

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1273/2015

Date of Institution ... 02.11.2015

Date of Decision ... 13.12.2017

Muhammad Yousaf Khan S/O Fazal Rahim
R/o Daang Qila Tehsil Tangi District Charsadda (Ex-Constable No. 5105)
.. (Appellant)

VERSUS

1. Government of KPK through Chief Secretary and four others.
... (Respondents)

MR. MUHAMMAD IMRAN KHAN,
Advocate ... For appellant.

MR. KABIRULLAH KHATTAK,
Addl. Advocate General ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN
MR. MUHAMMAD AMIN KHAN KUNDI, ... MEMBER

JUDGMENT


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

FACTS

2. The appellant was dismissed from service on 19.05.2015 against which he filed departmental appeal on 22.05.2015 which was rejected on 06.7.2015 and thereafter, he filed the present service appeal on 02.11.2015. After rejection of the

departmental appeal the appellant moved review petition which was decided and then he filed the present service appeal. Alongwith memorandum of appeal an application for condonation of delay has also been submitted by the appellant. The reason given in the application for condonation of delay is the pendency of the review/reconsideration application. That the respondents despite many contacts did not respond the decision of his review/reconsideration application.

ARGUMENTS.



3. The learned counsel for the appellant argued that the reasons for delay in filing of the present appeal have fully been mentioned in the application for condonation of delay. That perusing the review petition is a valid ground for condonation of delay. On merits he argued that the absence of the appellant was not willful. That the criminal case was falsely made against the appellant by his opponent in order to recover some money from the appellant. That the appellant was acquitted on merits and not on the basis of any compromise as opined by the inquiry officer. That the appellant duly reported the matter to the concerned Police Station on 26.12.2016 regarding the whole story which was entered into a daily diary. That the whole proceedings against the appellant were illegal. That the respondents have admitted through evasive denial in the comments regarding pendency of the review petition. That the appellant submitted application for leave which was not honored. That the appellant was forced to remain absent under compelling circumstances which could not be termed as willful absence.

4. On the other hand the learned Addl. Advocate General argued that the present appeal is hopelessly time barred. That second departmental appeal or any review is not permissible under the law. In this regard he relied upon a judgment reported as 2013 SCMR 911. He argued that in so many appeals this Tribunal has

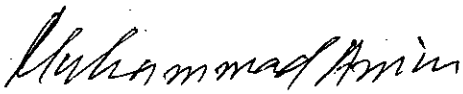
decided that second departmental appeal or review is not permissible. That the appellant was involved in a criminal case. That the case is one of moral turpitude. That full inquiry was conducted and no noticeable lacuna could be pointed out by the learned counsel for the appellant in the whole proceedings.

CONCLUSION.

5. Admittedly the present appeal is time barred. The application for condonation of delay is a proof of delay. This Tribunal is first to decide the application for condonation of delay and if the delay is condoned then, of course, this Tribunal would discuss the merits of the appeal. The reason given in the application for condonation of delay is filing of review/reconsideration application. This Tribunal is first to see whether this ground is a valid ground for condonation of delay. This Tribunal in so many appeals has decided that pursuing a remedy before a wrong forum or pursuing a wrong remedy is no ground for condonation of delay. The appellant shall have to show that what reasons misled him or his counsel to pursue the remedy before a wrong forum or to resort to a remedy not provided by law. Such reason must specifically be mentioned in the application for condonation of delay. This situation has been explained by the august Supreme Court of Pakistan in a larger bench judgment reported as PLD 2016-Supreme Court-872. In the said reported judgment, the august Supreme Court of Pakistan has settled this long standing issue once for all by holding that pursuing a wrong remedy or before a wrong forum is no ground *per se* for condonation of delay. That not only delay of each and every day is to be explained but the seeker of the condonation must specifically mention that what misled him or his counsel to seek wrong remedy. It has been fully elaborated in that judgment that wrong advice of the counsel, ignorance of law etc. are no ground for condonation of delay. The case of the

appellant stand at a lower pedestal then the one mentioned in the said judgment because in the case in hand none of the above ground has been taken by the appellant. The only ground is that the appellant filed an application for reconsideration without explaining that why did he file an application for reconsideration and under what law. In this regard this Tribunal has delivered so many judgments and one of the judgments is entitled "*Syed Roidar Shah Versus the Government of Khyber Pakhtunkhwa through Secretary Health Department, Civil Secretariat Peshawar and 3 others*", in service appeal No. 458/2017 decided on 30.11.2017.

6. As a result of the above discussion the application for condonation of delay is rejected and the present appeal is also dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER


(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
13.12.2017

1273/2015

13.12.2017 Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. Advocate General alongwith Aziz Shah, H.C for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, this appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

Muhammad Amin
MEMBER

[Signature]
CHAIRMAN

ANNOUNCED

13.12.2017

11.01.2017

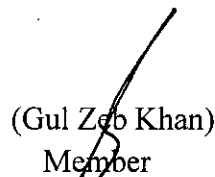
Appellant with counsel and Additional AG for the respondents present. Learned counsel for the appellant submitted rejoinder and requested for adjournment. To come up for final hearing on 18.05.2017 before D.B.


MEMBER


CHAIRMAN

18.05.2017

Appellant in person present. Mr. Ijaz Hussain Inspector Legal and Mr. Shah Jehan Assistant alongwith Mr. Muhammad Jan Deputy District Attorney for the respondents present. Appellant requested for adjournment. Adjourned. To come up for arguments on 12.09.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

12.09.2017

Clerk of counsel for the appellant, Asstt. AG alongwith Ijaz Hussain, Inspector (Legal) and Shah Jehan, Asstt. for the respondents present. Counsel for the appellant is not in attendance. Seeks adjournment. Adjourned. To come up for arguments on 13.12.2017 before the D.B.


Member


Chairman


21.07.2016

Appellant in person and Mr. Hayat Muhammad, Reader alongwith Additional AG for the respondents present. Written reply not submitted and requested for further time to file written reply. Last opportunity granted. To come up for written reply/comments on 15.08.2016 before S.B.


MEMBER

15.08.2016

Clerk to counsel for the appellant and Mr. Hayat Muhammad, HC alongwith Addl. AG for respondents present. Written reply submitted on behalf of respondents No. 1 to 4. None present on behalf of respondent No. 5. Notice be issued to respondent No. 5. To come up for written reply/comments on 31.10.2016 before S.B.


Member

31.10.2016

Clerk to counsel for the appellant and Mr. Shah Jehan, ASI alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 11.01.2017.


Member

11.02.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to inquiry on the allegations of wilful absence and involvement in a criminal case and removed from service vide impugned order dated 19.5.2015 where-against he preferred departmental appeal on 22.5.2015 which was rejected on 6.7.2015. That the appellant filed a review petition on 10.7.2015 but with no response and hence the instant service appeal on 12.11.2015.

That the appellant was acquitted of the criminal case vide order dated 24.3.2014 by the Court of competent jurisdiction and that the inquiry was not conducted in the prescribed manners as neither any show cause notice was issued to the appellant nor he was associated with the inquiry.

Points urged need consideration. Admit, subject to limitation. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 27.4.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

27.4.2016

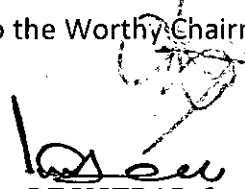

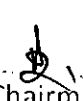

Appellant present in person and Muhammad Raziq, H.C alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 21.07.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1273/2015

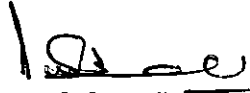
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12.11.2015	<p>The appeal of Mr. Muhammad Yousaf Khan resubmitted today by Mr. Muhammad Imran Khan Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>25-11-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	25.11.2015	<p>Agent of counsel for the appellant present. Seeks adjournment. Adjourned to 25.1.2016 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p>
	25.01.2016	<p>Agent of counsel for the appellant present. Seeks adjournment. To come up for preliminary hearing on 11.2.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Muhammad Yousaf Khan son of Fazal Rahim received to-day i.e. on 02.11.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Affidavit may be got attested by the Oath Commissioner.
- 4- Annexure-F of the appeal is illegible which may be replaced by legible/better one.

No. 1205 /S.T.

Dt. 02/11/2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Imran Khan Adv. Pesh.

PTD

Respected Sir,

objection ~~are~~ removed, Be fixed for hearing please. Annexure F. is illegal, and it is the only copy obtained from office.

Ms. Insaan Khan
Advocate.

12-12-11

1

BEFORE THE CHAIRMAN SERVICE
TRIBUNAL KHYBER PUKHTOON
KHAWA PESHAWAR.

Appeal No. 1273/2015

MUHAMMAD YOUSAF KHAN

VERSUS

GOVERNMENT OF KPK AND OTHERS

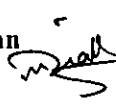
INDEX

S/No.	Subject	Annexure	Page No
1	GROUNDS OF APPEAL		2-4
	AFFIDAVIT & Condonation Application		5-6
2	APPOINTMENT ORDER & MEDICAL CERTIFICATE	A & B	7-8
3	APPLICATION FOR LEAVE	C	9
4	JUDGMENT DT: 23.04.2015	D	10
5	ROZNAMCHA	E	11
6	SHOW CAUSE NOTICE AND APPLICATION	F & G	12 & 13-15
7	DISMISSAL ORDER DT: 19.05.15	H	16
8	DEPARTMENTAL APPEAL AND ORDER	I & J	17-20
9	APPLICATION FOR RECONSIDERATION	K	21
10	WAKALATNAMA		22
11	SPARE COPIES FOR RESPONDANTS NO: 1 TO 5		

Dated: 31.05.2015

APPELLANT

 Through

Muhammad Imran Khan
Muhammad Zia Ullah 
Advocates, High Court

BEFORE THE CHAIRMAN SERVICE
TRIBUNAL KHYBER PUKHTOON
KHAWA PESHAWAR.

Appeal No. 1273/2015

MUHAMMAD YOUSAF KHAN S/O: FAZAL RAHIM R/O: DAANG QILA
 TEHSIL TANGI DISTRICT CHARSAKDA (EX-CONSTABLE NO: 5105).

APPELLANT *D.W.F. Province*
Service Tribunal
Diary No 1313
Dated 02-11-15

VERSUS

1. GOVERNMENT OF KPK THROUGH CHIEF SECRETARY.
2. CAPITAL CITY POLICE OFFICER PESHAWAR.
3. SUPERINTENDENT POLICE HEAD QUARTERS PESHAWAR.
4. DEPUTY SUPERINTENDENT POLICE HEAD QUARTERS PESHAWAR.
5. DISTRICT POLICE OFFICER CHARSAKDA.

RESPONDENTS

APPEAL U/S: 4 OF THE NWFP SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER PR-1975 VIDE OB NO: 1982 DATED 19.05.2015 AND ORDER NO: 3276-81 DATED 06.07.2015, WHEREBY THE ORDER OF DISMISSAL FROM SERVICE HAS BEEN PASSED AGAINST THE APPELLANT.

PRAYER IN APPEAL:

ON ACCEPTANCE OF THIS APPEAL THE ORDER PR-1975 VIDE OB NO: 1982 DATED 19.05.2015 AND ORDER NO: 3276-81 DATED 06.07.2015 PASSED BY RESPONDENTS MAY PLEASE BE SET-ASIDE AND THE APPELLANT BE RE-INSTATED BACK TO HIS SERVICE WITH ALL BACK BENEFITS.

RESPECTFULLY SHEWETH:

The appellant most humbly submits as under:

That the appellant was appointed as constable on 23.05.2006 in police department and he served the department with zeal and efficiency.

(Copy of appointment order and medical certificate are attached as annexure A & B)

That the appellant performed his job to the entire satisfaction of his Superior and during service no adverse remark or black spot has been found on the part of appellant.

Signature
2/11/15

re-submitted to-dag
and filed.

Signature

12/11/2015

3. That due to some money dispute and false implication in the criminal case, the appellant was constrained to be absented from duty as there was a threat of dire consequences of life from the complainant of FIR which was planted against the appellant, that's why the appellant was absent from his duty from 10.11.2012 to 26.12.2014.
4. That on 08.11.2012 the appellant moved application for leave to SP Cantt, Peshawar through his brother as there was threat of dire consequences of life to appellant and in such situation there was no other alternate way with the appellant.

(Copy of application for leave is attached as annexure C)

5. That on 23.04.2014 the appellant was acquitted from the case FIR No: 549, dated: 03.06.2013, U/Ss: 365/382/147/149 PPC, PS: Charsadda on the basis of statement of complainant in which during cross-examination he stated that "the time of occurrence is not known to him. He further admitted that the accused had muffled their faces. He also stated that he does not know that where the accused have taken him because it was night time and that he has not identified the accused. He further stated that there was a civil litigation between him and the accused party and on the basis of that he charged them".

(Copy of judgment is attached as annexure D)

6. That even after acquittal from case, the appellant was having threat of dire consequences of life from complainant and when the matter was satisfactorily settled down with efforts of elders of locality, the appellant rejoined his duty on 26.12.2014.

(Copy of roznamcha is attached as annexure E)

7. That after re-joining service, the appellant was performing his duty regularly but on 11.05.2015 he was issued final show cause notice No: 361 while appellant submitted an application in response of final show cause notice in which he mentioned all facts and there after conducting baseless inquiry by the respondents he was dismissed from service on 19.05.2015.

(Copy of show cause notice, application and dismissal order dt: 19.05.15 are attached as annexure F, G, H)

8. That after dismissal order, the appellant filed departmental appeal on 22.05.2015 which was rejected on 06.07.2015 without giving consideration to the cogent grounds raised in departmental appeal.

(Copy of appeal and order are attached as annexure I, J)

9. That after dismissal of departmental appeal, the appellant again moved another application for re-consideration of departmental appeal on humanitarian grounds as the appellant was terminated from service due to his false implication in the said criminal case in which he was acquitted for having no connection in said case therefore the termination of appellant from service is against law but respondents have not given any reply to such application for re-consideration of departmental appeal.

(Copy of application for re-consideration of departmental appeal is attached as annexure K)


10. That appellant was time to time contacting with respondents, but they were lingering on the matter by one pretext or the other.
11. That feeling aggrieved, the appellant filed this appeal before this Hon'ble Court on the following grounds inter-alia:

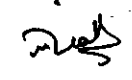
GROUND:-

- A. That the appellant was legally appointed on the post police constable and was performing his duty regularly.
- B. That on the false implication of the appellant in criminal case, the baseless inquiry was conducted by the respondents and even after acquittal of appellant from such criminal case, the respondents terminated the job of appellant, which is against law and fundamental rights.
- C. That such an attitude of hire and fire is not even warranted by any law in the institution where a simple master and servant rule is applicable, whereas the whole procedure of dealing with the Civil Servant in the cases of any misconduct as enumerated in the Service Laws has been bulldozed in such a manner.
- D. That not only the whole process and procedure of E&D Rules, 1973 as well as Removal from Service Ordinance has been ignored and defied, but the service of the appellant has been terminated in such a manner which cannot be justified even under the law of jungle.
- E. That the appellant is the only serving member of huge family and such harsh punishment of dismissal from the service without considering his hardships during his false implication in the criminal case not only put him in so many mental worries, financial crises but also spoiled his career in a very bad way.
- F. That there is a basic principle of Islam as well as of law that no one should be condemned unheard but such rule has been ruined out by passing one sided Order.

IT IS, THEREFORE, PRAYED THAT ON ACCEPTANCE OF THIS APPEAL THE ORDER PR-1975 VIDE OB NO: 1982 DATED 19.05.2015 AND ORDER NO: 3276-81 DATED 06.07.2015 WHEREBY THE SERVICE OF THE APPELLANT HAS BEEN TERMINATED IS UNLAWFUL WITHOUT AUTHORITY/JURISDICTION AS WELL AS BEING UNCONSTITUTIONAL AND BASED ON THE MALAFIDE INTENTIONS OF THE RESPONDENTS MAY PLEASE BE SET-ASIDE AND THE APPELLANT BE RE-INSTATED BACK TO HIS SERVICE WITH ALL HIS BACK BENEFITS FROM THE DATE OF HIS ABOVE SAID DISMISSAL.

Appellant 

Through 

Muhammad Imran Khan
 Muhammad Zia Ullah 
 Advocates, High Court,
 Peshawar.

Dated: 23.10.15

BEFORE THE CHAIRMAN SERVICE
TRIBUNAL KHYBER PUKHTOON KHAWA
PESHAWAR.

MUHAMMAD YOUSAF KHAN

VERSUS

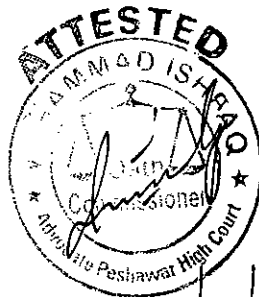
GOVERNMENT OF KPK AND OTHERS

AFFIDAVIT

It is verified upon oath that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

Deponent

*As per instruction of
my clients
[Signature]*



12/11/15

BEFORE THE CHAIRMAN SERVICE
TRIBUNAL KHYBER PUKHTOON KHAWA
PESHAWAR.

MUHAMMAD YOUSAF KHAN

VERSUS

GOVERNMENT OF KPK AND OTHERS

APPLICATION FOR CONDONATION OF DELAY

RESPECTFULLY SHEWETH:

The applicant most humbly submits as under:

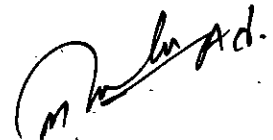
1. That the applicant moved this application for condonation of delay along with the instant service appeal in which no date of hearing is fixed till yet.
2. That reason of delay is just because of pendency of another application to department for re-consideration of departmental appeal.
3. That the applicant was contacting with respondents time and again regarding such application for re-consideration of departmental appeal but till yet no response is received from respondents and they are delaying the matter by one pretext or the other.
4. That the delay in filing of instant service appeal is just because of that very application for re-consideration of departmental appeal which is pending before Capital City Police Peshawars.

It is, therefore, prayed that on acceptance of this application, the instant appeal may kindly be considered within time.



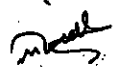
Applicant

Through



Muhammad Imran Khan
 Muhammad Zia Ullah
 Advocates, High Court,
 Peshawar.

Dated: 31-10-15



7

BEFORE THE CHAIRMAN SERVICE
TRIBUNAL KHYBER PUKHTOON KHAWA
PESHAWAR.

MUHAMMAD YOUSAF KHAN

VERSUS

GOVERNMENT OF KPK AND OTHERS

AFFIDAVIT

It is verified upon oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.



12/11/15

Deponent
As per instructions
of my client

(Signature)

ENLISTMENT ORDER

7

Recruit :- Muhammad Yousaf Khan
 S/O :- Fazal Rahim
 R/O :- Village Shakh No 5
 PS Khanmai Tehsil Charsadda District Charsadda is hereby enlisted as
 constable w.e from 23-5-06 and allotted constabulary No. _____

AMRUT
"A"

His particulars are as under:-

Height = 5' 7 3/4"
 Chest = 37x38"
 Date of Birth = 18-2-81
 Age on enrollment 25 Years 3 Months 05 Days.
 Education = FA

Imamuddin
District Police Officer,
Charsadda

OB No. 440
Dated 23/5/2006

No. _____ /OASI, dated Charsadda the _____ / 2006

Copy of the above is forwarded to the:-

- 1) District Account Officer, Charsadda.
- 2) Establishment Clerk, Charsadda.
- 3) FMC Charsadda.

Accountant General
 Pay Fixed in the Revised Basic Pay Scales

R.B.P.S. 29107 - B.5
 Pay Fixed @ Rs. 29107 w.e.f. 01-07-2007

(A.P.S.) 1340-160-8140 - E.5
 Pay Fixed @ Rs. 2660/- w.e.f. 01-07-2007

(A.P.S.) 5400-260/13200 - B.5
 Pay Fixed @ Rs. 6200/- w.e.f. 01-07-2007

Date of Next increment is on _____

ATTESTED

M. Ad.

MEDICAL CERTIFICATE

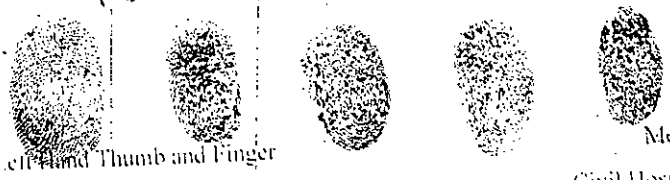
Name of Official MUHAMMAD JOUSAF KHAN
 Caste or race AFGHAN
 Father's Name FAZL RAHIM
 Residence VILLEGE SHAKH No 5 POST OFFICE SHAKH No 6 DIST 8 TEH CHARSADDA
 Date of Birth 18-02-1981
 Exact height by measurement 5-8 INCH
 Personal mark of identification NIL
 Signature of the official [Signature]
 Signature of head of office

COMMENT 'B'

Seal of office [Signature]
 District Police Officer
 Charsadda

I do hereby certify that I have examined Mr. M. Jousaf Khan a candidate for employment in the office of the Police Department And can not discover that he had any disease communication or other constitutional effecton of bodily infirmity except

I do not consider this as disqualification for employment in the office of the S.S.P. Charsadda. His age according to his own statement Years and by appearance about 7 years.



Left hand Thumb and Finger Impressions

Medical Superintendent—
 Civil Hospital
 Medical Superintendent
 DHQ Hospital Charsadda

ATTESTED

[Signature] Ad

کفر ضابط الیس۔ کیا کفر سے لپکا ہے؟
ضابط عالی!

سائل مؤدبانہ عرض کیا کہ اس سائل کا

میں محمد جان کے ساتھ کچھ رقم کا تبادلہ کیا گیا ہے، یہ سائل

سے سائل کو سہ ماہی سے جان دیا گیا ہے اس لئے سائل

کو اسے جان کے ضمانت کے سلسلے میں حالات کے ساتھ، پھر سائل

کہتا ہے کہ اسے اسے سائل کے ساتھ مل کر دیا گیا ہے۔

لہذا اسے دیا گیا کہ درخواست سائل منتقلی، فرماتا
جاتی ہے۔ عین دوزخ میں ہے۔

المترجم 11/08
2022

العربی

سائل نے شروع فرما دیا خود
آپ صاحب کو کہ منتقلی دیکھیں

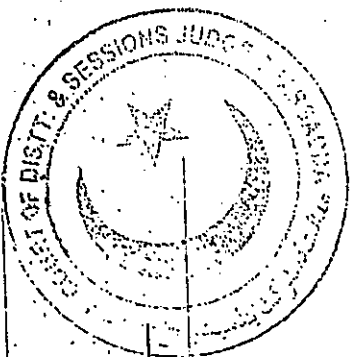
ATTESTED

(Signature)

(Signature)

ASD...
26-4-14
23-4-14
156/SC

amruya
D



ORDER -8
23.04.2014

Accused Akhtar Munir, Wali Khan, Muhammad Jan, Yousaf Ali and Muhammad Ayub on bail with counsel and APP for the state present. Complainant/PW Muhammad Jan also present and examined as PW.1. In the meanwhile, learned counsel for the accused submitted an application u/s 265-K Cr.PC for acquittal of the accused. Notice of the same given to the prosecution.

Arguments on the application heard and record perused.

The allegations leveled by the complainant against the accused are that on 19.04.2013, the accused have forcibly kidnapped the complainant and have taken him to a Hujra, snatched his mobile phone and Rs.780/- and thereafter, confined him in a house. For registration of FIR, the complainant preferred a 22-A Cr.PC petition before court, which was accepted and on the basis of which the instant FIR No.549, dated 03.06.2013, U/s 365/382/147/149 PPC was registered in PS Charsadda.

After due course of investigation, challan was submitted against accused Muhammad Yousaf, where...

ATTESTED -
Sd/-
12/14
Copying Agency
Department of Distt & Sessions
Charsadda

ATTESTED

M Ad



Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3

Handwritten notes:
 1
 2

challan u/s 512 Cr.PC was submitted against accused Akhtar Munir, Muhammad Jan, Muhammad Ayub and Wali Khan, however, after their arrest, supplementary challan was submitted against them and their case was entrusted to the court for trial. After observing legal formalities u/s 265-C Cr.PC, the accused were formally charged to which they pleaded not guilty and claimed trial. The prosecution produced and examined 01 PW, however, learned counsel for the accused submitted the instant application for acquittal of the accused.

Perusal of record would transpire that the complainant has charged the accused facing trial for his kidnapping, wrongful confinement and snatching of his mobile phone and cash amount, however, when the complainant appeared before this court as PW-1, he did not support the prosecution story. During his cross-examination, he stated that the time of occurrence is not known to him. He further admitted that the accused had muffled their faces. He also stated that he does not know that where the accused have taken him because it was night time and that he has not identified the accused. He further stated that there was a civil litigation between him and the accused party and on the basis of that he charged them. The complainant has got no objection on the acquittal of accused in the instant case.

Hence, in view of the above discussion, it is held that there is no probability of conviction of accused facing trial in the instant case even if the remaining prosecution evidence is recorded, rather it would be a futile exercise and wastage of precious time of court. Therefore, the application in hand stands accepted and accused named above are, hereby, acquitted u/s 265-K Cr.PC. They are on bail, their sureties are absolved from the liabilities of bail bonds.

File be consigned to the Record Room after its completion.

Announced
23.04.2014

Handwritten signature:
 Mrs. Shahnaz Hameed Khattak
 AD & SJ-V, Charsadda

TESTED
Signature
 12/14
 Copying Agency Branch
 of Distt & Sessions Judge
 Charsadda

کتابت شد

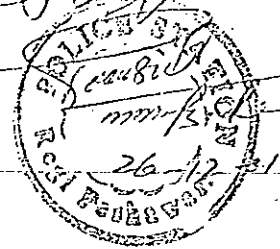
کھنڈر 14 روزہ نامہ 26/12/14

14/12/14

14 حاضرہ 11:30 بجے 26/12/14 اس وقت کھنڈر حرم کو دست 5105 FL غیر حاضر شدہ کو الٹ در 19/12/14 10:11 حاضر آیا اور میں کیا کہ
 میں غیر حاضر تھا۔ دوران غیر حاضری میرے خلاف قورم 549 قورم 3/6/13 جرم 118/365382۔ تمام کارسردہ میں درج کروا
 ہو کر کتبہ مناجی کو لیا۔ نے قورم میں مگر قورم کر کے طالبان عدرا ان کیا اب برا ہو کر حاضر آیا میں حاضر ہی نہیں آئی
 مذکورہ کی حاضرہ درج کر دینا مجھے کھنڈر کو الٹ 2352-013 کو مستقل پر صفا کچے کھنڈر مذکورہ کو لیکر اس لئے
 کے بزرگ کھنڈر میں قورم اس عباد کو الٹ دی گئی۔ ضابطہ الٹ 2

14 حاضرہ
روزہ

کتابت شد
 26/12/14
 81



ATTESTED

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11

کتابت شد

12

ORIGINAL
"F"

FINAL SHOW CAUSE NOTICE

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Muhammad Yousaf No.5105 the final show cause notice.

The Enquiry Officer, Mr. Muhammad Ashfaq, after completion of enquiry proceedings, has recommended with a punishment deemed appropriate for you Constable Muhammad Yousaf No.5105 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Muhammad Yousaf No.5105 deserve the punishment in the light of the above said enquiry reports.

I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975 for absence willfully performing duty away from place of posting & involvement in criminal case.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.
3. The copy of the finding of the enquiry officer is enclosed.

SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 261 /PA, SP/HQs dated Peshawar the 11-5 /2015.

Copy to official concerned

ATTESTED

[Signature]

... of ASJ, Charsadda

Signature
"G"

محکمہ خزانہ
دفعہ 174 کے تحت فراہم کردہ

تاریخ:

سائنس

361/PA/58/HQ

15/5/15

دفعہ 174 کے تحت فراہم کردہ

23/5/15

محکمہ خزانہ

دفعہ 174 کے تحت فراہم کردہ

محکمہ خزانہ

دفعہ 174 کے تحت فراہم کردہ

2012

ATTESTED

Ad

لاہور سٹی سیشن کورٹ

۵۔ یہ کہہ کر اس دوران یہ قذات مدعی $3\frac{6}{13}$ کو FIR درج

کیا اور سرٹیفکیٹ حاصل کیا اور باقی

۶۔ یہ کہہ کر بعد میں عدالت عظمیٰ نے مدعی $\frac{6}{14}$ کو لٹریچر

مدعی کے بہت سے طور پر لکھا گیا

۷۔ یہ کہہ کر اس کے بعد مدعی نے لٹریچر کے ساتھ ساتھ

مدعی کے ساتھ ساتھ لٹریچر اور اس کے ساتھ ساتھ

جان کو فطرہ لگا۔ یہ سب اس کے ساتھ ساتھ

۸۔ یہ کہہ کر مدعی نے اس دوران یہ لٹریچر لکھا جس کے

ساتھ ساتھ لٹریچر لکھا، جس کے ساتھ ساتھ جان کو فطرہ

بدرجہ لگا اور مدعی $\frac{16}{14}$ کو لٹریچر لکھا

فردیہ کا فریادی

ATTESTED

[Signature]

و یہ کہ اس وقت سے یہ کہ میں اس کے لیے ہوں
میں اس کے لیے ہوں اس کے لیے ہوں

۱۰۔ یہ کہ میں اس کے لیے ہوں اس کے لیے ہوں
میں اس کے لیے ہوں اس کے لیے ہوں

۱۱۔ یہ کہ میں اس کے لیے ہوں اس کے لیے ہوں
میں اس کے لیے ہوں اس کے لیے ہوں

یہ کہ میں اس کے لیے ہوں اس کے لیے ہوں
میں اس کے لیے ہوں اس کے لیے ہوں

1710-0915867-1

میں اس کے لیے ہوں اس کے لیے ہوں

نئی طرح

3105

ATTESTED

AS

use the court of ASD, Ch...

بہار احمد
فلسفہ سائنس
اس کے لیے ہوں

16
ORDER

This office order relates to the disposal of formal departmental enquiry against Constable Muhammad Yousaf No.5105 of Capital City Police Peshawar on the allegations that he while posted at PS Regi, Peshawar involved in criminal case vide FIR No.549 dated 03.06.2013 u/s 365/382/147/149 PS Charsadda and absented himself from lawful duty w.e.f 10.11.2012 to 26.12.2014 (02-years & 16-days) without taking permission or leave.

In this regard, he was issued charge sheet and summary of allegations vide No.361/E/PA/SP/H.Qrs, dated 03.07.2013. SDPO Rural was appointed as Enquiry Officer. He conducted the enquiry and submitted his report that defaulter official was acquitted on compromise basis from the charges leveled against him by the court of Additional Session Judge-V, Charsadda. The delinquent official was arrested on 07.06.2013 & released on 15.07.2013. He was served 39-days in Jail and remained absent for 01-year, 11-months & 16-days. The E.O further recommended that he may be awarded with a punishment deemed appropriate vide Enquiry Report No.908/ST dated 05.05.2015.

Upon the finding of Enquiry Officer, he was issued final show cause notice which he received & replied but his explanation found un-satisfactory.

In the light of recommendations of E.O & other material available on record, the undersigned came to conclusion that the alleged official found guilty of deliberate absence beside involvement in criminal case. Therefore, he is hereby dismissed from service under Police & Disciplinary Rules-1975 with immediate effect. Hence, the period he remained absent for 01-year, 11-months & 16-days is treated without pay.


SUPERINTENDENT OF POLICE
HEADQUARTERS, PESHAWAR

OB. NO. 1982 / Dated 19/5 /2015

No. 1862-70 /PA/SP/dated Peshawar the 19/5 /2015

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

- ✓ Capital City Police Officer, Peshawar.
- ✓ DSP/HQrs, Peshawar.
- ✓ Pay Office, OASI, CRC & FMC along-with complete departmental file.
- ✓ I/C Computer Cell
- ✓ Officials concerned.

ATTESTED


AA

ORIGINAL
" I "

Subject: DEPARTMENTAL APPEAL AGAINST THE ORDER OF DISMISSAL FROM SERVICE DATED 19.5.2015 PASSED BY S.P HQRS, PESHAWAR, WHEREBY THE APPELLANT HAS BEEN DISMISSED FROM SERVICE WITH IMMEDIATE EFFECT.

Respected Sir,

With due respect the appellant begs to submit as under :-

on 23/2/06

9 (nine years)

- 1. That the appellant joined police department and served the department with zeal and efficiency.
- 2. That due to some money dispute and involvement in the false case I absented from duty from 10.11.2012 to 20.12.2014.
- 3. That Charge sheet and summary of allegation was issued against the appellant which was replied. Copy of reply of charge sheet is attached).
- 4. That enquiry was conducted and upon the finding of Enquiry officer, the worthy S.P HQrs Peshawar dismissed from service with immediate effect vide order No. 1982 dated 19.5.2015. Copy of order is attached.
- 5. That being aggrieved from the order of dismissal the appellant approaches the Hon'able authority on the following grounds amongst other inter-alia :-

ATTESIED

[Handwritten Signature]

GROUNDS

A. That the appellant was absented from duty for the reason of money dispute and involvement in and false case, therefore being innocent the Hon'able court acquitted the appellant from the charges. Copy of acquittal order is attached.

B. That the absence from duty was because of false involvement in the case and was not wilful or deliberately.

C. That the appellant performed his duties to the best of his ability and potential, there is no complaint against him from any corner, except the false involvement in the case.

D. That the appellant served about ^(nine) 9 years in the police department with unblemished service record. and young aged 30 yrs.

E. That the appellant is suffering hardship due to jobless and there is no source of income to earn his livelihood.

F. That additional grounds will be raised at the time of hearing before your good honour.

It is therefore most humbly prayed that on

P---3

ATTESTED

[Handwritten Signature]
Ad

acceptance of the instant departmental appeal the order of dismissal from service dated 19.5.2015 passed by the worthy S.P. HQrs, Peshawar may very kindly be cancelled and the appellant may very kindly be re-instated in service with all back benefits and the period of absence may also be treated as leave without pay in the larger interest of justice.

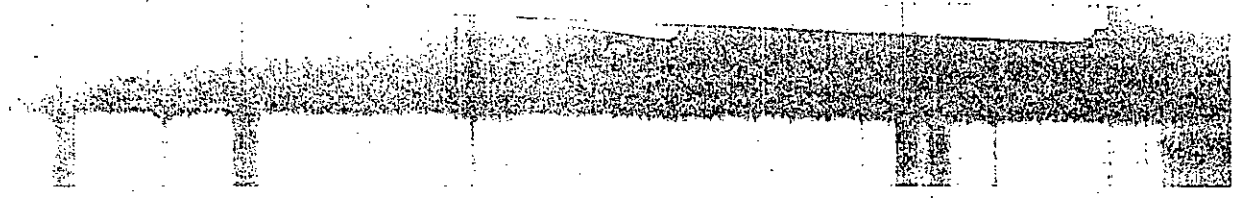
Appellant,

MUHAMMAD YOUSAF
Ex-CONSTABLE NO: 5105
S/O Fazal Rahim
R/O Dang Qilla Tehsil Tangi
Distt: Charsadda.

Dated: 22.5.2015

ATTESTED

M. [Signature]



ORDER.

20

2015/10
"T"

This order will dispose off departmental appeal preferred by ex-constable Mohammad Yousaf No. 5105 whereby he was awarded the major punishment of dismissal from service under PR-1975 vide OB No. 1982 dated 19.5.2015 by SP-HQRs:, Peshawar.

The allegations levelled against him were that:-

- i) Absence from PS Regi w.e.f 10.11.2012 to 26.12.2014= 2-year and 16-days
- ii) Involved in criminal case FIR No. 549 dated 3.6.2013 u/s 365/382/147/149 PPC PS Charsadda.

Proper departmental proceedings were initiated against him and DSP-Rural was appointed as the E.O. who in his findings found him guilty of allegations. FSCN was issued to him to which he replied. The same was perused and found unsatisfactory as such he was awarded the above punishment.

The relevant record was perused along with his explanation. He was also heard in person in OR on 3/7/2015. He could not defend himself. The allegations stand proved against him. He deserves no leniency. The order of SP-HQRs: is upheld and his appeal for reinstatement in service is rejected/filed.


CAPITAL CITY POLICE OFFICER,
PESHAWAR.

No. 3276-81 /PA dated Peshawar the 6.7. 2015.

Copies for inf and n/a to the:-

- 1/ SP/HQRs: Peshawar
- 2/ PO/OASI
- 4/ CRC along with S.Roll for making necessary entry in his S.Roll.
- 5/ FM enclosed F.M
- 6/ Official concerned.

ATTESTED



حضرت
گفتار جناب کمیٹی سنی پولیس آفیسر بیٹا

2024/25
"K"

عنوان :- درخواست برائے نظر ثانی بر ڈیپارٹمنٹل ایپل تاریخ فیصلہ

موز 6/7/15

جناب عالی

سائل حسب ذیل عرض گزار ہے

یہ کہ مسائل نے ایک عود دیپارٹمنٹل ایپل آپ جناب کی خدمت میں پیش کی تھی

جو کہ موز 6/7/15 کو آپ جناب نے خارج فرمادی ہے

(نقل ایپل و فیصلہ لف از درخواست ہے)

یہ کہ مسائل درج بالا دیپارٹمنٹل ایپل قانون، مطابق فیصلہ نہیں ہوا ہے۔ جبکہ مسائل کی غیر حاضری کی وجہ واضح ہے اور مسائل فوجدار میں مقدم سے بل باعزت ہری ہے۔ لیکن ان حقائق کو بروقت فیصلہ

حکمل طور پر نظر انداز کیا گیا ہے۔
یہ کہ مسائل ایک غریب گھرانے سے تعلق رکھتا ہے اور بڑا خاندان مسائل کے ذریعہ روکتا ہے۔ جبکہ مسائل کا دیگر کوئی ذریعہ معاشنا نہ ہے۔

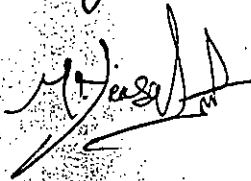
لہذا استدعا ہے کہ مندرجہ بالا دیپارٹمنٹل ایپل پر دوبارہ نظر ثانی کی جائے

اور مسائل کو دوبارہ نوکری پر بحال کیا جائے۔

مسائل پوری زندگی دعا گو رہے گا

الرضی

سائل



المترجم 7/15 ATTESTED



10 ستمبر



21199

ایڈووکیٹ/دستخط: _____
بارکول ابار ایسوسی ایشن نمبر: 525
رابطہ نمبر: 0314-9171770

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب:

منجانب: محمد یوسف خان (ایسٹریٹ)	دعویٰ: Service Appeal
	موضوع: _____
	مورخہ: _____
	جرم: _____
	تھانہ: _____

بابت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
آن مقام پشاور میں محمد عمران خان صاحب کو موصوف کو مکمل اختیار ہوگا۔ نیز وکیل مقرر
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو
راضی نامہ کرنے و تقرر حال و فیصلہ برصحت دینے جواب دعویٰ اقبال دعویٰ اور درخواست ازہر قسم کی تصدیق
زریں ہر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی، نیز
دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب
مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساتھ ہی دائرہ منظور و قبول ہوگا اور ان مقدمہ
میں جو خرچہ ہر جہان التوائے مقدمہ کے سب سے ہوگا وہ وکیل موصوف وصول کرنے کا اختیار ہوگا کوئی تاریخ پیشی مقام
دورہ یا عدسے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ مندر ہے۔

المقوم:

مقام کے لئے منظور ہے۔

نوٹ: اس جگہ ہر کی ڈیوٹی ہے، جہاں قبول ہوگی

Accepted
Accepted

[Handwritten signature]

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No1273/2015.

Muhammad Yousaf Ex- Constable No.5105 Police Line Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs, Peshawar.
4. Deputy Superintendent of Police, HQrs, PeshawarRespondents.

Reply on behalf of Respondents No. 1, 2, 3 & 4.

Respectfully shewth:.

PRELIMINARY OBJECTIONS.

1. That the appeal is badly time barred.
2. That the appeal is bad for mis-joinder of unnecessary and non-joinder of necessary parties.
3. That the appellant has not come to this Hon'able Tribunal with clean hands.
4. That the appellant has no cause of action.
5. That the appellant is estopped by his own conduct to file the instant appeal.
6. That the appellant has concealed the material facts from Honorable Tribunal.
7. That this Hon'able Tribunal has no jurisdiction to entertain the appeal.

Facts:-

- (1) First part of para No.1 pertains to record, while rest of para is for the appellant to prove.
- (2) Para No.2 is incorrect. In fact the appellant is a habitual absentee and does not take interest in his lawful duties.
- (3) Para No.3 is incorrect. In fact the appellant while posted as PS Regi. Peshawar wilfully involved himself in a criminal case vide FIR No.549

dated 03.06.2013 u/s 365/382/147/149 PS Charsadda and also absented himself wilfully from his lawful duty w.e.f 10.11.2012 to 26.12.2014 (total 02 years and 16 days).

- (4) Para No.4 is incorrect. The appellant remained absent without taking leave/permission from his seniors.
- (5) Para No.5 pertains to court. Hence needs no comments.
- (6) Para No.6 is not related, however the appellant remained absent for a long time.
- (7) Para No.7 is incorrect. Proper departmental proceedings were initiated against him in the charges mentioned above. The enquiry officer after fulfilling all codal formalities found him guilty and he was issued final show cause notice to which he replied. But his reply was found unsatisfactory. He was also heard in person in OR on 03.07.2015 but he could not defend himself. Hence he was awarded major punishment of dismissal from service under PR 1975 vide OB No 1982 dated 19.05.2015 by SP HQrs Peshawar.(charge sheet, statement of allegation, finding report and FSCN are annexed as A,B,C and D).
- (8) Para is correct to the extent that he filed a departmental appeal but after due deliberation was rejected/filed because the charges leveled against him were stand proved.
- (9) Incorrect. As above.
- (10) Para No.10 is incorrect. In fact the appellant did not informed his seniors and remained absent for a long time.
- (11) That appeal of the appellant being devoid of merits may kindly be dismissed with cost.

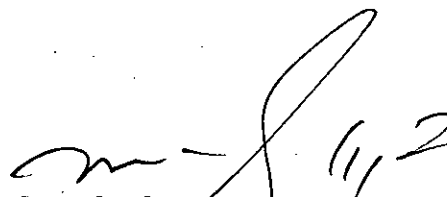
GROUND:-


- (A) Incorrect. The appellant did not perform his duties regularly. He is a habitual absentee.
- (B) Incorrect. The appellant intentionally involved himself in the criminal case and also absented himself wilfully without taking permission/leave.


- (C) Incorrect. The appellant being a member of a disciplined force was rightly proceeded under PR 1975.
- (D) Incorrect. As above.
- (E) Incorrect. The appellant was dealt as per law.
- (F) Incorrect. The appellant was given full opportunity of defense. He was called and heard in person in OR on 03.07.2015 but he failed to defend himself.

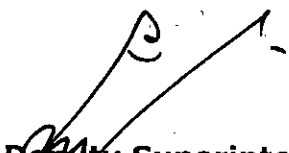
PRAYER.

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed with cost.


**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**


**Capital City Police Officer
Peshawar.**


**Superintendent of Police,
HQrs, Peshawar.**


**Deputy Superintendent of Police,
HQrs, Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No1273/2015.

Muhammad Yousaf Ex- Constable No.5105 Police Line Peshawar.....Appellant.

VERSUS.

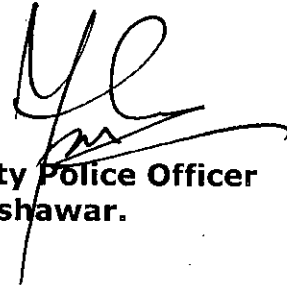
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, HQrs, Peshawar.
4. Deputy Superintendent of Police, HQrs, PeshawarRespondents.

AFFIDAVIT

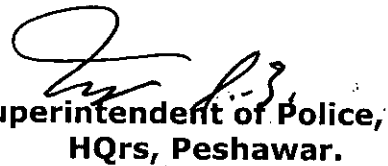
We respondents 1, 2, 3 &4 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.



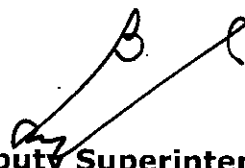
**Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.**



**Capital City Police Officer
Peshawar.**



**Superintendent of Police,
HQrs, Peshawar.**



**Deputy Superintendent of Police,
HQrs, Peshawar.**

(21)

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable Mubd Yusuf No. 5105 of Capital City Police Peshawar with the following irregularities.


"That you Constable Mubd Yusuf No. 5105 while posted at Civil Secretariat, Peshawar were absent from duty w.e.f 10.11.2019 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that have no defence to put in and in that case exparte action shall follow against you.

Intimate whether you desire to be heard in person.

A statement of allegation is enclosed.



SR: SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

20

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Muhammad Yousaf No.5105 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

"That Constable Muhammad Yousaf No.5105 while posted at PS Regi, Peshawar has been involved in a criminal case vide FIR No.549 dated 03.06.2013 U/S 365/382/147/149-PPC PS Charsadda and also remained absent from lawful duty w.e.f 10.11.2012 till date. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SP/O - Ruzal is appointed as Enquiry Officer.

- 2. The Enquiry Officer shall, in accordance with the provisions of the Ordinance, provide reasonable opportunity of hearing to the accused officer, record his finding within 30 days of the receipt of this order, make recommendations as to punishment or other appropriate action against the accused.
- 3. The accused shall join the proceeding on the date time and place fixed by the Enquiry Officer.

[Handwritten Signature]

SR: SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 361 /E/PA, dated Peshawar the 3/7 /2013

- 1. SP/O - Ruzal is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.
- 2. Official concerned

(2)

From: The Deputy Superintendent of Police,
Rural Sub-Division, Peshawar.

To:- The Superintendent of Police,
Headquarters, Peshawar.

Subject:- **DISCIPLINARY ACTION AGAINST FC MUHAMMAD YOUSAF
NO. 5105 OF PS REGI PESHAWAR.**

Memo:- Please refer to your office No. 361/E/PA dated 03.07.2013 on the subject
cited above.

ALLEGATIONS:

Constable Muhammad Yousaf No. 5105 while posted at PS Regi Peshawar was involved in a criminal case vide FIR No. 549 dated 03.06.2013 u/s 365//382/147/149-PPC PS Charsadda. In this regard, he was issued Charge Sheet and Statement of Allegation by SP/Headquarters and DSP Rural Peshawar was appointed as E.O to scrutinize the conduct of the said official.

PROCEEDINGS:

Accordingly the alleged FC alongwith Moharrir PS Regi & Police Lines were summoned through parvana and also telephonically. They all appeared and heard in person and also recorded their statements (DD reports).

Moharrir PS Raigi produced 03 DD reports which was perused by the undersigned. Brief facts are following.

01. DD No. 10.11.2012 PS Raigi.

It was found that on dated 10.11.2012, FC Naeem No. 28 while posted at Guard Banglow of Dr.Mian Saeed the then SP Cantt Peshawar reported to PS Raigi through mobile number 0302-5527313 that FC Yousaf No. 5105 is absent from the duty for the last 03 days without getting any leave or permission of his senior officers.

02. DD No. 14 dated 07.06.2013.

It was found that ASI Khawaja Muhammad of Investigation wing Charsadda reported to PS Raigi through telephone that Constable Muhammad Yousaf s/o Fazal Rahim r/o Charsadda has been arrested in case vide FIR No. 549 dated 03.06.2013 u/s 365//382/148/149-PPC PS Charsadda.

03. DD No. 26 dated 09.07.2013.

It was found that the alleged FC was suspended from service by the then SP Headquarters vide OB No. 2352 dated 04.07.2013 due to involvement in the above criminal case.

6

04. **DD No. 14 dated 26.12.2014.**

The alleged FC Muhammad Yousaf No. 5105 relieved from PS Regi after a period of 02 years, 01 month & 16 days (total=776 days). He was sent to police lines Peshawar as per directions passed through suspension orders.

05. **DD No. 52 dated 26.12.2014.**

The alleged FC joined his duty in police lines Peshawar.

STATEMENT OF ALLEGED FC MUHAMMAD YOUSAF:

That while serving as Sepoy and was posted at Police Station Regi, I absented from duty from 10.11.2012 to 26.12.2014 (total 02 years 01 month & 16 days) for the reason mentioned below and the worthy SP suspended me since then.

01. That there was some money dispute worth Rs. 25,00,000/- between me and Muhammad Jan, regarding selling of vehicle to him.
02. That due to non payment of the amount and I time and again demanded the same, the said Muhammad Jan, executed a stamp paper for plot worth Rs. 25,00,000/- (Annexure-A) and the same was found bogus, thereafter written another deed with three other deeds but the four deed were found bogus and false, because he was not owner in possession of the plot.
03. That a Jirga was conducted in the Hujra of Siyar at Tangi Distt: Charsadda in May 2013, but was not success and Muhammad Jan, reported the matter to he SHO PS City Charsadda for the abduction, but after the investigation by the SHIO concerned I was found innocent.
04. That then the said Muhammad Jan on mollified intentions filed 22-A application before the court of ASJ Charsadda and learned ASJ Charsadda passed an order for the registration of FIR against me and others, on 03.06.2013. (copy of FIR attached as Annexure-B)
05. That on 03.06.2013 I was arrested by the police and released on bail on 05.07.2013.(Copy of application is attached as Annexure-C).
06. That thereafter facing trial the Honorable court acquitted me because I was innocent and have falsely been involved in the said case. (copy of acquittal order is attached as Annexure-D)
07. That during the period from 10.11.2012 to 26.12.2014, I was absent from the duty due to the above reasons and was not willfully or deliberately.
08. That the absence from the duty was because of the reasons mentioned above and was unable to perform my duties to the best of my ability and potential.
09. That besides the above noted reason, I performed my duty with honesty and there is no complaint against me from either side.
10. That due to suspension I am facing great hardship in these expensive days and having no sources of income to earn my livelihood.

5

FINDINGS:

From the perusal of whole episode, Constable Muhammad Yousaf No. 5105 was involved in a criminal case mentioned above and remained absent from the duty w.e.f 10.11.2012 to 26.12.2014 (total 02 years 01 month & 16 days) for the reason mentioned above in his statement. The alleged constable stated in his statement that he was charged in a false case and totally innocent. The alleged FC produced a copy of Order sheet passed by the Additional Session Judge-V, Charsadda vide No. 08 dated 23.04.2014 (copy attached) which evident that the alleged FC has been acquitted from the charges u/s 265-K. He was arrested on 07.06.2013 and released on 05.07.2013 on bail by the Honorable Court (Jail period=28days) but his total absence period is highly objectionable and against the discipline of the force.

RECOMMENDATIONS:

During the course of enquiry conducted so far, it was noticed that the matter have been patched up through the Honorable Court which is evident from the order sheet No. 08 dated 23.04.2014 of Additional Session Judge-V, Charsadda in which the accused FC Muhammad Yousaf No. 5105 acquitted from the charge. It is to bring to your notice that he remained absent from his duty for a period of 06 months & 23 days. Later on he was acquitted but he did not join his duty and again remained absented himself 08 months & 03 days which is a long period. So I am of the opinion that he may please be awarded with a punishment deemed appropriate.

Submitted for your kind perusal and orders please.

No. 908 IS

Dated 05/05/2015

ENL (34)

(Signature)
(MUHAMMAD ASHFAQ)

DEPUTY SUPERINTENDENT OF POLICE
RURAL SUB-DIVISION PESHAWR

*Issue Pinal
Show Cause notice*

(Signature)
Shere

②

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Muhammad Yousaf No.5105 the final show cause notice.

The Enquiry Officer, Mr. Muhammad Ashfaq, after completion of enquiry proceedings, has recommended with a punishment deemed appropriate for you Constable Muhammad Yousaf No.5105 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas, the undersigned is satisfied that you Constable Muhammad Yousaf No.5105 deserve the punishment in the light of the above said enquiry reports.

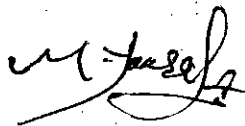
I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975 for absence willfully performing duty away from place of posting & involvement in criminal case.

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.
2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.
3. The copy of the finding of the enquiry officer is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 361 /PA, SP/HQrs: dated Peshawar the 11/15/11 /2015.

Copy to official concerned



12/5/15

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

Service appeal No.1273/2015

Muhammad Yousaf ex-constable No.5105 Police Lines Peshawar.....Appellant.

Versus


1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital city Police Officer, Peshawar.
3. Superintendent of Police, HQrs: Peshawar.
4. Deputy Superintendent of Police, HQrs: Peshawar.....Respondents.

Reply on behalf of Respondent No.5.

Respectfully shewth,

It is submitted that the answering respondent is agreed with the written reply/comments already submitted in the tribunal by respondents No. 1,2,3, and 4.

That respondent No.5 places reliance on the comments of respondents No.1,2,3, and 4.


District Police Officer,
Charsadda.
Respondent No.5

1

BEFORE THE CHAIRMAN SERVICE TRIBUNAL
KHYBER PUKHTOON KHAWA PESHAWAR.

MUHAMMAD YOUSAF KHAN

VERSUS

GOVERNMENT OF KPK AND OTHERS

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth:

The Petitioner/appellant most humbly submits his rejoinder as under:

Reply to Preliminary Objections:

All the preliminary objections raised by the Respondents in their written comments are wrong, incorrect and baseless, hence expressly denied.

The petitioner/appellant has a cause of action, the present service appeal is competent, maintainable and within time. The petitioner/appellant contacted this Hon'ble Court with clean hands and bona fide intention for redress of his grievances. The service appeal of the petitioner/appellant is based on cogent and reliable grounds. The service appeal is self-explanatory and all the facts of the service appeal favor the stance of the petitioner/appellant. The Hon'ble Tribunal has got the prerogative to entertain the instant appeal.

Reply to factual Objections:

The Petitioner most humbly presents his rejoinder as under:

1. Para No.1 is already proved and record is already annexed.
2. Paras No.2 to 4 of the comments are wrong, false and it amounts to evasive denial while paras No.2 & 4 of the service appeal are correct, properly explained and based on reality.
3. Para No 5 of the comments need no reply, however the judgment of the court is already attached.
4. Para No: 7 of the comments is incorrect, against law and facts, hence expressly denied while para No: 7 of the service appeal is self-explanatory. Moreover no charge sheet, statement of allegations etc were given to the petitioner/appellant and all the process was one sided and petitioner/appellant was condemn unheard.

5. Para No: 8 to 11 of comments are false, frivolous and baseless, hence expressly denied while para No: 8 to 11 of the service appeal are correct and based on real facts.

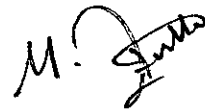
Reply to Grounds of comments:

- A. Paras No. A to F of the comments are false, frivolous and baseless hence expressly denied. The petitioner/appellant performed his duty regularly and intentional involvement in criminal case is out of imagination and not attract the prudent mind while his absence was due to involvement in criminal case and he was not dealt in accordance with law and opportunity of personally heard and self-defense were also not given to him.

**IT IS, THEREFORE, MOST HUMBLY PRAYED
THAT ON THE ACCEPTANCE OF THE REPLY
OF THE COMMENTS/REJOINDER, THE
ORDER MAY KINDLY BE PASSED IN
FAVOUR OF PETITIONER/APPELLANT.**

PETITIONER

Through



MUHAMMAD ZIA ULLAH
Advocate High Court

Dated: 11.01.2017

BEFORE THE CHAIRMAN SERVICE TRIBUNAL
KHYBER PUKHTOON KHAWA PESHAWAR.

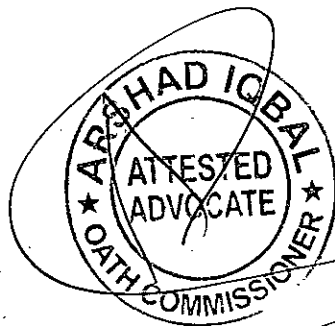
MUHAMMAD YOUSAF KHAN

VERSUS

GOVERNMENT OF KPK AND OTHERS

AFFIDAVIT

I Muhammad Zia Ullah Advocate Peshawar High Court Peshawar that as per instruction of my client upon oath that the contents of this reply/rejoinder are true and correct to the best of my Knowledge and belief and nothing has been concealed intentionally from the Hon'ble Court.



M *Zia Ullah*

Deponent

11-01-17

ORDER.

This order will dispose off departmental appeal preferred by ex-constable **Mohammad Yousaf No. 5105** whereby he was awarded the major punishment of **dismissal** from service under PR-1975 vide OB No. 1982 dated 19.5.2015 by SP-HQRs:, Peshawar.

The allegations levelled against him were that:-

- i) Absence from PS Regi w.e.f 10.11.2012 to 26.12.2014= **2-year and 16-days**
- ii) Involved in criminal case FIR No. 549 dated 3.6.2013 u/s 365/382/147/149 PPC PS Charsadda.

Proper departmental proceedings were initiated against him and DSP-Rural was appointed as the E.O. who in his findings found him guilty of allegations. FSCN was issued to him to which he replied. The same was perused and found unsatisfactory as such he was awarded the above punishment.

The relevant record was perused along with his explanation. He was also heard in person in OR on 3/7/2015. He could not defend himself. The allegations stand proved against him. He deserves no leniency. The order of SP-HQRs: is upheld and his appeal for reinstatement in service is rejected/filed.


**CAPITAL CITY POLICE OFFICER,
PESHAWAR.**

No. 3276-81 /PA dated Peshawar the 6.7. 2015.

Copies for inf and n/a to the:-

- 1/ SP/HQRs: Peshawar
- 2/ PO/OASI
- 4/ CRC along with S.Roll for making necessary entry in his S.Roll.
- 5/ FMC enclosed F.M
- 6/ Official concerned.

1 (2)

FINAL SHOW CAUSE NOTICE

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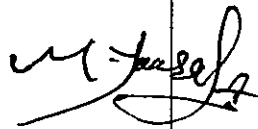
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SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 361 /PA, SP/HQrs: dated Peshawar the 11/15/11 /2015.

Copy to official concerned



12/15/15

(2)

From: The Deputy Superintendent of Police,
Rural Sub-Division, Peshawar.

To:- The Superintendent of Police,
Headquarters, Peshawar.

Subject:- **DISCIPLINARY ACTION AGAINST FC MUHAMMAD YOUSAF
NO. 5105 OF PS REGI PESHAWAR.**

Memo:- Please refer to your office No. 361/E/PA dated 03.07.2013 on the subject
cited above.

ALLEGATIONS:

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02. That due to non payment of the amount and I time and again demanded the same, the said Muhammad Jan, executed a stamp paper for plot worth Rs. 25,00,000/- (Annexure-A) and the same was found bogus, thereafter written another deed with three other deeds but the four deed were found bogus and false, because he was not owner in possession of the plot.
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04. That then the said Muhammad Jan on mollified intentions filed 22-A application before the court of ASJ Charsadda and learned ASJ Charsadda passed an order for the registration of FIR against me and others, on 03.06.2013. (copy of FIR attached as Annexure-B)
05. That on 03.06.2013 I was arrested by the police and released on bail on 05.07.2013. (Copy of application is attached as Annexure-C).
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09. That besides the above noted reason, I performed my duty with honestly and there is no complaint against me from either side.
10. That due to suspension I am facing great hardship in these expensive days and having no sources of income to earn my livelihood.

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FINDINGS:

From the perusal of whole episode, Constable Muhammad Yousaf No. 5105 was involved in a criminal case mentioned above and remained absent from the duty w.e.f 10.11.2012 to 26.12.2014 (total 02 years 01 month & 16 days) for the reason mentioned above in his statement. The alleged constable stated in his statement that he was charged in a false case and totally innocent. The alleged FC produced a copy of Order sheet passed by the Additional Session Judge-V, Charsadda vide No. 08 dated 23.04.2014 (copy attached) which is evident that the alleged FC has been acquitted from the charges u/s 265-K. He was arrested on 07.06.2013 and released on 05.07.2013 on bail by the Honorable Court (Jail period=28days) but his total absence period is highly objectionable and against the discipline of the force.

RECOMMENDATIONS:


During the course of enquiry conducted so far, it was noticed that the matter have been patched up through the Honorable Court which is evident from the order sheet No. 08 dated 23.04.2014 of Additional Session Judge-V, Charsadda in which the accused FC Muhammad Yousaf No. 5105 acquitted from the charge. It is to bring to your notice that he remained absent from his duty for a period of 06 months & 23 days. Later on he was acquitted but he did not join his duty and again remained absented himself 08 months & 03 days which is a long period. So I am of the opinion that he may please be awarded with a punishment deemed appropriate.

Submitted for your kind perusal and orders please.

No. 908/15

Dated 05/05/2015

ERL (34)


(MUHAMMAD ASHFAQ)
DEPUTY SUPERINTENDENT OF POLICE
RURAL SUB-DIVISION PESHAWR

Issue Final
Show Cause notice


Here

(21)

CHARGE SHEET

I, Superintendent of Police, Headquarters, Capital City Police Peshawar, as a competent authority, hereby, charge that Constable *Muhammad Yousof* No. 5105 of Capital City Police Peshawar with the following irregularities.

"That you Constable *Muhammad Yousof* No. 5105 while posted at Civil Secretariat, Peshawar were absent from duty w.e.f. 10.11.2019 till date without taking permission or leave. This amounts to gross misconduct on your part and is against the discipline of the force."

You are, therefore, required to submit your written defence within seven days of the receipt of this charge sheet to the Enquiry Officer committee, as the case may be.

Your written defence, if any, should reach the Enquiry Officer/Committee within the specified period, failing which it shall be presumed that you have no defence to put in and in that case ex parte action shall follow against you.

Intimate whether you desire to be heard in person.

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SR: SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

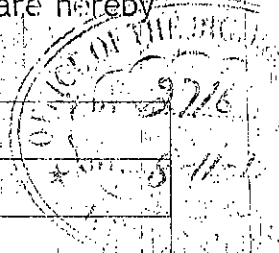
ORDER

No. 20951 /E-II This office order No. 26657/E-II, dated: 28.10.2013 so far it relates to the cancellation order of the following lower subordinates of CCP Peshawar to DCT, SB Khyber Pakhtunkhwa are hereby withdrawn.

S/N	NAME & NO	HOME POLICE STATIONS
1.	FC Shabir Khan No. 4861	Agha Mirjani Shah
2.	FC Asadullah No. 3448	Badhber
3.	FC Saeedullah No. 37	-do-
4.	FC Irfanullah No. 316	-do-
5.	FC Khalid No. 4675	Chainkani
6.	FC Tayyab No. 422	-do-
7.	FC Muhammad Imran No. 34	Daudzai
8.	FC Mumtaz No. 3609	Faqir Abad
9.	FC Jamshid Pashsa No. 1188	-do-
10.	FC Abid Khan No. 2567	Gulbahar
11.	FC Khanzeb No. 5013	Khazana
12.	FC Feroz Shah No. 592	Kotwali
13.	FC Javed Khan No. 5071	Michani Gate
14.	FC Sairaj Ali No. 2672	Paharipura
15.	FC Irfan-Afridi No. 4549	-do-
16.	FC Nasir Khan No. 2625	Pandu
17.	FC Noor Ullah No. 3938	-do-
18.	FC Fayo Afzal No. 197	Sarband
19.	FC Shaid Khan No. 1694	Pishtakhara
20.	FC Asif Khan No. 1617	-do-
21.	FC Khandad No. 2219	Regi
22.	FC Shams-ur-Rehman No. 1130	-do-
23.	FC Rafiullah No. 1494	Tahkal
24.	FC Muhammad Shah No. 352	Town
25.	FC Daud Khan No. 9621	Shahqabool
26.	FC Fahim No. 4535	Regi Town

No. 20952 This office order No. 26658/E-II, dated: 28.10.2013 so far its relation to the transfer order of the following lower subordinates from DCT/SB Khyber Pakhtunkhwa to CCP, Peshawar are hereby cancelled.

S.No	NAME & NO
1)	FC Waheed Gul No.
2)	FC Suleman Shah No. 23
3)	FC Inam Ullah No. 32
4)	FC Imran Khaliq No. 53



1770



CR# 13241/EB

DY: INSPECTOR GENERAL OF POLICE,
COUNTER TERRORISM DEPARTMENT,
KHYBER PAKHUNKHWA, PESHAWAR

No. 8559/PA, dated Peshawar the 18/06/2014.

To: The Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

Subject: DEPARTMENTAL ENQUIRY AGAINST CONSTABLE
JAMSHED RAZ PASHA NO. 505.

Memo:

It is submitted that Constable Jamshed Raz Pasha was received on transfer from CCP, Peshawar to this Unit on deputation basis vide your office order No. 27954-57/ E-II dated 08-11-2013. He was allotted constabulary No. 505 and posted as DFU (CTD) in the jurisdiction of PS Faqirabad district Peshawar.

On 29-04-2014 the above named Constable absented himself from lawful duty till 5.5.2014 and again from 6.5.2014 to 15.5.2014. In this regard a preliminary enquiry was conducted which revealed that, the defaulter constable had made a fake departmental identity card for himself at his own risk without obtaining proper permission from the Competent Authority due to which a criminal case vide FIR No. 149 dated 29-04-2014 u/s 419/420/468/471-PPC Police Station West Cantt: district Peshawar was registered against the defaulter Constable, Police arrested him and sent to the Judicial Lockup.

The defaulter constable was suspended vide OB No. 64 dated 29-04-2014, closed to CTD HQ. He was issued Charge Sheet and Statement of allegations and a departmental enquiry consisting upon SSP Sohail Khalid and Mr. Zaffar Hayat DSP HQ/ CTD was ordered to be initiated to probe further in the matter and submit finding.

SE-IV
18/6

E-IV
18/6

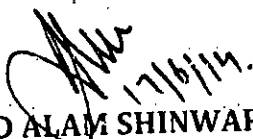
2233/E-IV
19/6/14
Khyber Pakhtunkhwa, Peshawar.

The enquiry committee after conducting the enquiry submitted findings concluded that:-

1. The defaulter Constable made a fake departmental Service Card for himself rather than to submit a written application before Competent Authority for obtaining service Card from CTD HQ. In this regard a criminal case has already been registered and is under trail in the Court of Law, therefore at this stage the enquiry regarding the fake service card may be kept pending till the decision of the Court.
2. It was his foremost duty to inform his high-ups about one Nauman s/o Nasrullah (Stamp maker) who is involved in making fake service Cards. Moreover he also absented himself for 09 days from his lawful duty w.e. from 6.5.2014 to 15.5.2014. At last the committee recommended for punishment of stoppage of one increment without cumulative effect.

The defaulter Constable was issued Final Show Cause Notice and was also heard in person but his plea found unsatisfactory. He is a burden on the national exchequer and therefore liable to be dismissed from service. He has to be repatriated to his parent district with the recommendation that he be awarded major punishment of dismissal from service.

The relevant enquiry file is annexed for favour of onward dispatch to CCPO, Peshawar for further disposal, please.


(MUHAMMAD ALAM SHINWARI) PSP
Deputy Inspector General of Police,
CTD Khyber Pakhtunkhwa,
Peshawar.