

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 813/2015

Date of Institution... 14.07.2015

Date of decision... 24.01.2018

Waqar Ali son of Samar Gul, Ex-Constable No. 2201, Police Department, Mardan
(resident of village Kas Kili, Toru, District Mardan. (Appellant)

Versus

1. The District Police Officer, Mardan. ... (Respondents)

Mr. Muhammad Adam Khan, ... For appellant.
Advocate.

Mr. Ziaullah, ... For respondents.
Deputy District Attorney

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. GUL ZEB KHAN, ... 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 07.05.2015 against which he filed departmental appeal (undated) which was rejected on 15.06.2015 and thereafter he filed the present service appeal on 14.07.2015.

ARGUMENTS

3. The learned counsel for the appellant argued that the absence period has been treated as leave without pay and thereby the absence period has become legalized. That this Tribunal in a number of judgments has declared such orders as

illegal. The learned counsel for the appellant further argued that the appellant was not absent rather he was on duty outside the Kachery Gate.

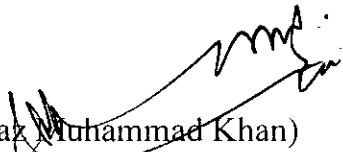
4. On the other hand the learned Deputy District Attorney argued that the appellant was absent. That all the codal formalities were fulfilled.

CONCLUSION

5. This Tribunal in a number of appeals has decided that when the period of absence is treated any kind of leave then the absence became legalized. Reliance is placed on the judgment of august Supreme Court of Pakistan reported as 2006-SCMR-434.

6. In view of the above, this appeal is accepted and the appellant is reinstated in service. The period of absence should be treated as leave of the kind due. Parties are left to bear their own costs. File be consigned to the record room.


(Gul Zeb Khan)
Member


(Niaz Muhammad Khan)
Chairman

ANNOUNCED
24.1.2018

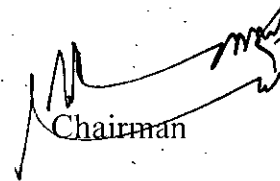
813/15

24.01.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Attaur Rahman, S.I (Legal) for the respondents present. Arguments heard and 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

ANNOUNCED
24.01.2018

04.05.2017

Counsel for the appellant and Mr. Ziaullah, Government Pleader for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 09.08.2017 before D.B.



(Gul Zeb Khan)
Member



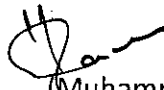
(Ahmad Hassan)
Member

09.08.2017


Clerk of the counsel for appellant present. Mr. Atta-ur-Rehman, S.I (legal) alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents present. Clerk of the counsel for appellant seeks adjournment on the ground that learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 27.11.2017 before D.B.



(Muhammad Amin Khan Kundi)
Member (J)



(Muhammad Hamid Mughal)
Member (J)



27.11.2017

Appellant in person and Addl: AG alongwith Mr. Atta ur Rehman, SI (Legal) for respondents present. Due to general strike of the Bar arguments could not be heard. Adjourned. To come up for arguments on 24.01.2018 before D.B.



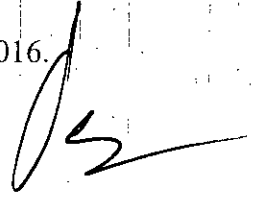
Member



Chairman

09.05.2016

Appellant in person and Mr. Muhammad Ghani, SI
alongwith Mr. Muhammad Jan, GP for respondents present.
Arguments could not be heard due to General Strike of the Bar.
To come up for Rejoinder and arguments on 17.08.2016.



Member



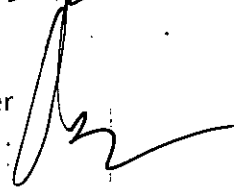
17.08.2016

Appellant in person and Mr. Muhammad Ghani, SI
alongwith Mr. Ziaullah, GP for the respondents present.
Rejoinder not submitted and requested for further time to
submit rejoinder. Request accepted. To come up for rejoinder
and arguments on 26-12-16 before D.B.



Member

Member



26.12.2016

Clerk to counsel for the appellant and Mr. Muhammad
Ghani, SI alongwith Mr. Ziaullah, GP for respondents present.
Arguments could not be heard due to incomplete bench. Case
adjourned to 04.05.2017 for rejoinder and arguments before D.B.



Chairman

31.07.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to inquiry on the allegations of wilful absence from duty and dismissed from service vide impugned order dated 7.5.2015 regarding which he preferred departmental appeal which was rejected on 15.6.2015 and hence the instant service appeal on 14.7.2015.

That the appellant was neither absent nor the inquiry was conducted in the prescribed manners.

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 27.10.2015 before S.B.


Chairman


27.10.2015

Counsel for the appellant and Mr. Muhammad Ghani, S.I. alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 11.02.2016 before S.B.


Chairman

11.02.2016

Counsel for the appellant and Mr. Muhammad Ghani, S.I. alongwith Addl: A.G for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing for 9.5.2016.


Chairman




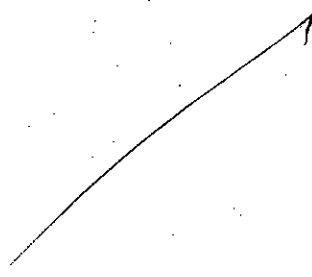
Appellant Deposited
Security & Process Fee →



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 813/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	14.07.2015	<p>The appeal of Mr. Waqar Ali presented today by Mr. Muhammad Adam Khan Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	15-7-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>16-7-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
3	16.7.2015	<p>None present for appellant. The appeal be relisted for preliminary hearing for 31.7.2015 before S.B.</p> <p style="text-align: right;"> CHAIRMAN</p> 

BEFORE THE SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 813 /2015

Waqar Ali Versus The DFO Mardan etc.

I N D E X

S.No.	DESCRIPTION OF DOCUMENTS	ANNEXURE Nos.	PAGE Nos. From To
1.	Appeal with Affidavit	-	01 - 05
2.	Charge Sheet & Statement of allegations.	A & B	06 - 07
3.	Reply to charge sheet	C	08
4.	Order of D.P.O.	D	09
5.	Departmental Appeal	E	10
6.	Appellate order	F	11
7.	Vakalat Name	-	12.
Total:			12

Appellant
(Waqar Ali)

Through

Adam
(MUHAMMAD ADAM KHAN
Advocate Mardan.

Dated 14/07/2015

BEFORE THE SERVICES TRIBUNAL , P E S H A W A R

Service Appeal No. 813 /2015

N.W.F. Province
Service Tribunal
Diary No. 852
dated 14-7-2015

Waqar Ali son of Samar Gul Ex-Constable No. 2201

Police Department, Mardan, (resident of Village

Kas Kili, Toru, District Mardan (Appellant) ..

VERSUS

1. The District Police Officer, Mardan.
2. The Deputy Inspector General of Police,
Region-I, Mardan. (Respondents)

APPEAL UNDER SECTION-4 OF THE SERVICES TRIBUNAL
ACT 1974 AGAINST THE ORDER OF THE DPO/RESPONDENT
NO.1, CONTAINED IN LETTER No. 4532-37 DATED 07.02.2015
DISMISSING THE APPELLANT FROM SERVICE.

- 14/7/15
1. That while posted as Constable in the Police
Lines, Mardan under the Respondents, The DPO/
Respondent No. 1, served the Appellant with the
charge-sheet and statement of allegations vide
Endorsement of alleged absence from duty vide DD

No. 64 dated 06.04.2015,
No. ~~65~~ dated ~~20~~.04.2015 to date.

COPIES ANNEXURE 'A' AND 'B'

2. That the Appellant replied the same, claiming that he was not absent from duty. But, he while posted in Security/^{staff} at the District Courts Mardan, was taken by Mr. Alizar Khan S.I. to the office of The DPO/Respondent No. 1, on 15.04.2015.

3. That there he was disarmed by The DPO and his Rifle was handed over to Mr. Murad, the Contable for deposit in the store (کورٹ) Police Lines Mardan and the Appellant was detained there, as " under watch/under supervision" till 21.04.2015.

COPY ANNEXURE 'C'

4. That the DPO/Respondent No. 1, awarded the Appellant with the punishment of dismissal from service vide letter No. 4532-37 dated 07.05.2015.

COPY ANNEXURE 'D'

- (5) That Appellant preferred departmental Appeal to The D.I.G./Respondent No. 2, which was rejected vide letter No. 3579/ES dated 15.06.2015.

COPIES ARE ANNEXURE 'E' AND 'F'

- (6) That the Appellate order was not conveyed to Appellant. He learnt about it on 19.06.2015, while persing the fate of departmental appeal.
- The impugned orders are incorrect, illegal, against the principles of natural justice and the same are liable to be set aside on the following amongst many other grounds:-

- (1) That the Appellant has never been absent from duty during the crucial period rather he was closed to be kept "under watch" in the Office of The DPO from 15.03.2015 to 21.04.2015.

- (II) That the defence plea of Appellant is never taken into consideration at any stage, that Appellant was kept under watch by the DPO during the crucial period.

- (III) That the Enquiry Officer heard the defence statement of Appellant verbally and not recorded the same into writing.
- (IV) That the plea that Appellant was kept under watch by the DPO is not taken into consideration at any stage, nor enquired into.
- (V) That no prosecution witness was examined in presence of Appellant during the enquiry proceedings.
- (VI) That the copy of Enquiry report was never supplied to Appellant.
- (VII) That no final show cause notice was served upon Appellant and he was condemned unheard through-out.
- (VIII) That the service records of Appellant, through-out his service is clean and unblemished.
- (IX) That the Appellant is jobless after the issuance of the impugned order.
- (X) That the Appellant seeks leave of this Hon'ble Tribunal to claim further grounds.

It is prayed that on acceptance of this Appeal setting aside the impugned order, the Appellant may be re-instated into service with back service benefits and also with the costs of this Appeal.

Appellant

(Waqar Ali) *Wai*

Through

Adam

MUHAMMAD ADAM KHAN

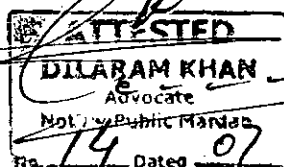
Dated: 14/07/2015

Advocate Mardan.

AFFIDAVIT

I, Waqar Ali son of Samar Gul (Ex-Constable No. 2201 Police Department Mardan resident of Village Kas Kili Toru Mardan do hereby state on solemn affirmation that the contents of the above Appeal are true and correct to the best of my knowledge and belief. Nothing has been concealed from this Hon'ble Tribunal.

Wai
Deponent (WAQAR ALI)



CHARGE SHEET UNDER KPK POLICE RULES 1975

ATTESTED


ADAM KHAN

I, Gul Afzal Khan District Police Officer, Mardan as competent authority hereby charge you Constable Waqar Ali No. 2201, as follows.

That you constable, while posted at Police Lines, deliberately absented yourself from the lawful duty vide DD No.64 dated 06.04.2015 to-dted without any leave / permission of the competent authority.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 5 (1) (b) of the KPK Police Rules 1975.

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


(GUL AFZAL KHAN)
District Police Officer,
Mardan.

OFFICE OF THE DISTRICT POLICE OFFICER, MARDANNo. 905 /IVD.A-P.R-1975.Dated 20-4- /2015

ATTESTED

ADAM KHAN

DISCIPLINARY ACTION UNDER KPK POLICE RULES - 1975.

I, Gul Afzal Khan District Police Officer, Mardan as competent authority am of the opinion that Constable Waqar Ali No. 2201, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of KPK Police Rules 1975.


STATEMENT OF ALLEGATIONS

That Constable Waqar Ali No. 2201, while posted at Police Lines, deliberately absented himself from the lawful duty vide DD No.64 dated 06.04.2015 to-date without any leave / permission of the competent authority.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations Mr: Mian Imtiaz Gul DSP/Legal Mardan is appointed as Enquiry Officer.

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

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


(GUL AFZAL KHAN)
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDANNo. 905 /R, dated Mardan the 20-4- /2015.

Copy of above is forwarded to the:

1. DSP/Legal Mardan for initiating proceedings against the accused official / Officer namely Constable Waqar Ali No. 2201, under Police Rules, 1975.
2. Constable Waqar Ali No. 2201, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

بازار ان وٹارسل 2201 سٹیڈ پولیس لاکھ وردان

ATTESTED
Aman
JAMIL KHAN

جائے والا

گزارش صدر جو الا شوٹنگ کلب نمبر 905 مورخہ 15-4-2005 مورخہ صحت ہوں

کہ میں نے ہرگز ذرا بھی کھری نہیں تھی۔ یہ تصدیقات تھیں۔ کہ مورخہ 15/4/2005 (158/76)

اگر آپ نے کہا ہے کہ آپ آجائے اور
میں نے یہ سب کہا ہے۔ DP0 دیکھ کر مجھے

سیر کرنے پر مجبور رہا ہے ساتھ دفتر جا۔ DP0 دیکھ کر مجھے
خا۔ DP0 دیکھ کر مجھے کرا۔

سیر کرنے پر مجبور رہا ہے ساتھ دفتر جا۔ DP0 دیکھ کر مجھے
خا۔ DP0 دیکھ کر مجھے کرا۔
میرا انتقال فراوان ہو گیا ہے اسکو کہا کہ
انٹرنیٹ پولیس لاکھ لوت سے جمع رہے

دفتر میں بٹھایا اور کہا کہ آپ دفتر میں موجود ہو گا
ہیں ہیں جائے۔ یہ رات 15/8/2004 سے اب تک دفتر
میں موجود ہوں۔

اسی طرح سب تقریباً 4 دفعہ جا۔ DP0 دیکھ کر سامنے
بٹھ کر ہر جگہ ہوں۔

میں نے کوئی غیر جانبداری نہیں کی ہے۔ اور مجھے سب سے بڑا
جانبدار ہے

لیڈر اسٹریٹجی کے ساتھ ساتھ کانسٹیبل کے نوٹس دلا گیا ہے کہ وہ اس دہلی
دفتر کے حوالے سے
سید عزیز گل
آریا مالدار وٹارسل 2201 سٹیڈ پولیس لاکھ (حالہ اللہ واج)

POLICE DEPARTMENT

MARDAN DISTRICT

ORDER


This order will dispose of departmental inquiry, which has been conducted against Constable Waqar Ali No. 2201, on the allegation that he while posted at Police Lines, absented himself from lawful duty vide DD No. 64 dated 06.04.2015 to-date without any leave/pennission. His attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part as defined in rule 2(III) of Police Rules 1975. Therefore he was recommended for departmental action.

In this connection, Constable Waqar Ali No. 2201, was charge sheeted vide this office No. 905/R, dated 20.04.2015 and also proceeded him against departmentally through Mian Imtiaz Gul DSP/Legal Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 547/LB dated 05.05.2015, as the allegation have been established against him.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Waqar Ali No. 2201, is hereby dismissed from service, while his absence period is counted as leave without pay in exercise of the power vested in me under the above quoted rules.

Order announced.

O.B No. 847Dated 7/5/2015No. 4532-37 / dated Mardan the 7/5 /2015

(Gul Asghar Atri) 
District Police Officer,
Mardan.

Copy for information and necessary action to:-

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

11/5/2015

To

PAGE NO.

10

ANNEXURE

E

The Deputy Inspector
General of Police
Mardan Region-I
Mardan.

ATTESTED
Wajal Ali
DAMKHA

Departmental representation Appeal

Sir

- 1- That the DPO Mardan vide letter-4532/37
The Applicant
dated 07/5/2015 dismissed \uparrow from service
- 2- That ~~the Applicant was ill and~~
The allegation of absence was incorrect
which was duly explained in my reply to show cause notice ⁹⁰⁵ _{20.4.15}
Applicant
- 3- that the Applicant belongs to poor family has
no other source of income, having
10 family members to feed.

It is prayed that Applicant may please be
reinstated into service.

Date / /

Wajal Ali

No 2201 - F.C

R/o Kas Killi P.o Ghalcher

Mardan

ATTESTED

ADAM KHAN

ORDER.

This order will dispose-off the appeal preferred by Ex- Constable Waqar Ali No. 2201 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was dismissed from service vide OB No. 347 dated 07.05.2015.

Brief facts of the case are that, he while posted at Police Lines, Mardan absented himself from lawful duty vide DD No. 64 dated 06.04.2015 to the date of dismissal without any leave/permission. His attitude adversely reflected on his performance which is an indiscipline act gross misconduct on his part. Therefore he was recommended for departmental action. In this connection he was charge sheeted and also proceeded against departmentally through Deputy Superintendent of Police Legal, Mardan, who after fulfilling necessary process submitted his findings to District Police Officer, Mardan, as the allegations were established against him, District Police Officer, Mardan agreed with the findings of enquiry Officer and the alleged Constable was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 10.06.2015, but he failed to justify his absence and could not produce any cogent reason about his absence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

ORDER ANNOUNCED.

(MUHAMMAD SAEED) PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan

No. 3579 /ES, Dated Mardan the 15/06/2015.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 645/LB dated 03.06.2015. His service roll is returned herewith for record in your office.

5. In view of above explanation, his appeal is not worth consideration and may be metu please.

Encl: S-R (1)

Amir

VAKALAT NAMA

In the Court of The Service Tribunal, Peshawar

Appeal No. _____ of 2015

Waqar Ali

(Petitioner)
(Plaintiff)
(Appellant)

VERSUS

Police Deptt etc

(Respondent)
(Defendant)

I/We Waqar Ali the
above noted Appellant do

hereby appoint and constitute **Muhammad Adam Khan, Advocate Mardan** as
Counsel in subject proceedings and authorize him to appear, plead etc., compromise, withdraw or
refer to arbitration for me/us, as my/our Advocate in the above noted matter, without any liability
for his default and with the authority to engage/appoint any other Advocate/Counsel at my/our
behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated: 14.07.2015

N.W.F.P. Bar Council

ADVOCATE
High Court

ADAM KHAN

No. BC-09-0600

A. Jahan
Secretary's Signature

Father's Name: **ABADSHAH GUL**
Address: **VILL: GOJAR GARHI DISTT: MARDAN**
Office Tel: **0931-63013** Res. Tel: **0931-63450**
Enrolment Date L.C: **03/08/1978**
Enrolment Date H.C: **31/05/1990**
Place of Practice: **MARDAN**
Date of Birth: **04/04/1945**
Blood Group: **BAB+VE**
N.I.C. No: **3161024612619-5**

N.W.F.P. BAR COUNCIL
Karachi Market, Sockand Square, Peshawar Phone: 091-252245

Waqar Ali
Waqar Ali/Appellant
(Signature of Client)

Adam Khan
Accepted

5

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR.

Service Appeal No. 813/2015.

Waqar Ali s/o Samar Gul Ex-Constable No. 2201
Police DepartmentAppellant.

VERSUS.

District Police officer, Mardan & others..... Respondents.

Parawise Comments on behalf of respondents No. 01 & 02 are submitted as under:-
Respectfully Sheweth:

PRELIMINARY OBJECTIONS:-

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary party and mis-joinder of unnecessary parties.
7. That the instant appeal is barred by law.

REPLY ON FACTS:-

1. Correct, hence, no comments.
2. Incorrect. As per statement of Sub-Inspector Ali Zar Khan Incharge Security Kachehry Guard, the appellant was brought before the W/DPO 08 months earlier i.e on 15.08.2014. Infact, the appellant has been proceeded against departmentally for his deliberate absence from 06.04.2015. It shows that the version given by appellant carries two different stories. However, the appellant has been punished for his habitual character of absence as well as on his absence from 06.04.2015.
3. Correct to the extent of Part-I of this Para while the later Part i.e regarding appellant's detention & being under watch is totally incorrect & baseless.
4. Incorrect. The appellant was dismissed vide O.B No. 487 dated 07.05.2015 and the letters No. 4532-37 dated 07.05.2015 were infact information copies of this order to the seniors officials & concerned branches of this office.
5. Correct, hence, no comments.
6. Incorrect & baseless as the appellant was duly informed about his dismissal from service. Further, the impugned orders are correct, legal, in accordance with principles of natural justice and the same are liable to be maintained. **(Copy of information proof is enclosed as Annexure-A).**

REPLY ON GROUNDS:-

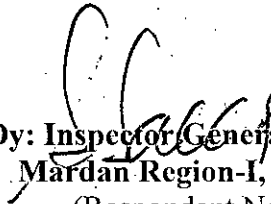
- I. Incorrect. The appellant was marked absent vide DD No. 64 dated 06.04.2015. The allegation of being kept under watch is totally baseless. **(Copy of DD No. 64 is attached as Annexure-B).**
- II. Incorrect & baseless. As replied above.
- III. Incorrect. The Enquiry Officer has conducted enquiry as per rules & complied with all codal formalities.
- IV. Incorrect & already replied in above Paras.
- V. Incorrect. Proper departmental enquiry has been conducted & the Enquiry Officer has left no legal lacunas therein.
- VI. Incorrect. The appellant could avail the copy thereof, if requested by him, from competent authority.
- VII. Incorrect. All codal formalities have been complied with.
- VIII. Incorrect. The appellant's service record bears numerous red/bad entries and he is found habitual absentee. **(Copy of red entries are enclosed as Annexure-C)**

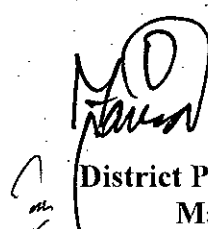
IX. Needs no comments.

X. The respondents also seek permission of presenting further documents/grounds etc, if any, at the time of arguments.

PRAYER:-

It is, therefore, prayed that the appeal of the appelliant, being devoid of merits, is liable to be dismissed with costs.


**Dy: Inspector General of Police,
Mardan Region-I, Mardan.**
(Respondent No. 02)


**District Police Officer,
Mardan.**
(Respondent No. 01)

سرمدان

نمبر 64 نورناجی 06/15/06

پیش

64 نورناجی

عبدالغنی

فضل ملک صاحب 17:10 4/15/06 جمع صبح

میں سے تحریر غائب وارہ آئی نے پولیس اسٹیشن میں

رہنمائی میں غنی کی پٹریاں کرتے ہوئے۔ میں

میں کنٹریل و وارنٹ 2201 کی کس ہی رہنمائی وغیرہ

میں تکمیل نہ تھا۔ خیرانہ پھر 47 روز ناچ 3/14/06

مطابق لائن لے کر غرض سکورٹی ڈیوٹی گارڈنگ

مردان لے کر گیا تھا۔ سکورٹی و پیارم علی نیر خان اور

سے مذکورہ کنٹریل پارڈ کے قتل کے حوالے کی گئی تو

اکمب نے کہا کہ تقریباً 2 - 3 - میں ملے گا

سے غرض پیشی تھا۔ DPD کو گھما تھا۔ یہاں

مجھے معلوم نہیں۔ NOHC رانچ سے ہی حوالے کر کے

مذکورہ کنٹریل پولیس اسٹیشن میں تعینات ہے۔

سرپرست مذکورہ کنٹریل پارڈ کے خلاف رپورٹ غرض

دیہ نورناجی کے نمبر علیہ غرض صاحب کا نام

افسران پارڈ کے خلاف میں ارسال ہوگی۔

ضلع عالی

نیشنل پبلسٹی ایجنسی

Paystop
SB 700
15-4-15

Sir,
Forwarded
Print
Lo P... Warden

Issue limit show - 7/4/15
Cause stop along

(Signature)

164

MAG Place March
6/4/05

Continued

CHARA ROLL OF


(Continued)

15-CENSURES AND PUNISHMENTS.

Serial No.

Punishment one day Quarter Guard for his
~~bad~~ bad Turnout on The General Parade


OB No. 2968
18/12/09


DPO/MR

Fined Rs 200/- for his absence during
Special duty

OB No - 3133

16-8-10


DPO/Mandan

Warned to be careful in future


OB No: 3163

11-012


DPO/MR

② days Extra drill for his Absence

OB No - 697
20-3-14


DPO/MR

③ days extra drill for his absence

OB No. 1494
27-6-14


DPO/MR

15-CENSURES AND PUNISHMENTS.--Contd.

Serial No.

Serial No.

Order

He is hereby dismissed
from service with immediate
effect.

OTB No. $\frac{847}{715/15}$

Di
20/10/1950

16. LEAVE, ABSENCE AND IN SERVICE

All periods not counting "approved service" to entered in red ink.

1		2			3	4
DATE		EX1ENT			No. of District Order	Description of leave i.e. Privilege, hospital, sick leave, or farlough, or of absence, or forfeiture of approved service. All entries to be initialled, by Superintendent of Police.
From	To	Years	Months	Days		
				(3)	1431 28-4-10	Leave w/o Pay (e) DP/TK
				(5)	1432 28-4-10	do DP/TK (e)
				(7)	1852 2-6-10	do DP/TK (e)
				(1)	2075 2-6-10	do DP/TK (e)
				(2)	2766 21-7-10	do DP/TK (e)
				(7)	205 28-7-10	do DP/TK (e)
				(4)	4269 3-11-10	do DP/TK (e)
				(3)	4498 24-11-10	do DP/TK (e)
				(2)	4548 30-11-10	do DP/TK (e)
				(1)	4608 4-12-10	do DP/TK (e)
				(12)	4974 31-12-10	do DP/TK (e)
				(15)	620 4-2-11	do DP/TK (e)

(5) $\frac{2414}{24-6-11}$ Leave w/o pay. DPo/MR ✓

(14) $\frac{2414}{24-6-11}$ m/leave. DPo/MR ✓

(30) $\frac{3816}{25-10-11}$ Leave w/o pay. DPo/MR ✓

(71) $\frac{62}{7-1-12}$ — do — DPo/MR ✓

(33) $\frac{2383}{30-8-12}$ — do — DPo/MR ✓

(1) $\frac{2480}{6-9-12}$ — do — DPo/MR ✓

(3) $\frac{2901}{24-10-12}$ — do — DPo/MR ✓

(16) $\frac{3258}{10-12-12}$ — do — DPo/MR ✓

(16) $\frac{3292}{12-12-12}$ — do — DPo/MR ✓

(3) $\frac{3293}{12-12-12}$ — do — DPo/MR ✓

(6) $\frac{3352}{18-12-12}$ — do — DPo/MR ✓

(208) $\frac{196}{21-1-13}$ — do — DPo/MR ✓

(1) $\frac{687}{20-3-14}$ — do — DPo/MR ✓

(1) $\frac{1494}{27-6-14}$ — do — DPo/MR ✓

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 905 /R/D.A-1975.

Dated 20-4-15

DISCIPLINARY ACTION UNDER KPK POLICE RULES - 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority am of the opinion that Constable **Waqar Ali No. 2201**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (ii) of KPK Police Rules 1975.


STATEMENT OF ALLEGATIONS

That Constable **Waqar Ali No. 2201**, while posted at Police Lines, deliberately absented himself from the lawful duty vide DD No.64 dated 06.04.2015 to-date without any leave / permission of the competent authority.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations **Mr: Mian Imtiaz Gul DSP/Legal Mardan** is appointed as Enquiry Officer.

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

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


(GUL AFZAL KHAN)
District Police Officer,
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 905 /R, dated Mardan the 20-4- /2015.

Copy of above is forwarded to the:

1. DSP/Legal Mardar for initiating proceedings against the accused official / Officer namely Constable **Waqar Ali No. 2201**, under Police Rules, 1975.
2. Constable **Waqar Ali No. 2201**, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

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

fa
21-4-15


CHARGE SHEET UNDER KPK POLICE RULES 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority hereby charge you Constable **Waqar Ali No. 2201**, as follows.

That you constable, while posted at Police Lines, deliberately absented yourself from the lawful duty vide DD No:64 dated 06.04.2015 to-dted without any leave / permission of the competent authority.

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

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


(GUL AFZAL KHAN)
District Police Officer,
Mardan.

عالیٰ

لعرض حضرت بیو، ۵۵۰ ماہ ضلع روانہ لکھو

لورہم $7 \frac{5}{15}$ کو نوم عم عافری حکیم لوہیں سے

فارغ کیا۔ اس سلسلے میں ضابطہ D.A.

ماہ روانہ کو اپیل کرنا چاہتا ہوں۔

گرسد علاء حکیم سید گل کو سیر خانی کی آرڈر کالی

کی نقل دینے کا حکم صادر نہ ہاں۔

نوازش بیوی

لورہم $11 \frac{5}{15}$

گرسد علاء حکیم

سابقہ لنٹیل و حار علی 2201 وکٹر عمل سکند کس کے طور پر

Alamed

نور علی

12-5-15

FINDING:-

This Departmental Enquiry has been conducted against Constable Waqar Ali No. 2201/ in accordance with provisions of Khyber Pakhtunkhwa Police Disciplinary Rules 1975 on below mentioned

1. "That you Constable Waqar Ali No. 2201, while posted at Police Lines, deliberately absented from lawful duty vide D D No. 64 dated 06.04.2015 to-date without any leave/permission from the competent authority".
2. On the basis said charges, he was issued charge sheet with statement of allegation and I was appointed as enquiry officer vide Endst: No. 905/R dated 20.04.2015.
3. On receipt of enquiry paper, I summoned defaulter official and on his attendance charge sheet with summary of allegation was handed over to him who submitted reply to it.
4. In order to prove the charges of absence, I summoned SI/Lines officer Fazal Malik and SI Ali Zar Khan and recorded their statements.
5. SI Fazal Malik Lines Officer in his statement stated that vide D.D No. 64 dated 06.04.2015, he had recorded absence report of constable Waqar Ali No. 2201 in Roznamcha and similarly, he had recorded arrival report of said constable in Roznamcha vide D.D No. 36 dated 21.04.2015.
6. SI Ali Zar Khan I/C Security Kachery Guard in his statement stated that constable Waqar Ali No. 2201 was performing duty at day guard under his supervision w.e.f 04.03.2014. On 15.08.2014, he brought him to Reader to W/DPO on his direction and deposited his official rifle with helmet in Kot.
7. Defaulter official in his statement stated that he has not remained absent rather he was under watch and remained present in office w.e.f 15.08.2014 till date. He further stated that he will produce Head Constable Basar and constable Wahid in support of his contention but he could not produced them. It shows that his contention is not based on facts and he had remained absent.
8. His service book was checked. It revealed that he was appointed as constable on 21.10.2008. since his appointment he had remained absent on below mentioned dates and he was awarded punishment for the same by competent authority as noted against each

S. No.	Days	Kind of punishment	OB No. & Date
1.	Absence	Fine Rs. 200/-	3133 dated 16.08.10
2.	03	Leave without pay by DPC Mardan	1431 dated 28.04.10
3.	05	-do-	1432 dated 28.04.10
4.	01	-do-	1952 dated 02.06.10
5.	01	-do-	2075 dated 08.06.10
6.	02	-do-	2766 dated 21.07.10
7.	04	-do-	4205 dated 28.10.10
8.	04	-do-	4269 dated 03.11.10
9.	03	-do-	4498 dated 24.11.10
10.	02	-do-	4548 dated 30.11.10
	01	-do-	4608 dated 04.12.10
	12	-do-	4974 dated 31.12.10
	15	-do-	620 dated 04.02.11
	53	-do-	2414 dated 24.06.11
	30	-do-	3816 dated 25.10.11
	Absence	Warned to be careful in future	3163 dated 29.11.12
		Leave without pay by DPC Mardan	62 dated 07.01.12
19.		-do-	2383 dated 30.08.12
20.		-do-	2480 dated 06.9.12
21.		-do-	2901 dated 24.10.12
22.		-do-	3258 dated 10.12.12
23.		-do-	3292 dated 12.12.12
24.		-do-	3293 dated 12.12.12
25.		-do-	3352 dated 18.12.12
26.		-do-	196 dated 21.01.13
27.		-do-	697 dated 20.03.14
		-do-	1494 dated 27.06.14

9. From the above detail, it is evident that he is habitual absentee. During his 06 years and 06 months service he has earned no good entry while there are 27 bad entries against him. As such he is found guilty of charges and is recommended for suitable punishment.

10. Submitted please.

Dismissed from service

(MIAN IMTIAZ GUL)
DSP Legal Mardan.
Enquiry Officer

2201

ORDER

This order will dispose of departmental inquiry, which has been conducted against Constable Waqar Ali No. 2201, on the allegation that he while posted at Police Lines, absented himself from lawful duty vide DD No. 64 dated 06.04.2015 to-date without any leave/permission. His attitude adversely reflected on his performance which is an indiscipline act and gross misconduct on his part as defined in rule 2(iii) of Police Rules 1975. Therefore he was recommended for departmental action.


In this connection, Constable Waqar Ali No. 2201, was charge sheeted vide this office No. 905/R, dated 20.04.2015 and also proceeded him against departmentally through Mian Imtiaz Gul DSP/Legal Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 547/LB dated 05.05.2015, as the allegation have been established against him.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Waqar Ali No. 2201, is hereby dismissed from service, while his absence period is counted as leave without pay in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 847

Dated 7 / 5 /2015


(Gul Asim Afridi)
District Police Officer,
Mardan.

No. 4532-37 / dated Mardan the 7/5 /2015

Copy for information and necessary action to:-

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

کھدایوں - پروانہ ویکٹیوی - کٹیوٹر

(1)

C-R D E R.

This order will dispose-off the appeal preferred by Ex- Constable Waqar Ali No. 2201 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was dismissed from service vide OB No. 847 dated 07.05.2015.

Brief facts of the case are that, he while posted at Police Lines, Mardan absented himself from lawful duty vide DD No. 64 dated 06.04.2015 to the date of dismissal without any leave/permission. His attitude adversely reflected on his performance which is an indiscipline act gross misconduct on his part. Therefore he was recommended for departmental action. In this connection he was charge sheeted and also proceeded against departmentally through Deputy Superintendent of Police Legal, Mardan, who after fulfilling necessary process submitted his findings to District Police Officer, Mardan, as the allegations were established against him, District Police Officer, Mardan agreed with the findings of enquiry Officer and the alleged Constable was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 10.06.2015. but he failed to justify his absence and could not produce any cogent reason about his absence. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith.

ORDER ANNOUNCED.

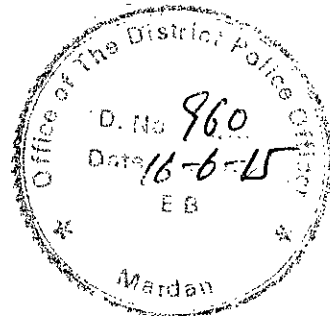
(MUHAMMAD SAEED)PSP
Deputy Inspector General of Police,
Mardan Region-I, Mardan.

No. 3579 /ES, Dated Mardan the 15/06 /2015.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 645/LB dated 03.06.2015. His service roll is returned herewith for record in your office.

Ec/DSP/legal
in action.

DPO/Mardan
at 15/6/15



5. In view of above explanation, his appeal is not worth consideration and may be filed please.

Amal: S-R (1)

(Signature)
District Police Officer,

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

Service Appeal No. 813/2015.

Waqar Ali s/o Samar Gul Ex-Constable No. 2201

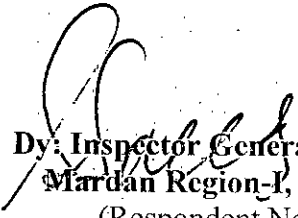
Police DepartmentAppellant.

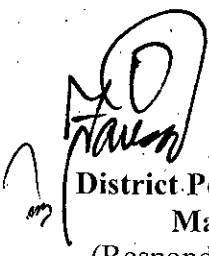
VERSUS.

District Police officer, Mardan & others.....Respondents.

COUNTER AFFIDAVIT.

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


**Dy. Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 02)**


**District Police Officer,
Mardan.
(Respondent No. 01)**

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

Service Appeal No. 813/2015.


Waqar Ali s/o Samar Gul Ex-Constable No. 2201
Police DepartmentAppellant.

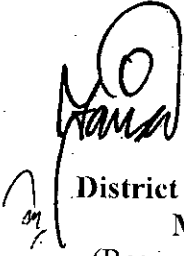
VERSUS.

District Police officer, Mardan & others Respondents.

AUTHORITY LETTER.

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


Dy. Inspector General of Police,
Mardan Region-I, Mardan.
(Respondent No. 02)


District Police Officer,
Mardan.
(Respondent No. 01)

BEFORE THE SERVICE TRIBUNAL P E S H A W A R

Appeal No. 813/2016

Waqar Ali

Versus

The Secretary etc.

REJOINDER

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Total : -

Appellant

Wa

Dt; 26.12.2016.

(WAQAR ALI)

.....

BEFORE THE SERVICE TRIBUNAL P E S H A W A R

Appeal No. 813/2016

Waqar Ali Versus The D.P.O. etc.

REPLICATION ON BEHALF OF APPELLANT :-

Preliminary objections:

1. The Appellant is with clean hands.
2. The Appellant has got the cause of action.
3. Nothing is concealed by Appellant.
4. There is no estoppel on the part of Appellant.
5. The Form of appeal is correct and the appeal is maintainable.
6. The Principles of non-joinder and misjoinder are not attracted.
7. The Appeal is within time.

ON FACTS:

1. No comments.
2. Incorrect, misleading, Denied.

3. The whole of para-3 of appeal is correct. The denail of Respondents in respect of detention and keeping under watch is incorrect and false. Denied.
4. Needs no reply.
5. No comments.
6. Para-6 of Appeal is correct. While reply thereof (Para-6 of written statement) is incorrect, false, misleading and based on malice on part of Respondents No. 1 and 2. Denied. The claimed Annexure -A in the said para-6 is now here attached nor marked as such. The copy of the impugned order(Copy Annexure-D with the memo; of appeal, as well as, the copy ~~with~~ the written statement would show that the same is event not endorsed to Appellant, nor delivered to him).

GROUNDS

- +. Para-1 of written stement is incorrect. denied.

- (II) The denail on the part of Respondents is incorrect and false, Denied.
- (III) Incorrect and false. Denied. Para-III of appeal is ~~true~~ and correct. Copy are Annexure X/I to X/II herewith.
- (IV) As para-III above. Denied.
- (V) to (VII) Incorrect and false. Denied. The corresponding paragraphs of memo; of Appeal are true and correct.
- VIII) Incorrect and misleading. Denied. Such allegation existed no where. The same is freshly introduced malafidely and after thought. The Appellant is now here heard in connection with the said charge. Moreover no one can be punished twice for the same charge.
- (IX) Para-IX stands admitted. Needs no further-reply.
- (X) Needs no reply.

It is prayed that on acceptance of the appeal,
the impugned order may be set aside and the Appellant
may be reinstated into service with back service benefits
and the costs as well.

Appellant

Waqar
(WAQAR ALI)

Dt: 26.12.2016

AFFIDAVIT

I Waqar Ali/The appellant do hereby state on solemn
affirmation that the contents of this rejoinder and memo;
of appeal are true and correct to the best of my knowledge
and belief and further that the objections as raised in
written statement are incorrect, false and misleading.

Waqar
Appellant (WAQAR ALI)



صالح جردان

تاریخ 22/04/04
22/04/04

X-I
Amir
Amina
سید اللہ

میں نے اپنے والدین کو 30/04/04 کو 18 بجے 22/04/04 کو اپنے وقت صاف لکھا ہے کہ میں
1795 کے ساتھ ساتھ جو ملک میں لکھوا گیا ہے اس کے ساتھ ساتھ
جو ملک میں لکھوا گیا ہے اس کے ساتھ ساتھ جو ملک میں لکھوا گیا ہے اس کے ساتھ ساتھ
جو ملک میں لکھوا گیا ہے اس کے ساتھ ساتھ جو ملک میں لکھوا گیا ہے اس کے ساتھ ساتھ

صالح جردان
صالح جردان

MAST PL-MDN
16.8.016
MAST Police Ethe
Mardan

صلاح خاں

نقل کر = 18 لاکھ 3 ہزار 04 روپے 23

X/II
Aman
دو لاکھ لاکھ

مسئلہ مالان
طارسہ
مسئلہ مالان سے ایک خانہ لے کر 10:07 بجے 23⁰⁹/₀₁₅ اس وقت علامہ صاحب
HC وقار 2201، نصر اللہ 1795، روپوں 1298 صلح صلح کر کے
لے لیے ہیں یہ سب سب سے سب سے سب سے سب سے سب سے سب سے سب سے سب سے
طارسہ سے لے کر لے کر لے کر لے کر لے کر لے کر لے کر لے کر لے کر لے کر
نقل عطا کر کے

MAS - M. Malik
16-7-08-2016

MAS Police Line
Mardan
16.8.016

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 229 /ST

Dated 30 /01/2018

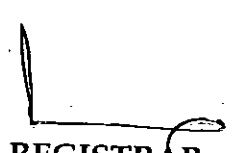
To

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

Subject: **JUDGEMENT/ORDER IN APPEAL NO. 813/2015 MR. WAQAR ALI.**

I am directed to forward herewith a certified copy of Judgment/Order dated 24/01/2018 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


**REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.**

ole

BEFORE THE SERVICE TRIBUNAL P E S H A W A R

Appeal No. 813/2016

Waqar Ali

Versus

The Secretary etc.

REJOINDER

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Total : -

Appellant

Waqar Ali
(WAQAR ALI)

Dt; 26.12.2016.

BEFORE THE SERVICE TRIBUNAL P E S H A W A R

Appeal No. 813/2016

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7. The Appeal is within time.

ON FACTS:

1. No comments.
2. Incorrect, misleading, Denied.

3. The whole of para-3 of appeal is correct. The detail of Respondents in respect of detention and keeping under watch is incorrect and false. Denied.
4. Needs no reply.
5. No comments.
6. Para-6 of Appeal is correct. While reply thereof (Para-6 of written statement) is incorrect, false, misleading and based on malice on part of Respondents No. 1 and 2. Denied. The claimed Annexure -A in the said para-6 is now here attached nor marked as such. The copy of the impugned order(Copy Annexure-D with the memo; of appeal, as well as, the copy ~~with~~ the written statement would show that the same is even not endorsed to Appellant, nor delivered to him).

GRUNDS

- (II) The detail on the part of Respondents is incorrect and false, Denied.
- (III) Incorrect and false. Denied. Para-III of appeal is true and correct. Copy are Annexure X/I to X/II herewith.
- (IV) As para-III above. Denied.
- (V) to (VII) Incorrect and false. Denied. The corresponding paragraphs of memo; of Appeal are true and correct.
- VIII) Incorrect and misleading. Denied. Such allegation existed no where. The same is freshly introduced malefidently and after thought. The Appellant is now here heard in connection with the said charge. Moreover no one can be punished twice for the same charge.
- (IX) Para-IX stands admitted. Needs no further-reply.
- (X) Needs no reply.

It is prayed that on acceptance of the appeal,
the impugned order may be set aside and the Appellant
may be reinstated into service with back service benefits
and the costs as well.

Appellant

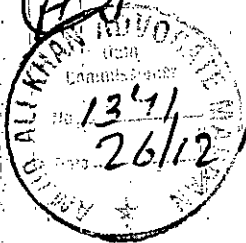
Wa
(WAQAR ALI)

Dt: 26.12.2016

AFFIDAVIT

I Waqar Ali/The appellant do hereby state on solemn
affirmation that the contents of this rejoinder and memo;
of appeal are true and correct to the best of my knowledge
and belief and further that the objections as raised in
written statement are incorrect, false and misleading.

Wa
Appellant (WAQAR ALI)



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