


04.04.2017

Clerk of the counsel for appellant present. Mr. Muhammad Zubair, Senior Government Pleader for the respondents also present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for rejoinder and arguments on 07.08.2017 before D.B at Camp Court Swat.



(AHMAD HASSAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER
Camp Court Swat

07.08.2017

Clerk of counsel for the appellant and Mr. Muhammad Zubair, District Attorney for respondents present. Clerk of counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 9.11.2017 before the DB at camp court, Swat.


Member



Chairman
Camp court, Swat

09.11.2017

Appellant in person, Mr. Kabir Ullah Khattak, Add; AG along with Mr. Hazrat Hussain, Inspector for the respondents present. The appellant submitted ^{real} an application for withdrawal of this appeal which ^{is} dismissed as withdrawn. File be consigned to the record room.

ANNOUNCED
09.11.2017


MEMBER


CHAIRMAN
Camp Court, Swat

26.1.2016

Counsel for the appellant and Mr. Ihsanullah, ASI alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 6.4.2016 before S.B at Camp Court Swat as the appeal pertains to the territorial limits of Malakand Division.


Chairman

06.04.2016

None present for appellant. Mr. Mushtaq Ahmad, Inspector (Legal) alongwith Mr. Muhammad Zubair, Sr.G.P for the respondents present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 05.09.2016 at camp court, Swat.


Chairman
Camp Court, Swat.

05.09.2016

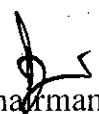
None present for the appellant present. Mr. Muihammad Zubair, Sr.GP for the respondents present. Due to strike of the bar, case adjourned for rejoinder and final hearing before the D.B to 05.12..2016 at camp court, Swat.


Member


Chairman
Camp Court, Swat

05.12.2016

None present for the appellant. Mr. Muhammad Zubair, 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 04.04.2017 before D.B at camp court, Swat.


Chairman
Camp court, Swat.

02.07.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when removed from service vide order dated 6.2.2014 on the allegations of wilful absence regarding which he preferred departmental appeal on 22.5.2014 which was rejected on 27.6.2014 where-after the instant service appeal was filed on 10.6.2015.

That the inquiry was conducted under the repealed law i.e RSO, 2000. Regarding limitation reliance was placed on 2003 PLD Supreme Court 724.

Point urged need consideration. Admit, subject to limitation. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 15.10.2015 before S.B. Notice of application for condonation of delay be also issued for the date fixed.

Appellant Deposited Security & Process Fee

5-10-2015

Chairman

15.10.2015

Since 15.10.2015 has been declared as public holiday on account of 1st Muharram-ul-Haram, therefore, case is adjourned to 26-1-15 for the same.

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 719 /2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25.06.2015	<p>The appeal of Mr. Muhammad Asif resubmitted today by Mr. Muhammad Asif Yousafzai 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	30-6-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>2-7-2015</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

The appeal of Mr. Muhammad Asif Ex-Constable No. 4392 FRP Malakand Range received to-day i.e. on 10.06.2015 is incomplete on the following scores 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- Annexures of the appeal may be attested.
- 3- Page No. 16 of the appeal is illegible which may be replaced by legible/better one.

No. 920 /S.T,

Dt. 10/6 /2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

- 1- Removed
- 2- Removed
- 3- Removed



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 719 /2015

Muhammad Asif

V/S

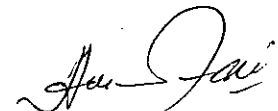
Police Deptt:

INDEX


S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-4
2.	Copy of medical prescriptions	A	5-10
3.	Copy of order dated 6.2.2014	B	11
4.	Copy of charge sheet	C	12
6.	Copy of Statement of Allegations	D	13
7.	Copy of Show Cause Notice	E	14
8.	Copy of Departmental Appeal	F	15
9.	Copy of Rejection Order	-----G-----	16
10.	Vakalat Nama	-----	17

APPELLANT

THROUGH:


(M.ASIF YOUSAFZAI)
ADVOCATE HIGH COURT
PESHAWAR.

&


(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 719 /2015

A.W.F. Province
Service Tribunal
Diary No. 671
Dated 10-07-2015

Muhammad Asif. Ex- Constable No.4392,
FRP, Malakand Range Swat.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Addl./IGP Commandant Frontier Reserve Police KPK, Peshawar.
3. The Superintendent of Police, FRP, Malakand Range, Swat.

(RESPONDENTS)

.....

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 27.06.2014, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 06.02.2014 HAS BEEN REJECTED FOR NO GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 27.06.2014 AND 06.02.2014 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

.....

Filed to-day
Registrar
10/6/15

Re-submitted to-day
and filed
20/6/15
Registrar

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the Frontier Reserve Police and completed all his due training etc and also has good service record throughout.
2. That the appellant's mother has heart problem and the problem became severe due to which the appellant rushed to different Doctors and Hospital. (Copy of the medical prescriptions are attached as Annexure-A)
3. That as the appellant's mother was under treatment, therefore the appellant could not performed his duty and remained absent from the duty. When the mother of the appellant recovered, the appellant came to join his duty, but he was told that he has removed from service under Section-3 of RSO 2000 vide order dated 6.2.2014 and handed over him Removal order along with charge sheet, statement of allegations and show cause notice. (Copies of order dated 6.2.2014, Charge Sheet, Statements of allegations and show cause notice are attached as Annexure-B,C,D&E)
4. That against the order dated 06.02.2014, the appellant filed Departmental Appeal, but the same was also rejected for no good ground on 27.06.2014. (Copies of Appeal and Rejection order are attached as Annexure-F&G).
5. That now the appellant come to this august Tribunal on the following grounds amongst others with an application for condoning the delay.

GROUND:

- A) That the impugned order dated 27.06.2014 and 06.02.2014 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.

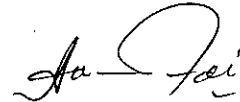
- B) That the appellant has not served the charge sheet and statements of allegations in time which is against the law and rules.
- C) That even the show cause notice was not served to the appellant in time which is against violation of law and rules.
- D) That no inquiry was conducted against the appellant and if any inquiry was conducted against the appellant he has not given any information about that. Even the inquiry report was not given to the appellant.
- E) That the appellant has been condemned unheard and has not been treated according to law and rules.
- F) That the appellant was treated under the repealed law of RSO 2000 which is not permissible in law and the impugned order is liable to be set aside on this ground alone.
- G) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- H) That the penalty of dismissal from service is very harsh which is passed in violation of law and the same is not sustainable in the eyes of law.
- I) That the appellant did not intentionally remain absent from his duties but due to severe heart problem of his mother due to which he was unable to perform his duty. As the illness is beyond the control of humans, therefore the appellant remained absent due to compelling circumstances.
- J) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT
Muhammad Asif



THROUGH:



(M.ASIF YOUSAFZAI)
ADVOCATE HIGH COURT
PESHAWAR.

&



(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2015

Muhammad Asif

V/S

Police Deptt:

.....
**APPLICATION FOR CONDONATION
OF DELAY IN THE INSTANT APPEAL**

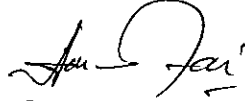
RESPECTFULLY SHEWETH:


1. That the instant appeal is pending before this Honourable Tribunal in which no date has been fixed.
2. That the appellant was punished under a repealed law of RSO 2000 and as such the penalty order was without legal backing, void abinitio and no limitation runs against such orders.
3. That the august Supreme Court of Pakistan has held that decision on merit should be encouraged rather than knocking-out the litigants on technicalities including limitation. Therefore, appeal needs to be decided on merit (2003, PLD (SC) 724.
4. That the appellant was engaged in his mother treatment therefore he has no time to file the appeal before Service Tribunal in time, otherwise, the appeal of the appellant on merit is good enough to be decided on merits.

It is therefore most humbly prayed that the instant appeal may be decided on merit by condoning the delay to meet the ends of justice.

APPELLANT 
Muhammad Asif

THROUGH:


(M.ASIF YOUSAFZAI)
ADVOCATE HIGH COURT, PESHAWAR.


(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR

AFFIDAVIT

It is affirmed that the contents of this appeal & application are true & correct.



D.H.Q Hospital Charsadda OUT - PATIENTS DEPARTMENT

NAME: فکر **Rs=5/-**
YEARLY NO: 4341
DATE: 10/11/2013
DISEASE: H.TN + CAD

BP 190/100
T.H.

E.C.G. 2A

Tabl Blokera Bid-

500 500

- 200 Mouni

1 2 20

- 200 Laxidol

500 500

مجلس دہلی

E.C.G.

Dr. Amir Zaman
D.H.Q. Hospital Chd

ATTESTED
A

D.H.Q Hospital Charsadda

OUT - PATIENTS DEPARTMENT

NAME 3/20 **Rs=5/**

YEARLY NO 11030

DATE 25/11/2013

DISEASE Known

HTN / IHD

for work

disorder

ECG

Tab. Spironolactone 200

- 1 tab. 10 P

- 1 tab. 10 P

- 1 tab. 10 P

D.H.Q Hospital Charsadda
Dr. Samar Zaman
S.D.O

ACCEPTED

D.H.Q Hospital Charsadda
OUT - PATIENTS DEPARTMENT

NAME: 3760 **Rs=5/**

YEARLY NO: 4350

DATE: 10/12/2013

DISEASE: IHD / HTN

Bp 180/100

NOTA

ECS

Carboc

Enzye

2

Tabl. Tenormin

100 cap

- Nbr Loprin

- Tabl. Isokit

75 T

02 weeks

Dr. Saqar Zaman

S.M.C

D.H.Q. Hospital Chd

TESTED
A

D.H.Q Hospital Charsadda
OUT - PATIENTS DEPARTMENT

NAME: 3/19 **Rs=5/**
YEARLY NO: 11524
DATE: 25/12/2013
DISEASE: _____

Advice
- ECG
- Blood sugar
02 weeks / -
Treatment - use M&A

- Tabl. Lasosid
- Ran. Advent
- In. Depota
- Ran. Novidat

Dr. Qamar Zaman
S.M.O.
D.H.Q. Hospital Chd

ATTESTED
A

D.H.Q Hospital Charsadda

OUT - PATIENTS DEPARTMENT

NAME She Rs=5/

YEARLY NO 3762

DATE 8/1/2014

DISEASE IHD / H.T.N

BP 170/110

Tabs. Advant 1 b f.

Di. Loprin 757

Di. Isokeit 107

Dr. Qamar Zaman

D.H.Q. Hospital Chd

Handwritten note in Urdu:
 ۱۰۰ روپے
 ۱۰۰ روپے
 ۱۰۰ روپے

Handwritten signature: ALB

D.H.Q Hospital Charsadda
OUT - PATIENTS DEPARTMENT

NAME: Uzair **Rs=5/**
YEARLY NO: 11912
DATE: 24/1/2014
DISEASE: KNOWN

HTD
LTD
UTI

4.

Tabs Tenoret

Tabs Moxes

ben Loprin

lidexotam

دیکلوفناک

Dr. Qamar Zaman
S.M.D
D.H.Q. Hospital Chd

A.FESTED
*

B

11

ORDER.

Constable Asif No. 4392 while posted to FRP, line Kabal Swat absented himself from his Lawful duty with effect from 13/11/2013 to date vide D.D report No. 05 dated 13/11/2013. He was proceeded against departmentally under the Khyber Pukhtoon Khwa removal from service (special power) ordinance 2000 with duly Constituted committee comprising the following Police Officers.

1. Inspector Rehmat Ali Khan RI, FRP, Line Swat.
2. Inspector Adalat Khan Line Officer-I FRP, Line Swat.
3. Inspector Bacha Khan Line Officer-II FRP, Line, Swat.

He was issued Charge sheet and statement of allegation but neither replied to the charge sheet nor reported for duty. Hence he was issued Final Show Cause Notice but in spite of that no result achieved.

I the undersigned have thoroughly perused the finding of the enquiry committee and reached to the conclusion that the defaulter Constable is no longer interested in his duty, Therefore he is removed from service from the date of his absence i.e 13/11/2013.

"ORDER ANNOUNCED"

Superintendent of Police FRP,
Malakand Range, Swat.
03/02/2014

No. 18889 /EC. Dt 06 / 2 / 014

Copy of above is submitted for favour of information to the:

1. Addl: I.G.P/Commandant Frontier Reserve Police, Khyber Pukhtoon Khwa, Peshawar.
2. Ex-Constable Asif No. 4392.

Superintendent of Police FRP,
Malakand Range, Swat.
03/02/2014

ATTESTED

OB No 40
3-2-014

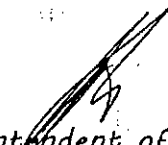
CHARGE SHEET.

I Riaz Hussain Supdt: of Police FRP, Malakand Range, Swat as competent authority here by charge you Constable Asif No. 4392 of FRP, Malakand Range Swat posted to FRP Line Kabal Swat absented yourself from your lawful duty with effect from 13/11/2013 uptill dated vide D.D report No. 05 dated 13/11/2013 without any leave/permission from your immediate officers. Thus issued charge Sheet and Statement of allegation.

- 1.) By reasons of the above, you appear to be guilty of misconduct under section - 3 of the K.P.K. (removal from service) special powers ordinance 2000, and have rendered yourself liable to all or any of the penalties specified in section - 3 of the ordinance bid.
- 3.) You are, therefore required to submit your written defense within 07 days of the receipt of this charge sheet to the Enquiry officer / committee, as the case may be.
- 4.) Your written defense 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 the 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.

No. 122 /EC

Dated: 26-11-013


 Superintendent of Police, FRP,
 Malakand Range, Swat.
 13/11/2013

ATTESTER
★

1 Riaz Hussain Supdt. of Police, FRP, MKD Range, as competent authority, is of the opinion that you Constable Asif No. 4392 FRP have rendered yourself liable to proceed against as you have committed the following action/omissions within the meanings of misconduct under section - 3 of the K.P.K. (removal from service) special powers ordinance 2000, and have rendered yourself liable to all or any of the penalties specified in section - 3 of the ordinance bid.


STATEMENT OF ALLEGATIONS.

You Constable Asif No. 4392 of FRP, Malakand Range Swat posted to FRP Line Kabal Swat absented yourself from your lawful duty with effect from 13/11/2013 until dated vide D.D report No. 05 dated 13/11/2013 without any leave/permission from your immediate officers. Thus you are hereby charge Sheet and Statement of allegation.

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 Police Officers is constituted under section - 3 of the K.P.K., (removal from service) special powers 2000, and to render yourself liable to all or any of the penalties specified in section - 3 of the ordinance bid

3) The Enquiry Committee shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused, record its findings and make within twenty five days of the receipt of this Order, recommendations as to punishment or other appropriate action against the accused.

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

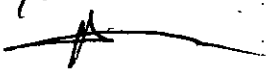

Superintendent of Police FRP,
Malakand Range Swat.

No. 122 / EC, Dated Saidu Sharif the 26-11 2013.

Copy of above is forwarded to the:-

- 1. Inspt. Rahmat Ali Khan
 - 2. Inspt. Adulat Khan
 - 3. Inspt. Bacha Khan
- } For initiating proceeding against the officers/ official under the provisions section-3of the K.P.K., (removal from service) special powers 2000.

4. _____
With the direction to appear before the Enquiry Committee on the date time and place fixed by the Committee for the purpose of the proceeding.

ATTESTED


FINAL SHOW CAUSE NOTICE.

I **Riaz Hussain** Supt.: of Police FRP Malakand Range, Swat as competent authority, under the NWFP-removal from service (special powers) ordinance 2000 do hereby serve you Constable Asif No. 4392 as follow:

- 1). That consequent upon the completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing.
- 2). On going through the findings and recommendation of the enquiry officer, the material on record and other connected papers including your defence before the said committee.

I am satisfied that you have committed the following Acts/ misconducts specified in section -3 of the said ordinance.

You Constable Asif No. 4392 of FRP, Malakand Range Swat posted to FRP, Line Kabal Swat absented yourself from your lawful duty with effect from 13/11/2013 uptill date vide D.D report No. 05 dated 13/11/2013. You have been issued charge sheet vide this office Endst: No. 122/EC, dated 26/11/2013 but you did not report/arrival for duty nor submit reply to the charge sheet in the stipulated period. Thus issued Urdu parwana vide this office Endst: No. 1907/EO, dated 27/11/2013 but you did not appeared before the enquiry committee. Thus issued Final Show Cause Notice.

- 3). You are therefore required to Final Show Cause to why the aforesaid penalty should not be imposed upon you, and also intimate whether you desire to be heard in person.
- 4). If no reply to this notice is received within fifteen days of its delivery in the normal course of circumstance it shall be presumed that you have nothing to offer and in that case, ex-parte action shall follow against you.

Copy of the findings of the enquiry officer is enclosed.

*Superintendent of Police, FRP,
Malakand Range, Swat.
20/12/2013*

No. 122/A /EC

Dated 23/12 /2013.

ARRESTED
[Signature]

بخدمت جناب ایڈیشنل - ای - جی - پی / کمائنٹیٹی ایف - اردنی صوبہ K.P.K لیڈنگ

عنوان :- درخواست ہمدردی بارہ بحالی ملازمت (بجٹ کانٹریل)

F

جناب عالی! مودبانہ گزارش بالمختور الفرح حسب ذیل ہے۔ سائیل محمد بولیس 9527
FRP میں بجٹ کانٹریل ہوتی ہو چکا تھا۔ سائیل کے والد صاحب عمرہ 22.5.04
دراز سے دل کے بیماری میں مبتلا ہے۔ سائیل کے علاوہ سائیل کے گھر
میں کوئی اور نارینہ موجود نہیں ہے۔ بدین وجہ سائیل مورخ 3.11.2013

سے FRP ملاکتڈ ریج سے غیر حاضر ہوا تھا۔ سائیل بدستور غیر حاضر
ہونے پر بحوالہ اڈریک نمبری 40 مورخ 03.2.2014 کو حکمانہ

My
Add: IGP
Comdt: FRP
By Comdt:
FRP/P.K.
FRP
Ish. Range
D.P. FRP
HQ Pesh.
RTRP
I.O. Pesh.
GSTRP
HQ Pesh.
F. FRP
HQ Pesh.
EC: IGP
HQ Pesh.
OS: IGP
HQ Pesh.

انکوٹری مکمل ہوتے پر حکم ہذا سے درخواست کرنے کا حکم صادر ہو چکا ہے
سائیل اپنے بیمار اور ضعیف العمر ماں باپ کا واحد کفیل سہرا
ہے۔ نہایت غریب گھرانے سے تعلق رکھتا ہے۔ سائیل ضلع جارسہ
کا مستقل سکونتی باشندہ ہے۔ اور FRP ملاکتڈ ریج میں ان ٹیوٹی تھا
ماں کسی بیماری کے باعث آمدورفت کی وجہ سے غیر حاضر ہوا تھا۔
اور یہی وجہ تھا کہ وہ ہذا سے ڈسچارج ہوا ہوں۔ نہایت
ادب کیا ہو بندوبست

درخواست افسران بالا کے ذمیت میں
استدعاگوں ہوں کہ افسران بالا سائیل کے متذکرہ بالا غریب اور
جسوری / بے روزگاری کو مد نظر رکھ کر اس دفعہ سائیل کو ہنگامی
کریں اور سائیل کو ہنگامی دوبارہ بجٹ کانٹریل ملازمت
میں بحال کرنے کا حکم صادر فرماویں تو سائیل کے ضعیف العمر
ماں باپ اور سائیل سادے محلہ دیگاؤ رہے گا۔

العارض

الغیاثی کھلی سانبہ کا فیصلہ خدایف 4392

سائیل 9005186 - 0314

ATP/EP
A

BETTER COPY

Annexure-G

(Page-16)

ORDER

The Order shall dispose off on the appeal by Ex-Constable Muhammad Asif No.4302 of FRP against the order of SP FRP Malakand Range.

Brief facts of the case are that he while posted to FRP Lines Kabal Swat absented himself from duty with effect from 13.11.2013 till the date of his removal from service for a total period of 50 days without any leave/permission of the competent authority. He was issued charge-sheet / statement of allegations; R1, LO-1 FRP Malakand Range were nominated as Inquiry Officer. After enquiry, the Enquiry Officers recommended the defaulter Constable for major punishment. He was issued Final Show Cause Notice but his reply not received within stipulated period. Therefore, he was removed from service by SP FRP Malakand Range Swat vide his OB No.40, dated 03.02.2014. His appeal is time barred.

However, from the perusal of record and finding of Enquiry Officer there are no cogent reasons to interfere in the order of SP FRP Malakand Range. Therefore, his appeal is rejected.

SD/-
Addl. IGP Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

No.5259-60/ED;

Dated, Peshawar, the 27.06.2014.

Copy of the above is sent for information and necessary action to the:-

1. Superintendent of Police, FRP Malakand Range w/r to his Memo No.949/FC; dated 13.06.2014. His service record and departmental enquiry files are returned herewith for record.
2. Ex-Constable Muhammad Asif No.4392 S/o Hayat Khan, Village Faqir Abad, Wardaga Police Station, Sardhari, District Charsadda.

ATESTED
AS

ORDER.

P-16

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16

This order shall dispose off on the appeal by Ex Constable Muhammad Asif No. 4392 of FRP against the order of SP FRP Malakand Range.

Brief facts of the case are that he while posted to FRP Lines Kabal Swat absented himself from duty with effect from 13.11.2013 till the date of his removal from service for a total period of 50 days without any leave/permission of the competent authority. He was issued charge sheet/statement of allegation; RI, LO-I and LO-II FRP Malakand Range were nominated as Enquiry Officer. After enquiry, the Enquiry Officers recommended the defaulter Constable for major punishment. He was issued Final Show Cause Notice but his reply not received within stipulated period. Therefore, he was removed from service by SP FRP Malakand Range Swat vide his OB No. 40 dated 03.06.2014. His appeal is time barred.

However from the perusal of record and finding of Enquiry officer there are no cogent reason to interfere in the order of SP FRP Malakand Range. Therefore his appeal is rejected.

Adit: IG/Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

No. 5259-60 /EC dated Peshawar the 27/06

2014.

95-6-2014

Copy of above is sent for information and necessary action to the:-

1. Superintendent of Police FRP Malakand Range w/r to his Memo. No. 949/EC dated 13.06.2014. His service record and departmental enquiry files are returned herewith for record.
2. Ex-Constable Muhammad Asif No. 4392 S/o Haya: Khan Village Paqir Abad Wardaga Police station Sardhari district Charsadda.

ATTESTED

VAKALAT NAMA

NO. _____/20

IN THE COURT OF Service Tribunal, Peshawar

Muhammad Asif (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Police Department (Respondent)
(Defendant)

I/We Muhammad Asif

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20

M. Asif
(CLIENT)

ACCEPTED

M. Asif Yousafzai

M. ASIF YOUSAFZAI
Advocate

Taimur Ali Khan

TAIMUR ALI KHAN
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:

Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.719/2015.

Muhammad Asif No.4392 FRP/Malakand Range Swat.....Appellant.

VERSUS

1. **Superintendent of Police FRP**
Malakand Range, Swat.
2. **Addl: IGP/Commandant,**
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar
3. **Provincial Police Officer,**
Khyber Pakhtunkhwa, PeshawarRespondents

Respectfully Sheweth

Written reply on behalf of respondents are as under

PRELIMINARY OBJECTIONS

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
3. That the appellant has no cause of action.
4. That the appellant has not come to this court with clean hands.
5. That the appellant is estopped due to his own conduct to file the instant Service Appeal.
6. That this Honorable Court has no jurisdiction to entertain this Service Appeal.

FACTS

1. Para No.1 Pertain to the appellant record needs no Comments.
2. Para No.2 Incorrect. The appellant while posted to Police line Kabal Swate, remained absent from lawful duties w.e.from 13-11-2013 vide D.D report No.5 dated 13-11-2013 till to the date of his removal from service i.e. 06-02-2014.
3. Para No.3 Incorrect, on the allegation of absence the appellant was issued/Served with charge sheet along with summery of allegation and enquiry Committee was nominated. The appellant failed to submit reply of Charge Sheet or appeared before the Enquiry Committee. The Enquiry Committee found him guilty of the Charges leveled against him and recommended him for major penalty. After receiving the findings of E.C, the competent authority served the appellant with final Show Cause Notice, but the appellant failed to submit his reply. An opportunity of personal hearing was also provided to the appellant but he failed to avail the opportunity of personal hearing and after fulfillment of all codal formalities the appellant was removed from service.
4. Para No.4 correct to the extent that departmental appeal submitted by the appellant, was thoroughly examined and rejected on sound grounds.
5. Para No.5. The appellant has got no cause of action to file instant appeal.


GROUND

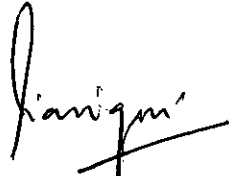
- A. Incorrect, the order of the respondents are legally justified and in accordance with Law, which commensurate with the gravity of guilt of the appellant, therefore the instant appeal may be dismissed.
- B. Incorrect, the allegation are false and baseless as the appellant was already served with charge sheet by E. Committee well in time but he deliberately failed to submit his reply of Charge Sheet.


- C. Incorrect, after receiving the findings of Enquiry Committee the competent Authority served the appellant with final show cause notice but he failed to submit his reply before the competent Authority.
- D. Incorrect, proper inquiry was conducted against the appellant by the inquiry committee and it is evident from charge Sheet and show cause notice, but he failed to participate with the enquiry proceedings. During the course of enquiry the Enquiry Committee found him guilty of charges leveled against him.
- E. Incorrect the opportunity of personal hearing was also provided to the appellant but he failed to turn-up.
- F. Incorrect that the appellant was dealt in accordance to law. However, the Appellant remained absente from lawful duties deliberately and in this regard he was served with charge sheet and summary of allegations but he failed to submit his reply and after fulfillment all the due codal formalities, the appellant was removed from service as per law, therefore the instant Service appeal may kindly be dismissed.
- G. Incorrect, the Para has already been explained in the proceeding Para No.F.
- H. Incorrect, that the appellant was being a member of disciplined force, absented himself from lawful duties without proper permission or leave and on the other hand he failed to submit his reply of charge sheet and show cause notice to explain his position, therefore, the Competent Authority was compelled to remove him from service. However, the penalty awarded to the appellant is commensurate with the gravity of the appellants grass misconduct.
- I. Incorrect The appellant was remained absent from duty intentionally without prior permission or leave and the plea taken by the appellant in the Para is after thought story.
- J. The Respondent may also be permitted to raise additional Grounds at the time of arguments.

PRAYERS:

It is therefore, most humbly prayed that in the light of afore mentioned facts/submission the instant service appeal may kindly be dismissed with cost.


Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.1)


Addl: IGP/Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.
(Respondent No.2)


Superintendent of Police FRP,
Malakand Range, Swat.
(Respondent No.3)

لیدر لک جناب پرزادہ شکیل احمد صاحب
لکھا (کل کھڑے سوات)

محمد اصف بنام محمد بولیس FRP سوات

درخواست برادر واپسی دیپل سفرون بالا

صوبے عالمی قصبہ نعلی عرض ہے

دیپل سفرون بالا عمالک سفرون میں زیر محاسبیت
صحیح آج تاریخ اپنی معذرت

میں آج من سائل پر اپنی اپنی اپنی واپسی لیا جائے
میں آج عمالک سفرون اجازت فروری

اپنے اساتذہ عالیہ کی لائقوری درخواست ہے

دیپل سفرون بالا لینڈ واپسی داخل دفتر
کرتے تاکہ صادر فرمایا جائے

محمد اصف بنام محمد بولیس
فرقہ 2017/9

محمد اصف بنام خان نکتہ دودگ چارسدہ

شناختی کارڈ - 7-6-1075107-027-17101

سٹریٹ نمبر 9005186 0314