

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO.6623/2021

Imshad Khan s/o Mohammad Irshad Khan, r/o Village Bakhi (Kokotri) Tehsil & District
Haripur, Ex-Constable No.585, District Police Haripur.

..... (Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar and others.

..... (Respondents)

Reply/comments by respondents No.1, 2 & 3.

Respectfully Sheweth.

PRELIMINARY OBJECTIONS:-

1. That the instant Service Appeal is not maintainable in the present form.
2. That the appellant is estopped by his own conduct.
3. That the appellant has not come to the Honorable Tribunal with clean hands. As he filed instant appeal after about 10 years, which is not maintainable.
4. That the appellant has suppressed material facts from the Honorable Tribunal.
5. That the instant Service Appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
6. That the instant Service Appeal is badly barred by law and limitation about 10 years.
7. That the appellant has filed the instant service appeal just to pressurize the respondents.
8. That the order passed by the authorities are based on facts & rules, after fulfilling all the codal formalities, hence, the appeal is liable to be dismissed without any further proceeding.

REPLY ON FACTS:-

1. Incorrect, the appellant Ex-Constable Imshad Khan No.585, while posted at Police Lines Haripur, for duties at China guard absented himself from lawful duties with effect from 16.02.2010 to 29.04.2010 for 71 days without any leave or permission from competent authority. The acts and omissions of the appellant were gross misconduct under Khyber Pakhtunkhwa, Removal from Service (Special Power) ordinance 2000. He was issued charge sheet with statement of allegations vide this office Memo No.2433-34 dated 04.05.2010 by the then District Police Officer, Haripur. (Copy of charge sheet with statement of allegations is attached as annexure "A"). DSP, Haripur Qazi Ghulam Asfia was appointed as inquiry officer, who conducted proper departmental enquiry and submitted his findings vide his office Memo. No.853 dated 05.07.2010, in which he held the appellant as habitual absentee and charges proved, the inquiry officer recommended the appellant for major punishment. (Copy of inquiry finding is attached as annexure "B"): The appellant was issued show notice and was also heard in person by the competent authority. The

appellant could not prove his innocence. The appellant continued his absence for about 159 days. Therefore, the appellant was awarded major punishment of dismissal from service vide OB.No.521 dated 29.09.2010 by the then District Police Officer, Haripur. (Copy of order is attached as annexure "C"). The appellant filed representation against the punishment to the departmental appellate authority i.e. Deputy Inspector General of Police, Hazara Region, Abbottabad, who considered the same and filed vide his office letter No.14943/E dated 27.12.2010.(Copy of letter is attached as annexure "D").

2. Incorrect, the appellant did not obtain any leave from the competent authority and committed misconduct by absents from lawful duties. The appellant is generating false stories. The charges of misconduct were proved against the appellant. The appellant was recommended for major punishment by the inquiry officer.
3. Incorrect, the appellant had committed misconduct. He remained absent for a long period without prior permission or leave from competent authority. Therefore, departmental action was initiated against the appellant being held guilty of misconduct, he was awarded major punishment of dismissal from service by competent authority. The instant service appeal is badly time barred. The appellant is adducing false defenses.
4. Incorrect, the appellant filed departmental representation which was considered by the departmental appellate authority i.e. by the then Deputy Inspector General of Police, Hazara Region, Abbottabad and it was rejected vide his office letter No.14943/E dated 27.12.2010. The appellant was informed about the rejection of his representation well in time. The appellant also received the copy of letter of Deputy Inspector General of Police, Hazara Region, Abbottabad rejecting his representation through application dated 30.12.2010. (Copy of application is attached as annexure "E"). The filing of instant service appeal after statutory period is liable to be dismissed under the law and rules.
5. Incorrect, the appellant filed appeal against the punishment order after about 8 years to the Inspector General of Police, Khyber Pakhtunkhwa, which were rejected being badly time barred vide registrar for Inspector General of Police, Khyber Pakhtunkhwa, Peshawar letter No.S/2305/18 dated 07.06.2018. Therefore, the order of punishment had attained finality in year 2010. The instant service appeal is devoid of any legal force.


REPLY ON GROUNDS:-


- A) Incorrect, the order of respondents dated 29.09.2010 and 27.12.2010, are quite legal, based on facts and justice, hence, the orders are lawful and maintainable.
- B) Incorrect, the appellant has been dealt in accordance with law. Proper departmental inquiry was conducted. The appellant could not prove his innocence. He was awarded punishment of dismissal from service on lawful grounds and evidence. Hence, all legal requirements and principles of natural justice were fulfilled while passing order of punishment to the appellant.
- C) Incorrect, the appellant committed gross misconduct. He absented himself from lawful duties without prior leave or permission from competent authority. His acts/omissions were gross misconduct under the law. Therefore, departmental action was taken and he was awarded lawful punishment of dismissal from service.

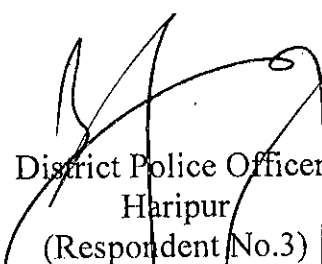
- D) Incorrect, the appellant willfully absented himself from duties for a long period of 159 days. His acts and omissions were gross misconduct, therefore, on lawful grounds and justifications, the appellant was awarded major punishment of dismissal from service on strong evidence. Therefore, the punishment is lawful and maintainable.
- E) Incorrect, the order of punishment is quite legal, based on facts, circumstances, evidence and lawful justifications. Hence, it is maintainable under the law/rules. Moreover, the august Supreme Court of Pakistan in its judgment 2020 SCMR 425 and CA No.1661 of 2019 while referring these judgment in civil appeal No.2098 of 2019 in case titled "Muhammad Altaf vs Government of Khyber Pakhtunkhwa" (Copy of order of Honorable Supreme Court of Pakistan is attached as annexure "F").
- F) Incorrect, the appellant had committed gross misconduct for which he was awarded appropriate punishment. He is not entitled for reinstatement in service under the law/rules.
- G) Incorrect, the appellant was held guilty in the departmental proceedings on strong evidence. He was recommended for major punishment by the inquiry officer, therefore, he was awarded major punishment of dismissal from service as per law/ rules. All legal requirements were fulfilled while passing the said punishment.
- H) Incorrect, all legal requirements were fulfilled while awarding punishment to the appellant. Hence, the punishment is lawful and maintainable under the law/rules.
- I) Legal.

PRAYER:-

In view of above stated facts it is most humbly prayed that the instant service appeal does not hold any legal force, may kindly be dismissed with costs, please.


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


Regional Police Officer,
Hazara Region,
Abbottabad
(Respondent No.2)


District Police Officer,
Haripur
(Respondent No.3)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO.6623/2021

Imshad Khan s/o Mohammad Irshad Khan, r/o Village Bakhi (Kokotri) Tehsil & District
Haripur, Ex-Constable No.585, District Police Haripur.

..... (Appellant)

VERSUS

Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar, and others.

..... (Respondents)

**REPLY TO APPLICATION FOR CONDONATION OF DELAY IN SERVICE
APPEAL BY RESPONDENTS.**

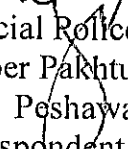
Respectfully Sheweth:-

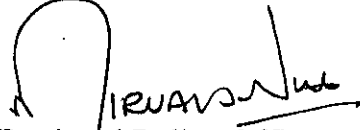
The reply to application for condonation of delay of service appeal on behalf of respondents No. 1,2 & 3, is submitted as under:-

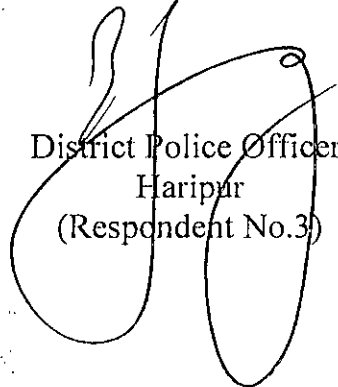
1. Incorrect, the appellant Ex-Constable Imshad Khan No.585, while posted at police lines Haripur, for duties at China guard absented himself from lawful duties with effect from 16.02.2010 to 29.04.2010 for 71 days without any leave or permission from competent authority. The acts and omissions of the appellant were gross misconduct under Khyber Pakhtunkhwa, Removal from Service (Special Power) ordinance 2000. He was issued charge sheet with statement of allegations vide this office Memo No.2433-34 dated 04.05.2010 by the then District Police Officer, Haripur. DSP, Haripur Qazi Ghulam Asfia was appointed as inquiry officer, who conducted proper departmental enquiry and submitted his findings vide his office Memo. No.853 dated 05.07.2010, in which he held the appellant as habitual absentee and charges proved, the inquiry officer recommended the appellant for major punishment. The appellant was issued show cause notice and was also heard in person by the competent authority. The appellant could not prove his innocence. The appellant continued his absence for about 159 days. Therefore, the appellant was awarded major punishment of dismissal from service vide OB.No.521 dated 29.09.2010 by the then District Police Officer, Haripur. The appellant filed representation against the punishment to the departmental appellate authority i.e. Deputy Inspector General of Police, Hazara Region, Abbottabad, who considered the same and filed vide his office letter No.14943/E dated 27.12.2010. The instant service appeal is badly time barred and not maintainable under the law.
2. Incorrect, the appellant/applicant has not a prima facie case in his favor, rather, the respondent department has accrued valuable legal rights in terms of time bar service appeal.
3. Incorrect, the respondents dealt the applicant/appellant in accordance with law/rules. The orders of punishment passed by the respondents are quite legal, based on evidence and facts, hence, maintainable under the law/rules. Moreover, the applicant has no cause of action to file the instant service appeal, as it is time barred. The period of limitation cannot be condoned under the law/ruling of

4. Incorrect, the application for condonation of delay does not hold any legal force, so, the service appeal and the instant application are liable to be dismissed.

In view of above, it is most humbly prayed that the instant service appeal as well as application for condonation of delay does not hold any legal force, which may kindly be dismissed with cost, please.


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


Regional Police Officer,
Hazara Region,
Abbottabad
(Respondent No.2)


District Police Officer,
Haripur
(Respondent No.3)

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Haripur, Ex-Constable No.585, District Police Haripur.

..... (Appellant)

VERSUS

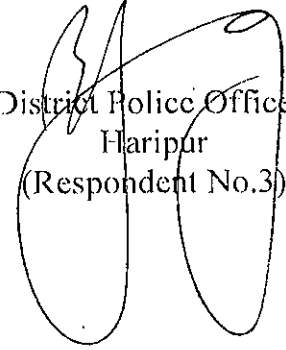
Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar, and others.

..... (Respondents)

COUNTER AFFIDAVIT

I, do hereby solemnly affirm and declare, that the contents of comments / reply, are true to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

District Police Officer,
Haripur
(Respondent No.3)



Annexure

A

CHARGE SHEET

I, Muhammad Hussain, District Police Officer, Haripur as competent authority, here in charge you Constable Himshad No. 585 for in-efficiency under the following reasons: -

That you while posted in Police Lines Haripur vide Daily Diary No. 18 dated 16.02.2010 detailed by the Lines Officer, Police Lines Haripur for duty China Guard Hattar absented yourself from duty w.e.f 17.02.2010 to 29.04.2010 for 71 days without any leave or permission of the competent authority. You are habitual absentee which is gross misconduct on your part.

1. By reason of the above you appear to be guilty of misconduct under section 3 of the NWFP (Removal from Service) Special Power Ord: 2000 and have rendered yourself liable to all or any of the penalties specified in section 3 of the ordinance ibid.
2. You are therefore, required to submit your written defence to the enquiry officer within seven days of the receipt of this charge sheet as the case may be.
3. Your written defence if any should reach to the enquiry officer/committee within specified period failing which it shall be presumed that you have no defence to put in and in that case exparte action shall follow against you.
4. Intimate whether you desire to be heard in person.
5. A statement of allegation is enclosed.

Handwritten Urdu text, possibly a signature or note.

Handwritten signature and the number 585.



(MUHAMMAD HUSSAIN)
District Police Officer,
Haripur

DISCIPLINARY ACTION

I, Muhammad Hussain, District Police Officer, Haripur competent authority, here in charge you, Constable Himshad No. 585 for in-efficiency under the following act/omissions with in the meaning of section 03 of the NWFP Removal Services (Special Power) ordinance 2000.

STATEMENT OF ALLEGATION

That you while posted in Police Lines Haripur vide Daily Diary No. 18 dated 16.02.2010 detailed by the Lines Officer, Police Lines Haripur for duty China Guard Hattar absented yourself from duty w.e.f 16.02.2010 to 29.04.2010 for 71 days without any leave or permission of the competent authority. You are habitual absentee which is gross misconduct on your part.

For the purpose of scrutinizing the behavior/conduct of the said accused with reference to the above allegations an enquiry is necessary to be conducted under section 5 of the ordinance and Qazi Ghulam Asfia DSP/ Haripur is appointed as enquiry officer.

The enquiry officer shall in accordance with the provisions of the ordinance will provide reasonable opportunity of hearing to the accused, record its finding and make within 15 days of the receipt of this order, recommendations as to punishment or other appropriate action against the accused.


(MUHAMMAD HUSSAIN)
District Police Officer
Haripur

No: 213334 IR, dated Haripur the.

415 /2010.

Copy to the Enquiry Officer for initiation proceeding against the accused under the provision of NWFP Removal from Service (Special Powers) Ord: 2000.

① 17 $\frac{2}{10}$ تا 29 $\frac{4}{10}$ (71) 7② 29 $\frac{4}{10}$ تا 23 $\frac{6}{10}$ (55) 7③ 24 $\frac{6}{10}$ تا 27 $\frac{7}{10}$ (33) 1④ 27 $\frac{7}{10}$ تا 29 $\frac{4}{10}$ (159) 7

خلین ہری پور

نور 7 $\frac{7}{10}$ سے کیر 7 $\frac{7}{10}$ اور 7 $\frac{7}{10}$ سےاور کی اور میں لکھ کر نہ ملو اور
فائینڈنگ رپورٹ انکوائری برخلاف امشاد نمبر 585/FC پولیس لائن ہری پور

جناب عالی!

بحوالہ حکم نمبری 2433-34/R مورخہ 4.5.10 محکمہ انکوائری ازاں امشاد نمبر 585/FC پولیس لائن ہری پور موصول

ہو کر مطالعہ سے پایا گیا۔ کہ مذکورہ امشاد نمبر 585/FC پر الزام عائد ہے کہ دوران تعیناتی پولیس لائن اس کو بحوالہ نمبر 18 روز نامچہ

17.2.10 پولیس لائن سے چائنا گارڈ ہٹار کے لیے روانہ کیا گیا۔ مگر وہ اپنی ڈیوٹی سے بغیر رخصت / اجازت افسران بالا مورخہ 17.2.10

سے 29.4.10 تک (71) یوم غیر حاضر ہوا، جس سے بسکی کارس کار میں عدم دلچسپی صاف ظاہر ہوتی ہے۔ کہ وہ عادی غیر حاضر باش ہے۔

جس کے نتیجے میں مذکورہ امشاد نمبر 585/FC کو چارج شیٹ دی گئی، مجھے کو انکوائری آفیسر مقرر کیا گیا۔

انکوائری کا باقاعدہ آغاز کرتے ہوئے مذکورہ امشاد نمبر 585/FC کو بذریعہ پروانہ جات / ٹیلی فون دفتر ہذا میں طلب کیا۔

جس نے چارج شیٹ کا جواب پیش کیا، اور الزامات چارج شیٹ ماننے سے انکار کیا۔ اور اپنے آپ کو بے گناہ ظاہر کیا۔

فائینڈنگ :-

تمام حالات واقعات اور تفصیلی انکوائری دستاویز ریکارڈ سے پایا گیا کہ مذکورہ امشاد نمبر 585/FC کو پولیس لائن سے

چائنا گارڈ ہٹار ڈیوٹی کے لیے بحوالہ نمبر 45 روز نامچہ 17.2.10 پولیس لائن روانہ کیا گیا۔ جو اپنی مرضی سے بغیر اجازت، رخصت افسران

بالا غیر حاضر ہوا۔ اور بحوالہ نمبر 6 روز نامچہ 29.4.10 پولیس لائن میں (71) یوم کے بعد اپنی حاضری کی۔ اور پھر اسی دن بحوالہ نمبر 18

روز نامچہ 29.4.10 پولیس لائن سے دوبارہ غیر حاضر ہو گیا۔ جس نے بحوالہ نمبر 13 روز نامچہ 23.6.10 کو پولیس لائن میں (56) یوم

کے بعد اپنی حاضری کی۔ اور ایک دن کے بعد بحوالہ نمبر 19 روز نامچہ 24.6.10 پولیس لائن دوبارہ غیر حاضر ہو گیا۔ جو ابھی تک بدستور غیر

حاضر ہے۔ (جملہ نقل ریٹ ہائے حاضری، غیر حاضری، ہمراہ انکوائری ہیں)

مذکورہ امشاد نمبر 585/FC نے غیر حاضری کی وجہ اپنی والدہ کی بیماری بیان کی، اور جواب چارج شیٹ کے ہمراہ (2) عدد

میڈیکل چٹ پیش کی (ہمراہ انکوائری لف ہیں)۔

انکوائری سے پایا گیا کہ امشاد نمبر 585/FC کو پولیس لائن ہری پور سے چائنا گارڈ ہٹار ڈیوٹی کے لیے بھجوایا گیا۔ جس نے

اپنی جائے تعیناتی چائنا گارڈ ہٹار میں حاضری کرنے کے بجائے اپنی مرضی سے غیر حاضری کی۔ اسی دوران (2) دفعہ بحوالہ نمبر 6 روز نامچہ

29.4.10، نمبر 13 روز نامچہ 23.6.10 پولیس لائن میں اپنی حاضری کی۔ اب مذکورہ بحوالہ نمبر 19 روز نامچہ 24.6.10 پولیس لائن

سے جان بوجھ کر بدستور غیر حاضر ہے۔ جس سے ثابت ہوتا ہے کہ وہ عادی غیر حاضر باش ہے۔ اس کا کل عرصہ غیر حاضری (127) یوم بنتا ہے۔

انکوائری سے چارج شیٹ کا الزام ثابت ہوتا ہے کہ بڑی سزا دی جائے۔

ڈی ایچ پی سرکل
خان پور

OR

Sir - attached for order

6/7

Annexure
C

ORDER

Constable Imshad No. 585 was proceeded against under the NWFP Removal from Service (Special Powers) Ordinance 2000 for the charges mentioned in the charge sheet and statement of allegations served upon him by the Enquiry Officer on 06.05.2010.

Mr. Ghulam Asfia DSP/ Haripur was appointed as enquiry officer to probe into the allegations leveled against him.

The Enquiry Officer in his report/ findings dated 05.07.2010 held him guilty of charges leveled against him. He was summoned to appear before the undersigned for personal hearing time and again but did not appeared. Therefore Final Show Cause Notice alongwith copy of finding was served upon him for imposition of major penalty of dismissal from service to which replied. He was again given a chance of personal hearings. He appeared before the undersigned in Orderly Room on 22.09.2010 but he could not produced satisfactory account of the charges leveled against him.

The detail of his absence period of different occasions is as under:-

I.	17.02.2010 to 29.04.2010	=	71 days
II.	29.04.2010 to 23.06.2010	=	55 days
III.	24.06.2010 to 27.07.2010	=	33 days
	Total	=	159 days

He is again absent from 28.07.2010 till now.

I am fully satisfied with the findings of the Enquiry Officer. Therefore he is hereby awarded Major punishment of dismissal from service w.e.f 28.07.2010 and period of absence 159 days treated as leave without pay.

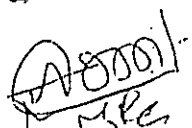
Order announced.

Dated 22.09.2010.


District Police Officer
Haripur

OB/Officer/SLC

OB NO 521
29.09.2010

Entry made
in the
Roll

MSR
30-9-2010

Annexure
D

From:-

The Dy:Inspector General of Police,
Hazara Region, Abbottabad.

To :-

The District Police Officer,
Haripur.

NO. 14943 / 17, Dated Abbottabad, the 27/12 / 2010.

Subject:- REPRESENTATION.

Memo:

23-10-2010.

Please refer to your office M/NO. 6537 dated

Representation of Ex-Constable Imshai NO.585

has been considered by Regional Chief and filed.
His Service Roll and Fauji Missal/Enquiry file
is also returned herewith.

DHC/SRC

Please inform
the const cable.

Imshai
of HC
27/12

Encl: 5 / Rodd. und.

F/M / E / File,

6265
27.12.10

✓
Dy:Inspector General of Police,
Hazara Region, Abbottabad.

Handwritten notes on the right margin, including a signature and some illegible text.

Handwritten notes at the top, including a signature and the text "30/12" and "OK, yes".

Handwritten text in Urdu, possibly a signature or a note, with a horizontal line below it.

Handwritten numbers and symbols: 30, 12, 10, 12, 10.

Handwritten text in Urdu: "میں نے اس کو دیا"

Handwritten text in Urdu: "میں نے اس کو دیا"

Handwritten text in Urdu: "میں نے اس کو دیا"

Handwritten text in Urdu: "میں نے اس کو دیا"

Handwritten text in Urdu: "میں نے اس کو دیا"

Handwritten text at the bottom left: "Answer E"

Handwritten text at the bottom center: "میں نے اس کو دیا"

Annexure
"F"

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan

CIVIL APPEAL NO.2098 OF 2019

[Against the judgment dated 16.1.2018, passed by the
Khyber Pakhtunkhwa Service Tribunal, Camp Court,
Abbottabad, in Service Appeal No.1 of 2013]

Muhammad Altaf

...Appellant

Versus

*Government of KPK through Secretary,
Home and Tribal Affairs Department,
Peshawar and others*

...Respondents

For the Appellant

: Mr. Abdul Rehman Qadar, ASC
Ch. Akhtar Ali, AOR

For the Respondents

: Mr. Zahid Yousaf Qureshi,
Addl. A.G., KPK

Date of Hearing

: 11.02.2021

ORDER

GULZAR AHMED, CJ. - The very question raised by the

learned counsel for the appellant is that the appellant's absence
period was treated as Leave Without Pay and such being a
penalty, he could not have been imposed another penalty of
dismissal from service. The very question, as to whether the
treatment of absence period as Leave Without Pay is a penalty or
not, has already been decided by this Court in a number of cases.

Reliance in this regard is placed on the cases of National
Accountability Bureau through Chairman v. Muhammad Ashraf
(2020 SCMR 425) and Kafayat Ullah Khan v. Inspector General

Senior Co
Supreme C
lah

Police, Islamabad and another (C.A.No.1661 of 2019) wherein it has been held by this Court that treatment of absence period as Leave Without Pay is not a penalty rather is a treatment of the absence period which is not counted as penalty.

2. The learned counsel for the appellant when confronted with the same, is unable to give any reply. The appeal is, therefore, dismissed.

Sd/ CJ

Sd/ J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad



2924/21

GR No: _____ Civil/Criminal

Date of Presentation: 11-2-21

No of Words: 600

No of Folios: 6

Requisition Fee Rs: 5.00

Copy Fee Int: 3.72

Court Fee Stamps: 8.72

Date of Completion of Case: 18/2/21

Date of Delivery of Case: 22/2/2021

Compared by/Paragon: _____

Received by: [Signature]