

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	20.11.2017	<p style="text-align: center;"><b><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></b>  <b>Service Appeal No. 621/2015</b></p> <p style="text-align: center;">Date of Institution ... 05.06.2015  Date of Decision ... 20.11.2017</p> <p>Asad Ali S/O Yousaf Ali, R/o Muhalla Qaziabad Stop, Katlang,  Distt: Mardan.</p> <p style="text-align: right;"><b>Appellant</b></p> <p style="text-align: center;"><b>Versus</b></p> <ol style="list-style-type: none"> <li>1. Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar</li> <li>2. Deputy Commandant Frontier Reserve Police, Khyber Pakhtunkhwa, Peshawar</li> <li>3. Inspector General of Police Khyber Pakhtunkhwa, Peshawar.</li> <li>4. Government of Khyber Pakhtunkhwa, through Chief Secretary, Khyber Pakhtunkhwa.</li> </ol> <p style="text-align: right;"><b>Respondents</b></p> <p style="text-align: center;"><b><u>JUDGMENT</u></b></p> <p style="text-align: center;"><b><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u></b> - Learned counsel for the appellant present. Learned Assistant Advocate General on behalf of the respondents present.</p> <p>2. The appellant has filed the present appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the respondents and made impugned order dated 28.11.2014 whereby the appellant was Dismissed from Service on the ground of absence from duty. The appellant has also challenged the order dated 16.03.2015 whereby the departmental appeal filed by appellant was rejected.</p>



3. Learned counsel for the appellant argued that he impugned order of dismissal from service is illegal. Further argued that the appellant has been punished retrospectively hence the impugned order is void. Further argued that the impugned order is also harsh. Further argued that vide the impugned order, the competent authority has also regularized the absence period of appellant as leave without pay hence the impugned order of removal from service is not tenable in the eyes of law hence liable to be set aside.

4. On the other hand learned Assistant Advocate General while opposing the present appeal argued that the appellant remained willfully absent without any application or permission and codal formalities were also completed, as such the impugned orders don't warrant any interference.

5. Arguments heard. File perused.

6. Perusal of the impugned order dated 28.11.2014 would show that the competent authority has dismissed the appellant from service from the back date/retrospectively, moreover while awarding the major punishment of dismissal from service on the charge of absence from duty, also treated the period of absence of appellant as leave without pay. The relevant portion of the impugned order dated 28.11.2014 is reproduced as under:-

*"Therefore, Recruit Constable Asad Ali No. 1736 of FRP.HQrs is dismissed from Service Under Police Rules, 1975 from the date of first absence i.e.*

04.07.2014 and the period of absence is treated as leave without pay”.

7. The authority while passing the order of ~~dismissal~~ of the appellant from service treated the period of absence of the appellant as leave without pay and in this way regularized his absence, hence the very ground has vanished on which the appellant had been proceeded against. When appellant was treated on leave without pay then he could not have been considered absent. In this regard judgment of august Supreme Court of Pakistan titled LAHORE DEVELOPMENT AUTHORITY and others----Petitioners Versus MUHAMMAD NADEEM KACHLOO and another---- Respondents (2006 S C M R 434) may be quoted as a reference. Consequently the present appeal is accepted and the impugned order to the extent of punishment of Dismissal of appellant from service is set aside and resultantly the appellant is reinstated. The intervening period shall 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

(Muhammad Hamid Mughal)  
MEMBER

**ANNOUNCED**  
**20.11.2017**

20.11.2017, Learned counsel for the appellant present.  
Learned Assistant Advocate General for the respondents  
present. Vide our separate judgment of today placed  
on file the present appeal is accepted and the impugned  
order to the extent of punishment of Dismissal of appellant  
from service is set aside and resultantly the appellant is  
reinstated. The intervening period shall 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

**ANNOUNCED**

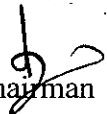
20.11.2017

  
(Muhammad Hamid Mughal)

MEMBER

26.12.2016

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to incomplete bench. Case adjourned to 21.04.2017 for rejoinder and arguments before D.B.

  
Chairman

21.04.2017

Counsel for the appellant present. Mr. Zahid-ur-Rehman, alongwith Mr. Ziaullah, Government Pleader for the respondents also present. Inquiry record of the appellant is not available on file. Respondents are directed to produce the inquiry record of the appellant on or before the next date of hearing. To come up for record and arguments on 19.07.2017 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

19.07.2017

Appellant in person present. Mr. Ihsanullah, ASI alongwith Mr. Ziaullah, Deputy District Attorney for the respondents also present. Record submitted. The same is placed on record. Due to strike of the bar learned counsel for the appellant is not available today. Adjourned. To come up for arguments on 20.11.2017 before D.B.

  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

22.02.2016

Appellant in person and Mr. Ihsanullah, ASI alongwith Assistant AG for respondents present. Written reply not submitted despite last opportunity. Requested for further adjournment. Last opportunity is extended subject to payment of cost of Rs. 1000/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost on 26.4.2016.

  
Chairman

26.4.2016

Counsel for the appellant and Mr. Ihsanullah, H.C alongwith Addl: A.G for respondents present. Written reply submitted. Cost of Rs. 1000/- also paid and receipt thereof obtained from the learned counsel for the appellant. The appeal is assigned to D.B for rejoinder and final hearing for 16.8.2016.


  
Chairman

16.08.2016

None for the appellant present. Addl: AG for the respondents present. Notices be issued to the appellant/counsel for the appellant. To come up for rejoinder and arguments on 26.12.2016.

  
Member


  
Member

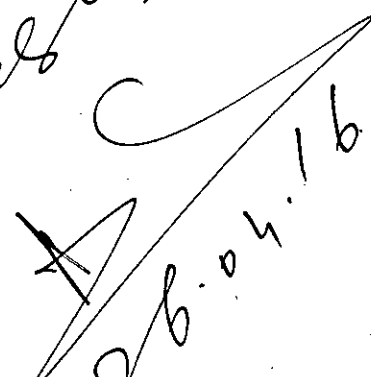
*Member*  
  
19/8/2016

C.A. 621/2015. Asad Ali VS KPK Police

Rs. 1000/- has been received

as cost from the representative  
of department on 26/4/2016.

  
26/4/16

Attended  
  
26.04.16

29.06.2015

Appellant Deposited  
Security & Process Fee

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when vide impugned order dated 28.11.2014 dismissed from service on the ground of wilful absence from duty which order was not communicated to the appellant and on gaining knowledge preferred departmental appeal on 12.1.2015 which was rejected on 16.3.2015 which came into the notice of appellant on 15.5.2015 where-after the instant service appeal was preferred on 9.6.2015.

That neither the absence of the appellant was wilful nor the inquiry 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 for 12.10.2015 before S.B.

  
Chairman

12.10.2015

Counsel for the appellant and Mr. Ihsanullah, ASI (legal) alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 22.12.2015 before S.B.

  
Chairman

22.12.2015

None present for appellant. Mr. Ihsanullah, ASI (legal) alongwith Assistant AG for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 22.2.2016 before S.B.

  
Chairman

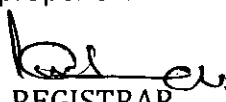

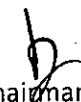


Form-A

FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 621/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	09.06.2015	<p>The appeal of Mr. Asad Ali resubmitted today by Mr. Zia-ud-Din 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> <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>10-6-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2	9-6-15	
3	10.06.2015	<p>None present for appellant. Notice to counsel for the appellant be issued for preliminary hearing for 29.6.2015 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Asad Ali son of Yousaf Ali R/o Katlang Distt. Mardan received to-day i.e. on 05.06.2015 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Order dated 16.3.2015 mentioned in para-2 of the memo of appeal (Annexure-A) is not a dismissal order but an order of rejection of departmental appeal.
- 2- Annexures of the appeal may be annexed serial wise/date wise.
- 3- Address of appellant is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974. In sequence

No. 882 /S.T,

Dt. 05/6 /2015

  
**REGISTRAR**  
**SERVICE TRIBUNAL**  
**KHYBER PAKHTUNKHWA**  
**PESHAWAR.**

Mr. Zia-ud-Din Adv. Pesh.

*Resubmitted  
on 09/06/2015.*

*Sin  
9/6/15*

①

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

Service Appeal No. 621 /2015

Asad Ali ..... Appellant

**Versus**

Commandant FRP and Others ..... Respondents

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8.	Wakalat-Nama		

Dated: 05/06/2015

Appellant  
Through  
Zia-Ud-Din Khan  
Advocate,  
High Court.  
Cell. No. 0345-9110368  
0303-5893180

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

Service Appeal No. 621 /2015

Asad Ali S/o Yousaf Ali, R/o Muhalla Qaziabad Stop, Katlang, Distt: Marda.  
.....Appellant

**Versus**

A.W.F. Province  
Service Tribunal  
Diary No. 652  
Dated: 05-6-2015

- 1) Commandant Frontier Reserve Police, KPK, Peshawar.
- 2) Deputy Commandant Frontier Reserve Police, KPK, Peshawar.
- 3) Inspector General, Police, KPK, Peshawar.
- 4) Govt of KPK, through Chief Secretary, KPK.

.....Respondents

**APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT 1974, AGAINST THE APPELLATE AUTHORITY, WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE BY THE RESPONDENT NO (2) THROUGH OFFICE ORDER NO. 1280-85/PA/FRP/HQrs. DATED PESHAWAR THE 28/11/2014. WHILE THE APPELLANT DEPARTMENTAL APPEAL DATED: 12/01/2015, WAS REJECTED BY THE RESPONDENT NO (1), DATED: 16/03/2015.**

**PRAYER:**

On acceptance of this appeal, the impugned office order No.1280-85/PA/FRP/Hqrs, may please be set aside and the appellant be Re-instated to his Service. Any other relief deemed fit and proper in the circumstances of this case may also be granted.

Filed to-day  
Registrar  
5/6/15

**Respectfully Sheweth;**

**FACTS:**

- 1) That the appellant have been appointed/recruited as a "Constable (BPS-5)" in the Frontier Reserves Police (FRP), on Dated: 13/09/2013, at Peshawar, where he render his services with liability and honesty to the entire satisfaction of the respondent.
- 2) That the respondent served upon the appellant a "Show-Cause Notice" without annexing any inquiry report whatsoever in this behalf which was mandatory upon the respondent to oblige. The appellant after the said show cause notice appeared before the respondent No (2), but the respondent No (2) was not available on the same date. (Copy of Final Show-Cause Notice annexed as Annexure- "A")

ac-submitted to-day  
and filed.  
Registrar  
9/6/15

- 3) *That the respondent initiated departmental inquiry/proceedings against the appellant to probe into the alleged charges leveled against the appellant. In the meanwhile a charge sheet/statement of allegations was served upon the appellant but the appellant wasn't informed in time through any sort of proper notice about the charge sheet/statement prepared by the respondent against the appellant. (Copy of Charge Sheet annexed as Annexure- "B")*
- 4) *That on Dated: 28/11/2014, the appellant was dismissed from his service by the respondent No (2) on the ground of willful and intentional absence from duty. (Copy of Dismissal Order annexed as Annexure- "C")*
- 5) *That the respondent allegation of willful and intentional absence against the appellant is false and fabricated. The reason behind the absence of the appellant was the serious illness of his mother and the appellant also put of the same reason before the respondent at the time of appeal. (Copy of Appeal annexed as Annexure- "D")*
- 6) *That the respondent No (1) through Vide Office Order No. 2347-49/EC dated Peshawar the 16/03/2015, rejected the appeal of the appellant. (Copy of Order of Appeal rejection annexed as Annexure- "E")*
- 7) *That the appellant after knowing the fact that the respondent initiated the departmental inquiry and other proceedings against him, the appellant appeared several times before the respondent even though that his mother was in critical illness.*
- 8) *That the appellant rebutted and denied the alleged and frivolous allegations as leveled by the respondent against him in the subject matter case. That this Hon'ble Court as well as the Superior Judiciary are also of the opinion that no one should be condemned unheard and the case should be decided on merits alone.*
- 9) *That the appellant was neither associated with the inquiry nor the appellant granted any opportunity to produce his justification before the respondent. However, despite all this the inquiry officer submitted an adverse report against the appellant purely on presumption and conjecture and in view of the said inquiry report the respondent No (2) passed an Ex-Parte order and dismissed the appellant from service which is against the establish service rules.*
- 10) *That the appellant submitted an application before the respondent No (1) to furnish a copy of the inquiry report, but despite his request the same was refused by the respondent and the appellant couldn't submit his reply to the show-cause notice in question and as a consequence thereof, vide office order noted above the appellant was dismissed from service.*
- 11) *That the appellant submitted his departmental appeal on Dated: 12/01/2015 before the respondent No (1) for redresal of his grievance. However, appeal of the appellant was dismissed.*



12) That the appellant dismissal from service by the respondent No (1) is illegal, unlawful and the same is liable to be set aside inter-alia on the following grounds:

**GROUND(S):**

- A) That the appellant has not been treated in accordance with law, nor he given any proper, fair and meaningful opportunity to defend himself and thus he was highly prejudiced in the inquiry proceedings conducted against him by the respondent.
- B) That it is strange enough that the respondent No (1) issued the dismissal order of the appellant on Dated: 16/03/2015, while the appellant was informed about the said order on Dated: 12/05/2015.
- C) That the alleged charges leveled against the appellant were false, frivolous, baseless and devoid of facts. The appellant never deviated himself from his duty nor the appellant had any intention like that.
- D) That the whole inquiry conducted by the respondent against the appellant was defective and was against the spirit of the Service Rules. The appellant was neither associated with the inquiry nor granted any opportunity to produce his justification. Thus he was condemned unheard and the principles of natural justice were violated.
- E) That the appellant has not committed any misconduct. The entire inquiry conducted by the respondent against the appellant was based on malafide and as such is unwarranted in law.
- F) That the appellant being a low paid Government Servant, having no other source of income and deserves to be treated leniently and hence the impugned order being unkind and vindictive and is liable to be set aside.
- G) That the appellant be allowed to add any other ground(s) at the time of arguments.

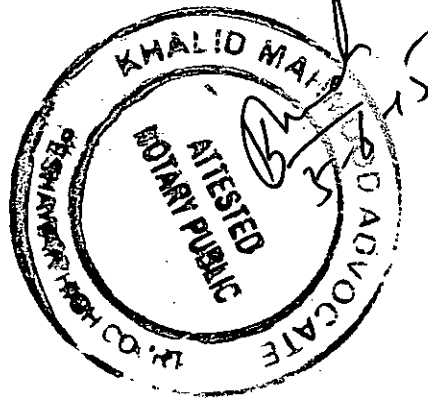
It is, therefore, most humbly prayed that appeal of the appellant may kindly be accepted as prayed for.

Dated: 05/06/2015

  
 Appellant  
 Through  
  
 Zia-Ud-Din Khan  
 Advocate  
 High Court.  
 Zia-ud-Din Khan  
 Advocate High Court  
 Peshawar.

Verification:

Verified that the contents of above appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



*Khalid Malik*  
Deponent.

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

C. M. No. \_\_\_\_\_/2015

In

S. A. No. \_\_\_\_\_/2015

Asad Ali..... Appellant

**Versus**

Commandant FRP and Others..... Respondents

**APPLICATION FOR CONDONATION OF DELAY**

**Respectfully Sheweth;**

- 1) That the above titled case has been filed by the applicant, in which no date of hearing has yet been fixed.
- 2) That the reason behind delay in filing the titled appeal was due to the late delivery of the appellant dismissal order by the respondent.
- 3) That delay in filing the above titled appeal is neither willful, nor intentional, but due to the reason mentioned above.
- 4) That there are number of judgments of the superior courts that cases must be decided on merits and the technicalities should be avoided. The applicant is diligently pursuing his case therefore; the case deserves to be decided on merits.

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

Dated: 05/06/2015

*Asad Ali*

Appellant

Through

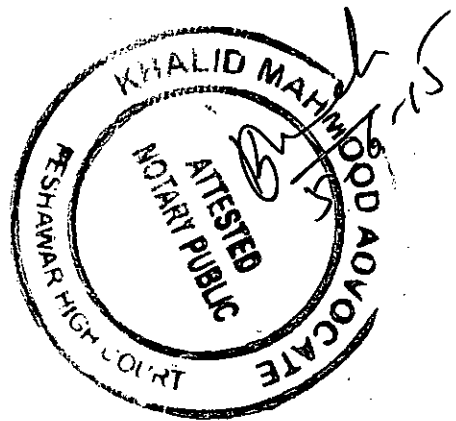
*Zia-Ud-Din Khan*  
Advocate,  
High Court.



Affidavit

I, **Zia-Ud-Din Khan** Advocate High Court, Peshawar as per instructions of my client, do hereby solemnly affirm and declare on oath that the contents of the accompanying "**Condonation Application**" are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Tribunal.

  
Deponent.



Amexure - "A" (8)

FINAL SHOW CAUSE NOTICE UNDER POLICE RULES 1975.

I, Deputy Commandant, FRP, KPK as competent authority do hereby serve you Recruit Constable Asad Ali No.1736 of FRP/HQrs. Peshawar.

(1) i- That consequent upon the completion of enquiry conducted against you by DSP, FRP/HQrs for which you were given full opportunity of hearing.

ii- On going through the findings/recommendations of the Enquiry Officer, the material available on record and other connected papers I, am satisfied that you have committed the following acts/omissions per Police Rules 1975.

Whereas you Recruit Constable Asad Ali No.1736 of FRP/HQRS; Peshawar remained absent from duty w.e. from 04.07.2014 till to date without any leave/permission of the competent authority.

(2) Therefore, I, Deputy Commandant, FRP, KPK as competent authority has tentatively decided to impose upon you Major/Minor penalty including dismissal from service under the said Rules.

(3) You are, therefore, required to Show Cause as to why not the aforesaid penalty should not be imposed upon you.

(4) If no reply to this Final Show Cause Notice is received within the seven days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and consequently ex-parte action shall be taken against you.

Recd  
01/10  
Asad  
5/11/14

Sim

Asad

Deputy Commandant,  
Frontier Reserve Police,  
Khyber Pakhtunkhwa, Peshawar.

Mob2 0341-9772440  
NIC 16101-2857906-7

Handwritten text in Arabic script at the top of the page, possibly a title or header.

0341-9772640

1736

**FINAL SHOW CAUSE NOTICE UNDER POLICE RULES 1975**

I, Deputy Commandant, FRP, KPK as competent authority do hereby serve you Recruit Constable Asad Ali No. 1736 of FRP/HQrs. Peshawar.

(i) That consequent upon the completion of enquiry conducted against you by DSP, FRP/HQrs for which you were given full opportunity of hearing.

(ii) On going through the findings/recommendations of the Enquiry Officer, the material available on record and other connected papers I, am satisfied that you have committed the following acts/omissions per Police Rules 1975.

Whereas you Recruit Constable Asad Ali No. 1736 of FRP/HQRS; Peshawar remained absent from duty w.e. from 04.07.2014 till to date without any leave/ permission of the competent authority.

(2) Therefore, I, Deputy Commandant, FRP, and KPK as competent authority has tentatively decided to impose upon you Major/ Minor penalty including dismissal from service under the said Rules.

(3) You are, therefore, required to Show Cause as to why not the aforesaid penalty should not be imposed upon you.

(4) If no reply to this Final Show Cause Notice is received within the seven days of it delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in a consequently ex-parte action shall be taken against you.

Deputy Commandant,  
Frontier Reserve Police,  
Khyber Pakhtunkhwa, Peshawar.



Charge Sheet

Annexure

B

9  
SP/1608

CHARGE SHEET U/S 6(I) (A) POLICE RULES 1975

You Constable Asad Ali No. 1736 posted at FRP, HQrs: Peshawar is hereby charged for committing the following omission/commissions.

Whereas you Constable Asad Ali No. 1736 posted in FRP, HQrs: Peshawar remained absent from duty w.e. from 04.07.2014 till to date without taking any leave permission of the Competent Authority

You are hereby called upon to submit your written defense against the above charges before the enquiry officer.

Your reply should reach the enquiry officer within seven (7) days from date of receipt of this Charge Sheet, failing which ex-parte action shall be taken against you.

Deputy Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar

دعا ہے کہ اسے سزا دی جائے  
اور اسے سزا دی جائے  
اور اسے سزا دی جائے

1736

دعا ہے کہ اسے سزا دی جائے  
اور اسے سزا دی جائے  
اور اسے سزا دی جائے

0300-5735125  
Mob 2- 0341-9772440  
NICH - 16101-2857906-7

دعا ہے کہ اسے سزا دی جائے  
اور اسے سزا دی جائے  
اور اسے سزا دی جائے

DAC

Annexure - "C"

19

O.R.D.E.R.

This Office Order so far it relates to the Departmental of Departmental Enquiry against Recruit Constable Asad Ali No. 1736 of FRP/HQrs: Peshawar absented himself from duty w.e. from 01.07.2011 till to date without taking any leave/permission of the Competent Authority.

In this regard formal departmental proceedings were initiated against him and DCP/FRP/HQrs: Peshawar was nominated as Enquiry Officer. He conducted enquiry into the matter and submitted his report.

Upon the findings of Enquiry Officer he was issued Final Show Cause Notice to which he received. His reply was not received in the prescribed period. Accordingly he was summoned to appear before the undersigned in Orderly Room but failed to do so.

Keeping in view the recommendations of the Enquiry Officer and other material available on record it has come crystal clear that the delinquent Official is habitual absentee and does not take interest in official duty. His service record also shows that previously he has repeatedly absented from official duty for prolong periods in his short span of service. It is evident that he is not fit for Police service, which requires discipline coupled with punctual performance of official duty especially in the prevailing Law & Order situation. Therefore, Recruit Constable Asad Ali No. 1736 of FRP/HQrs: Peshawar is dismissed from Service under Police Rules, 1975 from the date of first absence i.e. 01.07.2011 and the period of absence is treated as leave without Pay.

**Order announced.**

Deputy Commandant,  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar

No. 1230-257/FRP/HQrs: dated Peshawar, the 28 11 2011

Copy of the above is forwarded for information & action to:

1. The Addl. IGP/Commandant, FRP Khyber Pakhtunkhwa.
2. The Accountant /FRP/HQrs: Peshawar.
3. The RI/FRP/HQrs: Peshawar.
4. The SRC/FRP/HQrs: Peshawar.
5. The OSI FRP/HQrs: Peshawar.
6. The FMC/ FRP/HQrs: Peshawar with original copy.

\*\*\*\*\*

**ORDER**

This office order so far it relates to the \_\_\_ of departmental enquiry against Recruit Constable Asad Ali No.1736 DSP/FRP/HQrs. Peshawar absented himself from duty w.e.from 04.07.2014 till to date without taking any leave/permission of the competent authority

In this regard formal departmental proceedings were initiated against him and DSP/FRP/HQrs: Peshawar was nominated as Enquiry Officer. He conducted inquiry into the matter and submitted his report.

Upon the findings of Enquiry Officer he was issued Final Show cause notice to which he received. His reply was not received in the prescribed period. Accordingly he was summoned to appear before the undersigned in Orderly Room but failed to do so.

Keeping in view the recommendation of the Enquiry Officer & other matter available on record it has come crystal clear that the delinquent Official is habitual absentee and does not take interest in official duty. His service record also shows that previously he has repeatedly absented from official duties for prolong periods in his short span of service it is evident that he is not fit for police service, which requires discipline (sic) with perpetual performance of official duty especially in the prevailing law & order situation. Therefore, Recruit Constable Asad Ali No.1736 of FRP.HQrs is dismissed from Service Under police Rules, 1975 from the date of first absence i.e. 04.07.2014 and the period of absence is treated as leave without pay.

**Order announced**

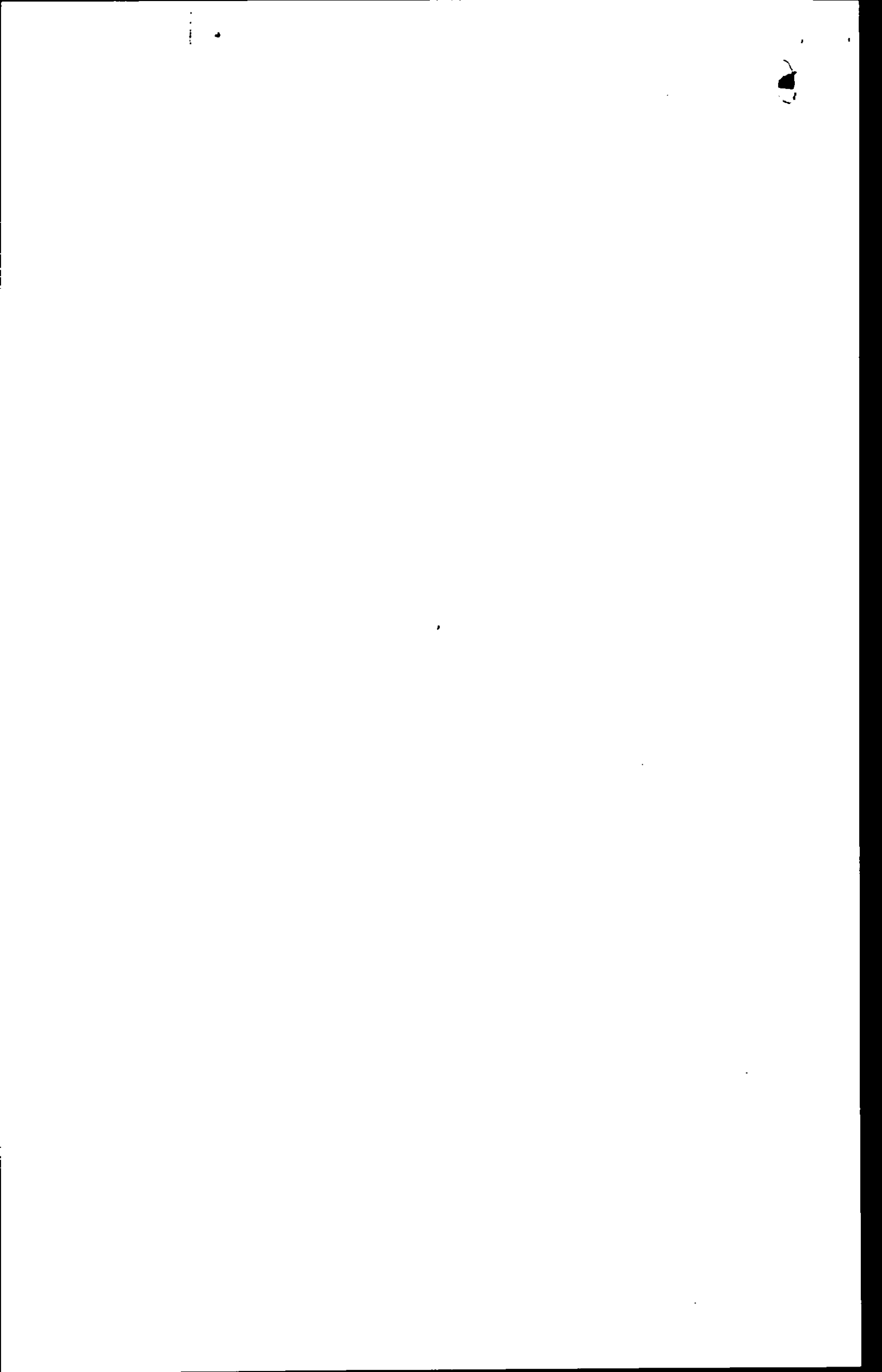
Sd/-

Deputy Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa, Peshawar

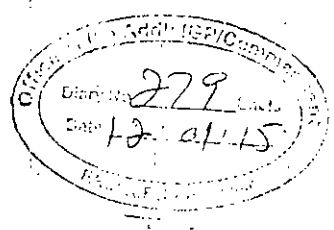
No.1280-85/PA/FRP/HQrs. Dated Peshawar the 28.11.2014.

Copy for the above is forwarded for information & n/action to:-

1. The Addl: IGP/Commandant, FRP Khyber Pakhtunkhwa
2. The Accountant /FRP/HQrs. Peshawar
3. The RI/FRP/HQrs. Peshawar
4. The SRC/FRPh/HQrs. Peshawar
5. The OSI, FRP/HQrs. Peshawar
6. The FMC/FRPh/HQrs. Peshawar with original file.







عناص عالی

انتخابی حوربانہ گزارش کیجانی ہے کہ سائل

نی والدین نیابت علت میں مسئلہ بحق اور سائل اپنی والدہ کا واپس سہارا ہے۔ اپنی والدہ کو اپنی تکلیف میں دیکھ کر سائل ذہنی کوفت کا شکار ہو گیا۔ اور پورے غیر حاضری سے سائل اپنی نوٹری سے چند دنوں تک غیر حاضری نیابت کر رہا ہے اور اب عاصبان سے بہزیدہ درخواست اپنی نوٹری کی حالی کی اپیل کر رہا ہے۔

آپ عاصبان سے گزارش اپنی آن ہے کہ سائل کے درخواست پر بعد دانہ غور فرمائے مشورہ فرمائیں۔ تاہم عاصبان کے لئے دعاؤں اور بیوٹا۔

عین نوٹریسی بیوی  
السارض

اسد علی 1736 این آر بی صیوانوٹر

EC

SRE

Put up S-Roll and Forwarded and Definit method comparing

COMMANDER  
Khyber Pakhtunkhwa  
10/01/2015

Signature  
EC

9/12/2015

Signature

ORDER.

This order shall dispose off the appeal of Ex-constable Asad Ali No. 1736 of FRP HQrs; Peshawar against the order of Deputy Commandant FRP KPK.

Brief facts of the case are that he absented himself from lawful duty w.e.f.04.07.2014 till to date. The defaulter official was proceeded against departmentally. The defaulter official failed to respond in connection with Show Cause Notice and did not appear in orderly room despite the fact that he was summoned. He was therefore dismissed from service under Police Rule 1975 for his willful and intentional absence. The defaulter official filed the appeal without any solid reason. Misconduct was proved on the part of said official.

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

*Awal Khan*  
Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar.

*05/07/2015* 7

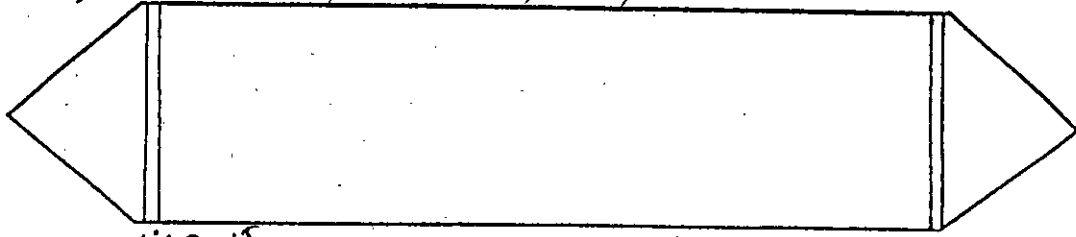
No. 2347-48/EC dated Peshawar the 16/3 /2015.

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

1. OASI FRP HQrs; Peshawar.
2. SRC FRP HQrs; Peshawar with service record
3. Ex-Constable Asad Ali No. 1736 through OASI.

Attested by  
*Ziauddin Khan*  
Advocate.  
*Sim*

بعدالت حسبہ کی نکتہ خواہ اس کی اسٹیمپ شدہ کاپی



2015ء پنجاب

بنام

موزنہ 2015-06-05

مقدمہ

دعویٰ

جرم

اسم علی

کمانڈر نذیر الف آری وغیرہ  
باعث تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ  
آن مقام پشاور کیلئے ضیاء الدین خان ایڈووکیٹ پشاور

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور صولی چیک دروپیا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخ  
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور  
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار  
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ  
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے وہوگا۔  
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی  
مذکور کریں۔ لہذا اوکالت نامہ لکھ دیا کہ سند ہے۔

اس کی علی کے لئے جو سف علی کا نام ہے  
سائن کا سلف، ضلع مہاراجہ

المرقوم 05 \_\_\_\_\_ ماہ جون 2015

العبد \_\_\_\_\_ واہ العبد \_\_\_\_\_

کے لئے منظور ہے۔

Accepted

Zia-ud-Din Khan  
Advocate High Court  
Peshawar.

Simu  
05/06/2015

بمقام لکھنؤ

Arif Ali

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

**Service Appeal No. 621/2015**

**Asad ali S/O Yousaf ali R/O Muhalla Qazi Abad Stop Katlang Distt:  
Mardan.....(Appellant)**

**VERSUS**

- 1. Commandant Frontier Reserve Police KPK/Peshawar.**
- 2. Deputy Commandant Frontier Reserve Police KPK Peshawar.**
- 3. Provincial Police Officer KPK/Peshawar.**
- 4. Govt of KPK, through Chief Secretary, KPK  
.....(Respondents)**

**Subject:- COMMENTS ON BEHALF OF RESPONDENTS.**

**Respectfully Sheweth!**

**Preliminary Objections:-**

1. That the appellant has no cause of action.
2. The appeal is not maintainable in the present form.
3. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
4. The appellant is estopped by his own conduct to file the appeal.
5. The appeal is barred by law and limitation.
6. The appellant has not come to the Honorable Tribunal with clean hands.

**FACTS:-**

- 1) Para No. 1 pertains to the appellant record needs no comments.
- 2) Incorrect, the appellant absented himself from lawful duties w. e. from 04.07.2014 till the date of his removal from service i.e. 28.11.2014 without permission or leave. On the allegations of absence he was dealt with proper enquiry. During the course of enquiry, it was dig out that the appellant went abroad and after receiving the findings of EO the Competent Authority issued a final show cause notice to the appellant which served upon his brother Namly Haris, on his home address, as the appellant was not present in his home. Moreover, the plea of non receiving of enquiry report taken by the appellant in the para, in this connection he supposed to have taken this plea in his departmental appeal or before the Competent Authority.

- 3) Incorrect on the allegations of absence, the appellant was issued charge sheet alongwith statement of allegations and EO was nominated to conduct proper enquiry against the appellant. The charge sheet alongwith summary of allegations was served upon the brother of the appellant (namely Haris) through special messenger on his home address and his signature was obtained as a token on duplicate copy of charge sheet. According to the statement of the brother of the appellant that his brother Asad Ali (appellant) went to abroad for labor. Moreover, the allegation of the appellant regarding to the preparation of statement mentioned in the para is after thought story.
- 4) Correct.
- 5) Incorrect, that proper departmental proceeding conducted by the EO, in to the matter and the appellant was found guilty of the charges leveled against him. Furthermore that the plea of illness of the mother of the appellant mentioned in his departmental appeal is a fabricated story as the appellant failed to produced any documentary proof regarding the illness of his mother.
- 6) Correct to the extent that departmental appeal submitted by the appellant was thoroughly examined and rejected on sound grounds.
- 7) Incorrect the allegation are false and baseless, as the appellant was well known according to enquiry proceedings and it is evident from charge sheet and show notice which already served upon on his brother through special messenger on his home address, besides he was summoned time and again but he failed to appear before the enquiry officer or then before the Competent Authority for defending himself.
- 8) Incorrect that the appellant was dealt with proper enquiry and all the due codal formalities were fulfilled by the respondents in the course of enquiry as per law. The appellant was found guilty of the charges leveled against him and his case was decided purely on merit thus the verdict of this Honorable Tribunal or the Superior Court of Pakistan was not violated as an opportunity of personal hearing was also provided to the appellant but he failed to do so.
- 9) Incorrect, actually the appellant went abroad / absented himself from lawful duties for a long period without prior permission or

leave, and the Enquiry Officer found him guilty of the charges leveled against him and after fulfillment of all the codal formalities, the EO submitted his findings. After receiving the findings of the EO the Competent Authority issued final Show cause notice to the appellant which was served upon the brother of the appellant on his home address. An opportunity of personal hearing was also offered to the appellant but he failed to do so and after fulfillment all the codal formalities the appellant was dismissed from service as per law.

- 10) Incorrect the allegations are false and baseless the appellant failed to submit any application for obtaining of enquiry report before, the respondents. Moreover, the appellant deliberately neither submitted reply of charge sheet and nor of show cause notice. Furthermore, during the course of enquiry it was dig out that the appellant went abroad and after fulfillment of all the codal formalities the appellant was dismissed from service. (Copy of enquiry report attached as annexure "A")
- 11) Correct to the extent that departmental appeal submitted by the appellant was thoroughly examined and rejected on sound grounds and a copy of the same was also conveyed to the appellant vide office Endst: No.2347-49, dated 16.03.2015.
- 12) Incorrect the order of respondent No. 1, regarding dismissal of the appellant from service is justified and in accordance with law, therefore, the instant appeal may kindly be dismissed.

**GROUND:-**

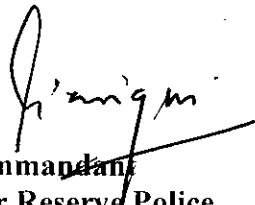
- (A) Incorrect, in fact the appellant went abroad / absented himself from lawful duties for a long period without prior permission or leave, and in this regard he was dealt with proper enquiry and the Enquiry Officer found him guilty of the charges leveled against him and after fulfillment of all the codal formalities the EO submitted his findings. After receiving the findings of the EO the Competent Authority issued final Show cause notice to the appellant which was served upon the brother of the appellant on his home address. An opportunity of personal hearing was also offered to the appellant but he failed to do so and after fulfillment all the codal formalities the appellant was dismissed from service as per law.
- (B) Incorrect, the appellant remained absent from duty without prior permission or leave and during the course of enquiry it was dig out that he went abroad: After fulfillment of codal formalities he was

dismissed from service and in this regard his relatives were informed well in time as the appellant was abroad.

- (C) Incorrect, the appellant trying to mislead this honorable Court, by producing false and baseless grounds as during the course of enquiry the appellant was found went to abroad without prior permission or Ex-Pakistan leave by meaning thereof that he intentionally deviated himself from his official duty.
- (D) Incorrect the allegations are false and baseless as proper departmentally was initiated against the appellant and it is evident from charge sheet and final show cause notice. Furthermore, during delivering of charge sheet his brother narrated / disclosed that the appellant is abroad and after completion of all codal formalities the appellant was dismissed from service as per Police Rules 1975.
- (E) Incorrect, the Para has already been explained in the preceding Para No." D".
- (F) Incorrect, Each case is decided on its merit. Moreover, the order regarding dismissal from service is in accordance to law which commensurate with the gravity of the appellant grass misconduct.
- (G) The respondents may also be permitted to advance other grounds at the time of hearing.

**PRAYERS:**

Keeping in view the above facts/submissions the instant appeal may very kindly be dismissed with cost.



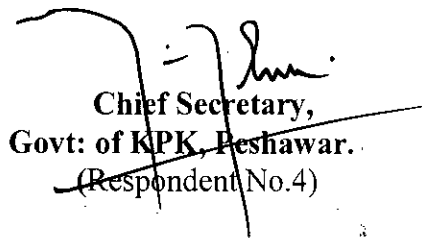
**Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No.1)**



**Deputy Commandant  
Frontier Reserve Police  
KPK, Peshawar  
(Respondent No.2)**



**Inspector General, of Police,  
KPK, Peshawar.  
(Respondent No.3)**



**Chief Secretary,  
Govt: of KPK, Peshawar.  
(Respondent No.4)**

ENQUIRY REPORT.

"A"

Sir,

In pursuance of inquiry initiated against Recruit Constable Asad Ali No. 1736 of FRP HQrs: who absented himself from duty with effect from 04.07.2014 till date without any leave/permission of the competent authority. He was issued charge sheet/statement of allegation which was served upon his brother though DFC Shakirullah and the undersigned has nominated as inquiry officer by the Deputy Commandant FRP.

FINDINGS REPORT.

The matter has inquired and during the course of enquiry it came to light that he absented himself from duty with effect from 04.07.2014 till date without any leave/permission of the competent authority. While delivering Charge Sheet/Statement of allegation, his brother narrated that constable Asad Ali No. 1736, went to abroad, at F/A therefore absented himself from duty without any leave/permission of the high ups.

During the course of enquiry it has come to light that the said constable was enlisted on 13.09. 2013 and during his service he found absent from duty for 12 days which was treated as without pay. Keeping in view the above his prolong absence from duty, is recommended for ex-parte action.

Submitted for kind perusal and orders please.

W  
DSP FRP HQRS

W/Deputy Commandant.

28-10-14

No. III. dated. 28-10-2014.

No. 70



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

*Service Appeal No. 621 /2015*

*Asad Ali ..... Appellant*

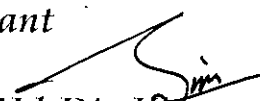
***Versus***

*Inspector General Police & Others..... Respondents*

**INDEX**

<b>S.No</b>	<b>Description of Documents</b>	<b>Annex</b>	<b>Pages</b>
1.	<i>Rejoinder</i>		2-5
2.	<i>Affidavit</i>		6
4.	<i>Copy of Re-instatement Order</i>	<i>"A"</i>	<b>7</b>

*Dated: 24/08/2016*

*Appellant*  
*Through*   
*Zia-Ud-Din Khan*  
*Advocate*  
*High Court.*  
*Cell. No: 0345-9110368*  
*0303-5893180*

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

*Service Appeal No. 621 /2015*

*Asad Ali ..... Appellant*

**Versus**

*Inspector General Police & Others.....Respondents*

**REJOINDER ON BEHALF OF THE APPELLANT TO THE PARA-WISE  
COMMENTS OF RESPONDENTS.**

**Respectfully Sheweth:**

The Appellant humbly submits as under:-

**Preliminary Objection**

*That all the preliminary objections are incorrect, misconceived denied explicitly. This Hon'ble Court/Tribunal has ample jurisdiction to re-instate the appellant according to Law. Dismissal of appellant from service by the respondents is based on malafide, ill-will, unlawful and against the basic rights of the appellant.*

**REPLY ON FACTS.**

- 1) *That Para No. 1 of comments needs no rejoinder.*
- 2) *That Para No. 2 of respondent comments is incorrect. The respondent dismissed the appellant from service without granting sufficient opportunity of proper hearing according to the E& D Rules. The respondents never informed the appellant through any published advertisement in the "News Paper" or through any other alternative communication service. The respondent served the "Final Show-Cause Notice" upon the appellant dated 05/11/2014, without annexing any inquiry report whatsoever in this behalf which was mandatory upon the respondent to pursue as per rules. The respondent ploy of allegation that the appellant went abroad is totally false and misconceived. The appellant was not available at home during the course of proceedings because he was in hospital with her mother for her medical treatment. The appellant appeared before the respondent No (2) at very next day, dated 06/11/2014, but the subordinate staff of the respondent office informed the appellant that the high ups not available and the appellant should revisit next week.*
- 3) *That Para No. 3 of respondent's comments is incorrect and baseless. The respondents prepared a charge sheet/statement of allegations against the appellant and convey the same to appellant brother namely "Haris" and not to the appellant. While astonishingly, any copy of the same charge-*

sheet was provided neither to appellant brother and neither to the appellant himself.

- 4) That Para No. 4 of comments needs no rejoinder.
- 5) That Para No. 5 of comments is incorrect and baseless. If the respondent initiated any departmental inquiry/proceedings against the appellant to probe into the alleged charges leveled against the appellant then why a charge-sheet wasn't served upon the appellant and why the appellant was kept unaware of the said proceedings. While the appellant submitted the fact before the respondents in his departmental appeal that his mother was seriously ill and he was unable to join his duty due to the said reason. It was mandatory upon the respondents to accomplish proper inquiry to fulfill the principles of justice.
- 6) That Para No. 6 of comments needs no rejoinder.
- 7) That Para No. 7 of the respondent comments is incorrect and baseless. Para has been explain in the preceding Para No. 2 of the Rejoinder.
- 8) That Para No. 8 of comments is also incorrect and baseless. The appellant visit several times office of the respondent No (2) but the same was mostly unavailable at office. Unfortunately, no time was granted to the appellant to verify his position in the interest of fair justice on equal footing with other employees of the same department without discrimination.
- 9) That Para No. 9 of comments is incorrect and misleading the Hon'ble Court. The appellant rebutted and denied the alleged and frivolous allegations as leveled by the respondent against him in the subject matter case. That the Hon'ble Supreme Court of Pakistan in one of its leading judgment Civil Petition No. 1702/2015, explicitly mentioned "that after the induction of Article 10A in the Constitution of Islamic Republic of Pakistan, 1973, it would postulate that opportunity of fair trial had not been afforded to the respondent by depriving him his right of cross-examining the witnesses as such it could be held that principles and procedures of due process of law and fair trial had not been followed, which are against the principle of natural justice".
- 10) That Para No. 10 of comments needs no rejoinder.
- 11) That Para No. 11 of comments needs no rejoinder.
- 12) That Para No. 12 of comments is also baseless and superstitious. The punishment awarded by the respondents is illegal, unlawful and against the NWFP Government Servants (E&D) Rules 1973. According to "Rule 8. Procedure in case of willful absence: - Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government Servant, a notice shall be issued by the authorized officer through registered acknowledgement due cover on

his home address directing him to resume duty forthwith. If the same is received back as undelivered or no response is received from the absentee within the stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision will be taken against him. On expiry of the stipulated period given in the notice, the authorized officer shall recommend his case to the authority for imposition of major penalty of removal from service." Unfortunately, the appellant stance at that time wasn't properly measured and consequently the appellant face the brunt of dismissal from service.

### REPLY ON GROUNDS.

- A) Ground "A" of the respondent comments is absolutely baseless. The respondent dismissed the appellant on grounds of discriminatory approach, biased attitude and malafide intention and not according to the principles of justice. The Honorable Supreme Court of Pakistan in one of its leading judgment Civil Appeals No.1122, 1123, 1107 of 2013 & 173 and 174 of 2015, clearly mentioned as "For reasons to be recorded later, these appeals are partially allowed and the impugned judgments of the High Court are set aside to the extent of setting aside the order of dismissal of the respondents by the Commandant Frontier Constabulary. However, since the procedure laid down in Rule 18 of the NWFP Frontier Constabulary Rules, 1958, had not been followed during the inquiry conducted against the respondents, a de novo inquiry according to the said Rule may be conducted against the respondents. In order to hold the inquiry the respondents have to be reinstated. Since three inquiries have already been held, the fresh inquiry shall be concluded within a period of four months."
- B) Ground "B" of comments is also baseless. The respondents stated in their comments that they served their inquiry report upon the appellant and his brother naming "Haris". While in this Para the respondents mentioned that his relatives were informed in time about the inquiry proceedings conducted against the appellant. But the respondents failed to provide any such evidence before the Hon'ble Court/Tribunal in this regard.
- C) Ground "C" of comments is also incorrect and baseless. The respondents carried out their departmental inquiry against the appellant looks like one sided show and not provided any fair & just opportunity of hearing to the appellant as required per rules. While, the appellant was just once given an opportunity of hearing during his departmental appeal dated 06/11/2014. The respondents neither treat the appellant within the ambit of legal requirements and nor the appellant was treated at equal footing with other employees of the same department/institution as they did in the case of one "Mr. Muhammad Asghar Iqbal" (No. 1428) dated 09-08-2011, against the order of Superintend Police (FRP)

- D) Kohat Range wherein he was discharged from service and re-instated. Therefore, the appellant is also entitled to the same relief in view of the judgment of the August Supreme Court of Pakistan "GOVERNMENT OF PUNJAB through Secretary Education, Civil Secretariat Lahore & Others Vs SAMEENA PERVEEN and Others" (2009 SCMR-1) (Copy of Re-instatement Order annexed as Annexure- "A")
- E) Ground "D" of comments is also baseless and against the facts. Para has been explained in the above preceding Para of the Rejoinder.
- F) Ground "E" of the respondent comments is also baseless and incorrect. The Honorable Supreme Court of Pakistan in the "Zarai Taraqiati Bank Ltd Vs Hakeem Khan" 2010 PLC (C.S) 938; clearly stated that "Removal from service (Special Powers Ordinance, 2000) provides that if a person in Government Service or Corporation Service is guilty of being habitually absent from duty in the opinion of the competent authority, he can be proceeded against under the provisions of the Ordinance. Competent authority by not adhering to the provisions of Ordinance, 2000 had deprived the petitioner of safeguards and remedies available to him under the Law--- Adoption of course of passing a relieving order appeared to be a ruse circumvent inquiry proceedings provided for by Ordinance, 2000--- Court could not countenance such a colorable exercise of power--- Supreme Court declared the impugned order to be without lawful authority and ordered for reinstatement of petitioner into service leaving open for Bank to proceed against him under Ordinance, 2000". There are special provisions of Law under which a proper modus operandi shall be adopted before dismissing an employee from service. But the respondents never pursue the same and straight forward dismissed the appellant from service without conducting any proper inquiry and proceeding.
- G) Ground "F" of comments needs no rejoinder. Para has been explained in the above preceding Para No. "E".
- H) Ground "G" of comments needs no rejoinder.

It is therefore, humbly prayed that keeping in view the above Rejoinder, the appeal may please be accepted.

Dated: 24/08/2016

Appellant  
Through  
Zia-Ud-Din Khan  
Advocate  
High Court.

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

*Service Appeal No. 621 /2015*

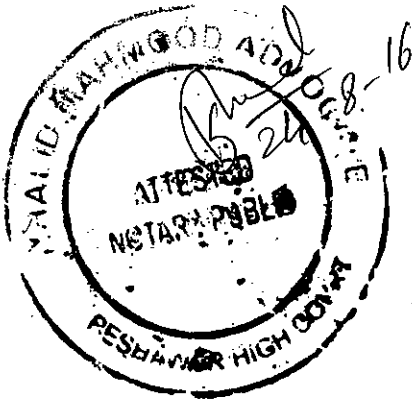
*Asad Ali ..... Appellant*

**Versus**

*Inspector General Police & Others.....Respondents*

**Affidavit**

*I, Zia-Ud-Din Khan Advocate High Court, Peshawar as per instructions of my client, do hereby solemnly affirm and declare on oath that the contents of the accompanying "Rejoinder" are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court/Tribunal.*



*[Handwritten Signature]*  
DEPONENT

Annexure - A

7

ORDER.

5120-000 1207 PL

This order shall dispose on the appeal of Ex. Constable Muhammad Asghar Iqbal No.1428 against the order of SP FRP Kohat Range wherein he was discharged from service.

Brief facts of the case are that he absented himself from duty w.e.f 22.09.2008 till the date of discharge from service for a total period of 05 months and 01 day without any leave/permission of the competent authority. He was issued charge sheet and statement of allegations and Inspector Gul Raees Khan was appointed as Inquiry Officer. He was served with show cause notice to which his reply was not received. He was also informed through Newspaper Daily "MAASHRIQ" dated 16.02.2009 to resume his duty but he did not pay any heed. Therefore he was discharged from service by the SP FRP Kohat Range vide his OB NO.107 dated 25.02.2009.

He was heard in person, I take a lenient view and re-instated him in service and the period of absence is treated as leave without pay.

DIARY 840  
DATE  
12-8-11

ADD: ICP/Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar

No. 5186 IEC dated Peshawar the 09/08/2011.

Copy of above is forwarded for information and necessary action to the Superintendent of Police FRP Kohat Range w/r to his Memo: No. 1107/IEC dated 23.07.2011. His service record alongwith departmental file are returned herewith.

OHc/SRC/PO  
Superintendent of Police,  
FRP Kohat Range,  
Kohat

*Better Copy (Amesusa - A)*

ORDER.

*This order shall dispose on the appeal of Ex. Constable Muhammad Asghar Iqbal No. 1428 against the order of SP FRP Kohat Range wherein he was discharged from service.*

*Brief facts of the case are that he absented himself from duty w.e.f 22.09.2008 till date of discharge from service for a total period of 05 months and 01 days without any leave/permission of the competent authority. He was issued charge sheet and statement of allegations and Inspector Gul Raees Khan was appointed as enquiry Officer. He was served with Show-Cause Notice to which his reply was not received. He was also informed through Newspaper Daily "Mashriq" dated 16.02.2009 to resume his duty but he did not pay any heed.*

*Therefore, he was discharged from service by the SP FRP Kohat Range vide his OB No. 107 dated 23.02.2009.*

*He was heard in person, I take a lenient view and re-instated him in service and the period of absence is treated as leave without pay.*

**Add: ICP/Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar.**

No. 5186 /EC dated Peshawar the

09/08/2011.

*Copy of above is forwarded for information and necessary action to the Superintendent of Police FRP Kohat Range w/r to his Memo: No. 1107/EC dated 23.07.2011. His service record along with departmental file is returned herewith.*



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## ORDER

### UNDER SUB-SECTION-3 & SECTION 5 POLICE RULES, 1975

I, Deputy Commandant FRP, Khyber Pakhtunkhwa Peshawar as Competent authority, Charge you Constable Asad Ali No. 1736 of FRP HQrs: is prima facie guilty of the following acts to be dealt with u/s 5 (3) of Police Rules, 1975.

While posted at FRP HQrs, remained absent from duty w.e from 04.07.2014 till to date without taking any leave/permission competent authority.

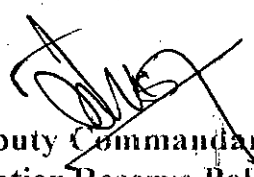
The act of delinquent Official falls within the ambit of gross misconduct and is liable to be proceeded under Police Rule 1975.

For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations. I, Deputy Commandant FRP, Khyber Pakhtunkhwa, being authorized officer hereby nominate enquiry officer as below to enquire into the charges within the meaning of 2(iii) under Police Rules 1975.

#### DSP, FRP/HQrs.

The enquiry officer after completing all enquiry proceedings should submit findings to the undersigned within stipulated period of (10) days per u/s 6(5) of the Rules.

Charge Sheet and Statement of Allegations are issued against the accused officer separately. Reply should be submitted before the Enquiry officer within the period of (07) days from the date of receipt

  
Deputy Commandant,  
Frontier Reserve Police,  
Khyber Pakhtunkhwa, Peshawar.

No: 961 /PA, dated Peshawar the

02 / 09 /2014.

Encl: Papers (03) in Original.

- 81/25 04 09 - 111



ENQUIRY REPORT.

Sir,  
In pursuance of inquiry initiated against Recruit Constable Asad Ali N 1736 of FRP HQrs: who absented himself from duty with effect from 04.07.2014 till date without any leave/permission of the competent authority. He was issued charge sheet/statement of allegation which was served upon his brother through DFC Shakirulla and the undersigned has nominated as inquiry officer by the Deputy Commandant FRP.

FINDINGS REPORT.

The matter has inquired and during the course of enquiry it came to light that he absented himself from duty with effect from 04.07.2014 till date without any leave/permission of the competent authority. While delivering Charge Sheet/Statement of allegation, his brother narrated that constable Asad Ali No. 1736, went to abroad, at F/o therefore absented himself from duty without any leave/permission of the high ups.

During the course of enquiry it has come to light that the said constable was enlisted on 13.09. 2013 and during his service he found absent from duty for 12 days which was treated as without pay. Keeping in view the above his prolong absence from duty, is recommended for ex-parte action.

Submitted for kind perusal and orders please.

W/Deputy Commandant.

  
DSP FRP HQRS

28-10-14

No. III. dated. 28-10-2014.

No. 70

FINAL SHOW CAUSE NOTICE UNDER POLICE RULES 1975.

I, Deputy Commandant, FRP, KPK as competent authority do hereby serve you Recruit Constable Asad Ali No.1736 of FRP/HQrs, Peshawar.

(1) i- That consequent upon the completion of enquiry conducted against you by DSP, FRP/HQrs for which you were given full opportunity of hearing.

ii- On going through the findings/recommendations of the Enquiry Officer, the material available on record and other connected papers I, am satisfied that you have committed the following acts/omissions per Police Rules 1975.

Whereas you Recruit Constable Asad Ali No.1736 of FRP/HQRS; Peshawar remained absent from duty w.e. from 04.07.2014 till to date without any leave/permission of the competent authority..


(2) Therefore, I, Deputy Commandant, FRP, KPK as competent authority has tentatively decided to impose upon you Major/Minor penalty including dismissal from service under the said Rules.

(3) You are, therefore, required to Show Cause as to why not the aforesaid penalty should not be imposed upon you.

(4) If no reply to this Final Show Cause Notice is received within the seven days of its delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and consequently ex-parte action shall be taken against you.

Recd  
01/10/14  
Asad Ali  
5/11/14

Mob 0341-9772440  
MIC 16101-2857906-7

  
Deputy Commandant,  
Frontier Reserve Police,  
Khyber Pakhtunkhwa, Peshawar.

**O.R.D.E.R.**

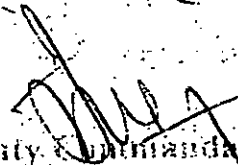
This Office Order so far it relates to the Disposal of Departmental Enquiry against Recruit Constable Asad Ali No. 1736 of FRP/HQrs. Peshawar, absented himself from duty w.c. from 04.07.2014 till, to date without taking any leave/permission of the Competent Authority:

In this regard formal departmental proceedings were initiated against him and DCP/FRP/HQrs. Peshawar was nominated as Enquiry Officer. He conducted enquiry into the matter and submitted his report.

Upon the findings of Enquiry Officer he was issued Final Show Cause Notice to which he received. His reply was not received in the prescribed period. Accordingly he was summoned to appear before the undersigned in Orderly Room but failed to do so.

Keeping in view the recommendations of the Enquiry Officer and other material available on record it has come crystal clear that the delinquent Official is habitual absentee and does not take interest in official duty. His service record also shows that previously he has repeatedly absented from official duty for prolong periods in his short span of service. It is evident that he is not fit for Police service, which requires discipline coupled with punctual performance of official duty especially in the prevailing Law & Order milieu. Therefore, Recruit Constable Asad Ali No. 1736 of FRP/HQrs. is dismissed from Service under Police Rules, 1975 from the date of first absence i.e. 04.07.2014 and the period of absence is treated as leave without Pay.

**Order announced.**

  
Deputy Commandant,  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar

No. ~~1230~~ - 651 A/FRP/HQrs. dated Peshawar, the 28 / 11 / 2014.

Copy of the above is forwarded for information & n/action to:

1. The Addl. IGP/Commandant, FRP Khyber Pakhtunkhwa.
2. The Accountant /FRP/HQrs. Peshawar.
3. The RI/FRP/HQrs. Peshawar.
4. The SRC/FRP/HQrs. Peshawar.
5. The OSI FRP/HQrs. Peshawar.
6. The FMC/ FRP/HQrs. Peshawar with original Enquiry Report.

\*\*\*\*\*

ORDER.

This order shall dispose off the appeal Of Ex-constable Asad Ali No. 1736 of FRP HQrs; Peshawar against the order of Deputy Commandant FRP KPK.

Brief facts of the case are that he absented himself from lawful duty w.e.f.04.07.2014 till to date. The defaulter official was proceeded against departmentally. The defaulter official failed to respond in connection with Show Cause Notice and did not appear in orderly room despite the fact that he was summoned. He was therefore dismissed from service under Police Rule 1975 for his willful and intentional absence. The defaulter official filed the appeal without any solid reason. Misconduct was proved on the part of said official.

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

*Amalika*  
Commandant  
Frontier Reserve Police  
Khyber Pakhtunkhwa Peshawar.  
*05/07/2015* 7

No. 2347-49/EC dated Peshawar the 16/3 /2015.

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

1. OASI FRP HQrs; Peshawar.
2. ✓ SRC FRP HQrs; Peshawar with service record
3. Ex-Constable Asad Ali No. 1736 through OASI.

انڈین ازاں کانسٹیبل ایسٹریٹس۔ ایف آر پی ہیڈ کوارٹر پشاور۔ تاریخ بھرتی۔ 2014-13

1736

1	سال غیر حاضری	تعداد ایام	سزائیں	تعداد ایام
0	1313	09	لا انتہوا	09
	14	03	لا انتہوا	03
	ٹوٹل غیر حاضری	12	لا انتہوا	12
2	میڈیکل لیو	/	/	/
	ٹوٹل میڈیکل لیوگزارى			
3	لانگ لیو	/	/	/
	ٹوٹل لانگ لیوگزارى			

رپورٹ

انچارج فوجی مشن

صناعت عالی  
سپیشل ایس کی جی پی پی ویڈیو ایکٹو  
فوجی مشن بنام ایس ڈی خان نمبر 1736  
رٹرنس وقت لیور ایس سال 2014

Ammy  
2014-09-02

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

No 2598 /ST

Dated 05/12/2017

To


The Deputy Commandant Frontier Reserve Police,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: **JUDGEMENT/ORDER IN APPEAL NO. 621/15, MR. ASAD ALI.**

I am directed to forward herewith a certified copy of Judgment dated 20/11/2017 passed by this Tribunal on the above subject for strict compliance.

**Encl: As above**

o/c

  
REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.



(2)

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR.**

**Service Appeal No. 621-P/2015**

Asad Ali

**Versus**

Inspector General Police & others

**WRITTEN ARGUMENTS ON BEHALF OF THE APPELLANT**

**Respectfully Sheweth;**

- 1) That the above titled case is pending before this Hon'ble Court/Tribunal, which is fixed for final arguments today dated 10/11/2017.
- 2) That the Appellant submits Written Arguments on the following facts:-

**BRIEF FACTS**

**Respected Sir,**

- i) That the appellant filed the instant Appeal against the respondents before this Hon'ble Court/Tribunal dated 05/06/2015 to Set-aside the impugned "Office Order No.1280-85/PA/FRP/Hqrs Peshawar dated 28/11/2014, to re-instate the appellant to his service. The appellant raise the following important issues before this Hon'ble Court/Tribunal:-
  - a) That the appellant was appointed/recruited as a "Constable (Bps-5)" in the Frontier Reserve Police dated 13/09/2013 by the respondents.
  - b) That the appellant rendered his services with honesty and integrity to the entire satisfaction of his seniors.
  - c) That the respondent served upon the appellant a Show-Cause Notice without annexing any inquiry report whatsoever in this behalf which was

mandatory upon the respondents under the Law. The appellant after the said show-cause notice appeared before the Respondent No (2)/Deputy Commandant Frontier Reserve Police, KPK, but the respondent was not available on the same date.

- d) That the respondents initiated departmental inquiry/proceedings against the appellant to probe into the alleged charges leveled against him. In the meanwhile a charge sheet/statement of allegations was served upon the appellant but the appellant wasn't informed in time through any sort of proper notice about the charge sheet/statement as prepared by the respondent against the appellant.
- e) That the appellant was never informed through any Advertisement published in the News Paper by the respondents.
- f) That the Respondent No (2)/Deputy Commandant Frontier Reserve Police, KPK, dated: 28/11/2014, dismissed the appellant from service on the ground of willful and intentional absence from duty.
- g) That the appellant file the departmental appeal dated 09/02/2015, against his dismissal order from service which was rejected by the Respondent No (1)/Commandant Frontier Reserve Police, KPK through vide Office Order No. 2347-49/EC dated Peshawar the 16/03/2015,

Respected Sir,

- ii) This is crystal clear from the appeal file by the appellant before this Hon'ble Court/Tribunal against the respondents that how blindly a deliberate inquiry report was prepared against the appellant by the "Inquiry Committee" without any cogent evidence/proof. In addition to that the respondent dismissed the appellant from service without granting sufficient opportunity of proper hearing according to the E& D Rules. The respondents never informed the appellant through any published advertisement via News Paper or through any other alternate source of service. The respondent served

the "Final Show-Cause Notice" upon the appellant dated 05/11/2014, without annexing any inquiry report whatsoever in this behalf which was mandatory upon the respondent as per service rules. The respondent's ploy of allegations that the appellant went abroad is totally false and misconceived. The appellant was not available at home during the course of proceedings because he was in hospital with his mother for her medical treatment. The appellant came and appeared before the Respondent No (2) on very next day, dated 06/11/2014, but the lower staff of the respondent office informed the appellant that none is available today and the appellant should revisit next week. Hence, the authenticity of statements of the respondents and their legal justification without any credible evidence/proof become a question of fact and law. The Hon'ble Lahore High Court in one of its leading judgment laid down that;

"Whenever any discretion was given to an authority it had to be exercised not arbitrarily, but honestly, justly and fairly in consonance with the spirit of law after application of judicious mind and for substantial reasons--- Discretion had to be exercised with due care and caution keeping in mind the principles of natural justice, fair trial and transparency---Authority should record reasons with regard to dispensing with regular inquiry---Where recording of evidence was necessary to establish charge then departure from regular inquiry would amount to condemned unheard---Serving of Show-Cause notice and reply thereto in denial of allegations would not amount to affording the employee reasonable opportunity of showing cause". The wisdom of Law can be drawn from the following judgment of the Hon'ble Lahore High Court.

"Muhammad Riaz Versus MS, Service Hospital Lahore (2016 PLC (C.S) 296)"

Respected Sir,

- iii) It is important to be noted that the respondents stated in the Findings Report of their Enquiry Report "as per inquiry report the appellant absented himself

from duty with effect from 04/07/2014 till date without any leave/permission of the competent authority". The respondents carried out the entire departmental inquiry against the appellant on one sided and never followed the same in accordance with Law. While, the appellant was just once granted an opportunity of hearing during the course of his departmental appeal dated 16-03-2015. The respondents neither treat the appellant within the ambit of legal parameters and nor the inquiry proceedings carried out in accordance with the prescribed mandatory provisions of "E&D Rules". The wisdom of Law can be drawn from the following judgment of the Hon'ble Supreme Court of Pakistan;

Zarai Taraqiati Bank Ltd Vs Hakeem Khan 2010 PLC (CS) 938

"Removal from service (Special Powers Ordinance, 2000) provides that if a person in Government Service or Corporation Service is guilty of being habitually absent from duty in the opinion of the competent authority, he can be proceeded against under the provisions of the Ordinance. Competent authority by not adhering to the provisions of Ordinance, 2000 had deprived the petitioner of safeguards and remedies available to him under the Law--- Adoption of course of passing a relieving order appeared to be a ruse circumvent inquiry proceedings provided for by Ordinance, 2000--- Court could not countenance such a colorable exercise of power--- Supreme Court declared the impugned order to be without lawful authority and ordered for reinstatement of petitioner into service leaving open for Bank to proceed against him under Ordinance, 2000".

Likewise, in the Civil Appeals No.1122, 1123, 1107 of 2013 & 173 and 174 of 2015, the Honorable Supreme Court of Pakistan further make it clear that;

"For reasons to be recorded later these appeals are partially allowed and the impugned judgments of the High Court are set aside to the extent of setting aside the order of dismissal of the respondents by the Commandant Frontier Constabulary. However, since

the procedure laid down in Rule 18 of the NWFP Frontier Constabulary Rules, 1958, had not been followed during the inquiry conducted against the respondents, a de novo inquiry according to the said Rule may be conducted against the respondents. In order to hold the inquiry the respondents have to be reinstated. Since three inquiries have already been held, the fresh inquiry shall be concluded within a period of four months".

Respected Sir,

- iv) Likewise, the Hon'ble Supreme Court of Pakistan in the case of Muhammad Naeem Akhtar Vs Managing Director Water and Sanitation Agency LDA, Lahore and Others (2017 SCMR, Page 356), further elucidates;

"---Inefficiency---Major Penalty---Dispensation of regular enquiry---Legality---Fact finding enquiry--- Supreme Court observed that it would be lawful, appropriate and fair that a regular enquiry was conducted to the extent of responsibility of the appellant for his alleged misconduct and if culpable, the lawful penalty that may be imposed on him---Supreme Court set-aside the major penalty of dismissal from service imposed on the appellant and remanded his case to the department for holding regular enquiry after giving him full opportunity of representation in accordance with Law".

Respected Sir,

- v), The respondents neither treat the appellant within the ambit of legal requirements and nor the appellant was treated on equal footing with other employees of same department/institution as they did in the case of Mr. Muhammad Asghar Iqbal (No. 1428), dated 09-08-2011, against the order of Superintend Police (FRP) Kohat Range, wherein he was discharged from service and later on re-instated. Hence, the appellant is also entitled to same relief in view of the judgment of the August Supreme Court of Pakistan. The

wisdom of Law can be drawn from the following judgment of the Hon'ble Supreme Court of Pakistan;

Govt of Punjab through Secretary Education, Civil Secretariat Lahore & Others Vs Sameena Perveen and Others (2009 SCMR-1)

"Dr. Munir Ahmed and 37 others VS Govt of Pakistan, and 4 others PLC (CS) 285"

In the later judgment of Dr. Munir Ahmed and 37 others VS Govt of Pakistan, and 4 others PLC (CS) 285, the Hon'ble Supreme Court of Pakistan precisely stated that;

"b) ---Arts. 2-A, 4, 25, 27, 37 & Preamble---equality---scope- --concept of equal protection and equality before law is hallmark of the constitutional scheme recognized by not only preamble, Objective Resolution, Arts. 25 & 27 of the Constitution but also by Principle of Policy contained in Arts. 37 of the Constitution---Equal protection and equal treatment of citizens similarly placed is universally accepted and recognized principle which has been explained by many authors in text books and judges in precedents---Statutory functionaries in a democratic setup cannot make any individual distinction for any extraneous reasons and exercise of discretion must be free of arbitrariness and caprices".

Respected Sir,

- vi) It is also important to mention here that astonishingly the Respondent No (2)/the Deputy Commandant Frontier Reserve Police KPK issued the order of dismissal from service of the appellant under the Police Rules, 1975 on the grounds of Absentee. While, under Rule 8.A, of the NWFP E & D Rules, the procedure has been mentioned as under;

"8.A Procedure in case of willful absence:- Notwithstanding anything to the contrary contained in these rules, in case of willful absence from duty by a Government Servant, a notice shall be issued by the authorized officer through registered

acknowledgement due cover on his home address directing him to resume duty forthwith. If the same is received back as undelivered or no response is received from the absentee within the stipulated time, a notice shall be published in at least two leading newspapers directing him to resume duty within fifteen days of the publication of that notice, failing which an ex-parte decision will be taken against him. On expiry of the stipulated period given in the notice, the authorized officer shall recommend his case to the authority for imposition of major penalty of removal from service." Hence, the punishment awarded by the respondents is illegal, unlawful and against the NWFP Government Servants (E&D) Rules 1973.

Respected Sir,

- vii) Likewise, the Hon'ble Supreme Court of Pakistan in the case of Khuda-I-Nazar Vs The Curator and others (2000 SCMR Page 1743) wherein it was mentioned that;

"The provisions of the rules that the authority having power to impose penalty shall frame a charge and communicate it to the accused together with a statement of the allegations on which it based and of other circumstances which the authority proposes to take into consideration are mandatory. Non-compliance with such provisions would amount to transgression of an obligatory rule which lays down the minimum standards comprising reasonable opportunity to be afforded to a Government servant. The amount of prejudice which would be caused to the person concerned need not be taken into consideration for non-compliance with the rule itself would constitute denial of a reasonable opportunity which per se would vitiate the action taken. Where the charges are vague and are not accompanied by a statement of allegations this causes prejudice to the official concerned because he is deprived of information as to the basis on which the charges have been framed against him and the other circumstances which were taken into consideration when passing orders". (PLD 1970 Page 811)

Respected Sir,

viii) Likewise, in the case of Muhammad Alamzeb Khan Vs Registrar Peshawar High Court Peshawar and others (2000 SCMR, Page 1406), the Hon'ble Supreme Court of Pakistan precisely stated that;

"---S. 5---North-West Frontier Province (Efficiency and Discipline) Rules, 1973, R. 3 & 4---North-West Frontier Province Government Servants (Conduct) Rules, 1987, R. 4-A (b)---Officer was not allowed any opportunity to cross-examine the witnesses produced against him and as such, he had been condemned unheard and was refused to produce defence witnesses thus, prejudicing his interest---Held, officer had been condemned unheard and major penalty of removal from service had been imposed upon him, contrary to the material on record and without adopting the required and mandatory procedure, resulting in manifest justice--Order of dismissal from service could not be sustained in circumstances---Supreme Court allowed appeal of the officer, set-aside the impugned judgment of the Subordinate Judicial Service Tribunal and ordered re-instatement of the officer in service".

Respected Sir,

ix) Likewise, in the case of Inspector General of Police, Police Headquarters Office, Karachi and 2 others Vs Shafqat Mehmoods (2003 SCMR, Page 207), the Hon'ble Supreme Court of Pakistan precisely stated that;

"---Natural Justice, principles of---Applicability---Opportunity of defence to civil servant---Scope---Proper inquiry is to be conducted wherein Government servant is to be provided an opportunity of defence and personal hearing and if regular inquiry are proved then action against the public servant is to be taken".



Respected Sir,

It is therefore, most humbly prayed that on acceptance of these Written Arguments:

- i) On acceptance of this Appeal, the impugned "Office Order No.1280-85/PA/FRP/Hqrs Peshawar dated 28/11/2014" may please be Set-aside and the appellant shall be Re-instated to his Service.
- ii) Any other remedy deems proper in the matter and not specified may also be granted to the Appellant.

Dated: 20/11/2017

Appellant **Zia-ud-Din Khan**  
 Through **Zia-Ud-Din Khan**  
 Advocate High Court  
 Peshawar.

Annex - "A"

**2010 P L C (C.S.) 9387**

**[Supreme Court of Pakistan]**

**Present: Javed Iqbal, Sayed Zahid Hussain and Muhammad Sair Ali, JJ**

**ZARAI TARAQIATI BANK LTD.**

**Versus**

**[HAKEEM KHAN]**

Constitutional Petition No.646 of 2009, decided on 8th May, 2009.

(On appeal from the judgment dated 25-2-2009 of the Islamabad High Court, Islamabad passed in W.P. No.798 of 2008).

**Zarai Taraqiati Bank's Staff Service Regulations, 2005—**

---Regln. 7(b)---Agricultural Development Bank of Pakistan (Re-organization and Conversion) Ordinance (LX of 2002), Preamble---Removal from Service (Special Powers) Ordinance (XVII of 2000), Ss.1(4), 2(c), 3, 5, 9 & 10---Constitution of Pakistan (1973), Art.185(3)---Order of relieving from service---Inefficiency and absence from duty, charges of---Imposition of such penalty by competent authority in terms of Regln.7(b) of Zarai Taraqiati Bank's Staff Service Regulations, 2005 without resorting to provisions of Removal from Service (Special Powers) Ordinance, 2000---Validity---Practical effect of word "relieved" front service as used in impugned order was deprivation of petitioner from source of his livelihood---Respondent-Bank was a corporate body owned, managed and controlled by Federal Government for purposes of Removal from Service (Special Powers) Ordinance, 2000 even after enforcement of Agricultural Development Bank of Pakistan (Re-organization and Conversion) Ordinance, 2002---Provisions of said Ordinance, 2000 were applicable to Bank as per its own Circular dated 31-1-2008 having revised thereby delegation of powers to its various officers under Ordinance, 2000---Competent authority had special powers under Ordinance, 2000 to proceed against petitioner being in Corporation Service---Petitioner under Ss.3 and 5 of Ordinance, 2000 was entitled to defend himself and explain his position in inquiry; and upon any action taken against him under Ordinance, 2000 had right to avail remedy of representation and file appeal before Service Tribunal---Competent authority by not adhering to provisions of Ordinance, 2000 had deprived petitioner of safeguards and remedies available to him under law---Adoption of course of passing a relieving order appeared to be a ruse to circumvent inquiry proceedings provided for by Ordinance, 2000---Court could not countenance such a colourable exercise of power---Supreme Court declared impugned order to be without lawful authority, and ordered for reinstatement of petitioner into service leaving open for Bank to proceed against him under Ordinance, 2000.?

Azizullah Memon v. Province of Sindh 2007 SCMR 229 rel.

Haider Hussain, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Petitioner.

Respondent in person.

Date of hearing: 8th May, 2009.

**ORDER**

**SAYED ZAHID HUSSAIN, J.**---This is a petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, qua the order passed by the Islamabad High Court, Islamabad, dated 25-2-2009 in Writ Petition No.798 of 2008, whereby the petition filed by the respondent under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, was accepted.

2. The case of the respondent before the High Court and before this Court is that in response to the Advertisement published in the Press on 30-10-2005 and the subsequent interview with the Selection Board comprising one of the Board of Directors (BODs) of the defendant Bank, Ex-Managing Director Standard Chartered Bank, the then Banking Ombudsman, Head HR ZTBL and President ZTBL, he was offered employment as Senior Vice President in the Department vide offer of employment letter No.PAD (RP&C)/1(162)/2006/380, dated 27-7-2006 and consequent upon his appointment as Area Specialist in the Rank of Senior Vice-President vide Notification dated 13-9-2006 and posted as Credit Risk Manager at ZTBL Head Office. On completion of probation period, he was confirmed vide office memorandum dated 1-3-2007 enunciating therein his pay, allowances, perks including vehicle at his disposal as a part of his terms and conditions.

3. Undisputedly, the respondent was a Senior Vice-President in the petitioner bank, who claims to have been performing duties diligently with full devotion and dedication when on 26-1-2008 he received a letter informing him that he had "ceased to be productive for the bank" and that the "competent authority, considering it expedient and viable, do hereby relieve you from the Bank's services in terms of clause 7(B) of SR-2005 with immediate effect." This order was assailed by the respondent by filing a review petition which remained un-responded. He eventually approached the Islamabad High Court, Islamabad by means of the writ petition referred to above, which was accepted by the learned Judge of the High Court observing inter alia "that S.3(1)(b) of the Ordinance, 2000 i.e. Removal from Service (Special Powers) Ordinance, 2000 provides that if a person in Government Service or Corporation Service is guilty of being habitually absent from duty in the opinion of the competent authority, he can be proceeded against under the provisions of the Ordinance. As has already been mentioned, the petitioner was removed from service on the ground of absence from duty without leave. The petitioner is a person in Corporation Service within the meaning of Clause (c) of section 2??..". It was thus observed that "the petitioner is a person in Corporation Service and the disciplinary proceedings in respect of person in corporation service is covered by the provisions of Removal from Service (Special Powers) Ordinance, 2000 and that he cannot be removed from service without resorting to the provisions of Removal from Service (Special Powers) Ordinance, 2000." The order was declared to be without lawful authority and he was ordered to be reinstated into service leaving it open for the petitioner before us to proceed against him under the provisions of Removal from Service (Special Powers) Ordinance, 2000.

4. Assailing the order of the High Court, it is sought to be contended by the learned counsel that the High Court has incorrectly and illegally proceeded on the premises as if the respondent was liable to be proceeded only under the provisions of Removal from Service (Special Powers)

Ordinance, 2000, whereas according to him the Bank's Staff Regulation, 2005, particularly Regulation 7(B) thereof was rightly invoked for dispensing with the service of the respondent. Further contends that the provisions of the Ordinance could only be applicable if the said respondent was to be dismissed, removed or compulsorily retired from service or was to be reduced to lower post or pay scale and not in a case like this.

5. We have considered the contentions of the learned counsel for the petitioner in the light of the material placed before us and would like to observe that the Office Memorandum dated 26-1-2008 indeed narrated incidents and events reflecting upon the inefficiency of the respondent including his absence from duty which was made basis by the competent authority to "relieve" him from Bank's service. Before us the applicability and significance of Staff Service Regulation, 2005, is sought to be highlighted empowering the competent authority to relieve any employee from the service. But the same have neither been placed on record nor produced before us. The mere use of the word "relieved" from service, would not make any difference inasmuch as this was the mode adopted by the petitioner for sending home the said respondent. In reality and pragmatically the respondent lost his job/employment. The practical effect is one and the same i.e. deprivation of source of livelihood.

6. Adverting now to the crucial issue as to whether provisions of Removal from Service (Special Powers) Ordinance, 2000, were applicable or not. It may be observed that as per S.1(4) of the Removal from Service (Special Powers) Ordinance, 2000, it applies to "persons in government service and corporation service." A "person in Corporation Service" is defined as per clause (c) of S.2 as follows:

"(c) "Person in corporation service" means every person in the employment of a Corporation, corporate body, authority statutory body or other organizations or institutions set up, established, owned, managed or controlled by the Federal Government, or by or under any law for the time being in force or a body or organization in which the Federal Government has controlling share or interest and includes the Chairman and the Managing Director, and the holder of any other office therein."

The petitioner admittedly is a body corporate owned, managed and controlled by the Federal Government, for the purpose of Ordinance even after the enforcement of Agricultural Development Bank of Pakistan (Re-Organization and Conversion) Ordinance, 2002. It also stands substantiated by Circular No.DPD/02/2008 dated 31-1-2008, whereby the delegation of powers to various officers under Removal from Service (Special Powers) Ordinance, 2000.was revised. There can thus be no cavil that the provisions of Removal from Service (Special Powers) Ordinance, 2000 are applicable as per the petitioner's own circular and stance.

7. Having observed that the provisions of the Removal from Service (Special Powers) Ordinance, 2000, were applicable, the further question that arises is whether the respondent was liable to be proceeded against under the relevant provisions of the said Ordinance. It may be observed that whereas special powers were given to the competent authority as per the said Ordinance for disciplinary proceedings against the persons in Government Service or Corporation Service; it contained certain safeguards to such persons as envisaged by sections 3 and 5 of the Ordinance. Firstly, he was entitled to defend himself and explain his position in the inquiry, when instituted against him, unless dispensed with on due application of mind. Secondly, upon any action taken under the said Ordinance, the person concerned had the right to avail the remedy of representation as per section 9 and file appeal under section 10 before

the Federal Service Tribunal. By not adhering to the provisions of the Ordinance, the respondent stood denuded of the safeguards and remedies, available to him under the law. The adoption of course of passing a relieving order appear to be a ruse to circumvent the inquiry procedure provided for by the Ordinance. Such a colourable exercise of power cannot be countenanced by Court.

8. In the case of Azizullah Memon v. Province of Sindh (2007 SCMR 229), the import and effect of the provisions of the Ordinance was reiterated by observing:-

"3. In the presence of express and specific language employed in the Ordinance neither the departmental authorities nor the Tribunal bothered to notice that after the date of promulgation of the Ordinance all disciplinary proceedings should have been initiated under Ordinance rather than the old Rules enforced in 1973. This Court has already ruled in a number of judgments that this Ordinance has the overriding effect over all other laws on the subject except in case of proceedings, which were already pending before promulgation of the Ordinance. Since the impugned action was initiated and taken to its logical conclusion under a misconception of law and under a wrong law, it has vitiated the entire proceedings, including the final order, which cannot be sustained under the law. The proceedings as well as final order is, therefore, liable to be set aside."

The petition in that case was converted into appeal, reinstating the petitioner into service leaving it open for the department to initiate fresh proceedings against him. Similar course has been adopted by the High Court in the present case which is consistent with the legal position obtaining in the matter.

8-A. No case for interference by this Court has been made out. Leave to appeal is declined accordingly.

S.A.K./Z-

6/SC??

Appeal declined,



IN THE SUPREME CO-URT OF PAKISTAN  
(Appellate Jurisdiction)

Present:

Mr. Justice Nasir-ul-Mulk, HCJ  
Mr. Justice Amir Hani Muslim  
Mr. Justice Ijaz Ahmed Chaudhry

Civil Appeals No.1122, 1123, 1107 of 2013  
& 173 and 174 of 2015.

(On appeal from judgment dated 9.5.2013 of the Peshawar High Court, Peshawar, passed in W.Ps.No.2987, 2764 of 2011 & 818-P/2012). And against judgment dated 10.9.2014 of the Peshawar High Court, Abbottabad Bench, passed in W.Ps.No.3219 & 475-P of 2014).

The Commandant, Khyber Pakhtunkhwa Constabulary,  
Headquarters, Peshawar and another,  
(in all Appeals)

...Appellants,

VS

Muhammad Nasir and others. (in C.A.No.1122/2013).

Sarad Khan and others (in C.A.No.1123/2013).

Muhammad Arif and others (in C.A.No.1107/2013).

Najeebullah and others (in C.A.No.173/2015).

Zakirullah and another (in C.A.No.174 of 2015)

...Respondents,

For the Appellants:

Ms. Shireen Imran, ASC.  
Syed Razaqat Hussain Shah, AOR.  
(in C.As.No.1122, 1123 and 1107 of 2013).

Mian Shafaqat Jan, ASC.  
Mr. M.S. Khattak, AOR.  
(in C.As.No.173 & 174/2015).

For the respondents:

1-40 in C.A.No.1122/2013)  
1-34 in C.A.No.1123/2013)

Hafiz S.A. Rehman, Sr.ASC.

1-18, 20-25, 27, 28, 30, 31  
33, 35, 37, 38, 40, 41, 43-51,  
53-65 in C.A.No.173/2015  
and for Respondent No.1 in  
C.A.No.174/2015).

Mr. Abdul Latif Afridi, ASC.

Date of hearing:

31.3.2015.

**JUDGMENT**

**AMIR HANI MUSLIM, J.** – The relevant facts for the purpose of disposal of these Appeals are that the Appellants were posted in different Platoons of Frontier Constabulary which were deployed in different areas of F.R Peshawar and F.R Kohat. They were dismissed from service on the allegations of insubordination and cowardice. The Respondents filed Appeals before the Federal Service Tribunal, Islamabad, which were allowed, by various judgments passed on different dates and they were reinstated in service with direction to the Appellants to hold de novo inquiries against them and conclude the same within four months, providing them full opportunity of hearing.

2. After receipt of the judgments of the Federal Service Tribunal, the Appellants without formally reinstating the Respondents, conducted de novo inquiry in the light of directions of the Tribunal and dismissed all the Respondents from service. The record shows that a second de novo inquiry upon the direction of the Tribunal was conducted against some of the Respondents, but they too were dismissed. The record further reveals that even 5<sup>th</sup> de novo inquiry was conducted against some of the Respondents, who were dismissed after such inquiries.

3. Feeling aggrieved, this time the Respondents approached the High Court, pleading therein that the orders of dismissal from service were illegal and passed without affording them opportunity of hearing. The learned High Court allowed all the Writ Petitions holding as under:-

*"In case in hand, no doubt serious allegation were levelled against the Petitioners but the standard of proof as well as*

*the procedure adopted by the respondents, which is otherwise too noticeable, from the comments filed by respondents before this Court, without proper documentation and proper and elaborate answer to the objections raised by the petitioners in their writ petitions give no other reference but to hold that dismissal orders resulted into miscarriage of justice. The remand of these writ petitions would serve no good purpose too as respondents have already conducted a number of inquiries against the petitioners and another de novo inquiries would do nothing except to increase more agonies while petitioners have already suffered for more than four years which was a sufficient punishment for any lapses on their part (if any).*

*30. This while allowing these writ petitions, we set aside the impugned orders of dismissal of the petitioners from their services and order their re-instatement into service from the date when they were dismissed with all consequential benefit of the posts from the said date except the salary as there is no proof that petitioners remained jobless for the whole duration of their dismissal.*

4. The Appellants challenged the judgments of the learned High Court before this Court and leave was granted in these appeals, *inter alia*, to consider whether the Respondents are Civil Servants. Hence these Appeals.

5. The learned Counsel for the Appellants has contended that the Respondents are Civil Servants and the jurisdiction of High Court was barred under Article 212 of the Constitution. He submitted that once the Respondents had obtained relief from the Federal Service Tribunal, they could not have approached the High Court for the same relief. He next contended that the findings of the High Court were erroneous on the point that the Appellants had failed to comply with the provisions of Rule 18 of the North West Frontier Constabulary Rules, 1958. In support of his





submissions, he has relied upon the case of IG Frontier Corps and others vs Ghulam Hussain (2004 SCMR 1397).

6. On the other hand, the learned Counsel for the Respondents have contended that the Respondents are not Civil Servants and their terms and conditions of service are regulated by the North-West Frontier Constabulary Act, 1915, and the Rules framed there-under. They contended that the learned High Court did have the jurisdiction to adjudicate upon the matters relating to terms and conditions of service of the Respondent. They next contended that the Appellants had recorded findings in violation of the procedure prescribed under Rule 18 of the North West Frontier Constabulary Rules of 1958 (hereinafter referred to as the Rules of 1958), therefore, the learned High Court was justified in ordering their reinstatement.

7. The Respondents' Counsel next contended that the Appeals are barred by time and should have been dismissed on the point of limitation, as the grounds taken for condonation of delay are not plausible.

8. We have heard the learned Counsel for the parties at length and have perused the record. The Appellants are not Civil Servants as their terms and conditions of service are regulated by the provisions of the North West Frontier Constabulary Rules of 1958. The case law cited by the learned Counsel for the Appellants is not relevant after the judgment of this Court in the case of Muhammad Mubeen-us-Salam and others vs. Federation of Pakistan (PLD 2006 SC 602), where this Court has held that the status of a Civil Servant cannot be conferred on an employee of the organization by a deeming clause which has its own statutory service Rules. The terms and



conditions of service of the Respondents are regulated by the Act of 1915 which authorizes the Appellants to frame Rules. The Rules were framed in 1958 and are duly notified which regulates the terms and conditions of service of the Respondents. The plea of the Appellants that the Respondents are Civil Servants is without force in view of the judgment in the case of Muhammad Mubeen-us-Salam and others (supra)

9. The contention of the learned Counsel for the Appellants that proper procedure was followed while dismissing the Respondents from service, we have examined the procedure provided in Rule 18 (*ibid*) and the material brought on record by the parties. The orders which were impugned before the learned High Court are indicative of the fact that procedure as defined in Rule 18 of the Rules of 1958 was not followed. Even the learned High Court has observed in the impugned judgment that *de novo* inquiries were conducted by the Appellants without following the procedure provided in Rule 18 of the Rules of 1958. Once the learned High Court has held that the procedure prescribed in Rule 18 (*ibid*) has not been followed while dismissing the Respondents from service, it should have remanded the matter to the department after reinstating the Respondents in service for *de novo* inquiry.

10. We, therefore, while partly allowing these Appeals remand the matters to the departmental Authority of the Appellants to hold *de novo* inquiry after reinstating the Respondents in service, by strictly following the procedure provided in Rule 18 of the Rules of 1958 and pass appropriate orders within four months from the date of communication of this judgment.



11. Since the points raised in the Appeals are of public importance, therefore, the delay in filing the Appeals is condoned on the grounds taken in the Applications for condonation of delay. The above are the reasons for our short order of even date which reads as under:-

*"For reasons to be recorded later, these appeals are partially allowed and the impugned judgments of the High Court are set aside to the extent of setting aside the order of dismissal of the respondents by the Commandant Frontier Constabulary. However, since the procedure laid down in Rule 18 of the NWFP Frontier Constabulary Rules, 1958, had not been followed during the inquiry conducted against the respondents, a de novo inquiry according to the said Rule may be conducted against the respondents. In order to hold the inquiry the respondents have to be reinstated. Since three inquiries have already been held, the fresh inquiry shall be concluded within a period of four months."*

Chief Justice

Judge

Judge

Islamabad the,  
25<sup>th</sup> March 2015.

Approved for Reporting,

Sohail\*\*

2017 S C M R 356

[Supreme Court of Pakistan]

Present: Umar Ata Bandial and Manzoor Ahmad Malik, JJ

MUHAMMAD NAEEM AKHTAR---Appellant

Versus

MANAGING DIRECTOR WATER AND SANITATION AGENCY LDA, LAHORE and others---Respondents

Civil Appeal No. 328-L of 2009 and C.M.A. No. 06-L of 2011, decided on 29th November, 2016.

(On appeal from the judgment of the Lahore High Court, Lahore dated 22.12.2008 passed in W.P. No. 15703 of 2000)

**Civil service---**

---Inefficiency---Major penalty---Dispensation of regular enquiry---Legality,---Fact-finding enquiry, did not accuse the appellant personally for committing misappropriation---Allegation against all three accused persons was of inefficiency and misconduct for failing to abide by the departmental rules on storage of scrap stock---Major penalty of reduction in pay to one lower stage in time scale had been imposed on the appellant without an opportunity to demonstrate that the responsibility for the alleged inefficiency was shared and he should not be singled out---Enhancement of penalty to dismissal from service attributed malice and concealment of pilferage to the appellant, which were altogether new charges regarding which a regular inquiry was necessary and could not be dispensed with---Failure by the appellant to object against the dispensation of regular enquiry could not bestow legality/validity upon an administrative action that was deficient in meeting the legal standards of fairness and propriety in disciplinary proceedings---Appellant was apparently punished for misappropriating property of department but without charging him with the same or confronting him with the adverse material sustaining the allegation---Supreme Court observed that it would be lawful, appropriate and fair that a regular enquiry was conducted to the extent of responsibility of the appellant for his alleged misconduct, and if culpable, the lawful penalty that may be imposed on him---Supreme Court set aside the major penalty of dismissal from service imposed on the appellant and remanded his case to the department for holding regular enquiry after giving him full opportunity of representation in accordance with law,

A.D. Naseem, Advocate Supreme Court for Appellant.

Ihsanul Haq Chaudhry, Senior Advocate Supreme Court and Syed Fayyaz Ahmed Sherazi, Advocate-on-Record for Respondents Nos.1 - 3.

Date of hearing: 29th November, 2016.,

**JUDGMENT**

**UMAR ATA BANDIAL, J.**---In September 1999, the appellant was serving as SDO Gulberg (O&M) WASA. Certain vent shafts were damaged by the contractor during construction of service roads and had to be removed. This was done on the instructions of the appellant by shifting six vent

shafts to the T Block tube well. The shifting was done by officers subordinate to the appellant in the official Suzuki pickup provided to the appellant. Stocktaking of the said scrap material was not catered in the old stock and was misappropriated. A fact-finding enquiry in the incident was conducted in which statements of three accused officers namely the appellant, a Sub-Engineer and Assistant Supervisor, concerned subordinate employees of WASA were recorded in brief. Since the fact-finding enquiry did not press charges against any accused persons, therefore, no cross-examination was conducted by any of them. The enquiry report observed that the appellant ought to have been careful in the final disposal of scrap material in accordance with WASA rules and regulations. It was recommended that the proportionate value of the misappropriated material be recovered from the three accused officers. The appellant was served with a notice alleging inefficiency and demanding a reply to be filed. The two accused officers were given minor penalties. By order dated 15.03.2000, major penalty of reduction in pay to one lower stage in time scale was imposed upon the appellant along with order for recovery of proportionate loss caused to WASA due to misappropriation of vent shafts. The appeal preferred by appellant before the departmental authority was turned down and after service of notice dated 26.06.2000 for enhancement of punishment, the appellant was dismissed from service vide order dated 13.07.2000.

2. Learned counsel for the appellant has highlighted that the law laid down by this Court favours the holding of regular enquiry in a case where major penalty is likely to be imposed on an accused officer. In the present case, it is evident from the record that in the fact-finding enquiry, the appellant was not provided any opportunity to cross-examine the witnesses in the enquiry including the two co-accused persons.

3. Learned counsel for the respondents submits that appellant had an opportunity under Rule 6(3) of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 to object to the dispensation of regular enquiry mentioned in the show cause notice dated 22.12.1999. He did not do so and therefore, no prejudice has resulted to the appellant. He further submits that appellant has left the country and does not seem to be interested for employment within the department.

4. We have heard learned counsel for the parties at length and have perused the available record with their assistance.

5. The fact-finding enquiry does not accuse the appellant personally for committing misappropriation. The allegation against all three accused is of inefficiency and misconduct for failing to abide WASA Rules on storage of scrap stock. A heavy penalty has been imposed on the appellant without an opportunity to demonstrate that the responsibility for the alleged inefficiency was shared and he could not be singled out. The enhancement of penalty through notice dated 26.06.2000 attributes malice and concealment of pilferage to the appellant. These are altogether new charges regarding which a regular inquiry was necessary and could not be dispensed. The failure by the appellant to represent against the dispensation of enquiry ordered in case of joint liability cannot bestow legality/validity upon an administrative action that is deficient in meeting the legal standards of fairness and propriety in disciplinary proceedings. In the circumstances, the appellant was apparently punished for misappropriating property of WASA but without charging him with the same or confronting him with the adverse material sustaining the allegation. To our minds, it would be lawful, appropriate and fair that a regular enquiry is conducted into the extent of responsibility of the appellant for his alleged misconduct and if culpable, the lawful penalty that may be imposed on him.

6. On the contention of learned counsel for respondents that enquiry in the circumstances of the case would be futile because the appellant is not available in the country, suffice it to observe, the respondents shall make efforts to serve the appellant at the given address. If he attends the

proceedings, then respondents shall proceed with the regular enquiry, otherwise, the law shall take its course.

7. For what has been discussed above, this appeal is allowed. The impugned judgment/order(s) of the lower fora and also the major penalty of dismissal of service against the appellant are set aside. The case is remanded back to the department for holding regular enquiry against the appellant after giving him full opportunity of representation, in accordance with law. No order for payment of back benefits is made as the appellant is admittedly working abroad. In any event, his entitlement will be subjected to the outcome of the disciplinary proceedings held against him.

Case remanded.

MWA/M-90/SC

24

**2000 S C M R 1743 ,****[Supreme Court of Pakistan]****Present: Iftikhar Muhammad Chaudhary and Javed Iqbal, JJ****KHUDA-I-NAZAR---Petitioner****versus****THE CURATOR and another---Respondents**

Civil Petition No.4-Q of 1999, decided on 20th June, 2000.

(On appeal from the judgment dated 6-11-1998 passed by Balochistan Service Tribunal, in S.A. No.45 of 1997).

**Balochistan Civil Servants Act (IX of 1974)---**

---S. 11---Balochistan Civil Servants (Efficiency and Discipline) Rules, 1992, Rr. 3, 6 & 7---Dismissal from service---Framing of charge and its communication to civil servant alongwith statement of allegations was not mere a formality but was a mandatory requisite which was to be followed--Principles---Failure to follow the principles---Consequences.

The procedure as prescribed in the Rules was neither adhered to by the department which aspect of the matter escaped unnoticed and resulted in serious miscarriage of justice. The Service Tribunal had not examined the controversy with diligent application of mind and appeal of the civil servant was disposed of in a casual and slipshod manner.

Perusal of the order of Service Tribunal would reveal that the controversy had neither been dilated upon seriously nor the relevant rules were taken into consideration. The impugned judgment could not be equated with that of a speaking one. A thorough examination of the entire record would indicate that the Authority, the Authorised Officer and the Inquiry Officer had failed to abide by the relevant rules in letter and spirit. The procedure as prescribed under Rule 6 of the Rules pertaining to inquiry procedure had not been adhered to strictly. The Authorised Officer failed to frame the proper charge and communicate it to the civil servant alongwith statements of allegations explaining the charge and other relevant circumstances proposed to be taken into consideration. Framing of charge and its communication alongwith statement of allegations was not merely a formality but it was a mandatory prerequisite which was to be followed.

The provisions of the rules that the authority having power to impose the penalty shall frame a charge and communicate it to the accused together with a statement of the allegations on which it was based and of other circumstances which the authority proposes to take into consideration are mandatory. Non-compliance with such provisions would amount to transgression of an obligatory rule which lays down the minimum standards comprising reasonable opportunity to be afforded to a Government servant. The amount of prejudice which would be caused to the person concerned need not be taken into consideration for non-compliance with the rule itself would constitute denial of a reasonable opportunity which per se would vitiate the action taken. Where

the charges are vague and are not accompanied by a statement of allegations this causes prejudice to the official concerned because he is deprived of information as to the basis on which the charges have been framed against him and the other circumstances which were taken into consideration when passing orders.

The Inquiry Report was silent about the oral or documentary evidence which was considered to substantiate the allegations as levelled against the civil servant and moreso the provisions as enshrined in Rule 7 (6) of the Rules were also violated as the Inquiry Officer failed to give a specific findings and grounds for initiation of further action. Similarly, the Authorised Officer also failed to comply with the procedure as enumerated in Rule 7 (7) of the Rules. All the formalities had been completed in a haphazard manner which depicted somewhat indecent haste. Proper opportunity of hearing had not been afforded to the civil servant and maximum penalty of removal from service had been imposed without examining the gravity of the alleged offence. Entire record was silent and it could not be proved that damage caused to the antiquities was deliberate or intentional which could be due to negligence as the civil servant remained in service for more than a decade but no such allegation was ever levelled against him. The show-cause notice was vague, sketchy and ambiguous as was apparent from the show-cause notice that a mention regarding previous conduct and behaviour was also made, but no specific instance could be quoted. The competent Authority was entitled to take into consideration the record and the past service of a civil servant in order to determine the appropriate punishment, but before taking this into consideration the civil servant must be apprised of the record of his past service and of the fact that it would be taken into account to decide the question of punishment. But in the present case the civil servant was neither apprised of the record of his previous conduct nor was informed that it would also be considered for awarding punishment.

It could be inferred safely that the damage and the admitted manner in which it was caused to antiquities (Government property) may be due to negligence which would not be sufficient to prove the factum of being "inefficient or has ceased to be efficient" as provided in Rule 3 (a) of the Balochistan Civil Servants (Efficiency and Discipline) Rules, 1992.

PLD 1970 Lah. 811; AIR 1960 Mys. 159 and 1998 SCMR 69 ref.

Petitioner in person.

M. Ashraf Khan Tanoli, Advocate-General; Balochistan for Respondents.

Date of hearing: 20th June, 2000.

**ORDER**

**JAVED IQBAL, J.**---This Civil Petition for Leave to Appeal is preferred on behalf of Khuda-i-Nazar (petitioner) under Article 212 (3) of the Constitution of Islamic Republic of Pakistan, 1973 against judgment dated 28th of August, 1998 passed by learned Service Tribunal, whereby, the appeal filed by petitioner against order of his removal from service passed by Director, Archaeological Museum Balochistan, Quetta on 20-10-1996 has been kept intact.

Precisely stating the facts of the case are that petitioner was initially appointed as sweeper by Director Archaeological Museum, Quetta by means of order dated 12-7-1981 and subsequently he was appointed as Gunman vide order dated 1-8-1987 by the Secretary Information and Sports



Department, Government of Balochistan, Quetta. While performing his official duties, two pieces of antiquities recovered from Miri Kalat Turbat were damaged when the showcase wherein the same were placed was being cleaned by the petitioner. He was purportedly proceeded against under the Balochistan Civil Servants Act, 1974 (IX of 1974) and Balochistan Civil Servants (Efficiency and Discipline) Rules, 1992. The petitioner after observing formalities was removed from service vide order dated 20-7-1996. Being aggrieved petitioner submitted an appeal to the Secretary Information and Sports Department on 30-10-1996 which could not be decided and accordingly the Service Tribunal was approached by means of appeal dated 16-12-1996 which was dismissed being premature on 1-8-1997 and consequently, another appeal was filed by the petitioner which met the same fate and dismissed on 6-11-1998.

We have heard at length the petitioner who mainly argued that proper opportunity of hearing was never afforded and besides that the procedure as prescribed in the Balochistan Civil Servants (Efficiency and Discipline) Rules, 1992 was not complied with in letter and spirit which resulted in serious miscarriage of justice. It is also contended that due to personal grudge and bias of the Curator he was removed from service. It is pointed out that he was having more than 15 years' service at his credit with unblemished record and the antiquities were neither damaged deliberately nor the showcase was broken wilfully which aspect of the matter was never considered by his department nor learned Balochistan Service Tribunal and resultantly serious prejudice has been caused.

The learned Advocate-General appeared on Court notice alongwith Dr. F.D. Khan, Director, Archaeological Museum Government of Balochistan, Quetta. The learned Advocate-General found it difficult and rightly so to support the order passed by learned Service Tribunal. The Director, Archaeological Museum, however, attempted to point out that there was no personal grudge or bias against the petitioner and disciplinary action was initiated as due to his negligence two antiquities were damaged badly and which caused a substantial and irreparable loss to national heritage.

We have carefully examined the respective contentions as agitated by the petitioner and respondent in the light of the relevant provisions of law and record of the case. We have carefully perused the judgment dated 6-11-1998 passed by learned Service Tribunal Balochistan, -Quetta. Let we mention here at the outset that the procedure as prescribed in the Rules was neither adhered to by the department which aspect of the matter escaped unnoticed and resulted in serious miscarriage of justice. The learned Service A Tribunal has not examined the controversy with diligent application of mind and appeal of the petitioner was disposed of in a casual and slipshod manner vide judgment dated 6-11-1999 and operative portion whereof is reproduced hereinbelow for ready reference:--

"We have gone through the record of the case and have considered arguments pleaded from both sides, while removing the appellant from service procedure prescribed in the E&D Rules was properly adopted by issuance of a show-cause notice and giving a copy of inquiry report to the appellant for defence.

The appellant has confessed for breaking of two pieces of antiques which is an offence under the provisions of Antiquities Act, 1975 for which a punishment of 3 years' R.I. or with fine or both is there under the law."

A bare perusal of the above-referred extract would reveal that the controversy has neither been

dilated upon seriously nor the relevant rules were taken into consideration. The impugned judgment cannot be equated to that of a speaking one. A thorough examination of the entire record would indicate that the Authority, the Authorized Officer and the Inquiry Officer have failed to abide by the relevant rules in letter and spirit. It is worth mentioning that the procedure as prescribed under Rule 6 of the Rules pertaining to inquiry procedure has not been adhered to strictly. The Authorized Officer failed to frame the proper charge and communicate it to the petitioner alongwith statements of allegations explaining the charge and other relevant circumstances proposed to be taken into consideration. It will not be out of place to mention here that framing of 'charge and its communication alongwith statement of allegations is not mere a formality but it is a mandatory prerequisite which is to be followed. It is well-settled by now that:--

"The provisions of the rules that the authority having power to impose the penalty shall frame a charge and communicate it to the accused together with a statement of the allegations on which it based and of other circumstances which the authority proposes to take into consideration are mandatory. Non-compliance with such provisions would amount to transgression of on obligatory rule which lays down the minimum standards comprising reasonable opportunity to be afforded to a Government servant. The amount of prejudice which would be caused to the person concerned need not' be taken into consideration for non-compliance with the rule itself would constitute denial of a reasonable opportunity which per se would vitiate the action taken. Where the charges are vague and are not accompanied by a statement of allegations this causes prejudice to the official concerned because he is deprived of information as to the basis on which the charges have been framed against him and the other circumstances which were taken into consideration when passing orders.". (PLD 1970 Lahore 811).

Besides that what has been stated hereinabove, the Inquiry Report is silent about the oral or documentary evidence which was considered to substantiate the. allegations as levelled against the petitioner and moreso the provisions as enshrined in Rule 7 (6) of the Rules were also violated as the Inquiry Officer failed to give a specific findings and grounds for initiation of further action. Similarly, the Authorized Officer also failed to comply with the procedure as enumerated in Rule 7 (7) of the Rules. All the formalities have been completed in a haphazard manner which depicts somewhat indecent haste. We are of the considered opinion that proper opportunity of hearing has not been afforded to the petitioner and maximum penalty of removal of service has been imposed without examining the gravity of the alleged offence. It is to be noted that entire record is silent and it could not be proved that damage caused to the antiquities was deliberate or intentional which could be due to negligence as the petitioner remained in service for more than a decade but no such allegation was ever levelled against him. We have also observed that the show-cause notice is vague, sketchy and ambiguous as is apparent from the show-cause notice that a mention regarding previous conduct and behaviour was also made, but no specific instance could be quoted. We are conscious of the fact that "the competent Authority is entitled to take into consideration the record and the past service of a civil servant in order to determine the appropriate punishment, but before taking this into consideration the civil servant must be apprised of the record of his past service and of the fact that it would be taken into account to decide the question of punishment (AIR 1960 Mysore page 159) But in the case in hand the petitioner was neither apprised of the record of his previous conduct nor' was informed that it would also be considered for awarding punishment. It is worth mentioning that no action whatsoever has been initiated under section 19 of the Antiquities Act, 1975 pertaining to Prohibition of Destruction, Damage etc. of protected Antiquities.

In the light of what has been discussed hereinabove, it can be inferred safely that the damage and the admitted manner in which it was caused to antiquities may be due to negligence which would not be sufficient E to prove the factum of being "inefficient or has ceased to be efficient" as provided in Rule 3(a) of the Balochistan Civil Servants (Efficiency and Discipline) Rules, 1992. In this regard we are fortified by the dictum laid down in 1998 SCMR 69.

In view of above discussion, the petition is converted into appeal and is consequently accepted and order dated 20-10-1996 passed by Director Archaeological Museum, Quetta and order dated 6-11-1998 passed by learned Service Tribunal are hereby set aside with the direction that the petitioner be reinstated as Gunman with effect from 21-10-1996 with all back benefits.

M.B.A./K-23/S            Appeal accepted.

2008 S C M R 1406

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar, C.J. , Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ

MUHAMMAD ALAMZEB KHAN---Appellant

Versus

REGISTRAR, PESHAWAR HIGH COURT, PESHAWAR and another---Respondents

Civil Appeal No.41 of 2008, decided on 25th June, 2008.

(On appeal from the judgment, dated 8-5-2006 passed by the Peshawar High Court, Peshawar in Service Appeal No.3 of 1999).

North-West Frontier Province Subordinate Judiciary Service Tribunal Act (VIII of 1991)---

---S. 5---North-West Frontier Province (Efficiency and Discipline) Rules, 1973, Rr.3 & 4---North-West Frontier Province Government Servants (Conduct) Rules, 1987, R.4-A(b)---Dismissal from service, of a Judicial Officer, having more than 12 years of service to his credit, on the charges of favouritism, abuse of process of the court and misuse of powers, as a result of which, the State was deprived of huge amount and its profit---Act of the officer was found prejudicial to the good order of service and unbecoming of an officer---Allegations being serious in nature, were required to be proved through direct positive evidence---Record showed that except the bare allegations, there was nothing incriminating on the file to connect the officer with the guilt---Nothing was available on record to show that the officer had received any illegal gratification/consideration for passing orders in question---Inquiry report also revealed that no illegal gratification was taken by the said officer---First two inquiries conducted against the officer, did not show any involvement---Charges of misappropriation and embezzlement could neither be proved by the complainant nor any finding to that effect was on record even on the third inquiry---Loss, if any, to the government was not due to the fault of the officer but by the act of some other officials of the different department who had not been taken to task---Wrong done, if any, however, was undone and as such there remained no grievance for action against the officer and there was no reason to proceed against him---Officer was not allowed any opportunity to cross-examine the witnesses produced against him and as such, he had been condemned unheard and was refused to produce defence witnesses thus, prejudicing his interest---Held, officer had been condemned unheard and major penalty of removal from service had been imposed upon him, contrary to the material on record and without adopting the required and mandatory procedure, resulting in manifest injustice---Order of dismissal from service could not be sustained in circumstances---Supreme Court allowed appeal of the officer, set aside the impugned judgment of the Subordinate Judiciary Service Tribunal and ordered reinstatement of the officer in service.

Deputy Director, Food, Bahawalpur and others v. Akhtar Ali and others 1998 SCMR 597; Inspector-General of Police, Police Headquarters Office, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 207; Muhammad Idris Khan v. Secretary/Chairman, Ministry of Railways, Islamabad and 5 others 2006 SCMR 104; Salman Faruqui v. Javed Burki, Authorized Officer, Secretary, Ministry of

Water and Power Government of Pakistan, Islamabad and another 2007 SCMR 693 and Chairman, Syndicate University of Peshawar and another v. Dil Nawaz Khan 2007 SCMR 703 ref:

Syed Iftikhar Hussain Gilani, Senior Advocate Supreme Court and Shoaib Shaheen, Advocate Supreme Court for Appellant.

Sh. Riazul Haq, Advocate Supreme Court and Qaiser Rasheed, Additional Advocate-General, N.-W.F.P. for Respondents.

Raja Abdul Rehman, D.A.-G. on Court Notice.

Date of hearing: 4th June, 2008.

## JUDGMENT

**IJAZ-UL-HASSAN KHAN, J.**--- This appeal, with leave of the Court, arises out of the judgment dated 8-5-2006 passed by the N.-W.F.P. Subordinate Judiciary Service Tribunal High Court Peshawar, whereby appeal preferred by appellant Muhammad Alamzeb Khan, was dismissed and order of his removal from service was maintained.

2. Facts of the case have been mentioned elaborately in the impugned judgment hence reproduction whereof would be of no use. Suffice is to state that appellant was proceeded against for malpractice, misconduct, misappropriation and embezzlement. On receipt of complaint, the Chief Justice, Peshawar High Court as "Authority" under the N.-W.F.P. Civil Servants (Efficiency and Discipline) Rules, 1973, nominated Mr. Justice Nasir-ul-Mulk, (as he then was) as "Authorized Officer" to probe into the matter, in pursuance whereof, appellant was served with the charge-sheet containing the following allegations:---

"(i) That while posted as Senior Civil Judge, Kohat, you on 21-4-1991 by an order in Civil Suit No.117/1 of 1991, titled Wazir Muhammad v. Government of Pakistan and others ordered the representative of the defendants (L.A.C.) to assess the share of the plaintiff and present a cheque for the share so assessed to the Court and after a cheque for Rs.41,88,905 was deposited, you on 24-4-1991 released the cheque to the plaintiff without any legal justification whatsoever as neither any award was drawn nor any decree granted in favour of the plaintiff.

(ii) That as the cheque was paid to the plaintiff without any award or decree your afore-stated orders were patently illegal and irregular and passed with ulterior motives, causing loss of Rs.41,88,905 to the Federal Exchequer.

You, therefore, appear to have misconducted yourself under Rule 3 of the N.-W.F.P. Government Servants (Efficiency and Discipline) Rules, 1973 and have rendered yourself liable to one or more penalties specified in Rule 4 of the said Rules.

You are, therefore, required to put in your written defence, within fourteen days of the receipt of this charge-sheet as to why disciplinary action, as aforesaid, should not be taken against you and also state whether you want to be heard in person.

If no written reply is received from you within the period specified above, it shall be presumed that you have no defence to offer and ex parte action shall be taken against you without any further correspondence."

3. A perusal of the record would reveal that the Authorized Officer appointed Syed Musaddiq Hussain Gillani, the then District and Sessions Judge, Bannu, as Inquiry Officer under the N.-W.F.P. Government Servants (Efficiency and Discipline) Rules, 1973. After going through the record, the Inquiry Officer found the appellant guilty of "misconduct" in terms of Rule 4-A(b) of the N.-W.F.P. Government Servants (Conduct) Rules, 1987 and recommended his removal from service. The Chief Justice vide order, dated 21-12-1998 removed the appellant from service. The appellant made a representation but the same was rejected. Feeling aggrieved, the appellant filed appeal before the Tribunal, which did not succeed. Hence the instant appeal.

4. We have heard at length, Syed Iftikhar Hussain Gilani, Advocate, for the appellant, Sh. Riazul Haq, Advocate, for respondent No.1 and Mr. Qaiser Rasheed, learned Additional Advocate-General, N.-W.F.P., for respondent No.2, on Court notice. We have also perused the record minutely with their assistance.

5. The learned counsel for the appellant at the very outset of his arguments submitted that he will not press the objection, regarding jurisdiction of the Tribunal and confine his arguments to the merits of the case. The learned counsel bitterly criticized the impugned judgment and contended with vehemence that nothing incriminating was available on record to substantiate the allegations of malpractice, misconduct, misappropriation and embezzlement levelled against the appellant; that appellant was exonerated in the first inquiry, conducted by Mr. Muhammad Jehangir Khan, the then District and Sessions Judge, Kohat, so initiation of 2nd and 3rd inquiry was unjustified and amounts to double jeopardy; that the wrong done, if any, was undone, as such, there remained no grievance for action against appellant and that there was no reason to proceed against the appellant under N.-W.F.P. Civil Servants (Efficiency and Discipline) Rules, 1973, on account of judicial order passed by him justly, honestly, fairly and without any ulterior motives. Concluding the arguments, the learned counsel asserted that appellant was afforded no opportunity to cross-examine the prosecution witnesses and refused to produce defence witnesses, and even otherwise, complaint against the appellant after about 3 years and 3 months of payment to the plaintiff was made without any basis and legal justification. To substantiate the contentions, reliance was placed on Deputy Director, Food, Bahawalpur and others v. Akhtar Ali and others 1998 SCMR 597, Inspector-General of Police, Police Headquarters Office, Karachi and 2 others v. Shafqat Mehmood 2003 SCMR 207, Muhammad Idris Khan v. Secretary/Chairman, Ministry of Railways, Islamabad and 5 others 2006 SCMR 104, Salman Faruqui v. Javed Burki, Authorized Officer, Secretary, Ministry of Water and Power, Government of Pakistan, Islamabad and another 2007 SCMR 693 and Chairman, Syndicate University of Peshawar and another v. Dil Nawaz Khan 2007 SCMR 703.

6. The learned counsel for respondent No.1, while controverting the contentions raised by learned counsel for the appellant, contended that the conduct of the appellant is clearly indicative of the fact that appellant had received illegal gratification and the Authorized Officer has rightly held that circumstances lead to conclusion that the appellant could not have ordered payment to the plaintiff but for ulterior motives and reasons other than judicial. The learned Additional Advocate-General, N.-W.F.P. for respondent No.2, adopted the arguments of learned counsel for respondent No.1 and supported the impugned judgment, maintaining that there is no infirmity or illegality in the impugned judgment, same is based on valid and sound reasons and is entirely in consonance with the law laid down by this Court. Neither, there is misreading, non-reading of material evidence, nor

misconstruction of facts and law, justifying interference of this Court.

7. The appellant, a senior Judicial Officer having more than 12 years of service to his credit, is accused of having indulged in favouritism, abuse of process of the Court and misuse of powers, as a result of which, the State was deprived by huge amount and its profit. The act was found prejudicial to the good order of service and unbecoming of an officer, resulting in the removal of the appellant from service. The allegations are serious in nature and were required to be proved through direct positive evidence. A perusal of the record would indicate that except the bare allegations, there is nothing incriminating on the file to connect the appellant with the guilt. The record does not demonstrate that the appellant has received any illegal gratification/consideration for passing orders on 21-4-1991 and 24-4-1991. In the inquiry report, it has also been observed that "there is no allegation nor any evidence that the accused had accepted illegal gratification for ordering payment to the plaintiff". It may be recalled that in the first two inquiries conducted against the appellant, no involvement was found. Even in the 3rd inquiry the charges of misappropriation and embezzlement could neither be proved by the complainant nor any finding to this effect given by the two Inquiry Officers. Again the loss, if any to the Government was not due to the fault of the appellant but by the act of the officials of Land Acquisition Collector/D.C., Kohat. They appear to have not been taken to task. Further, the wrong done, if any, was undone and as such there remained no grievance for action against appellant and there was no reason to proceed against him. We also find ourselves in agreement with learned appellant's counsel that appellant was allowed no opportunity to cross-examine the witnesses produced against him and as such, he has been condemned unheard and refused to produce defence witnesses, prejudicing his interest. It may not be out of place to mention here that orders, dated 21-4-1991 and 24-4-1991 regarding payment to the plaintiff have not been appealed against and same have attained finality. When attention of learned counsel for respondents was drawn to this aspect of the matter, they had no plausible reply to make.

8. Having considered the matter from all angles, in the light of the material on the file, we are of the opinion that appellant has been condemned unheard and major penalty of removal from service has been imposed upon him, contrary to the material on record and without adopting the required and mandatory procedure, resulting in manifest injustice. In the circumstances, impugned judgment cannot be allowed to remain intact.

9. Pursuant to above, this appeal is accepted, impugned judgment is set aside and appellant is reinstated in service. However, we make no order as to costs.

10. These are the detailed reasons of our short order dated 4-6-2008.

M.B.A./M-52/SC

Appeal allowed.





Nemo for Respondent.

Date of hearing: 27th June, 2002.

### JUDGMENT

**SYED DEEDAR HUSSAIN SHAH, J.** ---Petitioners seek leave to appeal against the judgment passed by Sindh Service Tribunal, Karachi, (hereinafter referred to as the Tribunal) in Appeal No.284 of 1999, dated 31-1-2002, whereby appeal filed by the respondent was accepted.

2. Brief facts of the case are that respondent had applied for appointment for the post of Head Constable in training with Sindh Reserve Police through his application dated 3-7-1985 and was selected/appointed by the Competent Authority as Police Head Constable on merits. After selection, the respondent had immediately undergone recruittee as well as lower course at PTS, Baldia, in the year 1985, which he successfully passed, thereafter, had also undergone Intermediate Course at PITS, Shandadpur in the year 1989 and successfully completed the same in the year 1992. The respondent was found fit for promotion on the basis of seniority-cum-fitness for the post of Assistant Sub-Inspector of Police and was promoted as such. In the year 1997, the respondent was promoted on merits as Sub-Inspector of Police, SRP, Karachi. On 28-4-1997, one Muhammad Zaheer son of Haji Muhammad Bashir Khokhar resident of Gujranwala had lodged F.I.R. No.99/97 at Police Station Saddar, District South, Karachi, for an offence under section 17(3)EHO, 392/34, P.P.C. against police mobile bearing No.SP-4558 for unlawfully snatching 1100 American Dollars, wherein the name of the Assistant Sub-Inspector/respondent allegedly ascertained as Ch. Shafqat was mentioned and on the basis of that F.I.R., matter was reported against the respondent by the Police Station Saddar, Karachi, vide report No.1191-93 dated 22-5-1997. Thereafter, respondent received Show Cause Notice bearing No.SRP. Gulshan Base-II, SSC/5677 dated 23-5-1997 on the basis of above-referred F.I.R., calling upon him to submit his reply within 7 days and respondent through his statement dated 2-5-1997, vehemently, denied the charges of Show-Cause Notice and also requested for personal hearing for further explaining his position. On 7-6-1997, final Show-Cause Notice bearing No.SRP, Gulshan Base-II, SSC/6900 on the same alleged charges of the earlier show-cause notice was issued to the respondent. The department also appointed Fact-Finding Inquiry Committee (hereinafter referred to as the Committee for fixing of actual responsibilities on the real culprits through order dated 13-5-1997, which was investigated by Azhar Rab, DSP/Chairman of Complaint Committee SRP, Unit-11, Gulshan Base-11, Karachi. The respondent objected to the above investigation and he was even not allowed to participate in the investigation. Thereafter, investigation was transferred to Haq Nawaz Baloch, DSP, Headquarter, SRP, Unit-II Gulshan Base-II, Karachi. During the proceedings of the Committee, Muhammad Zaheer-complainant of F.I.R. No.99 of 1997 filed his affidavit dated 14-5-1997, by mentioning that complainant had not identified the respondent. Subsequently, the respondent alongwith other co accused were charge-sheeted to face the trial for the crime mentioned above in the Court of Additional Sessions Judge, who conducted the trial, and after conclusion of the trial, through judgment dated 20-8-1998, acquitted the respondent and other co-accused observing that charges against them were not proved. The respondent was dismissed from service by order dated 21-8-1997, on the allegation of his involvement in criminal case under Rule 9(b) of the Sindh Police (E & D) Rules, 1988.

3. The respondent preferred departmental appeal against the said dismissal order, mentioning full facts, and circumstances, requesting for his exoneration from the above charges but his departmental

appeal was rejected through order dated 1-1-1999. Lastly, finding no other way out, respondent approached the Tribunal through appeal under section 4 of the Service Tribunals Act, 1973, which was allowed. Hence, this petition.

4. We have heard the learned Additional Advocate-General for the petitioners, who, inter alia, contended that Tribunal did not consider the case in its proper perspective and that respondent was prosecuted for a criminal offence though he was acquitted by the trial Court but the judgment of the Tribunal is not sustainable.

5. We have considered the arguments of the learned Law Officer and have carefully examined the record. The trial Court after conclusion of the trial, acquitted the respondent of the charges, as the same were not proved against him.

6. The respondent was dismissed from service on the basis of investigation of the case, whereas judgment of the trial Court, whereby the respondent was acquitted, was not considered by the department. It is borne out from the record that the regular enquiry, as required under Sindh Police (E & D) Rules, 1988, was not conducted, whereas the Committee was constituted in which respondent was not even allowed to participate. The Tribunal, after careful consideration and following the rule laid down by this Court in the case of Rashid Mehmood v. Additional Inspector-General of Police and 2 others (2002 SCMR 57), wherein, it was held that departmental authority failed to conduct any regular inquiry against the respondent, P therefore, there was no ground to hold the respondent guilty of misconduct, and reinstated the respondent. By now, it is settled law that a proper inquiry is to be conducted, wherein Government servant is to be provided an opportunity of defence and personal hearing, and if charges in regular inquiry are proved then action against the public servant is to be taken.

7. The dismissal order was passed on the recommendations of Fact Finding Inquiry, Committee, which investigated the case, in which respondent was not allowed to take part. The respondent was acquitted, by the Court of law meaning thereby no material was available with the petitioners to take action and impose major penalty on the respondent.

8. The impugned judgment is based on valid and sound reasons and is entirely in consonance with the law laid down by this Court. Neither, there is misreading, nor non-reading of material evidence, nor misconstruction of facts and law. Moreover, the question of general public importance as contemplated under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973, is not involved in this Case.

9. For the facts, circumstances and reasons stated hereinabove, the petition is without merit and substance, therefore, the same is hereby dismissed and leave declined.

Q.M.H./1-63/S

**Petition dismissed.**

**IN THE SUPREME COURT OF PAKISTAN,**  
**(Appellate Jurisdiction)**

**PRESENT:**

Mr. Justice Anwar Zaheer Jamali  
Mr. Justice Dost Muhammad Khan

**Civil Petition No.1472 of 2013,**

(On appeal from the judgment dated  
14.05.2013 passed by the Federal Service  
Tribunal, Islamabad in Appeal  
No.269(P)CS/2012)

The Commandant Khyber Pakhtunkhwa Constabulary FC Head,  
Quarters, Peshawar and another

... Petitioners

**versus**

Amir Ullah Islam and another

... Respondents

For the petitioners: Ms. Shireen Imran, ASC

For respondent No.1: Mr. Ijaz Anwar, ASC  
Mr. M.S.Khattak, AOR

Date of hearing: 03.03.2014

**ORDER**

**Dost Muhammad Khan, J.**— This CPLA is barred by 4 days. CMA No.5578/2013 has been filed, seeking condonation of delay on the ground that the impugned order is *void ab initio*, without jurisdiction and no limitation runs against the void order and because, the delay occurred in filing of the petition was due to misunderstanding and mis-calculation of time by the petitioner department.

2. We are in no manner convinced from the ground taken in the CMA and the submissions made at the bar by the learned ASC for the petitioners. On this ground alone, the main petition is

liable to be dismissed, hence, the delay cannot be condoned and the CMA is dismissed.

3. There is another CMA No.5577/2013, seeking suspension of the operation of impugned judgment dated 14.05.2013 given in W.P.No.269(P)CS/2012, passed by the Federal Service Tribunal (FST), Islamabad. However, as we are deciding the main petition on merits, therefore, this CMA having become infructuous, is disposed of.

4. Precisely, stating facts of the case are that Amir Ullah Islam, respondent No.1 was working as Naib Subidar in Platoon No.276; Frontier Constabulary, was stationed at Khyber Pakhtunkhaw. During operation in F.R. Peshawar, he along with many others; allegedly, refused to launch strike against the militants, thus, the main charge against him and his co-employees, was that they had not only disregarded the command of the superior officer but also had shown cowardice.

5. Departmental inquiry was conducted but during that no opportunity of hearing was provided to him like his colleagues and at the conclusion he was dismissed from service.

6. After exhausting other remedies, he filed Appeal No.296(P)CS/2010 before the FST, Islamabad, which was allowed vide judgment dated 06.09.2010 directing the respondent (therein) to hold de-novo proceedings against the appellant(s) in accordance with the law and the rules, and also to reinstate him into service during the period of inquiry.

7. It was further directed in the judgment by the FST that the inquiry be completed, preferably, within a period of four months and the question of payment of back benefits would depend upon the outcome of the fresh proceedings.

8. In the second round, same and similar treatment was given to respondent No.1 and not a little respect was shown to the judgment of the FST, as it was not complied with in letter and spirit, rather the inquiry was conducted in the old fashion and according to the whims and wishes of the superiors of respondent and that of the inquiry officer, as at that stage too, respondent No.1 was condemned unheard, so much so that he was not informed about the result of inquiry, thus, he again approached the FST, Islamabad, which passed the judgment dated 14.05.2013, impugned herein, and while relying upon the ratio decidendi, laid down by this Court in the case of Pakistan International Airlines Corporations v. Shaista Naheed (2004 SCMR 316) set aside the dismissal order of respondent, declaring it unlawful and illegal. It was further directed that the earlier judgment be given effect from 06.09.2010 in its letter and spirit by issuing clear order of reinstatement of respondent No.1 into service. However, the petitioners were not restrained from conducting fresh inquiry.

9. The learned ASC for the petitioners vehemently argued that the appeal filed before the FST was barred by time, however, this contention, in our view, has no legal force because the second inquiry conducted, was in disregard of the earlier judgment of the FST and because, the result of the same was not communicated to respondent No.1 as required under the rules. Moreover, the

co-employees of respondent No.1 have already been reinstated into service as was stated at the bar.

10. Learned counsel for the replying respondent stated at the bar that the delay in filing the appeal before the FST was for the reason stated above, besides the fact that during that period the FST was not vested with the powers and jurisdiction to implement its judgments/orders till the time this Court directed the government to amend the law on the subject investing the FST with powers to implement its judgments and orders by adopting coercive measures.

11. The plea of the learned ASC for the replying respondent is based on sound reasons, to which no exception could be taken, more so, the petitioner-side has committed wrong to the respondent twice in two successive inquiries and also disregarded the binding judgment of the FST in this regard with all convenience.

12. Accordingly, for reasons stated above, the petition being barred by time and on merits too, does not deserve any indulgence by this Court, hence the same is dismissed and leave to appeal declined.

Judge

Judge

Islamabad, the  
3<sup>rd</sup> March, 2014  
Nisar/\*

**Not Approved For Reporting**



2016 P.L.C. (C.S.) 296

[Lahore High Court]

Before Muhammad Qasim Khan, J

MUHAMMAD RIAZ

Versus

MEDICAL SUPERINTENDENT, SERVICE HOSPITAL, LAHORE and 2 others

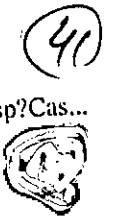
W.P. No.461 of 2014, decided on 12th March, 2015.

(a) Punjab Employees Efficiency, Discipline and Accountability Act (XII of 2006)---

---Ss. 5 & 7---Constitution of Pakistan, Arts. 199 & 10-A---Constitutional petition---  
 Maintainability---Contract employee---Misconduct and charge of inefficiency---Effect---Show cause  
 notice, issuance of---Termination of service---Regular inquiry, dispensation of---Principles---  
 Discretion, exercise of---Natural justice, principles of---Reasonable opportunity of showing  
 cause---Right of fair trial---Scope---Services of petitioner, a contract employee were terminated by  
 issuing show cause notice by dispensing with regular inquiry---Validity---Petitioner was a contract  
 employee---Competent authority had right to dispense with regular inquiry---Whenever any  
 discretion was given to an authority it had to be exercised not arbitrarily, but honestly, justly and  
 fairly in consonance with the spirit of law after application of judicious mind and for substantial  
 reasons---Nature of allegations against the employee had to be considered for exercise of such  
 discretion---When allegations could be decided with reference to admitted record or the authority  
 had formed opinion that un-rebutted evidence to prove the charge against the accused/employee was  
 available on record, regular inquiry might be dispensed with, otherwise ends of justice would demand  
 an inquiry through an inquiry officer or inquiry committee---Such discretion had to be made in the  
 nature of judicial decision---Discretion had to be exercised with due care and caution keeping in  
 mind the principles of natural justice, fair trial and transparency---Authority should record reasons  
 with regard to dispensing with regular inquiry---Where recording of evidence was necessary to  
 establish charge then departure from regular inquiry would amount to condemn a person unheard---  
 Serving of show cause notice and reply thereto in denial of allegations would not amount to affording  
 the employee reasonable opportunity of showing cause---Requirement of reasonable opportunity of  
 showing cause could only be satisfied if particular of charge or charges, substance of evidence in  
 support of charges and specific punishment which would be called for after the charge or charges  
 were established were communicated to the civil servant who was given reasonable time and  
 opportunity to show use---Specific allegations had been leveled against the employee which included  
 inefficiency and misconduct---Petitioner had denied both the charges and authority was bound to  
 order for a regular inquiry---Departure from normal course did not reflect bonafide of Authority  
 employee---Right of fair trial had been associated with the fundamental right of access to justice  
 which should be read in every statute even if not expressly provided for, unless specifically  
 excluded---Order terminating service of employee contained stigmatic allegations, therefore,  
 constitutional petition was maintainable---Order of removal from service passed against the petitioner  
 did not stand the test of judicial scrutiny, as same was against the spirit of law---Impugned order was  
 set aside and petitioner was reinstated in service---Period between removal till reinstatement should  
 be considered as leave without pay---Constitutional petition was accepted in circumstances.

Rana Asif Nadeem v. Executive District Officer, Education, District Nankana and 2 others

Judgment on "Regular Inquiry"



208 PLC (CS) 715; Rai Zaid Ahmad Kharal v. Water and Power Development Authority, through Chairman WAPDA and another 2008 PLC (CS) 1005 and 1997 SCMR 1543 ref.

2003 SCMR 1110 and PLD 2012 SC 553 rel.

**(b) Discretion---**

-----Exercise of---Principle---Whenever any discretion was given to an Authority it had to be exercised not arbitrarily, but honestly, justly and fairly in consonance with the spirit of law after application of judicious mind and for substantial reasons.

**(c) Words and phrases---**

---Right of fair trial---Meaning---Fair trial would mean right to proper hearing by an unbiased forum.

**(d) Words and phrases---**

---"Decision"---Meaning.

Black's Law Dictionary Eighth Edition rel.

Muhammad Iqbal Mohal for Petitioner.

Imtiaz Ahmad Kaifi, Addl. A.G.

**ORDER**

**MUHAMMAD QASIM KHAN, J.**--- Briefly the facts of the case are that petitioner was appointed as Driver (BS-4) on contract basis for a period of one year, which could be extended subject to performance and conduct to be evaluated by the competent authority. Subsequently a Silk Cause Notice under the charge of inefficiency as well as misconduct was issued and by dispensing with regular inquiry or affording him opportunity of hearing to him, the order dated 03.02.2008 was passed whereby his services were terminated.

2. Since the petitioner was admittedly a contract employee and furthermore the order terminating his service on the face of it contains stigmatic allegations, therefore, the instant writ petition is held to be entertain-able by this Court. Reliance in this respect is placed on the case "Rana Asif Nadeem versus Executive District Officer, Education, District Nankana and 2 others" (208 PLC (CS) 715) and "Rai Zaid Ahmad Kharal versus Water and Power Development Authority, through Chairman WAPDA and another" (2008 PLC (CS) 1005). In the later judgment, this Court while assuming jurisdiction in clear terms held that "If the termination order would convey a message of any stigma, the employee could not be ousted from service without resorting to the procedure of Efficiency and Disciplinary Rules."

3. The learned counsel for the petitioner has argued that when the petitioner had specifically denied the allegations levelled against him in the Show. Cause Notice, a regular inquiry into the matter was essential, wherein, the petitioner had to be supplied copies of evidence against him, he should have right to produce his defence and during inquiry if any witness appear against him, he had a right to cross-examine such witness. Reliance has been placed on the case reported in 1997 SCMR 1543. Adds that fair trial under Article 10(a) of the Constitution of Islamic Republic of Pakistan, 1973 is inalienable right of the person against whom any allegation is levelled, but in this case neither transparent procedure nor fair trial has been provided to the petitioner, therefore, impugned removal from service order is to be struck down.



4. On the other hand, learned Additional Advocate General opposed this petition on all corners by contending that charges were proved against the petitioner, therefore, the order removing him from service is fully justified.

5. I have heard the arguments of learned counsel for the parties and perused the entire available record with the assistance.

6. Without going through the factual aspect or controversy, the fact of the matter is that specific allegations of inefficiency and misconduct had been levelled against the petitioner. It is admitted position that on same charges a Show Cause Notice was issued to the petitioner, he submitted reply thereof but the authority without having recourse to regular inquiry, dispensed with inquiry and proceeded to pass the impugned order of removal from service.

7. To be precise enough, this slipshod act of the respondent/authority dispensing with regular inquiry is the pivotal point in this case. For facility of reference, Section 7 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (hereinafter to be called as PEEDA ACT), are attached with judgment at "FLAG-A".

8. By bare perusal of Section 7 of PEEDA Act, it is apparent that authority has been vested with a right to dispense with regular inquiry against an employee, but one must not lose sight of the fact that whenever any discretion is given to an authority, it has to be exercised not arbitrarily but honestly, justly, and fairly right in consonance with the spirit of law, after application of judicious mind and for substantial reasons. For this purpose, the nature of allegations against the accused has to be considered. In a case when it is clear to the authority that the allegations could be decided with reference to admitted record or he forms an opinion that un-rebuttable evidence on the touchstone of QANUN-E-SHAHADAT, to prove the charge against the accused/employee is available on the record, the procedure for regular inquiry (Section 5 of the PEEDA Act), may be dispensed with, otherwise, the ends justice demand an inquiry through an Inquiry Officer or Inquiry Committee. Although, to dispense with regular inquiry is discretion left for the authority to be gauged, yet, the word "decision" has been used in the said section, and the definition of word "decision" has been given in BLACK'S Law Dictionary Eighth Edition (Bryan A. Garner), as under:-

"A judicial or agency determination after consideration of the facts and the law; esp., a ruling, order, or judgment pronounced by a court when considering or disposing of a case. "

Thus, as a matter of fact this discretion has been made in the nature of judicial decision, which has to be exercised with due care and caution keeping in mind the principles of natural justice, fair trial and transparency, so that no prejudice should be caused to the accused/employee. There can be a situation where real fate of allegations can only be adjudged by a regular inquiry and not by mere textual proof. The legislatures further emphasized that if the authority after considering the nature of charge or charges and the material before him, concludes that regular inquiry is to be dispensed with, then the authority shall record reasons in that respect. The sole object behind careful drafting of said provision is indicative of the fact that legislature intended that the discretion which was being left up to the authority, must be exercised judiciously and not arbitrarily. It is for the above reasons that the Hon'ble Supreme Court of Pakistan in the case reported in 2003 SCMR 1110 held that requirement of regular inquiry could be dispensed with in exceptional circumstances. Where recording of evidence was necessary to establish the charges, then departure from requirement of regular inquiry under the Rules would amount to condemn a person unheard.

9. In this case the defence put by the respondent authorities is that proper and lawful procedure was adopted by dispensing with regular inquiry, a Show Cause Notice was issued to the petitioner, he submitted reply to the same and thereafter, the authority being convinced that charges had worth, the

removal from service order was passed, but I am afraid, serving of Show Cause Notice and reply thereto in denial of allegations on mere questions and answers do not amount to affording the accused reasonable opportunity of showing cause as required under PEEDA Act. The requirement of reasonable opportunity of showing cause against proposed action can only be satisfied if particulars of charges or charges, substance of evidence in support of the charges and specific punishment which would be called for after the charge or charges are established are communicated to the civil servant who is given reasonable time and opportunity to show cause. As detailed above, in this case specific allegations had been levelled against the petitioner which included inefficiency and misconduct. When the petitioner in response to Show Cause Notice, had specifically denied both the charges against him and furthermore, considering the nature of charges, all those allegations required evidence under each head, then it had become incumbent upon the authority to have ordered for a regular inquiry and in the above given situation departure from normal course does not reflect bonafides on the part of the authority, rather shows mechanical application of mind on his part, consequently the petitioner appears to be justified in pleading that the authority was in fact biased towards him.

10. It is by now well settled that right to a fair trial means right to a proper hearing by an unbiased competent forum. Right to a fair trial has been associated with the fundamental right of access to justice, which should be read in every statute even if not expressly provided for unless specifically excluded. While incorporating Article 10A in the Constitution and making the right, to a fair trial a fundamental right, the legislature did not define or describe the requisites of a fair trial, which showed that perhaps the intention was to give it the same meaning as is broadly universally recognized and embedded in jurisprudence in Pakistan. While holding so, guideline has been derived from the case reported in PLD 2012 SC 553.

11. For what has been discussed above, the impugned removal from service order passed against the petitioner does not stand the test of judicial scrutiny, as it runs against the spirit of law. Consequently, this petition is allowed, the impugned order dated 03.02.2008 is set-aside and petitioner is reinstated in service. The period between his removal till reinstatement shall be considered as leave without pay.

ZC/M-113/L

Petition allowed.



2011.PLC.(C.S.) 7

[Peshawar High Court]

Before: Ejaz Afzal Khan, C. J. and Mazhar Alam Khan Miankhel, J

ZIAULLAH KHAN

Versus

GOVERNMENT OF PAKISTAN through Secretary Law, Justice and Human Rights,  
Islamabad and 3 others

Writ Petition No.2509 of 2009 and C.M. No.273 of 2010, decided on 27th August, 2010.

(a) National Accountability Ordinance (XVIII of 1999)---

---S. 28---Constitution of Pakistan, Art.199---Constitutional petition---Civil service--- Appointment and regularization of service---Petitioner initially worked with the National Accountability Bureau as private investigator for 6 years; and then he worked for 2 years as a contract employee in BPS-18---Services of petitioner once again were hired as such for another period of six months---Petitioner, being a qualified, skilful and experienced person sought regularization of his service---Petitioner had further asserted that he deserved alike treatment as was meted out to one of his colleagues who being contract employee in BPS-18, was inducted in regular service of the department in BPS-19 on the directive/ratification issued by the Prime Minister---Petitioner had also submitted that his name was not considered by the Chairman for the regular post of BPS-18 advertised by the department, despite strong recommendations of Director-General, while still forty sanctioned posts of BPS-18 were lying vacant for the last so many years---When a similarly placed person i.e. person employed on contract basis; and that too having no basic qualification for initial recruitment, could be inducted as a regular employee; qualified and experienced person like petitioner, who had worked in the department, having many commendations at his credit, could also be inducted as a regular employee, when he had a sufficient experience with the department at his credit---Petitioner being qualified, eligible and experienced person, also deserved the alike treatment of regularization of his service---Authorities were directed to consider the name of the petitioner for regularization of his service.

(b) Constitution of Pakistan---

---Art. 25--Equality before law---Principles---Equality before law, was the basic concept of Islam and that concept had been borrowed by English, American and European

*Attested*  
*Sin*



Constitutions from Islam---Two similarly placed persons could not be treated differently--- Principle of equality before law and prohibition of discrimination between the similarly placed persons, was the essence of rule of law---Even selective, discriminatory and distinctive treatment by the Government was also prohibited---Two similarly and equally placed persons, could not be treated differently!

M. Zahid Arifan and Shakeel Ahmad for Petitioner.

Nemo for Respondents.

Date of hearing: 15th July, 2010.

**JUDGMENT**

MAZHAR ALAM KHAN MIANKHEL, J.---The petitioner herein seeks issuance of appropriate writ by directing the respondents to regularize his service in the NAB as he has served the NAB initially as private investigator from 2000 to 2006 and then from 2006 to 2008 as a contract employee in (BPS-18). His services were once again hired as such for another period of six months with effect from April 7, 2009 to October 6, 2009. Being a qualified, skilful and experienced person, he too deserves alike treatment as was meted out to one Miss Aaliya Rasheed who being contract employee in BPS-18 was inducted in regular service of the NAB in BPS-19 on the directive/notification issued by the Prime Minister.

2. The learned counsel for the petitioner, in support of his petition further submitted that the name of the petitioner was not considered by the respondent No.2 for the regular post of BPS-18 advertised by the NAB in spite of strong recommendations of respondent No.3. He added that still forty sanctioned posts of BPS-18 are lying vacant for the last so many years.

3. As against that, the learned counsel for the respondents submitted that the case of the petitioner can, in no terms be equated with that of Mst. Aaliya Rasheed as she was working on contract against a sanctioned establishment post whereas the petitioner was appointed, on contract on lump sum basis under section 28(0 of National Accountability Ordinance, 1999 whereas regular appointment is made under Employees Terms and Conditions of Services (TCS), 2002. The petitioner also lacked the prerequisite five years post academic qualification in BPS-17 or equivalent in the fields of investigation or inquiries etc. as provided in the schedule provided in the TCS. He further submitted that the present petition is barred under explanation IV of section 11 and Order II, rule 2 of C.P.C. as his earlier writ petition was dismissed and the present one is barred under the above provisions of C.P.C.

4. We have considered the submissions of the learned counsel for the parties and have gone through the available record. The same would reveal that the petitioner initially was working with the NAB as private investigator from 2000 to 2006 and then was appointed as investigation officer on contract for a period of two years from 2006 to 2008. His status was equivalent to that of BPS-18 for the purposes of T.A./D.A. only. Then once again he served

for a period of six months as such. During this period, he completed several professional courses and the record would reflect his satisfactory performance in the NAB and nothing adverse was pointed out by the respondents. This would reflect his experience and efficiency. During his attachment with the NAB, certain regular posts of BPS-18 were advertised and in spite, of recommendations for his appointment by respondent No.3, he was refused regular induction. The record available on file and not denied by the respondents would further reveal that on his application, the Prime Minister of Pakistan also recommended his case for consideration as per rules/policy vide P.M.'s Sectt U.O. No.2(37)DS(Imp.II)/ 4737/09 dated 11-7-2009.

5. Appointments in NAB are made on contract/temporary basis by the Chairman NAB under section 28 of National Accountability Ordinance, 1999 and under Employees Terms and Conditions of Services (TCS), 2002. The academic qualification and requirements for regular appointments are given in the schedule of TCS. The relevant portion of the schedule is reproduced as under:---

S. No of the post	Nomenclature	BPS	Age Limit Min. Max.	Academic Qualification	Experience
1	Director-General	21	40 50	Second Class or Grade 'C' Master's Degree in Business Administration/Commerce/Economics/Statistics/Defence of Strategic Studies Law/Computer Science from a recognized University or a Chartered Accountant or B.E./B.Sc. (Civil/Mechanical/ Electrical/Petroleum or any qualification approved by the competent authority	22 years post academic qualification experience in BPS-17 and above or equivalent in Investigation or Inquiries or Research or Legal Matters or in the field to be specified at the time of advertisement
2					
3	Additional Director/ Deputy Secretary	19	30 40	-do-	12 years post academic quantization experience in BPS-17 and above of equivalent in the fields specified against, S.No.1.
4	Deputy Director/ Sr. Investigation Officer/Section Officer	18	25 35	-do-	5 years post academic qualification experience in BPS-17 or equivalent in the fields specified against S.No.1.

*Sin*

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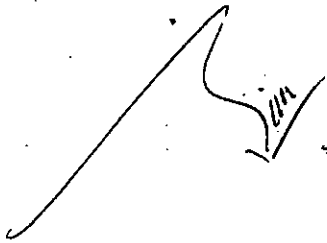
6. The petitioner has sought regularization of his service in the light of a contract employee of BPS-18 of NAB whose services were regularized as Additional Director with effect from 26-6-2003 in (BPS-19) in pursuance of the approval of Prime Minister of Pakistan. Departmental Selection Committee of NAB was also in accord with the approval of the Prime Minister and accordingly a notification was issued in this regard. Though the requisite experience appears to be there but the qualification of Miss Aaliya Rasheed though, not available on the record but submissions made at the bar were not denied that she is M. A. History. If the schedule is seen, then M.A. History is not a qualification for any post from BPS-16 to 21.

7. This case was also heard at length on 13-7-2010 but we were unable to understand that when a similarly placed person i.e. on contract and that too having no basic qualification for initial recruitment, can be inducted as a regular employee, and on the other side, a qualified and experienced person like petitioner who has worked within the NAB having many commendations at his credit, cannot be inducted as a regular employee when he has a sufficient experience with the NAB at his credit. If such a person is not considered for his regular induction in the department with which he has worked for more than eight years then who else would consider him when such a long span of his attachment with the NAB has blocked other ways for him as at present his age would be the first impediment in his way for any such application for regular appointment as he is more than 35 years of age by now. The argument of the learned counsel for the respondents that the initial appointment of the petitioner was under section 28(f) of National Accountability Ordinance, 1999 and not against a sanctioned establishment post would not be so forceful to convince us as to why the petitioner is not a fit person to be regularized specially when the terms and conditions of service of the petitioner and that of the lady are almost similar. He was even not allowed to appear in the examination for regular advertised posts of BPS-18 as stated above. The procedure adopted for the regularization of service of the lady in the given circumstances can well be adopted for the petitioner as he being qualified and fit person for regularization of service also deserves the alike treatment. Article 25 of the Constitution of Islamic Republic of Pakistan unequivocally and expressly provides equality before law and equal protection of law to the equally placed persons. The status and experience of the two if considered, that is at par with an edge to the petitioner i.e. his requisite qualification for the job, which is missing in the case of lady. There is no cavil to the proposition that equality before law is the basic concept of Islam and this concept has been borrowed by English, Americans and European Constitutions from Islam. Two similarly placed persons cannot be treated differently. The principle of equality before law and prohibition of discrimination between the similarly placed persons is the essence of rule of law. Even selective, discriminatory and distinctive treatment by the Government is also prohibited. So, the two similarly and equally placed persons cannot be treated differently and the petitioner in the circumstances not only deserves but is entitled to be treated alike.

8. As far as bar under section 11 or Order II, Rule 2 of C.P.C. is concerned, that would not become a legal hurdle in the way of petitioner as his earlier petition was not decided on its merits and was only dismissed being not maintainable. The relevant portion of the same is reproduced below:---

"2. ... Since the contract period of the petitioner has already been expired and the contract was not renewed, we in our constitutional jurisdiction cannot force the respondents either to extend his contract or to regularize his service.

3. Resultantly, this writ petition is misconceived which is hereby dismissed in limine along with interim."





This question can also be replied in other words that his fresh appointment in the year 2009 after the dismissal of the above writ petition would also give him a fresh cause of action and as such his instant petition would not be barred by section 11 or Order II, Rule-2 of C.P.C.

9. For what has been discussed above, we have no hesitation to hold that the petitioner being qualified, eligible and experienced person also deserves the alike treatment of regularization of his service. So, in the circumstances of the case by allowing this writ petition, we would direct the respondents to consider the name of the petitioner for regularization of his service as discussed above.

H.B.T./292/P

Petition allowed.

2011 PLC (C.S.) 7

[Peshawar High Court]

Before Ejaz Afzal Khan, C. J. and Mazhar Alam Khan Miankhel, J

ZIAULLAH KHAN

Versus

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M. Zahid Aman and Shakeel Ahmad for Petitioner.



50  
No for Respondents.

Date of hearing: 15th July, 2010.

## JUDGMENT

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2. The learned counsel for the petitioner, in support of his petition further submitted that the name of the petitioner was not considered by the respondent No.2 for the regular post of BPS-18 advertised by the NAB in spite of strong recommendations of respondent No.3. He added that still forty sanctioned posts of BPS-18 are lying vacant for the last so many years.

3. As against that, the learned counsel for the respondents submitted that the case of the petitioner can, in no terms be equated with that of Mst. Aaliya Rasheed as she was working on contract against a sanctioned establishment post whereas the petitioner was appointed, on contract on lump sum basis under section 28(0 of National Accountability Ordinance, 1999 whereas regular appointment is made under Employees Terms and Conditions of Services (TCS), 2002. The petitioner also lacked the prerequisite five years post academic qualification in BPS-17 or equivalent in the fields of investigation or inquiries etc. as provided in the schedule provided in the TCS. He further submitted that the present petition is barred under explanation IV of section 11 and Order II, rule 2 of C.P.C. as his earlier writ petition was dismissed and the present one is barred under the above provisions of C.P.C.

4. We have considered the submissions of the learned counsel for the parties and have gone through the available record. The same would reveal that the petitioner initially was working with the NAB as private investigator from 2000 to 2006 and then was appointed as investigation officer on contract for a period of two years from 2006 to 2008. His status was equivalent to that of BPS-18 for the purposes of T.A./D.A. only. Then once again he served for a period of six months as such. During this period, he completed several professional courses and the record would reflect his satisfactory performance in the NAB and nothing adverse was pointed out by the respondents. This would reflect his experience and efficiency. During his attachment with the NAB, certain regular posts of BPS-18 were advertised and in spite, of recommendations for his appointment by respondent No.3, he was refused regular induction. The record available on file and not denied by the respondents would further reveal that on his application, the Prime Minister of Pakistan also recommended his case for consideration as per rules/policy vide P.M.'s Sectt U.O. No.2(37)DS(Imp.II)/ 4737/09 dated 11-7-2009.

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This question can also be replied in other words that his fresh appointment in the year 2009 after the dismissal of the above writ petition would also give him a fresh cause of action and as such his instant petition would not be barred by section 11 or Order II, Rule-2 of C.P.C.

9. For what has been discussed above, we have no hesitation to hold that the petitioner being qualified, eligible and experienced person also deserves the alike treatment of regularization of his service. So, in the circumstances of the case by allowing this writ petition, we would direct the respondents to consider the name of the petitioner for regularization of his service as discussed above.

H.B.T./292/P

Petition allowed.

53

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEAL NO. 828/2012

Date of institution ... 19.07.2012  
Date of judgment ... 31.10.2016



Umar Khitab, Ex-Constable  
R/o Muskan Tehsil Takht Nasrati, District Karak.

... (Appellant)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Additional (IGP)/Commandant, FRP, KPK, Peshawar.
3. Superintendent of Police FRP, Kohat.

... (Respondents)

APPEAL AGAINST THE IMPUGNED ORDER DATED 11.11.2010 WHEREBY  
THE APPELLANT HAS BEEN DISMISSED FROM SERVICE FROM 25.05.2010  
AND ALSO AGAINST THE FINAL IMPUGNED ORDER DATED 24.03.2011  
WHEREBY THE APPELLANT REPRESENTATION FOR REINSTATEMENT IN  
SERVICE HAS BEEN REJECTED AND ALSO AGAINST THE IMPUGNED  
ORDER DATED 11.07.2012 WHEREBY HIS REVISION HAS BEEN FILED.

Mr. Aslam Khan Khattak, Advocate.  
Mr. Ziaullah, Government Pleader

.. For appellant.  
.. For respondents.

MR. ABDUL LATIF  
MR. PIR BAKHSH SHAH

.. MEMBER (EXECUTIVE)  
.. MEMBER (JUDICIAL)

JUDGMENT

ABDUL LATIF, MEMBER:- Facts giving rise to the instant appeal are that the appellant has been enlisted as Constable on 27.07.2007 in Frontier Reserve Police. That the appellant was selected for SSG Course at Jalojai Training Centre Nowshera but he suffered from chronic disease and the centre authorities relieved the appellant for managing treatment. That thereafter respondent No. 3 has taken ex-parte action against the appellant and dismissed him from service vide impugned order dated 11.11.2010. That against the impugned order appellant filed departmental appeal on 08.02.2011 which was rejected vide order dated 19.03.2011, thereafter appellant filed revision petition which was also filed on

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11.07.2012 and hence the instant service appeal with a prayer that on acceptance of this service appeal the impugned orders dated 11.11.2010, 24.03.2011 and 11.07.2012 may be set-aside and the appellant may be reinstated in service with all back benefits.

2. The learned counsel for the appellant argued that the impugned order dated 11.11.2010 had been given retrospective effect which is illegal and void order as under the law such effect was not permissible. He further argued that proper inquiry was not conducted, no show-cause notice was served on the appellant hence the impugned order was not maintainable under the law. He further added that the appellant remained sick thus the absence was beyond his control and medical treatment was also permitted by the concerned authority therefore his dismissal from service was not justified and required interference of this Hon'ble Tribunal. He further argued that even if the appellant absented himself from duty, major penalty of dismissal from service was very harsh and not commensurate to the degree of offence of the appellant adding further that in identical case of absence Muhammad Asghar Constable was given lenient treatment and was reinstated by the respondent-department. He relied on PLD 1995 (C.S) 546 and 2008 PLC (S.C) 1055. He further argued that the appellant also deserved for similar treatment otherwise it would tantamount to discrimination against the appellant which was not permissible under the law and prayed that on acceptances of this appeal the impugned order dated 11.11.2010 may be set-aside and the appellant may be reinstated in service with all back benefits.

3. The learned Government Pleader resisted the appellant and argued that the appellant was dismissed from service on 11.11.2010 against which departmental appeal was filed on 08.02.2011 which was time barred hence the instant service appeal before the Service Tribunal was not competent. He further argued that the appellant also filed revision petition before the relevant authority which was nowhere provided in the rule and such repeated representation would not extend time limitation. He relied on 2013 SCMR 911 and 2015 SCMR 173 and prayed that the appeal being not competent and not maintainable may be dismissed.

4. Arguments of learned counsels for the parties heard and record perused.

5. From perusal of the record it transpired that charge-sheet was dispatch on the home address of the appellant but the same was not responded as according to the appellant he did not receive any such charge-sheet and hence did not participate in the disciplinary proceeding. Major penalty of dismissal was inflicted on the appellant without his association with the inquiry proceeding and without affording him full opportunity of defence. The record reveals that principles of natural justice were not met and opportunity of fair trial as guaranteed under the constitution and the law were not provided to the appellant, the order of his dismissal thus suffer from legal infirmity. The record also reveals that in another similar case of Muhammad Asghar Constable absence of around five months of the said official was leniently treated and he was reinstated in service and the law of consistency would demand that equal treatment should also be meted out to the present appellant. It is observed that unlike the above case where opportunity of personal hearing was granted to the said official, no opportunity of personal hearing was given to the present appellant. In the above scenario, we are constrained to set-aside the appellate order dated 24.03.2011 and remit the case to the appellate authority to examine the same in light of the precedential case of Muhammad Asghar Constable and decide it in accordance with law and rules by treating him equally to dispel the impression of discrimination against the appellant. The case shall be decided within a period of 60 days of the receipt of this judgment and in case it is not decided within the said period, the appeal shall be treated as accepted and the intervening period since dismissal of the appellant from service till date be treated as extra ordinary leave without pay. The appeal is disposed of in the above terms. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
31.10.2016

*Edif- Abdul Latif, Member*

*Edif- Pirs Bakhtish Shah, Member*

08-11-2016  
 1202  
 8  
 Urgent  
 Total 10  
 Date of Completion 08-11-2016  
 Date of Delivery 08-11-2016

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR



SERVICE APPEAL NO. 138/2015

Date of institution ... 13.02.2015

Date of judgment ... 06.10.2016

Mukhtiar Ahmad Khan S/o Sher Ali Khan,  
R/o Obaid Abad, Baz Kalay, P/o Serai Naurang,  
Lakki Marwat, Ex-Constable No. 810, FRP, Bannu Range, Bannu.

... (Appellant)

VERSUS

1. Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. AIG/Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. S.P, FRP, Bannu Range, Bannu.

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL AGAINST OFFICE ORDER NO. 1144-49/E-IV, DATED 27.01.2015, OF RESPONDENT NO. 1, WHEREBY REPRESENTATION DATED 02.11.2010 AGAINST ENDST NO. 6838-39/EC DATED 15.10.2010 OF RESPONDENT NO. 2 WHO REJECTED DEPARTMENTAL APPEAL AGAINST ORDER NO. 542 DATED 04.08.2010 WAS REJECTED FOR NO LEGAL REASON.

Mr. Arbab Saif-ul-Kamal, Advocate

.. For appellant.

Mr. Usman Ghani, Senior Government Pleader

.. For respondents.

MR. MUHAMMAD AAMIR NAZIR


.. MEMBER (JUDICIAL)

MR. PIR BAKHSH SHAH

.. MEMBER (JUDICIAL)

**ATTESTED**

JUDGMENT,

  
**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

MUHAMMAD AAMIR NAZIR, MEMBER:-

Mukhtiar Ahmed Khan ex-

Constable No. 810 Frontier Reserve Police Bannu Range, Bannu hereinafter called the appellant, through instant appeal under Section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 has impugned order dated 04.08.2010 vide which the appellant was dismissed from service. Against the impugned order appellant filed a departmental appeal which was rejected vide order dated 15.10.2010, subsequently, appellant filed a mercy petition which was also turned down vide order dated 27.01.2015.

2. Briefly stated facts giving rise to the appeal in hand are that the appellant was appointed as Constable in the year 2007. That during his service, the appellant was issued a charge-sheet alongwith statement of allegation on 29.04.2010 on the allegations that he had absented himself from training program of PTC Hangu without any leave or permission of the Competent Authority. That the appellant submitted a reply to the charge-sheet and statement of allegation, however, the Competent Authority initiated inquiry proceeding against the appellant. The inquiry officer without associating the appellant with the inquiry proceeding and without providing the appellant right of defense, conducted a one sided inquiry and recommended the appellant for major penalty. Competent Authority while considering the inquiry report, imposed major penalty of dismissal from service upon the appellant vide impugned order dated 04.08.2010. The departmental appeal filed by the appellant was also rejected hence, the instant service appeal.

3. We have heard the arguments of learned counsel for the appellant and learned Additional Advocate General for respondents and have gone through the record available on file.

4. Learned counsel for the appellant argued before the court that the absence of the appellant from training programme was not willful as he has submitted proper application in this respect as during the period, he <sup>had</sup> to appear before examination of PTC Course in Alama Iqbal Open University as a private candidate. That a one sided inquiry was conducted without associating the appellant hence, the appellant was condemned unheard. That the impugned dismissal order suffered illegality hence, the same be set-aside and appellant be reinstated in service with all back benefits.

5. Learned Additional Advocate General on the contrary argued before the court that the appellant has willfully absented himself from training programme as PTC Hangu. That no justification for absence from duty has been provided, therefore, the Competent Authority has rightly dismissed the appellant from service. That the instant appeal being devoid of merits be dismissed.

6. Perusal of the case file reveals that the appellant during his service as Constable in Reserve Police Bannu was directed to undergo a Training Programme at Police

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Training College Hangu. However, due to the absence of the appellant from Police Training College Hangu, he has issued charge-sheet alongwith statement of allegation for willful absence. In response to the charge-sheet and statement of allegations appellant submitted that he had to appear in examination conducted by Alama Iqbal Open University as a private candidate for PTC Course during said period, therefore, he had submitted leave application to the concerned Muharrar and has also paid Rs. 7000/- to the said Muharrar for getting his leave sanctioned. An Inquiry was conducted upon the direction of the Competent Authority and the inquiry officer without associating the appellant with the inquiry proceeding, found him guilty for absence from duty and recommended major punishment. The Competent Authority, while considering a defective inquiry report, awarded major punishment of dismissal from service to the appellant which is un warranted under the law. The inquiry officer was duly bound to have conducted a regular inquiry by associating the appellant with the inquiry proceedings and should have provided him right of defense in respect of allegation leveled upon him. Since, defective inquiry was conducted and the appellant has not been provided right of hearing and defense, therefore, imposition of major penalty on the basis of defective inquiry report is illegal. Hence, we are inclined to accept the instant appeal and reinstate the appellant in service with direction to the respondents to conduct a de-novo inquiry against the appellant by providing him opportunity of defense and there-after passed an appropriate order. The inquiry must be concluded within two months after receipt of this judgment. The issue of salary and back benefits will be subject to the outcome of inquiry report. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
06.10.2016

*M.A.*  
Sd/- M. Amir Wazir,  
Member

Sd/- Pir Bakht Shah,  
Member

Certified to be true copy  
Sd/- JINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEALS NO. 1015/2014

Date of institution ... 6.8.2014

Date of judgment ... 27.7.2014

Mst. Saeeda, Ex. Constable No. 1881,  
Police Line Mardan, District Mardan

... (Appellant)

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa Peshawar.
2. The Deputy General of Police, Mardan Region-1, Mardan.
3. The District Police Officer, District Mardan.

... (Respondents)

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST THE APPELLATE ORDER DATED 8.7.2014 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT FOR HER RE-INSTATEMENT WITH ALL BACK BENEFITS HAS BEEN REJECTED ON NO GOOD GROUNDS AND AGAINST THE ORIGINAL ORDER DATED 23.4.2014 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE UNDER A WRONG LAW.

Mr. Noor Muhammad Khattak, Advocate.  
Mr. Muhammad Adeel Butt, Additional AG.

.. For appellant.  
.. For respondents

MR. AHMAD HASSAN  
MR. ABDUL LATIF

.. MEMBER (EXECUTIVE)  
.. MEMBER (EXECUTIVE)

JUDGMENT

AHMAD HASSAN, MEMBER: The appellant has preferred instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act, 1974 that impugned order dated 23.4.2014 and 8.7.2014 may be set-aside and appellant be reinstated in service with all back benefits.

2. Brief facts of the case as narrated in the contents of appeal are that the appellant was appointed as Lady Constable in Mardan on 19.5.2009. While serving in Mardan the appellant got married. Her husband Mr. Karim ul Haq was also serving as Constable in Police Department. After Marriage her husband pressurized her to immediately quit the Police Service. On 21.2.2014, when the appellant was going from duty she was stopped by her

husband from duty and confined the appellant in his house. The appellant came to the house of her parents on 10.5.2014. On 11.5.2014 when the appellant came to Police Line, Mardan to join duty and receive two months salary, she came to know about her dismissal from service on account of willful absence from duty vide order dated 23.4.2014. Departmental appeal was filed on 13.5.2014 and rejected on 8.7.2014 hence, the instant service appeal.

3. Arguments heard and record perused.

4. Learned counsel for the appellant argued that during her absence from duty inquiry proceedings were initiated against the appellant under Police Rules 1975. He contended that regular inquiry was not conducted and appellant was not treated in accordance with law. Charge sheet and statement of allegations were not served on the appellant before issuing the impugned order dated 23.4.2014 nor was opportunity of personal hearing provided. The appellant also filed a case for dissolution of marriage in the Civil Court and her marriage has since dissolved as a result of Jirga proceedings. He further argued that the appellant could not be removed from service on the basis of statement of her husband as annexed with the Parawise comments submitted by the respondents. She remained absent for two months and the punishment awarded was quite harsh which was beyond her control. Reliance was placed on case law as reported 2012 TD (S) 129, 2012 DT (S) 348, 2008 SCMR 1369, and 2008 SCMR 609. He further contended that impugned orders dated 23.4.2014 and 8.7.2014 being void and unlawful may be set-aside and appellant may be reinstated in service with all back benefits.

5. Learned Additional AG while opposing the appeal argued that inquiry proceedings were conducted in the prescribed manner and previous service record of the appellant was also found tainted. She was earlier dismissed from service in another case. He further contended that the Service Tribunal under section-4 of the Service Tribunal Act 2014 has the power to set-aside modify and confirm any order passed by the departmental authority and

the lacunae left in the impugned order could be rectified by its modification. He further contended that appeal being devoid of any merit may be dismissed with cost.

6. Having heard pros and cons of the case, this Tribunal is of the considered view that inquiry proceedings were not conducted in the prescribed manner and proper opportunity of defense was not provided to the appellant. Show cause notice was not served on the appellant prior to issuance of impugned order dated 23.4.2014 nor opportunity of personal hearing was provided. It is well settled principle that no one should be condemned unheard. Perusal of the record shows that imposition of major penalty of dismissal from service does not commensurate with the period of her absence from duty which was beyond her control as such the punishment seems too harsh.

7. In view of the foregoing, the appeal is partially accepted and impugned order dated 23.4.2014 is set-aside. The major penalty of dismissal from service is converted into minor penalty of stoppage of two annual increments for two years. The intervening period since her dismissal is treated as leave of the kind due. Parties are left to bear their own cost. File be consigned to the record room.

sd/- JPSI

sd/- JPSI

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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

SERVICE APPEAL NO. 1986/2011

Date of institution ... 23.11.2011  
Date of judgment ... 22.07.2016



Khalil Ur Rehman s/o Mehr Ullah  
R/o Khuidad Khel, Lakki Marwat,  
Ex-C. No. 6547, FRP, D.I. Khan.

... (Appellant)

VERSUS

1. Superintendent of Police, FRP, D.I. Khan Range, D.I. Khan. ... (Respondents)
2. Commandant, FRP, KPK, Peshawar.

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, AGAINST OB NO.376, DATED 31.05.2011 OF R.NO. 1 WHEREBY APPELLANT WAS DISMISSED FROM SERVICE OR OFFICE ORDER NO. 5395-96/EC, DATED 19.08.2011 OF R.NO. 2 WHEREBY REPRESENTATION OF APPELLANT WAS REJECTED FOR NO LEGAL REASON.

Mr. Saadullah Khan Marwat, Advocate.  
Mr. Muhammad Jan, Government Pleader

.. For appellant.  
.. For respondents.

MR. PIR BAKHSH SHAH  
MR. AHMAD HASSAN

.. MEMBER (JUDICIAL)  
.. MEMBER (EXECUTIVE)

JUDGMENT,

PIR BAKHSH SHAH, MEMBER: Stated that the appellant appointed as Constable in FRP on 27.7.2007, he was dismissed from service by SP, FRP/ competent authority on 31.5.2011 against which his departmental representation dated 30.6.2011 was rejected on 19.8.2011 which was deliver to the appellant on 27.10.2011, hence the instant service under section-4 of the Khyber Pakhtunkhwa Act, 1974 which is within time. The reasons for this dismissal, according to respondents are absence from duty of the appellant w.e.f 2.1.2011 to 31.5.2011.

2. Arguments heard and record perused.

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duty at D.I. Khan should have been thrashed out. According to Para-wise comments of the respondents, a discreet inquiry was conducted against the appellant, which shows that the requirement inquiring in to the absence of the appellant has not been properly attended too. Hence, the Tribunal is also led to the opinion that the punishment of dismissal in view of the stated circumstances is quite harsh. The absence of the appellant for which learned Government Pleader referred to different daily diaries also convey that absence of the appellant was not at a stretch and the dates of these daily diaries do not match with the absence period of the appellant which according to stance of the respondents commencing from 2.1.2011 to 31.5.2011.

6. In view of the foregoing, the Tribunal is constrained to set-aside the impugned orders. The appellant is reinstated into service. The respondents are directed to initiate *de-novo* proceedings against the appellant within a period of two months after receipt of this judgment. The appeal is allowed in the above terms. The issue of back benefits shall be decided subject to outcome of the *de-novo* inquiry. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
22.7.2016

*Self- Pk Bakht Shah, Member*  
*Self- Ahmad Hassan, Member*

Certified to be true copy  
[Signature]

Date of Presentation of Application 06-10-2016  
 Number of 1200  
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