of leave i.e. leave on full pay or half pay can be granted to the appellant as a covering sanction of already availed leave.
14. That dismissal order 2503-2015 was appealed against before the Regional Police Officer, Hazara Region, Abbottabad through departmental appeal dated 02-04-2015.

(Copy of Departmental Appeal dated 02-04-2015 is attached as annex-L).

15. That the Regional Police Officer, Hazara Region, Abbottabad while accepting the departmental appeal of the appellant he set aside the penalty of dismissal from service and modified it with the punishments of forfeiture of approved service for 02 years and period of absence as well as the period appellant remained out of service treated as leave without pay through his impugned order dated 16-06-2015 which is against the law, departmental rules & regulations, facts and circumstances and natural justice; hence this service appeal, inter alia, on the following grounds:-

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GROUNDS:

- a) That impugned order dated 16-06-2015 passed by the departmental appellate authority (Regional Police Officer Hazara Region Abbottabad) in departmental appeal of the appellant is illegal, against the law, departmental rules & regulations, facts and circumstances as well as natural justice to the extent of awarding the appellant with the punishments of forfeiture of approved service for 02 years and period of absence as well as the period appellant remained out of service i.e. from 08-08-2014 to 25-03-2015 as leave without pay; hence impugned order is liable to be set aside to the extent of these punishments.
- b) That the appellate authority (Regional Police Officer Hazara Region Abbottabad) while accepting appeal of the appellant has not considered the fact that appellant was granted 02 months leave by the competent authority with effect from 08-08-2014 but astonishing the entire period has been treated as absence from duty and awarded the penalty of leave without pay; which is against the facts and departmental rules & regulations; hence needs to be turned down to this extent.
- c) That the appellate authority (Regional Police Officer Hazara Region Abbottabad) while accepting appeal of the appellant has also not considered the

fact that appellant performed his duties on 21-09-2014 and from 10-02-2015 to 25-02-2015 (till dismissal from service) and entire period i.e. 08-08-2015 to 25-03-2015 has taken as leave without pay which is not in accordance with the departmental rules & regulations as well as natural justice hence deserve to be set aside to the extent of these penalties.

- d) That the appellant has been awarded with the penalties of forfeiture of approved service for 02 years contrary to the departmental rules & regulations as well as natural justice; hence impugned order is required to be set aside to the extent of punishment awarded to the appellant.
- e) That so far the allegation of absentee is concerned the same is totally incorrect and the so called absentee was in acute need and with the prior permission and sanction of leave from the then officers.
- f) That sufficient leave balance is available at the credit of appellant and the period treated as leave without pay can be converted into leave on full pay.

PRAYER:

It is therefore, humbly prayed that on acceptance of instant appeal the punishments of forfeiture of approved service for 02 years and the period of absence as well as the period appellant remained out of service may graciously be set aside

8

and the appellant may kindly be granted leave on full pay or half pay out of leave balance available at his credit.

Any other relief which this Honour Tribunal deems fit in the circumstance of the case may also graciously be awarded.

*Hussain
Tanoli*

APPELLANT

THROUGH

M. Aslam

(MOHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
HARIPUR

Dated: 10-07-2015

VERIFICATION

It is verified that the contents of instant appeal are true and correct to the best of my knowledge and nothing has been concealed therefrom.

*Hussain
Tanoli*

Appellant

Dated: 10-07-2015

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Imdad Hussain Shah LHC No.369, District Police Haripur R/O Village
Kailig, Tehsil & District Haripur.

Appellant

VERSUS

1. The Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. The Regional Police Officer, Hazara Region, Abbottabad.
3. The District Police Officer, Haripur.

Respondents

SERVICE APPEAL

CERTIFICATE

It is certified that no such Appeal on the subject has ever been
filed in this or any other court prior to the instant one.

Imdad Hussain Shah

APPELLANT

Dated: 10-07-2015

10

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Imdad Hussain Shah LHC No.369, District Police Haripur R/O Village
Kailig, Tehsil & District Haripur.

Appellant

VERSUS

1. The Provincial Police Officer, Khyber Paktunkhwa, Peshawar.
2. The Regional Police Officer, Hazara Region, Abbottabad.
3. The District Police Officer, Haripur.

Respondents

SERVICE APPEAL

AFFIDAVIT:

I, Imdad Hussain Shah D/O Sabir Hussain Shah do hereby solemnly declare and affirm on oath that the contents of the instant appeal are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Service Tribunal.

*Hussain
Imdad Shah*

Deponent/Appellant

Dated: 10-07-2015

Identified By:

M. Aslam

MOHAMMAD ASLAM TANOLI
Advocate High Court
At Haripur,

ROAC
Attested Death Commission
Yasir Aziz Anwar
Advocate High Court Haripur
Date: 6-7-2015 S No: TK

ORDER


This is an order on the representation of **Ex-LHC Imdad Hussain Shah No.369** of Haripur District against the order of major punishment i.e. dismissal from service awarded by the District Police Officer, Haripur vide his OB No.212 dated 25-03-2015.

Facts leading to his punishment are that he while posted at Police Lines Haripur, absented himself from his legitimate duty with effect from 08-08-2014 to 10-02-2015 almost 186 days without any leave or permission from the competent authority which is gross misconduct on his part.

Proper departmental enquiry was conducted by **Mr. Bilal Zafar Sheikh ASP/Hqrs Haripur**. After conducting a detailed enquiry, the E.O proved him guilty. On the recommendation of E.O, the District Police Officer Haripur awarded him major punishment of dismissal from service.

After receiving the appeal, the comments of DPO Haripur were obtained. The enquiry file, appeal & the comments of the DPO were perused. The appellant was also heard in person in the orderly room where he offered no cogent reason.

The punishment awarded to him i.e. dismissal from service by DPO Haripur is too harsh and do not commensurate the gravity of offence. Due to extenuate circumstances I take lenient view and set-a-side the order of the DPO Haripur. He is awarded minor punishment of "**forfeiture of approved service for two years**". He is reinstated in service with immediate effect. The period of absence and period during which he remained out of service is treated as leave without pay. He is also reprimanded with a warning to be careful in future.


REGIONAL POLICE OFFICER
Hazara Region Abbottabad


5416

No. /PA Dated Abbottabad the 16/6 /2015.

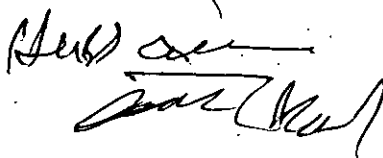
Copy of above is forwarded to the District Police Officer, Haripur for information and necessary action with reference to his Memo: No.3155 dated 05-06-2015. The Service Roll & Fauji Missal containing enquiry file of the appellant are returned herewith.

SRC/~~for~~
for n/action

3857
17/6/2015


REGIONAL POLICE OFFICER
Hazara Region Abbottabad

DPO/HAR
17/6/15



تینا سال

مذکورہ جیم سال کے والدین صاحب شہید بیمار ہیں اور صحت یوں
 یہ اتنی بیماری (جبر کا کسیر) ہے جسے علاج حالی لیکے لاہور (SKMT) ہسپتال
 ہے۔ بعد سائل انتہائی غریب ہے جو اتنی استطاعت نہیں رکھتا
 بڑا کیر ریفرنس اسٹریٹ جیم سال کو دینے والے صاحب نے علاج لیا لیکے
 اور دیکھو یہاں لیکے (جسٹریٹل انٹرنیشنل سنٹر) جس سے حالی قدرتی جبر
 بعد ماقومی سائل کو 2 ماہ اخصت فلان بھی عنایت فرمائی جا رہا
 والد صاحبان دیکھو یہاں لیکے دیگر کوئی ٹرینڈر مستحق نہیں ہے۔

الذکر

ادارہ صحت سہ 24C 369 پولیس اسٹیشن (عربی قسماں) سڑک بہتر مکان میں
 Hussain
 Dr. Hussain

الذکر 10/6/14

Hussain
 Dr. Hussain

Handwritten signature

ASST. Inspector
11-6-14

Handwritten signature

S.H.O. PS. Sanganli
10-6-14

Sir Forwarded PL

Post PS. Sanganli
06-2014

Forwarded

10/6-11/11

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369 JHC

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(13)

~~(13)~~

Annex (C)

فعلی کا نام

(1)

فعلی کا نام 22 روز تا 29/9/22

رپورٹ غیر حاضری کا 22/9/22 وقت 07:45 ہے رپورٹ ہے کہ امیر اڈا 369
 CHC علی سلطان ڈیوٹی پر حاضر خلع ڈیوٹی کالی گلی قریب منڈی کوہ CHC ایٹا ڈیوٹی سے
 عدم موجودگی یا باگیا علی کراچی وینڈی اڑی بارک کنگوان وغیرہ میں
 کسی قبیلہ عدم موجودگی دیکھا گیا علی غیر حاضری درج روزنامہ جاری
 جاری ہے فعلی کا نام 22 روز تا 29/9/22

مناب عالی

فعلی کا نام
 (Signature)
 D.M. P. L. Me...
 Police Head Office...
 Haripur

D-70-14

(Signature)

نمبر 284
22
15
10

دیورٹ حافری 10

وقت صبح 10:20
وقت جمعہ 369
LHC

تفصیلاً بحوالہ فرم 22 مورخہ 29/9/14
لہذا میرا والد محمد علی کی دیکھو حال کمرنگ والہ میرا بھلاؤ کوئی نہ تھا جو میں لاسکا
علمت معالیہ کمرنگ اتار گیا۔ اور 9/10 کو حافری کی تو میرے والد محمد
نے اطلاع دی کہ میری جگہ چلے گئے ہیں۔ میں جب گھر چلا گیا۔ جو اس
میری تہ میرے کلکتہ چری شاہ فقیر دینو دیورٹ کے تھے میرے خلاف
FIR درج کر دیا۔ لہذا میری پریشانی کے باعث ڈیورٹ پر حافری
آسکا اب حافری آیا ہوا۔ حافری کی جانب سے ~~الذی~~
جب تفصیلاً حافری کے نقل و حرکت کے متعلق میرے پاس سے اس کی حرکت
میں ارسال ہوئی۔

فنا
شیر مطلق
Police Head Quarte
Haripur
22.9.14

Musab
[Signature]



16

Annex

(F)

OFFICE OF THE DISTRICT POLICE OFFICER, HARIPUR

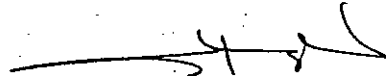
No. 212 /PA, dated 29/12 /2014.

FINAL SHOW CAUSE NOTICE.

I, Muhammad Khurram Rashid (PSP), District Police Officer, Haripur as Competent Authority under Police Rules 1975, do hereby serve Final Show Cause Notice upon you LHC Imdad Shah No: 269 on the following grounds: -

“You while posted at Courts Gate, absented yourself from the legitimate duty with effect from 08.08.2014 to up till now without any leave or permission from the competent authority, which is gross misconduct on your part”

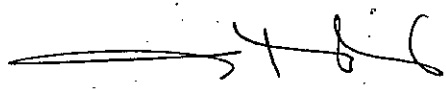
- (1) I am satisfied that you have committed the act/omission specified in Police Rules 1975:
“Guilty of Misconduct”
- (2) As result thereof, I, as competent authority have tentatively decided to impose upon you “major/minor punishment” under Police Rules 1975.
- (3) You are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you and that also intimate whether you desire to be heard in person.
- (4) If, no reply to this notice is received within (07) days of its delivery, it shall be presumed that you have no defense to be put in and in that case an ex-parte action shall be taken against you.
- (5) The copy of the findings of the Enquiry Officer is enclosed.

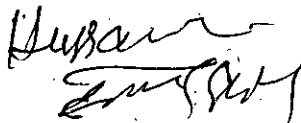

(Muhammad Khurram Rashid)
(PSP)

District Police Officer
Haripur

No. 213 /PA, dated Haripur the 29/12/2014.

Copy of above is submitted to the Regional Police Officer, Hazara Region Abbottabad please.


District Police Officer
Haripur



197

Annex - 9

Honourable District Police Officer,
Haripur.

SUBJECT:- REPLY TO THE SHOW CAUSE NOTICE.

Respected Sir,

With most reverence it is stated that the instant Final Show Cause Notice No.212/PA dated 29-12-2014 has been delivered to me on 12-02-2015, reply to which is submitted as under:-

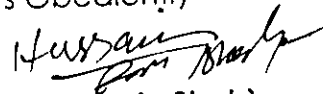
1. That the fact is that due to serious illness of my old age father the then worthy District Police Officer Haripur, Mohammad Ali Khan Gandapur, was kind enough to sanction/grant me 30 days leave which application was submitted to the concerned office. In the light of that application I proceeded on leave on 08-08-2014 and that too with the permission of my immediate in-charge.
2. That after return from leave on 21-09-2014 while performing my duties, I was telephonically informed that my father was again seriously illness and needed to be taken to the doctor. I requested my incharge and proceeded on leave on 22-09-2014, when I reached my house, I found that my father was unconscious. I immediately took my father to the doctor and provided medical treatment and am still caring him. **(Copies of relevant Papers of medical treatment of my father are attached herewith for kind information and perusal please).**
3. That not only that but I found that entire my house hold goods were missing. On quarry, I was told that my wife had taken everything including my children. Beside that, even in the past my wife has twice filed false family cases against me which were patched-up later on. She has again filed a false and fabricated criminal case against me and am being dragged in the cases only for extracting money from me.
4. That as I am the only son of my parents and my father, who is also a retired Police Officer, is seriously ill. There is no one at home except me to look-after him. He is, therefore, at the mercy of Almighty Allah. My mother is also dead. I myself have to look-after and take him to the Doctor. If he is admitted in the Hospital then I have to act as an attendant. Despite all that, I always tried best at my level not to allow these circumstances to become an impediment in discharge of my duties with dexterity, devotion, dedication and honesty.
5. That it is humbly stated that my service record, if perused, will speak itself that I did not avail even a single day leave without acquiring prior permission & sanction from my worthy officers throughout my entire service of 15 years.

[Handwritten Signature]

6. That Sir, as a token of proof with regard to my performance of duty it is stated that I always performed my assigned duties with zeal, zest, devotion, dedication, dexterity, honestly, actively, efficiently and to the entire satisfaction of my superiors/officers and never provided them with a chance of reprimand. In recognition of my tremendous services I have been awarded with 9/10 Commendation Certificates and Cash Reward by my Worthy High-Ups at different occasions.
7. That I always earned good and very good ACRs and have meritorious rather exemplary service record at my credit which can be perused to determine my performance of entire service. This is the first ever explanation issued to me throughout my service of 15 years.
8. That the leave availed by me was not without information/prior permission of my in-charge rather with information and prior permission and in the circumstances beyond my control otherwise I always performed my duties with dexterity and honesty.
9. That sufficient leave balance is available in my leave account. If either type of leave i.e. leave on full pay or half pay is granted to me as a covering sanction will be of great help to me.
10. That as there is sufficient leave balance at my credit and sanction can, therefore, be accorded for the requested/availed leave and I have resumed my duty on 11-02-2015.
11. That I shall be very grateful, if am provided with an opportunity of personal hearing enabling me to bring the real picture of the matter into the kind knowledge of your Highness and to clear my position.

In view of facts and circumstances submitted here above, it is earnestly requested that the instant Show Cause Notice may graciously be withdrawn by exonerating of the charge leveled against me and sanctioning the requested/availed leave. I shall be very thankful to your Highness for this act of kindness and shall pray for your good health and long life please. Thanking you sir in anticipation.

Yours Obediently



(Imdad Hussain Shah)

LHC No.369, District Police,
Police Line Haripur.

Dated: 13-02-2015



اولیٰ

Annax. H²

(19)

تقل رین کا افرامی $25 \frac{3}{5}$

بد 11 آگسٹ ٹون مسیح 25 $\frac{3}{5}$ وقت 1200 بزدلے کھل فرن

369 $\frac{369}{4HC}$ صدا الخم 440

ڈسٹنس فرام سروس پور صکا ہے۔ عمل در آمد کنہ عاریت۔ آمدہ اللوم و ریح 440
تقل رین علیہ مرتب پور کر افرام بالاد کی قیمت سے ارسال ہوگا
عزیزہ 2HC 440 ڈسٹریٹ ہسپتال گارد کمانڈر تعینات ہے جس کے
کر ڈسٹریٹ سوانہ کما جاتا ہے

تقل رین علیہ

25-3-15

Hussain

(20)

Atma-9

To
The District Police Officer,
Haripur.

Subject: Provision of dismissal Order.

Sir
Respectfully it is submitted
that yesterday i.e. 25/3/2015, at 1500 hrs
I was on Guard duty at DHO Dhinda
Haripur as Guard Commander. When called
on phone by Line Mohrori, Police line Haripur
and stated that "you have been dismissed
from service & leave your duty."

Then I approached OHE, ~~who~~ and requested
for dismissal order, who told me that the
same would be provided by SAC in charge.
But he has shown inability.

Kindly issue the same enabling
me to defend my case on proper
departmental & legal forum.

Thanks

Yours obediently

Hussain

Dated 26/3/2015

Mudad Hussain Shah
LHE 369, Police line

Haripur.
Hussain
DHO

~~21~~ 21

Anna - J

ORDER

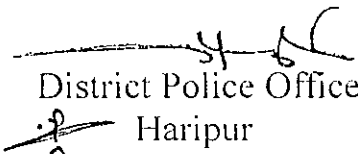
LHC Imdad Hussain Shah No.369 while posted at Police Lines Haripur, absented himself from his legitimate duty with effect from 08.08.2014 to 10.02.2015 almost 186 days without any leave or permission from the competent authority which is gross misconduct on his part, hence he was charge sheeted under police rules 1975.

To probe the matter and conduct of the official an enquiry was marked to Mr. Bilal Zafar Sheikh ASP/HQ, Haripur who reported that during enquiry he was summoned many time to reply the charge sheet as well as appearance before him but he did not appear before the enquiry officer nor submitted his reply of charge sheet. After perused of his service record and connected papers Enquiry officer recommended himself for major punishment.

Therefore I, Khuram Rashid, District Police Officer, Haripur being competent authority under the police Rules 1975, I am satisfy that the charges of misconduct are fully proved, LHC Imdad Hussain Shah absented several time during his past service, he did not take interest in his official duty, he is hereby awarded him major punishment of "Dismissed from Service, from the date of absence i-e 08.08.2014.

Order announced.

OB No. 212 dated 25.03.2015.


District Police Officer
Haripur

Received
on 31/3/15


Khuram Rashid

7 made
Gulab
SEC 203

22

Amex K-1

15

North West Frontier Province
Frontier Police



Recommendation Certificate
CLASS III
Granted by

AKHTAR HAYAT KHAN P.S.P.

SUPERINTENDENT OF POLICE DISTRICT HARIPUR

To CONST: IMDAD HUSSAIN SHAH NO. 369.

Son of _____

District HARIPUR.

in Recognition of

FOR HIS GOOD PERFORMANCE.

CASH REWARD RS. 500/-.

O.B. No. 103.

Dated 14.6. 2003.

SUPERINTENDENT OF POLICE
DISTT HARIPUR

(Signature)

23

76

Annex - K-2

Entirely made
in the
of
S.R.C.

Frontier Frontier
Police Police



Commendation Certificate
CLASS III
Granted by

CAPT. JHSAN TUFAIL (PSP)

SUPERINTENDENT OF POLICE DISTRICT HARIPUR

To CONSTABLE IMDAD-HUSSAIN SHAH NO. 559.

Son of _____

District HARIPUR.

in Recognition of

FOR HIS GOOD PERFORMANCE.

CASH REWARD RS. 500/-.

O.B. No. 111 .

Dated 20.05. 2002.

[Signature]
SUPERINTENDENT OF POLICE
DISTT HARIPUR
By *[Signature]*
Deputy Commissioner

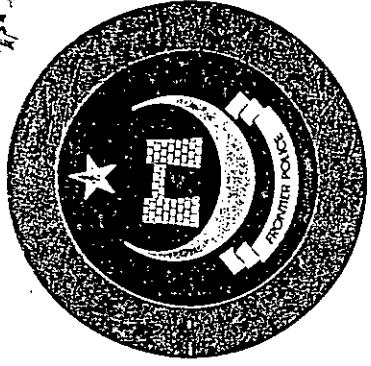
[Handwritten signature]

24

Annex-K-3

Frontier Province Police

Suby no. 10
MORC
5-2-04
BRIEF
5/2/04



Commendation Certificate
CLASS III
Granted by

CAPT. EHSAN UDDIN (FSP)

SUPERINTENDENT OF POLICE DISTRICT HARIPUR

To CONST: IMDAD HUSSAIN NO. 369.

Son of
District

HARIPUR.

in Recognition of

HIS GOOD PERFORMANCE
CASH REWARD RS. 200/-

O.B, No. 40

Dated 28.02.2002.

(Signature)
SUPERINTENDENT OF POLICE
DISTRICT HARIPUR

(Signature)
Supt. Haripur

25 ~~18~~

Annex-K-4

Enlistment of Frontier Police
10-1-27



Recommendation Certificate
CLASS II
Granted by

CAPT: EHSAN TUFALL (PSP)

SUPERINTENDENT OF POLICE DISTRICT HARIPUR

To CONSTABLE IMDAD HUSSAIN SHAH NO. 360.

Son of _____

District HARIPUR.

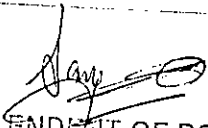
in Recognition of

HIS GOOD PERFORMANCE

CASH REWARD RS. 100/-

Dated 28.2.2002

O.B. NO. 13


SUPERINTENDENT OF POLICE

DISTT. HARIPUR

Superintendent of Police
Haripur

*Hussain
Imdad Shah*

26

19 Annex-K-5

Entry Made by
S/O 24/3

North West Frontier Province Police



Commendation Certificate
CLASS III
Granted by

CAPT: EHSAN TUFAIL (PSP)

SUPERINTENDENT OF POLICE DISTRICT HARIPUR

To CONSTABLE IMDAD HUSSAIN SHAH NO. 369.

Son of _____

District HARIPUR.

in Recognition of

HIS GOOD PERFORMANCE.

CASH REWARD RS. 500/-

O.B.No. 312.

Dated 25.12.2001.

[Signature]
SUPERINTENDENT OF POLICE
DISTT HARIPUR

Hussain
[Signature]

Annex-K-6
27
Regn. No. 2K2-NIF-17891

GOVERNMENT OF PAKISTAN

Certificate No. BRC-62-1951

DIRECTORATE GENERAL CIVIL DEFENCE



NATIONAL INSTITUTE OF FIRE TECHNOLOGY
ISLAMABAD

Certificate

This is to certify that Mr. Imdad Hussain Shah s/o Sabir Hussain Shah.
of Police Line, Haripur.
attended Bomb Reconnaissance Course No. 62
held from 26-Aug-2002 to 14-Sep-2002 and qualified.

19 Dated : _____

DIRECTOR TRAINING

DIRECTOR

Hussain
Imdad

28

Annex - L

BEFORE HONOURABLE REGION POLICE OFFICER,
HAZARA RANGE, ABBOTTABAD.

DEPARTMENTAL APPEAL AGAINST ORDER OB NO.212
DATED 25-03-2015 PASSED BY THE DISTRICT POLICE
HARIPUR WHEREBY THE APPELLANT HAS BEEN AWARDED
THE MAJOR PENALTY OF DISMISSAL FROM SERVICE WITH
EFFECT FROM 08-08-2014.

PRAYER:

ON ACCEPTANCE OF THE INSTANT DEPARTMENTAL ORDER
DATED 08-08-2014 MAY GRACIOUSLY BE SET ASIDE AND
THE APPELLANT BE RE-INSTATED IN SERVICE FROM THE
DATE OF HIS DISMISSAL WITH ALL CONSEQUENTIAL
SERVICE BECAK BENEFITS.

Respected Sir,

With most veneration and humble submission the following few lines are laid down for your kind consideration and favourable action please:-

- A)** That the District Police Officer Haripur has dismissed the appellant from service with effect from 08-08-2014 vide order OB No.212 dated 25-03-2015 illegally, unlawfully, against the facts and in serious violation of departmental rules and regulations as well as natural justice. **(Copy of order dated 25-03-2015 is attached as "A")**.

FACTS:

1. That the fact is that due to serious illness of appellant's father he had to apply for long leave (02 months) vide application dated 10-06-2014. **(Copy of the application is attached herewith as "B")**. Appellant also sought permission for personal appearance before the then District Police Officer Haripur (Mr. Mohammad Ali Khan Gandapur) through his written request dated 10-06-2014

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which was allowed by the worthy ASP Headquarter Haripur.
(Copy of the request is attached as "C").

2. That the then worthy District Police Officer Haripur (Mr. Mohammad Ali Khan Gandapur) was, on his turn, kind enough to grant/sanction me the said leave. But appellant's Immediate Boss did not let him to proceed on leave till 07-08-2014. However, ultimately and that too with the permission of his Immediate Boss, the appellant was allowed to avail his sanctioned leave with effect from 08-08-2014.
3. That during the leave the appellant was telephonically called to attend his duty. Appellant returned to his duty on 21-09-2014. While on duty on 22-09-2014, appellant was telephonically informed that his father was again seriously illness and needed to be taken to the doctor. Appellant requested his Immediate Boss for leave, who allowed him and with the permission of his Boss the appellant proceeded on leave on 22-09-2014, when he reached the house, he found his father unconscious. Appellant immediately took his father to the doctor and provided medical treatment. Instead of recording his departure in the Daily Diary, he was marked absent vide Mad No. 21 of D.D. dated 22-09-2014. **(Copies of D.D. is attached as "D").**
4. That appellant requested for leave in writing and availed leave with the permission of his Immediate Boss. It is incorrect that appellant never attended his duties after 08-08-2014 as is evident from the D.D. dated 22-09-2014 when the appellant was marked absent.
5. That appellant resumed duty on 10-02-2015. While performing duties as Guard Commander at District Headquarter Hospital, Haripur on 25-03-2015 at 1500 hours, the appellant was called on phone by Moharrir, Police Line Haripur and verbally told him that he had been dismissed

from service by the District Police Officer Haripur and was directed to give up his duties. **(Copies of D. D. showing deployment of appellant are attached as E.....).**

- 6. That it also incorrect that so called Inquiry was ever conducted and the appellant was directed to appear before the Enquiry Officer but he never appeared as is alleged in the impugned order dated 25-03-2015. However, the appellant was served with a Show Cause Notice bearing No.212/PA dated 29-12-2014 on 12-02-2015 which was duly reply on 13-02-2015 **(Copies of Show Cause Notice and its reply are attached as F.S.G.)**.
- 7. That appellant was verbally dismissed from service through Moharrier Police Line Haripur on 25-03-2015 at 1500 hours without providing any opportunity of personal hearing. Appellant vide his application dated 26-03-2015 requested the worthy District Police Officer Haripur for providing his dismissal order which was delivered to the appellant on 31-03-2015. (Copy of the application is attached as H.....).
- 8. That in recognition of his tremendous services that appellant has been awarded with Commendation Certificates and Cash Awards even by YOUR HIGHNESS including other High-ups on different occasion. (Copies of Commendations Certificates are attached herewith for kind perusal).
- 9. That appellant has always performed his assigned duties with zeal, zest, devotion, dedication, dexterity, honestly, actively, efficiently and to the entire satisfaction of his superiors/officers and never provided them with a chance of reprimand.
- 10. That appellant always earned good and very good ACRs and has meritorious rather exemplary service record at his credit

(51)

which can be perused to determine his performance of entire service. Appellant has more than 15 years service at his credit.

11. That sufficient leave balance is available in leave account of the appellant. If already not sanctioned then either type of leave i.e. leave on full pay or half pay is granted to the appellant as a covering sanction, hence the instant departmental appeal, inter alia, on the following grounds:-

GROUNDS:

- i) That impugned order is illegal, unlawful, against the facts and in a fanciful manner and without adhering to the procedure set forth to advance substantial justice during the course of departmental inquiries as envisaged under the law.
- ii) That no regular inquiry was conducted to probe into the allegations leveled against and straightway denied by the appellant which was mandatory in the cases while awarding major penalty of dismissal from service.
- iii) That neither any Charge Sheet nor statement of allegation was issued to the appellant before awarding the major penalty of dismissal from service.
- iv) That the appellant was also not provided with an opportunity of personal hearing which is mandatory thus has been condemned unheard.
- v) That so far the allegation of past absentee is concerned, the so called absentee was in acute need and with the due permission of the then officers.

(32)

- vi) That the penalty of dismissal from service with which the appellant has been awarded is very harsh one rather disproportionate and incommensurate with the magnitude of the charge of absence leveled against him.
- vii) That the appellant always earned good ACRs and has unblemished service record at his credit.
- viii) That since his recruitment, the appellant performed his assigned duties with devotion, dedication and honesty to the entire satisfaction of my superiors and never provided them with a chance of reprimand.
- ix) That the appellant is a young man with sound physique, stout, energetic, literate Police Officer, well equipped with the departmental training of police force and knowing police rules to a great extent having more than 15 years service at his credit.
- x) That Sir, the appellant is the only supporter of his old/ailing father, wife and 05 minor children having no source of income and they are fully dependent upon him.

PRAYER:

Sir, in view of the facts and circumstances narrated here above, it is earnestly requested that the impugned order dated 25-03-2015 whereby the appellant has been awarded the major penalty of dismissal from service may graciously be set aside exonerating him of the charge leveled and the appellant be re-instated in service with all consequential service back benefits.

Thanking you sir in anticipation.

*Hussain
Imdad Shah*

(Imdad Hussain Shah)

Ex-LHC No.369, District Police Haripur,
Village: Kailig, Tehsil & District Haripur

Dated: 02-04-2015

وکالت نامہ

کورٹ فیس قیمت

بعدالت جناب جسٹس مسٹر صاحب جسٹس بیچون خواہ سروس کمیشن

منجانب ایڈووکیٹ
اعداد مسین ستاہ پروٹیکشن ایجنٹ

دعویٰ یا جرم سروس ایجنٹ باعث تحریر آنکہ
مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی مقام ایس ایب ایب

محکمہ کے نمونگی ایڈووکیٹ بدیں شرط وکیل مقرر کیا۔ کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دے کر حاضر کروں گا۔ اگر کسی پیشی پر منظر حاضر نہ ہوں۔ اور حاضری کی وجہ سے کسی وجہ پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ کسی اور جگہ یا پکھری کے مقرر اوقات سے پہلے یا بروز تعطیل پیروی کرنے کے مجاز نہ ہوں گے۔ اگر مقدمہ مقام پکھری کے کسی اور جگہ سماعت ہونے پر یا بروز پکھری کے اوقات کے آگیا یا پیچھے ہونے پر منظر کو کوئی نقصان پہنچے تو ذمہ دار یا اس کے رابطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھے کل ساختہ پرواختہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجراءے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے کا ہر قسم کا بیان دینے اور سپروائشی و راضی نامہ و فیصلہ برخلاف کرنے اقبال دعوے کا اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم انتہائی یا ڈگری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا یگی علیحدہ پیروی مختار نامہ کر نیزکا مجاز ہوگا۔ اور بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہوں گے جیسے صاحب موصوف کو۔ پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا ہے کہ سندرے مضمون

مختار نامہ کن لیا ہے اور اچھی طرح سمجھ لیا اور منظور ہے۔


Accepted by
M. Aslam

مورخہ 310 2015ء

اعداد مسین ستاہ

Name: M. Aslam
 Address: E. 100, Karim Colony, Bahawalpur
 Office Tel: 0999-010750
 Residential Tel: 11-00-1057
 Fax: 22-11-2010
 Date of Birth: 13-05-1956
 Blood Group: B+ve
 At Floor C Block, Khyber Road, Bahawalpur, P.O. Bahawalpur.

Muhammad Aslam
 Advocate High Court
 N.I.C: 33302-0437685-1
 S.No: 00-10-1075



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In the matter of:
Appeal No. 791/2015

Imdad Hussain Shah LHCV/S.....PPO/IGP & others
(Appellant) (Respondents)

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully Sheweth:

The appellant submits his rejoinder s under:

Preliminary Objection:

1. Contents incorrect and misleading, the appeal has been filed well within the prescribed period of limitation.
2. Contents incorrect and misleading, the appellant has come to the Tribunal with clean hand.
3. Contents incorrect and misleading, the appellant has illegally been awarded the penalty of forfeiture of 02 years approved service etc; hence he has got every cause of action and locus standi to file the instant appeal.
4. Contents incorrect and misleading, all the facts necessary are brought before this Honourable Tribunal and nothing has been concealed.
5. Contents incorrect and misleading, no rule of estopple is applicable in the instant case.
6. Contents incorrect and misleading, all the necessary parties have been arrayed in the instant appeal.
7. Contents incorrect and misleading, the law, pecuniary matters like pension and gratuity are involved, hence entitled to the remedies as requested.

ON FACTS:

Contents of para No.1 to 15 of the appeal are correct; and the reply submitted to these paras by respondents in para-1 to 15 is incorrect and misleading hence denied.

GROUND:

All the grounds "A" to "F" taken in the memo of appeal are legal and will be substantiated at the time of hearing of appeal and reply submitted to these paras by respondents from "A" to "F" is incorrect and misleading hence denied.

It is, therefore, humbly prayed that the appeal of the appellant may kindly be accepted as prayed for.

Through:

Hussain
for Aslam Tanoli
Appellant

M. Aslam
(Mohammad Aslam Tanoli)

Advocate High Court, at Haripur

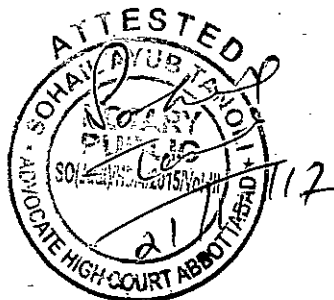
Dated: 21-11-2017

AFFIDAVIT:

It is stated on oath that the contents of this Rejoinder as well as that of the titled Appeal are true and correct to the best of my knowledge and belief and nothing has been kept concealed from this Honourable Tribunal.

Dated: 21-11-2017

Hussain
for Aslam Tanoli
Deponent/Appellant



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service appeal No. 791/2015

Imdad Hussain Shah LHC No. 369 District Police Haripur r/o Kailig, Tehsil &
District Haripur

.....(appellant)

Vs.

The Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and Others

.....(Respondents)

RESPECTFULLY SHEWETH!

The requisite Para-wise comments on the behalf of respondents are as under:-

PRELIMINARY OBJECTIONS:

1. That the instant appeal is badly time barred and not maintainable under the law.
2. That the appellant has not come to the Hon'ble Tribunal with clean hands.
3. That the appellant has no locus standi to file appeal.
4. That the appellant has suppressed material facts for the Hon'ble Tribunal.
5. That the appellant is estopped by his own conduct.
6. That the instant appeal is not maintainable for non-joinder/mis-joinder of necessary parties.
7. That the instant appeal has become infractitious on the ground of appellant's compulsory retirement from service.

In reply to this Para it is submitted that the appellant LHC Imdad Hussain Shah No.369 district Opolice Haripur ,while posted in police lines Haripur absented himself from his lawful duties with effect from 08.08.2014 to 10.02.2015 for 186 days without prior leave or permission from competent authority, such prolong absence was misconduct in terms of Police Rules 1975,therefore,proper departmental enquiry was conducted, ASP/HQ Haripur Mr. Bilal Zafar Sheikh was appointed as enquiry officer who conducted the enquiry and submitted his findings vide his office memo No. 145 dated 22.10.2014,in which he held the charges of misconduct proved and recommended the appellant for major punishment ,therefore, appellant was dismissed from service by the District Police Officer, Haripur vide OB No. 212 dated 25.03.2015.The appellant field a representation before the appellate authority i-e Regional Police Officer, Hazara Region, Abbottabad who took lenient view and the appellant was reinstated in service and minor punishment of "forfeiture of 02 years approved service" was passed vide Regional Police Officer, Hazara Region, Abbottabad office order memo No.5416/PA dated 16.06.2015,the punishment is quite legal in accordance with law and maintainable.

FACTS:

1. Incorrect, the appellant appeared before the then District Police Officer, Haripur in Orderly Room on 25.06.2014 with respect to his application for grant of leave, the competent authority granted 01 month leave to the appellant vide OB No.382 dated 25.06.2014 (copy of application is attached as annexure A)the appellant did not avail the leave on his own accord, later on the appellant in violation of rules absented himself from lawful duties with effect from 08.08.2014 to 21.9.2014 and from 2.09.2014 to 10.02.2015 for 186 days without prior leave or permission from competent authority ,the willful acts and omissions on part of appellant were misconduct, therefore, departmental proceedings were initiated against accused police official.
2. Incorrect, the appellant did not avail the leave on his own sweet will, which shows that the appellant did not need that leave rather he moved the state machinery vexatiously, the appellant resumed to absent from duty without any sanction, leave or permission from competent authority, senior officers remained sympathized towards the appellant as when he applied for leave he was allowed promptly, later on the appellant absented himself, which was misconduct under Police Rules 1975.
3. Incorrect, the appellant generated concocted story to absolve himself from liabilities, the appellant is inhabitant of district Haripur and any matter could be communicated to the senior officers easily, he remained absent and also did not join the enquiry proceedings, the appellant did not follow the law rather proceeded what he liked which is not warranted under Police Rules 1975.
4. Incorrect, the appellant was not granted any leave as claimed in the instant Para, moreover, the appellant had been habitual absentee and he was awarded following several punishments;
 - i. 05 days leave without pay vide OB No.463 dated 27.10.2008.
 - ii. 30 days leave without pay vide OB No.509 dated 22.11.207.
 - iii. Censure vide OB No. 171 dated 07.03.2012.
 - iv. 24 days leave without pay and censure vide OB No.339 dated 12.06.2014.
 - v. Compulsory retirement from service vide O.B. No. 781,dated 30.12.2015.
5. Incorrect, as the appellant committed gross misconduct so proper departmental enquiry was initiated against the appellant, ASP/HQrs: Haripur was appointed as enquiry officer who concluded the enquiry and submitted his findings vide his office Memo No. 145 dated 22.10.2014 in which he held the charges of misconduct were proved and recommended the appellant for major punishment so, final show cause notice by the then District Police Officer, Haripur vide his office Memo: No. 212/PA dated 29.12.2014 ,the appellant could not produce any plausible reply to the final Show Cause Notice, therefore, lawful punishment was awarded to the appellant .
6. Incorrect, the guilt of the appellant was proved through departmental enquiry ,therefore, the appellant was awarded major punishment of

dismissal from service by the District Police Officer, Haripur vide OB No. 212 dated 25.03.2015.

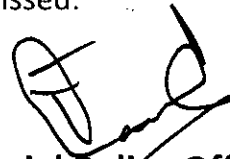
7. Pertains to record.
8. Incorrect, the charges of prolong absence extending to 186 days were proved in departmental enquiry, hence lawful punishment was awarded having considered all the facts and circumstances.
9. Incorrect, proper departmental enquiry was conducted against the appellant, charge sheet and statement of allegations was issued vide District Police Officer, Haripur office Endst: No. 30/PA dated 04.09.2014, in the meanwhile the appellant also indulge in criminal activities and was charge in case FIR No.382 dated 21.09.2014 u/s 337 Aii, PPC PS Sarai Saleh (copy of FIR is attached as annexure "C") the enquiry officer summoned the appellant through local police ,however he could not be found in his home (copy of report of DFC is attached as annexure "D"), hence, all the efforts were made to ensure his appearance before the enquiry officer to which the appellant intentionally evaded from proceedings ,therefore, all the legal requirements were fulfilled before passing the punishment.
10. Incorrect, as narrated in preceding Paras, moreover, his service record is not excellent.
11. In reply to this Para it is submitted that the respondent department appreciated the appellant for his good work which testified that respondent department is not prejudice against the appellant rather is upheld the rule of law.
12. Incorrect, as stated above.
13. Incorrect, a civil servant has to follow law/rules, the appellant violated the departmental rules and took the law in his own hands, therefore, he cannot claim to be law abiding force member, the charges of misconduct were proved beyond any doubt, moreover, leave is not a vested right rather it is the discretion of competent authority under the law.
14. Correct to the extent of filing of representation by the appellant before the Regional Police Officer, Hazara Region, Abbottabad against the order of dismissal.
15. Incorrect, the appellate authority i.e. the Regional Police Officer, Hazara Region, Abbottabad took a lenient view and the appellant was awarded minor punishment of "forfeiture of 02 years approved service" and he was reinstated in service vide Order No. 5416/PA, dated 16.06.2015 (copy of order is attached as annexure "D").

GROUNDS:

- a. Incorrect, the appellant committed gross misconduct, therefore, order of punishment dated 16.06.2015 which is based on cogent evidence is quite legal in accordance with law and maintainable.
- b. Incorrect, the appellant was not granted 02 months leave rather he was granted 01 month leave vide OB No. 382, dated 25.06.2014 by the then District Police Officer, Haripur which the appellant did not avail and later on 08.08.2014 to 09.02.2015 for almost 186 days, the appellant absented himself from lawful duties he was not on leave, therefore, the instant para is wrong, hence, the punishment is lawful and maintainable.
- c. Incorrect, the appellate authority i.e. the Regional Police Officer, Hazara Region, Abbottabad took into consideration all the facts, circumstances, evidence and relevant record and thereafter passed lawful punishment which commensurate with the gravity of charges.
- d. Incorrect, the punishment awarded to the appellant is based on facts, the principles of natural justice were observed, hence, the punishment is quite legal and maintainable.
- e. Incorrect, the fact of prolong absence was proved during departmental enquiry.
- f. Incorrect, the acts and omissions on part of member of discipline force were highly objectionable and misconduct in terms of police rules 1975, therefore, lawful punishment was passed to the appellant, moreover, on account of absence from duty the appellant had been awarded various punishments as narrated in Para No. 04.

Any other point may be argued on behalf of respondent department by the permission of this Hon'ble Tribunal during the hearing of the case.

In view of above, it is therefore, requested that instant service appeal does not hold any legal force which may kindly be dismissed.



Provincial Police Officer
Khyber Pakhtunkhwa, Peshawar
Respondent No. 01



Regional Police Officer,
Hazara Region, Abbottabad
Respondent No. 02



District Police Officer,
Haripur
Respondent No. 03

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COUNTER AFFIDAVIT

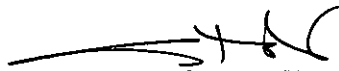
We the following respondents do hereby solemnly affirm and declare that all the contents of reply/comments are true and correct to the best of our knowledge and belief and nothing has been concealed from the Hon'ble Tribunal.



Provincial Police Officer
Khyber Pakhtunkhwa, Peshawar
Respondent No. 01



Regional Police Officer,
Hazara Region, Abbottabad
Respondent No. 02



District Police Officer,
Haripur
Respondent No. 03

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No 187 /ST

Dated 24 /01/2018


To

The District Police Officer,
Government of Khyber Pakhtunkhwa,
Haripur.

Subject: **JUDGEMENT IN APPEAL NO. 791/2015 MR. IMDAD HUSSAIN
SHAH.**

I am directed to forward herewith a certified copy of Judgment dated 17/01/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


**REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.**

OLC