

Appeal No. 74/2015

24.10.2017

Counsel for the appellant and Mr. Farkhaj Sikandar, District Attorney alongwith Mr. Imtiaz Ali, DSP(Legal) for respondents present. Counsel for the appellant requested for withdrawal of the instant appeal. In this respect his signature also obtained on the margin of the order sheet. As such the instant appeal is withdrawn and disposed of accordingly. File be consigned to the record room.

Imtiaz Ali

Announced:
24.10.2017




Member
(Executive)



Member
(Judicial)
Camp Court D.I.Khan

23.01.2017

Appellant with counsel and Mr. Muhammad Zubair, Constable alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Due to non-availability of D.B the appeal is adjourned to 27.03.2017 for same as before.


Reader

27.03.2017

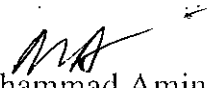
Since tour is hereby cancelled, therefore, the case is adjourned for the same on 25.07.2017.


Reader

25.07.2017

Junior counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for the respondents also present. Representative of the respondent-department is not in attendance, therefore, notice be issued to the respondents with the direction to direct the representative to attend the court on the next date positively. Junior counsel for the appellant also requested for adjournment. Adjourned. To come up for arguments on 23.10.2017 before D.B at Camp Court D.I.Khan.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan


26.01.2016

Counsel for the appellant and Mr. Farhaj Sikandar, GP for the respondents present and requested for time to contact the respondents. However, Fresh notices should also be issued to the respondents. To come up for written reply of the respondents on 24.5.16 at camp court, D.I.Khan.


MEMBER
Camp Court, D.I Khan

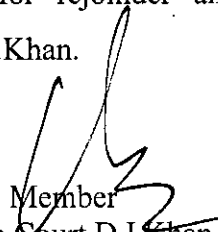
24.05.2016

Appellant in person and Mr. Hafizullah, Junior Clerk alongwith Mr. Farkhaj Sikandar, GP for respondents present. Written reply submitted. To come up for rejoinder on 27.09.2016 at camp court D.I. Khan.


Member
Camp Court D.I.Khan

27.09.2016

Counsel for the appellant and Mr. Farhaj Sikander, Government Pleader for the respondents present. Rejoinder on behalf of the appellant not submitted. Learned counsel for the appellant requested for further time to file rejoinder. Request accepted. To come up for rejoinder and arguments on 23.01.2017 before D.B at Camp Court D.I.Khan.


Member
Camp Court D.I.Khan

25.05.2015

Appellant in person present and requested for time to deposit security and process fee, which was not deposited due to unavoidable circumstances. Request is accepted. Security and process fee be deposited within 7 days. Thereafter, notices be issued to the respondents. Case to come up for written reply on 28.7.2015 at camp court, D.I.Khan.

Appellant Deposited
Security & Process Fee

28.07.2015

Clerk of counsel for the appellant present. Security and process fee have been deposited late, therefore, notices have not been issued. Notices be issued to the respondents and case to come up for written reply/comments on 27-10-2015 at camp court, D.I.Khan.


MEMBER
Camp Court, D.I.Khan.


MEMBER
Camp court, D.I.Khan

27.10.2015



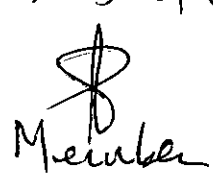
Appellant in person, Mr. Farhaj Sikandar, GP present. Notices have not been issued. Office is directed to issue notices to the respondents and case to come up for written reply of all the respondents at camp court, D.I.Khan on 26-1-16.


MEMBER
Camp court, D.I.Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 74/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	29.01.2015	<p>The appeal of Mr. Ziaullah resubmitted today by Mr. Muhammad Ismail Alizai 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	30-1-2015	<p>This case is entrusted to Touring Bench D.I.Khan for preliminary hearing to be put up thereon <u>23-2-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
32	23-2-15	<p><i>Counsel for the appellant present and heard. The b/c Counsel for the appellant contended that in deo enquiry colleague of the appellant Mr. M. J. Chaffar was differently treated and thus appellant was discriminated. Point raised at the Bar needs consideration. Admit. Process fee and Security be deposited within 10 days. Thereafter, notices be issued to respondents for submission of written reply on 25-5-2015 at Camp Court, D.I.Khan.</i></p> <p style="text-align: right;"> Member Camp Court, D.I.K.</p>

This is an appeal filed by Mr. Ziaullah today on 12/11/2014 against the order dated 01.07.2014 against which he preferred/made a departmental appeal on 10.10.2014 the period of ninety days is not yet lapsed as per section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974, which is premature as laid down in an authority reported as 2005-SCMR-890.

As such the instant appeal is returned in original to the appellant/counsel. The appellant would be at liberty to resubmit fresh appeal after maturity of cause of action and also removing the following deficiency.

Annexures of the appeal may be attested.

No. 1601 /ST,

Dt. 12/11 /2014

amity

10/10/2014

Mr. Muhammad Ismail Alizai Adv.
High Court Dera Ismail Khan.

160
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

- a) Resubmitted for registration + presenting to learned Tribunal since period of 90 days statutory limitation has reached culminated effective 10.11.2015.
- b) Annexes have been attested.
- R/Registrar please.
- M. Alizai*
AHE
27.1.2015

(12)

BEFORE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service Appeal No. 74/2015 /2014.

Ziaullah, PC / FRP No.7783.

Appellant.

Versus

Provl: Police Officer, Khyber Pakhtunkhwa, and others.

Respondents.

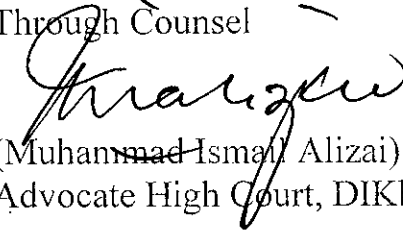
Service Appeal

I N D E X

<u>S.No.</u>	<u>Description of Documents</u>	<u>Annexure</u>	<u>Page(s)</u>
1.	Petition with Grounds of Appeal & affidavit.	--	01 — 05
2.	Copy of Tribunal Judgment.	A	06 — 08
3.	Copy of Supreme Court Judgment.	B	— 09
4.	Copies of Charge-sheet, Order impugned etc.	C & D	10 — 13
3.	Copy of Deptl: appeal.	E	14 — 15
4.	Vakalat-Nama		— 16

Dated: 10.10.2014.

(Ziaullah) Appellant
Through Counsel


(Muhammad Ismail Alizai)
Advocate High Court, DIKhan.

BEFORE SERVICE TRIBUNAL, KHY:PAKHTUNKHWA,PESHAWAR.

Service Appeal No:.....74/2015...../2014.

~~.....~~
~~.....~~ 1360
~~.....~~ 12-11-14

Ziaullah,
Constable No.7783, FRP, D.I.Khan District.
Office of SP / FRP, D.I.Khan.

(Appellant)

Versus

1. The Provincial Police Officer (IGP), KPK, Central Police Office, Peshawar.
2. Additional Inspector General of Police / Commandant, FRP, Khyber Pakhtunkhwa, Peshawar,
3. Superintendent of Police , FRP, D.I.Khan Range, D.I.Khan.

(Respondents)

Note: The addresses given above are sufficient for the purpose of service.

.....
under section 4 of KPK Service Tribunal Act, 1974

SERVICE APPEAL/AGAINST ORDER DTD 01.07.2014 WHEREBY THE APPELLANT IS AWARDED PUNISHMENT OF WITHHOLDING OF ANNUAL INCRIMENTS BY RESPDT: NO. 3,

Respectfully Sheweth: -

The appellant very humbly submits as under: -

BRIEF FACTS:

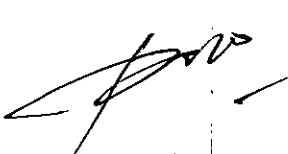
1. That the petitioner was inducted in Police Department / FRP as Constable and posted at D.I.Khan. The petitioner has been serving under Respondent No.3 while Respondent No.2 is the appellate authority and Respondent No.1 commands overall authority in respect of the parties, thus all are necessary party to the lis.

~~.....~~
~~.....~~
12/11/14
re-submitted to SAs
and filed.

~~.....~~
29/11/15

2. That the appellant always striven hard to discharge and fulfill the duties and tasks assigned with due diligence and dedication. Service record of the appellant is otherwise unblemished, clean and devoid of any adverse marking since nothing of the sort has ever been conveyed to the appellant in this respect.
3. That during June 2011 the appellant was subjected to departmental action on the allegation of showing cowardice during performance of duties, and culminated in award of punishment to the appellant of the kind Removal from Service after a cursory proceedings.
4. That aggrieved from the departmental authority the appellant moved an appeal with respondent No.2 seeking reinstatement in service which however, could not find favour with appellate authority and was dismissed / rejected vide order dated 21.9.2011.
5. That a Service Appeal was preferred by the appellant with this Hon'ble Tribunal which was taken up and decided vide Judgment dated 26.12.2012 setting aside the order of departmental authority and reinstating the appellant in service. Copy of Judgment is placed herewith at Annex-A.
6. That the departmental authorities filed a CPLA with august Apex Court against the judgment of Tribunal which stood disposed off while departmental authorities were allowed to hold a de-novo probe into the matter. Copy of Judgment attached herewith as Annex-B.
7. That consequently a fresh charge-sheet was issued to the appellant and once again based on a cursory evaluation in the name of an inquiry, the matter ended up in award of punishment of the kind " Stoppage of Annual Increments for two years". Copy of impugned order passed by respondent No.3 is enclosed herewith as Annex-C while copies of charge sheet & reply thereto are placed as Annex-D.
8. That the appellant moved departmental appeal with the office of respondent No.2, however, the matter did not see the light of the day and remains shelved without disposal even after culmination of statutory period, hence the instant appeal on the grounds, inter-alia, as under. Copy of departmental appeal is placed at Annex-E.

Grounds:

1. That the orders passed by departmental authority i.e Respd: No.3, impugned hereby, is discriminatory, arbitrary in nature, legally and factually incorrect, ultra-vires, void ab-initio and militates against the principles of natural justice thus is liable to be set-aside and nullified.
- 

2. That the appellant is innocent and has been subjected to the penalty for no fault on his part. SP/FRP, DIKhan (Respondent No.3), failed to regulate the departmental inquiry in accordance with the law & procedures prescribed for the purpose and as such erred at the very outset of the proceedings thus causing grave miscarriage of justice as well as prejudice to the appellant in making his defense.
3. That it is a matter of record that the appellant has been vexed in clear defiance of the law and principle laid by the superior courts as well as the Tribunals as could be gathered from the facts and circumstances of the case.
4. That the respondents while adjudicating in the matter of departmental proceedings and the departmental appeal either disposed off the entire matter in a slipshod manner through the order impugned hereby or even failed to finally decide it during the stipulated period, thus the award of impugned punishment is patently unwarranted, illegal, ultra-vires, nullity in law and apparently motivated for extraneous reasons and is neither sustainable nor maintainable in law.
5. That the appellant has sufficient length of service rendered for the department. While adjudicating in the matter the departmental authorities utterly ignored not only the provisions of law on the point but the rights, too, of the appellant including fringe benefits and by imposing the penalty in defiance of law as aforesaid, deprived the family of the appellant of its lawfully earned emoluments.
6. That the order passed by respondent No.3 on holding of departmental proceedings including the order on award of punishment as well as the inaction on the departmental appeal, as impugned hereby, have infringed the rights and have caused grave miscarriage of justice to the appellant without any lawful excuse.
7. That while ignoring the rights of the appellant guaranteed by the constitution, the departmental authorities / respondents utterly failed to adopt a proper course & follow due procedure hence erred in disposal of the matter in accordance with the law and rules. The impugned order passed by SP/FRP; DIKhan (Respondent: No.3) and inaction on departmental appeal by Addl:IG/Commandant, FRP i.e. (Respondent No.2) thus lack in legal sanction and therefore, are liable to be set aside in the interest of justice.
8. That the petition of appeal / appellant is duly supported by law and rules formulated thereunder, besides the affirmation / affidavit annexed hereto.
9. That this Hon'ble Tribunal is competent and has ample powers to adjudge the matter under reference/appeal.



- 10. That the counsel for the appellant may very graciously be allowed to add to the grounds during the course of arguments, if need be.

Prayer:

In view of the fore mentioned submissions, it is very humbly requested that the impugned order dated 01.07.2014 passed by SP/FRP, DIKhan may, on being declared as illegal, arbitrary, discriminatory, void ab-initio, ineffective and inoperable against the appellant, be very graciously set aside and the petitioner may in consequence thereof be very kindly retention of his increments besides allowance of all back benefits. Grant of any other relief including costs, as may be deemed appropriate by the Hon'ble Tribunal is solicited, too.

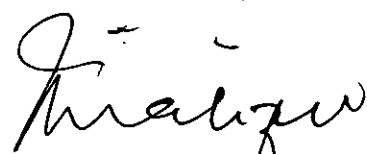
Dated: .10.2014

Humble Appellant,



(Ziaullah) Appellant,

Through Counsel.



(Muhammad Ismail Alizai)
Advocate High Court.

AFFIDAVIT:

Dated: .10.2014.

I, Ziaullah, the appellant hereby solemnly affirm and declare on oath that contents of the petition are true and correct to the best of my knowledge, belief and per the official records. Also, that nothing is willfully kept or concealed from this Hon'ble Tribunal.



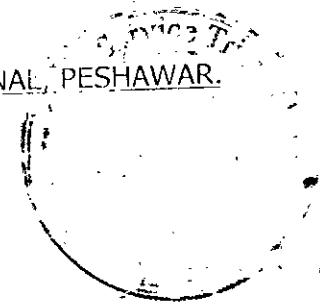
Deponent.



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
(Camp Court, D.I.Khan)

Appeal No. 1703/2011

Date of Institution. ... 17.10.2011
Date of Decision : ... 26.12.2012



16

Ziaullah Ex-Constable No. 7783 FRP D.I.KHAN S/O Muhammad Aziz
R/O Paharpur District D.I.Khan.. (Appellant)

VERSUS

1. The provincial Police Officer Khyber Pakhtunkhwa, Peshawar.
2. Additional Inspector General of Plice/Commandant FRP, Khyber Pakhtunkhwa, Peshawar.
3. Superintendent of Police, FRP D.I.Khan Range, D.I.Khan. (Respondents)

SERVICE APPEAL AGAINST ORDER DATED 17.8.2011 WHEREBY THE APPELLANT WAS REMOVED FROM SERVICE BY RESPONDENT NO. 3 AND AGAINST ORDER NO. 3162-63/EC, DATED 21.9.2011 OF RESPONDENT NO.2, WHEREBY DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED.

MR. MUHAMMAD ISAMEEL ALIZAI, Advocate ... For respondents.

MR. FARHAJ SIKANDAR, Addl. Government Pleader ... For respondents.

MR. SULTAN MAHMOOD KHATTAK, MEMBER
MR. FAREEDULLAH KHAN, MEMBER

JUDGMENT

SULTAN MAHMOOD KHATTAK, MEMBER: This appeal has been filed by the appellant Ziaullah against the order dated 21.9.2011, whereby his departmental appeal against the order dated 17.8.2011 has been rejected. It has been prayed that on acceptance of the appeal, the impugned orders may be set aside and the appellant may be reinstated into service with all back benefits and any other relief deemed appropriate may also be granted.

2. Brief facts of the case as narrated in the memo: of appeal are that the appellant while serving in the Police Department D.I.Khan was posted for Nakabandi at Bannu Octroi on 7.6.2011, some unknown attempted on one Naveed Iqbal son of Muhammad Iqbal rear New Bannu Octroi who was seriously injured and due to negligence and cowardice of the appellant, the accused

Khyber Pakhtunkhwa Service Tribunal Peshawar

party fled away from the spot. Departmental proceedings were initiated against the appellant alongwith others under the Khyber Pakhtunkhwa Removal from service (Special Powers) Ordinance 2000. Charge sheet/statement of allegations issued to the appellant on 11.6.2011, which was duly replied by him. An enquiry was conducted in slipshod manner without taking into consideration material and evidence on record by Lines Officer/FRP D.I.Khan and recommended the appellant for award of punishment. Final show cause notice was issued to the appellant, which was duly replied by him. The competent authority vide order 17.8.2011, awarded major penalty of removal from service with immediate effect upon the appellant. Feeling aggrieved, the appellant filed departmental appeal, which was rejected on 21.9.2011, hence the present appeal on 17.10.2011.

3. The appeal was admitted to regular hearing on 30.1.2012 and notices were issued to the respondents. The respondents have filed their joint written reply and contested the appeal. The appellant also filed rejoinder in rebuttal.

4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that the charge of cowardice and negligence could only be proved through regular enquiry by giving the appellant opportunity of examining and cross examining the witnesses. But no proper chance of defence given to the appellant. The whole proceedings including enquiry procedure against the appellant conducted in a slip-shod manner without ascertaining the factual position. No examination/cross examination of witnesses recorded in the presence of the appellant nor statements of other co-accused etc. recorded. Ex-parte proceedings conducted against the appellant. Opportunity of personal hearing not afforded to the appellant. The appellant had long service at his credit and the punishment awarded to the appellant is harsh and not commensurate with guilt of the appellant. He stated that no action taken against other while the appellant has been discriminated. He requested that the appeal may be accepted as prayed for.

The learned AGP argued that the appellant was detailed for Nakabandi duty near Bannu Octroi on 7.6.2011. Some unknown accused attempted murder of one Navid Iqbal son of Muhammad Iqbal, near the duty point of the appellant. He showed cowardice and negligence at the spot and the accused fled away from the spot. Charge sheet with statement of allegations was issued to the appellant, proper enquiry conducted. Show cause notice was also issued to the appellant but he failed to prove his innocence. All the codal formalities have been observed and

found guilty of the offence and has rightly been removed from service. He requested that the appeal may be dismissed.

7. The Tribunal observes that no proper opportunity of defence given to the appellant during the enquiry proceedings. No chance of personal hearing given to him which were mandatory under the law. The Tribunal agrees with the arguments advanced by the learned counsel for the appellant.

8. In view of the above, the appeal is accepted, the impugned order dated 21.9.2011 is modified to the extent that the appellant is reinstated into service with all back benefits. Parties are left to bear their own costs. File be consigned to the record.

9. This order will also dispose of another connected appeal No. 1704/2011, titled "Muhammad Khalid Versus the Provincial Police Officer, Khyber Pakhtunkhwa Peshawar etc.", in the same manner.

ANNOUNCED
26.12.2012.

Sd/- Sultan Mahmood Khattak
Member, Camp Court B.K. Khan
Sd/- Fareed Ullah Khan, Member

Certified true copy
K. Serv. Peshawar

1200 22-1-13

8-00
2-00
18-00

22-1-13
22-1-13

(9)
B

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Sarmad Jalal Osmany
Mr. Justice Ijaz Ahmed Chaudhury

CIVIL PETITIONS NO. 159-P AND 160-P OF 2013
(On appeal against the judgment dated 26.12.2012 passed by
KPK Service Tribunal, Peshawar in S.A. No. 1704 of 2011)

Provincial Police Officer Khyber Pakhtunkhwa etc.
(In both petitions)

Petitioners

VERSUS

Zia Ullah (In C.P. No. 159-P of 2013)
Muhammed Khalid (In C.P. No. 160-P of 2013)

Respondents

For the petitioners: Mr. Zahid Yousaf Qureshi, Addl. A.G., KPK
Mr. Yaseen, Inspector KPK

For the respondents: Mr. Muhammad Arif Khan, ASC
(On caveat)

Date of hearing: 17.02.2014

ORDER

SARMAD JALAL OSMANY, J. Mr. Zahid Yousaf Qureshi,

Learned Additional Advocate General as well as Mr. Muhammad Arif Khan, Learned ASC appearing for the Respondents jointly state that these Petitions could be disposed of by directing the police authorities to investigate the matter again through a proper inquiry after due notice to the Respondents and after having giving them a chance to participate fully in the proceedings.

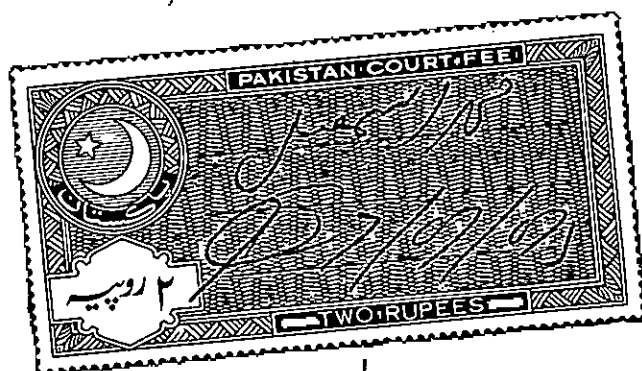
2. In view of this joint statement, these Petitions are disposed of accordingly. The back benefits given or to be given to the Respondents shall be dependent upon the outcome of the inquiry



Call Sarmad Jalal Osmany, J.
Call J. Ijaz Ahmed Chaudhury, J.
Certified to be True Copy

[Signature]
Superintendent
Supreme Court of Pakistan
Islamabad

[Signature]
Sarmad Ismail Alizai
Advocate High Court
Dera Ismail Khan



136-8/13

GR No. _____
Date of Issue _____
No. of Pages _____
No. of Lines _____
Responsible _____
Case No. _____
Court _____
Date _____
Recd. By _____

14.2.14
5.60
6.2/244

(10)

C

DISCIPLINARY ACTION.

I, Mr. SANA ULLAH KHAN MARWAT, Superintendent of Police FRP, D.I.Khan Range D.I.Khan, as a competent authority am of the opinion that you Constable Zia Ullah No.7783/FRP have rendered yourself liable to be proceeded against and committed the following acts/omissions within the meaning of the NWFP Police Rules-1975.

STATEMENT OF ALLEGATION.

a. It has been reported by District Police Officer, D.I.Khan vide his office memo: No.7551, dated 08.06.2011, that you while posted for Nakabandi at Bannu Octori on 07.06.2011 some un known accused attempt on one Naveed Iqbal son of Muhammad Iqbal near New Bannu Octroi who was seriously injured. On which case FIR No.339, dated 07.06.2011 U/S 324/34 PPC was registered at Police Station Cantt: D.I.Khan. Besides the facts that the occurrence took place near the place of your posting but you did not chase/arrest the accused and showed Cowardice/negligence. As a result they succeeded in decamping after commission of offence.

b. For the above you were proper Charge Sheeted and Enquiry Officer was appointed. The Enquiry Officer found you guilty of the charges and recommended for awarding major punishment. Final Show cause notice was issued and subsequently on finalization of proceeding you were Removed from service.

c. You lodged a petition in the Honorable service Tribunal KPK Peshawar to set aside the above said punishment order of your Removal from service. After hearing the Honorable court directed for your re-instatement in service with all back benefits vide judgment dated 26.12.2012, which was upheld by supreme court of Pakistan vide judgment dated 17.02.2014 and you were directed to be re-instated in service subject to denovo enquiry with immediate effect, hence denovo proceeding is being initiated for the afore mentioned grave misconduct on your part which is punishable under the NWFP Police Rules,1975.

Hence the statement of allegation.

1. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegation Muhammad Nadeem Siddiqui DSP/FRP D.I.Khan is appointed as enquiry Officer to conduct proper departmental enquiry under Police Rules 1975.
2. The enquiry Officer shall in accordance with the provision of the ordinance, provided reasonable opportunity of the hearing to the accused, record its findings and make, within ten (10) days of the receipt of this order recommendations as to punishment or other appropriate action against accused.
3. The accused and a well conversant representative of the department shall join the proceedings on the late time and place fixed by the enquiry officers.

(SANA ULLAH KHAN MARWAT)
Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

No. 1097-98/FRP, dated D.I.Khan the 26/05/2014.

Copy to:-

1. Muhammad Nadeem Siddiqui DSP/FRP D.I.Khan. The enquiry officer for initiating proceeding against the defaulter under the provision of NWFP Police Rules 1975. Enquiry papers containing ___ pages are enclosed.
2. Constable Zia Ullah No.7783/FRP with the direction to appear before the E.O on the date, time and place fixed by the E.O, for the purpose of enquiry proceeding.

Atiqul
Muhammad Nadeem Siddiqui
Advocate High Court
Dera Ismail Khan

(SANA ULLAH KHAN MARWAT)
Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

CHARGE SHEET.

WHERE AS, I am satisfied that a formal enquiry as contemplated by NWFP Police Disciplinary Rules 1975 is necessary and expedient to be conducted into the allegation as follow:-

- a. It has been reported by District Police Officer, D.I.Khan vide his office memo:No.7551, dated 08.06.2011, that you while posted for Nakabandi at Bannu Octroi on 07.06.2011 some un known accused attempt on one Naveed Iqbal son of Muhammad Iqbal near New Bannu Octroi who was seriously injured. On which case FIR No.339, dated 07.06.2011 U/S 324/34 PPC Police Station Cantt: D.I.Khan. Besides the facts that the occurrence took place near the your posting but you did not chase/arrest the accused and showed Cowardice/negligence. As a result they succeeded in decamping after commission of offence.
- b. For the above you were proper Charge Sheeted and Enquiry Officer was appointed. The Enquiry Officer found you guilty of the charges and recommended for awarding major punishment. Final Show cause notice was issued and subsequently on finalization of proceeding you were Removed from service.
- c. You lodged a petition in the Honorable service Tribunal KPK Peshawar to set aside the above said punishment order of your Removal from service. After hearing the Honorable court directed for your re-instatement in service with all back benefits vide judgment dated 26.12.2012, which was upheld by supreme court of Pakistan vide judgment dated 17.02.2014 and you were directed to be re-instated in service subject to denovo enquiry with immediate effect, hence denovo proceeding is being initiated for the afore mentioned grave misconduct on your part which is punishable under the NWFP Police Rules,1975.

AND WHEREAS, I am of the view that the allegation if established would call for award of a major penalty including dismissal from service as defined in Rules 4(i)(B) of the aforesaid rules.

AND WHEREAS, as required by Police Rules 6 (I) of the aforesaid rules, I, Mr. SANA ULLAH KHAN MARWAT, Superintendent of Police FRP, D.I.Khan Range D.I.Khan, hereby charge you Constable Zia Ullah No.7783/FRP with the misconduct on the basis of the above statement.

AND, hereby directed you further, under rules 6 (I) (B) of the said rules to put in written defence with-in 7-days of receipt of this Charge sheet as to why you proposed action should not be taken against you and also state at the same time whether you desire to be heard in person.

In case your reply is not received with-in the prescribed period, without sufficient cause, it would be presumed that you have no defence to offer and the proceedings will be completed against you ex-parte.

Muhammad Ismail Khalil
Muhammad Ismail Khalil
Advocate High Court
Dera Ismail Khan

(SANA ULLAH KHAN MARWAT)
(SANA ULLAH KHAN MARWAT)
Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.



بخدمت جناب ایس پی، ایف آر پی صاحب ڈیرہ اسماعیل خان رینج

(12)

جواب چارج شیٹ نمبر 1097-98/FRP, DIKhan مورخہ 26.05.2014

عنوان

Allegation

It has been reported by district Police officer, D.I.Khan vide his office memo: No.7551, Dated: 08.06.2011 that you whiel posted fro Nakabandi at Bannu Octori on 07.06.2011 some un known accused attempt on one Naveed Iqbal S/o Muhammad Iqbal near new Bannu Octroi who was Seriously injured. On which case FIR NO.339 dated: 07.06.201 U/S 324/34PPC was register at Police Station Cantt: D.I.Khan. Beside the facts that the occurance took place near the police of your posting but you did not chase/arrest the accused and showed Cowardice /Negligence.

جناب والا!

مجھ پر الزام درج بالا بالکل درست نہیں اور سراسر غلط ہے جسکی تردید بعدالت خیبر پختونخواہ سروس ٹریبونل پشاور ثابت ہو کر مجھ کو الزام سے باعزت بری اور مکمل مراعات کے سروس پر بحال کیا گیا۔

جناب والا! الزام درج بالا کا جواب سابقہ انکوائری آفیسر کو بھی دے چکا ہوں کہ میں نے اپنی ڈیوٹی میں کسی بھی قسم کی کوتاہی یا بزدلی کا مظاہرہ نہیں کیا۔

جناب والا! میں مورخہ 06.06.2011 کو نیوہنوں چوکنگی پر ڈیوٹی سرانجام دے رہا تھا کہ اسی اثناء میں چند نامعلوم لوگ جو کہ موٹر سائیکل پر سوار تھے نے ایک دوکاندار نوید اقبال ولد محمد اقبال کو اپنے ہی دوکان میں بیٹھے کو فائرنگ کر کے شدید زخمی کر دیا اور فرار ہو گئے۔ ہم فائرنگ کی آوازیں سن کر جائے وقوعہ کی جانب بھاگے۔ آس پاس کے دوکاندار حضرات اور علاقے کے لوگ بھی جمع ہو گئے۔ جناب والا! آپ کو معلوم ہے کہ یہ ایک بہت ہی مصروف چوک ہے اور عوام کا رش رہتا ہے تو میں اور کانٹینبل محمد خالد نے زخمی کو سنبھالا اور رکشہ پکڑ کر زخمی کو First Aid کے لئے ہسپتال روانہ کر دیا۔

بحکم انچارج موقع عبدالغفار ہیڈ کانٹینبل کہ ہمیں اپنے پوائنٹ اپچوکی پر رہنے کا حکم دیا گیا اور انچارج عبدالغفار ہیڈ کانٹینبل نزدیک موجود ایگل اسکواڈ اور RIU موبائل نے ملزمان کا تعاقب کیا اور گرفتاری میں کوئی خاطر خواہ نتیجہ نہ نکل سکا۔ ہم موقع پر حسب الحکم موجود رہے تاکہ مزید کوئی ناخوشگوار واقعہ رونما نہ ہو۔

جناب والا! درج بالا حالات کو مد نظر رکھتے ہوئے ہم نے کہیں بھی بزدلی/انانہلی کا مظاہرہ نہیں کیا ہے بلکہ موقع پر مزید نقصان سے بچانے کیلئے اپنی ڈیوٹی خوش اسلوبی سے سرانجام دی ہے اور انفران بالا کا حکم مانا ہے۔ جس کا واضح ثبوت ڈسٹرکٹ پولیس آفیسر کی انکوائری میں ہمارے موقع انچارج عبدالغفار ہیڈ کانٹینبل کی اسی الزام سے بریت ہے۔ اور ہمیں اسی الزام کی نسبت ٹرائل ہو کر عدالت نے بھی ہمیں بے گناہ قرار دیا ہے۔

لہذا مہربانی فرما کر ہمیں ازسرنو انکوائری میں بری کیا جانے۔ تاکہ ہم اپنی ڈیوٹی خوش اسلوبی اور احسن طریقے سے سرانجام دے سکیں۔

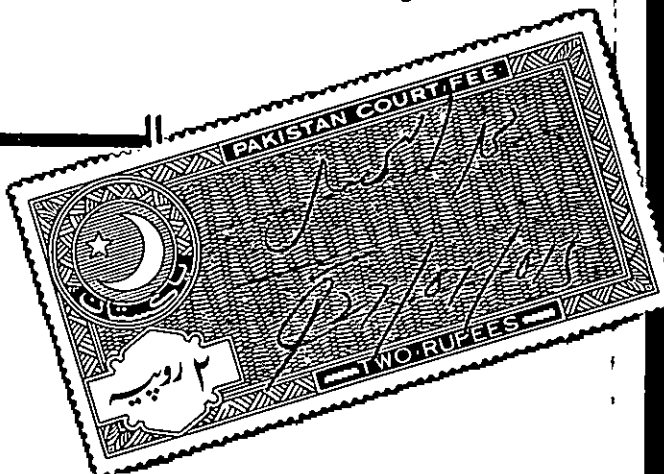
مورخہ: 29.05.2014

ضیاء اللہ

ارض

ضیاء اللہ پولیس کانٹینبل نمبر: 7783
ایف آر پی ڈیرہ اسماعیل خان

Advocate Isma
Advocate High Court
Dera Ismail Khan



(13)
D

ORDER:-

This Order will dispose off departmental enquiry conducted against Constable Zia Ullah No.7783/FRP, of FRP, D.I.Khan Range, on the Charges that It has been reported by District Police Officer, D.I.Khan vide his office memo: No.7551, dated 08.06.2011, that he while posted for Nakabandi at Bannu Octroi on 07.06.2011 some un known accused attempt on one Naveed Iqbal son of Muhammad Iqbal near New Bannu Octroi who was seriously injured. On which case FIR No.339, dated 07.06.2011 U/S 324/34 PPC was registered at Police Station Cantt: D.I.Khan. Besides the facts that the occurrence took place near the place of his posting but he did not chase/arrest the accused and showed Cowardice/negligence. As a result the accused succeeded in decamping after commission of offence.

On the basis of his above, he was proceeded against departmentally and served with proper Charge Sheet and Statement of allegations. Mr. GUL MANAN KHAN LO/FRP D.I.KHAN was appointed as Enquiry Officer. After completion of all codal formalities, the Enquiry Officer submitted his finding report along-with other relevant papers, where in he recommended the said Constable for major punishment i.e Removal from service. Hence he was removed from Service vide order bearing O.B No.778, dated 17.08.2011. His departmental appeal was also rejected. He lodged the service appeal No.1703/2011, in the KPK Service Tribunal Peshawar which was accepted vide judgement dated 26.12.2012, whereby the Honourable service tribunal directed to re-instate the appellant in service with all back benefits which was upheld by supreme court of Pakistan vide judgment dated 17.02.2014 subject to denove enquiry. Thus the Worthy Addl: Inspector General of Police/Commandant FRP KPK Peshawar re-instated him in service conditionally subject to denove enquiry. Therefore denove proceedings were initiated and Mr. MOHAMMAD NADEEM HIDIQUI DSP/FRP D.I.KHAN, was deputed to conduct departmental enquiry as per rules.

The enquiry Officer after Conducting proper departmental enquiry submitted his finding report recommending defaulter Constable for Major Punishment and period he remained out of service to be treated as with out pay. He was heard in person but he failed to convince the under-signed about his innocence.

However Keeping in view his poorness, IMR. SANA ULLAH KHAN MARWAT, Superintendent of Police FRP D.I.Khan Range in exercise of powers conferred upon me under NWFP Police Rules 1975 by taking lienent view hereby convert his Major Punishment of Removal from service into minor Punishment of with holding two years increments with out cumulative effect falling due on 01.12.2014 & 01.12.2015, & the period he remained out of service shall be treated with out pay. He is also warned to be Careful in future.

ORDER ANNOUNCED.Dated. 01.07.2014.OB No. 645 /FRPDated 01 /07/2014.

(SANA ULLAH KHAN MARWAT)
Superintendent of Police,
FRP, D.I.Khan Range, D.I.Khan.

Attest
Advocate High Court
Dera Ismail Khan

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To: The Worthy. Addl: I.G.P/ Commendant,
F.R.P=Khyber Pakhtunkhwa,
Peshawar.

Subject: APPEAL AGAINST ORDER GB NO. 645 DTD 1.7.14 OF SP/ FRP / D.I.KHAN.

Sir,

Respectfully, the petitioner states as under.

1. That the petitioner was inducted in Police Department-/ FRP as Constable and posted at D.I.Khan.
2. That the appellant always striven hard to discharge and fulfill the duties and tasks assigned with due diligence and dedication. Service record of the appellant is otherwise unblemished, clean and devoid of any adverse marking since nothing of the sort has ever been conveyed to the appellant in this respect.
3. That during June 2011 the appellant was subjected to departmental action on the allegation as contained in the Charge Sheet. The matter was assigned for inquiry to Lines officer/FRP, D.I.Khan who while pushing the proceedings in a slipshod manner, conveyed complicity on part of the appellant in his inquiry report yet without any lawful, justifiable and sustainable basis, foundation and material or evidence brought on records in any manner and recommended award of punishment to the appellant.
4. That the matter having been put-up for consideration to the authority i.e SP/FRP, D.I.Khan culminated in award of punishment to the appellant of the kind "Removal from Service" after a cursory proceedings conducted in the name of Final Show Cause Notice.
5. That aggrieved from the order of SP/FRP the appellant moved departmental appeal seeking reinstatement in service on the grounds mentioned therein. The petition of appeal however, could not find favour and was dismissed / rejected vide order dated 21.9.2011.
6. That later the appellant moved Service Appeal before KPK Service Tribunal against the order his removal from service. The appeal was decided in favour of the appellant vide order dated 26.12.2013.
7. That respondents challenged the judgment of Service Tribunal before Supreme Court which too, while maintaining the decision of the Tribunal, departmental authority was allowed to proceed denovo in the matter if deemed fit. Consequently, a fresh inquiry was ordered in the matter which culminated in award of Minor Punishment of Withholding of increments for Two years vide order dated 1.7.2014. Copy attached herewith.
8. That the appellant moved an appeal with your good office against the order mentioned above. It was however, directed from your good office to file an appeal challenging therein withholding of increments for two years instead seeking back benefits, hence the present appeal on grounds hereinafter preferred.

Grounds:

1. That the order passed by SP/FRP, DIKhan, impugned hereby, is discriminatory, arbitrary in nature, legally and factually incorrect, ultra-vires, void ab-initio and militate against the principles of natural justice thus is liable to be set-aside and nullified.
2. That the appellant is innocent and has been subjected to the penalty for no fault on his part. SP/FRP, DIKhan failed to regulate the departmental inquiry in accordance with the law & procedures prescribed for the purpose and as such erred at the very out set of the proceedings thus causing grave miscarriage of justice as well as prejudice to the appellant in making his defence.
3. That it is a matter of record that the appellant has been vexed in clear defiance of the law and principle laid by the superior courts as well as the Tribunals as could be gathered from the facts and circumstances of the case.
4. That while adjudicating in the matter of departmental proceedings the authority disposed off the entire matter in a slipshod manner through the order impugned hereby thus the award of impugned punishment is patently unwarranted, illegal, ultra-vires, nullity in law and is thus not sustainable nor maintainable in law.
5. That the appellant had sufficient length of service rendered for the department. While adjudicating in the matter the authority utterly ignored not only the provisions of law on the point but the rights, too, of the appellant including fringe benefits and by imposing the penalty in defiance of law as aforesaid, deprived the family of the appellant of its lawful earning.
6. That the order passed by SP/FRP on holding of departmental proceedings including the order on award of punishment, as impugned hereby, has infringed the rights and have caused grave miscarriage of justice to the appellant without any lawful excuse.
7. That while ignoring the rights of the appellant guaranteed by the constitution, the departmental authority utterly failed to adopt a proper course & follow due procedure hence erred in disposal of the matter in accordance with the law and rules. The impugned order passed by SP/FRP, DIKhan thus lacks in legal sanction and therefore, is liable to be set aside in the interest of justice. The petition of appeal / appellant is duly supported by law and rules formulated thereunder.
8. That your gracious office is competent and has ample powers to adjudge the matter under reference/appeal in favour of the appellant as prayed for.

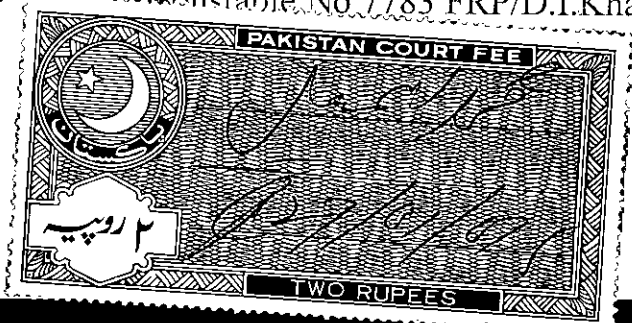
In view of the fore mentioned submissions, it is very humbly requested that the impugned order dated 1.7.2014 passed by SP/FRP, D.I.Khan may, on being declared as illegal, arbitrary, discriminatory, void ab-initio, ineffective and inoperable against the appellant, be very graciously set aside and the appellant may in consequence thereof be very kindly allowed all back benefits as well. Grant of any other relief, as may be deemed appropriate by your grace, is solicited, too.

Dated: 10-10-2014

Humble Appellant,

Amir Ali
Muhammad Ali
 Advocate High Court
 Dera Ismail Khan

Ziaullah
 (Ziaullah) Appellant,
 Constable, No. 7783 FRP/D.I.Khan.



وکالت نامہ

کوریٹ فیس		ایک روپیہ قیمت
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بعد التَّجَنُّبِ سروسز ٹرانسپورٹیشن پرائیویٹ لمیٹڈ
 منجانب ذیل کے
 دعویٰ یا جرم
 تفصیل دعویٰ یا جرم SA No — 2014

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے بیرونی وجود ہی برائے پیشی یا تصفیہ مقدمہ بمقام Delhi کیلئے
Muhammad Ismael Aliqaw, AHC
 کو حسب ذیل شرائط پر وکیل مقرر کیا ہے، کہ میں ہر وقت خود یا بذریعہ مختیار خاص روز عدالت حاضر ہوتا ہوں گا۔ اور ہر وقت پکارے جانے مقدمہ وکیل صاحب
 موصوف کو اطلاع دیکر حاضر عدالت کروں گا، اگر پیشی پر منظر حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا۔ تو صاحب موصوف
 اسکے کسی طرح ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیرونی کرنے کے
 ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی جگہ یا کچہری کے اوقات سے پہلے یا پیچھے یا بروز تعطیل بیرونی کرنے کے ذمہ دار نہ
 ہوں گے۔ اور مقدمہ صدر کچہری کے علاوہ اور جگہ ساعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر منظر کو کوئی نقصان پہنچے تو اس کے ذمہ
 دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا جتانہ واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ
 ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرصی دعویٰ یا جواب دعویٰ یا درخواست اجراءے ڈگری و نظر ثانی اپیل و ترمیم درخواست پر دستخط و تصدیق کرنے کا
 بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر ثالثی یا راضی نامہ و فیصلہ بر
 حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا۔ اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ بیرون از کچہری صدر بیرونی مقدمہ مذکورہ نظر ثانی اپیل و ترمیم و ترمیمی
 ہر قسم یا سلسلہ ذریعہ کطرف یا درخواست حکم امتناعی یا ترقی یا گرفتاری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادا سنگی علیحدہ جتانہ بیرونی کا اختیار ہوگا
 اور تمام ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ اسکے کسی جزو
 کی کارروائی یا بصورت درخواست نظر ثانی اپیل یا ترمیم یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا پھر سزا پانے بجائے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو
 بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا، وہ صاحب
 موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا کرنا ہونی چاہئے۔ اور صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیرونی نہ کریں اور ایسی
 صورت میں ہر کوئی مطالبہ کہ قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

مورخہ 10/11/2014

مضمون وکالت نامہ سن لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

العبد العبد العبد

Accepted
 محمد اسماعیل علی قاری
 17/11

قریشی فونڈیشن ضلع کچہری ڈیرہ اسماعیل خان

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.75/2015.

Constable Ziaullah No.7783/.....Appellant.

VERSUS

1. **Provincial Police Officer,**
Khyber Pakhtunkhwa, Peshawar
2. **Addl: IGP/Commandant,**
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.
3. **Superintendent of Police,**
4. **FRP, D.I.Khan Range.....** Respondents

PRELIMINARY OBJECTIONS

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

WRITTEN REPLY ON BEHALF OF RESPONDENTS

FACTS

RESPECTFULLY SHEWETH:-

1. It pertains to the appellant records needs no comments.
2. Pertains to the appellant service record.
3. Incorrect. That the appellant while detailed for Nakabandi duty near Bannu Octroi on 07.06.2011, some unknown accused attempted murder on one Navid Iqbal S/O Muhammad Iqbal near the said Nakabandi, who was seriously injured, regarding which case FIR No.339 dated 07.06.2001 U/S 324/34 PPC was registered at Police Station Cant DIK. Besides the facts that occurrence took place very near the duty point i.e Nakabandi, but the appellant did not bother to chase / arrest the accused and showed cowardice / negligence in his official duty and as a result, the accused succeed in decamping after commission of offence. On the allegations of above, the appellant was dealt with proper departmental proceedings and during the course of enquiry the appellant was found guilty of the charges leveled against him and the enquiry officer recommended him for major punishment. After receiving the findings of EO the Competent Authority served the appellant with final show cause notice to which he replied but his reply was found unsatisfactory. He was also heard in person but he failed to convince the Competent Authority and after fulfillment of all the due codal formalities he was removed from service.
4. Departmental appeal submitted by the appellant was thoroughly examined and rejected on sound ground.
5. Para pertains to this Hon'able Tribunal record need no comments.
6. Correct to the extent that feeling aggrieved this department approached to law department for filing CPLA in the Apex Court of Pakistan against the said judgment. The case was thoroughly examined by the Law department and found a fit case for filing CPLA. Thereafter, CPLA was filed which the case remanded back to the replying department by the

Apex Court of Pakistan for the purpose of de novo enquiry with further directions that back benefits shall be dependent upon the outcome of the enquiry.

Incorrect. In the light of judgment of the Honorable Apex Court of Pakistan a fresh / proper enquiry was initiated against the appellant as per law / rule and during the course of enquiry the appellant was found guilty of the charges leveled against him, by the enquiry officer and submitted his findings in which the appellant was recommended for major punishment. Moreover the appellant was also heard in person, but he failed to produce any cogent reason before the Competent Authority in regard of his innocence. However keeping in view the poorness, of the appellant his major punishment of removal from service has been converted in to minor punishment of withholding of tow years, increments without cumulative affect, otherwise the appellant did not deserve for minor punishment.

8. Departmental appeal submitted by the appellant, was thoroughly examined and rejected on sound ground.

GROUNDS


1. Incorrect, the orders of the respondents are legal, justified and in accordance with Law/Rules, therefore, the instant appeal of the appellant is liable to be dismissed.
2. Incorrect, as per the decision of the Honorable Apex Court of Pakistan, proper de novo enquiry was initiated against the appellant and during the de novo proceedings he was found guilty of the charges leveled against him and finally he was heard in person but he failed to advance any cogent reason in regard of his innocence, but however, keeping in view of his poor family background the Competent Authority i.e. respondent No. 3 decided his case, on humanitarian grounds and his major punishment of removal from service converted in to minor punishment.
3. Every case have there own facts and merits. While cases mentioned in the Para are not at par with the case of the appellant.
5. Incorrect, the allegations are false and baseless as after conducting of proper de novo enquiry, the appellant was found guilty of the Charges leveled against him, but the Competent Authority decided his case on compassionate ground by taking a lenient view while otherwise the appellant was legally entitled for major punishment.
6. Incorrect, the allegations are false and baseless, as the appellant being a member of disciplined force showed extreme cowardice act on the charges of duty while the Police force is delegated under the law for maintaining law and order and public security. However, he was dealt with proper (de novo) departmentally as per law wherein the appellant was found guilty of the charges leveled against him, but keeping in view the poor family background of the appellant decided his case on compassionate ground by converting his major punishment in to minor punishment, while otherwise he was eligible / entitled for major punishment of dismissal from service.
6. Incorrect, the orders of the respondents are legal, justified and in accordance with Law/Rules, as the case of the appellant have already been decided by the Competent Authority with a lenient view.
7. Incorrect that all the codal formalities were fulfilled in the case of the appellant by the replying respondents and he was found guilty of the charges leveled against him and it is pertinent to mention hear that legally he was entitled / eligible for major punishment, but subsequently the Competent Authority decided his case on compassionate ground keeping in


view of his poor family background so the instant appeal of the appellant is liable to be dismissed


8. Incorrect the case of the appellant is not supported by the Law/Rules and it is for appellant to Prove.
9. Correct to the extent that the Hon'ble Tribunal has ample powers to entertain the instant case and can easily be dismissed on merit at par with the similar cases in service appeal No. 1829/2011, Service Appeal NO.827/2012 which have already been dismissed by this honorable tribunal vide judgments dated 17.09.2015, 11.05.2015.(copies of the judgments attached herewith as annexure "A" & "B")
10. The respondent may also be permitted to submit addl: Grounds at the time of arguments.

PRAYERS

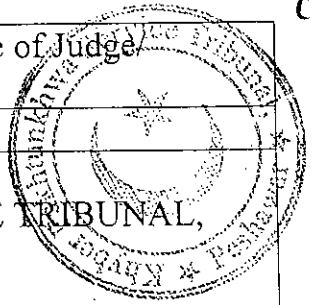
It is therefore, most humbly prayed that in the light of afore mentioned facts/submission the instant service appeal may kindly be dismissed with cost.


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


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


Superintendent of Police ERP,
DIKhan Range, D I Khan.
(Respondent No. 3)

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Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Magistrate
1	2	3
1	17.09.2015	<p>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, <u>PESHAWAR.</u></p> <p>Appeal No. 1829/2011</p> <p>Muhammad Zaman Versus Commandant, FRP, Peshawar etc.</p> <p><u>JUDGMENT</u></p> <p><u>PIR BAKHSH SHAH, MEMBER.-</u> Counsel for the appellant (Mr. Saadullah Khan Marwat, Advocate) and Government Pleader (Mr. Muhammad Jan) with Ihsanullah, H.C for the respondents present.</p> <p>2. This appeal is for the payment of salary for the period treated without pay by the appellate authority vide his impugned order dated 2.11.2011.</p> <p>3. Appellant Muhammad Zaman nominated in a murder case, was dismissed from service for the reason of absence from duty. In his departmental appeal, he was reinstated in service to face proceedings denovo. He was issued charge sheet and statement of allegations. This time the matter was enquired into by Allaudin Line Officer, D.I.Khan. At the end of the day he was once again dismissed from service vide order of the competent authority dated 08.10.2011 against which the appellant preferred departmental appeal which was decided on 2.11.2011. Fortunately his punishment of dismissal was set</p>

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

aside and his absence period was treated as leave without pay. The appellant is aggrieved with decision of the appellate authority whereby his absence period has been was treated as leave without pay.

4. Arguments heard and record perused.

5. Perusal of judgment of this Tribunal dated 06.5.2011 shows that prayer of the appellant for back benefits was left to be decided by the departmental authority in denovo proceedings. It is thus evident that the departmental authority was competent to refuse salaries to the appellant for the period of his absence. This being so, it is also evident from record that the appellant was charged in a murder case and his acquittal happened on the basis of compromise and not on merits of the case. Hence we do not find that the appellant is entitled for the release of salary for the period of his absence. The appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
17.9.2015.


Sd

(ABDUL LATIF)
MEMBER

Sd

(PIR BAKHSH SHAH)
MEMBER

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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Order or other proceedings with signature of Judge/Magistrate

Sr. No. _____
Date of _____
Order/ _____
proceedings _____

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 827/2012
Muhammad Zubair Provincial Police Officer, Khyber
Pakhtunkhwa, Peshawar etc.

PIR BAKHSI SHAH MEMBER- Appellant with

counsel (Mr. Matullah Batuch, Advocate) and Mr.
Muhammad Jan, Government Pleader for the respondents

present.

2. The appellant Muhammad Zubair Ex-Constable No.

6071/815 FRP, D.I.Khan was removed from service on the

ground of wilful absence from duty vide order dated

03.6.2010. His departmental appeal was also dismissed vide

order dated 19.7.2010 but fortunately his service appeal No.

1609/2010 decided on 12.08.2011 succeeded and he was

reinstated into service with consequential/back benefits. The

Tribunal however, in its judgment dated 12.08.20-11 also

provided that if deemed appropriate, the department may

conduct denovo departmental/enquiry proceedings. Thus the

denovo enquiry, this time was conducted by Sub Inspector/

Platoon Commander Muhammad Nawaz who concluded that

the total number of days for which the appellant remained

absent are 297 days out of which the appellant would be

credited for earned leave for a period of 192 days.

Consequently the rest of 105 days absence of the appellant was

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MEMBER
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

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treated as leave without pay. In view of the above recommendations of the enquiry officer, the impugned order dated 19.3.2012 was passed. The appellant is aggrieved from the said order, contending that order dated 19.3.2012 may be set aside and the respondent-department may be directed to release allowance of all back benefits for the entire period of absence.

3. We have heard the arguments of the learned counsel for the parties and perused the record with their assistance.

4. It is the contention of the learned counsel for the appellant that the appellant was removed for no fault on his part and further that the Tribunal reinstated him with all back benefits, therefore, he was entitled for the receipt of back benefits which were wrongly refused to him by the competent authority and further that the appellate authority also did not dispose of his departmental appeal.

5. The appeal was resisted by learned Government Pleader on the ground that the Tribunal in its decision dated 12.08.2011 had provided for denovo departmental/enquiry proceedings which were conducted and that after showing enough leniency in favour of the appellant, the impugned order was passed. He requested that the appeal may be dismissed.

6. It is evident from the last paragraph of the judgment of this Tribunal dated 12.08.2011 that order of reinstatement as

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well as back benefits was conditional and the respondent-department was given discretion to have initiated fresh enquiry proceedings. Since the appellant had remained absent for 297 days, he was also given earned leave for 192 days and as he was not entitled for any kind of leave for 105 days, therefore, the same was rightly treated as leave without pay. No excess appears to have been done to the appellant.

7. Consequently, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.5.2015

Certified to be true copy
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Member
Peshawar

sd

Pir Bakht Shah
member

sd
Abdullatif
member

Date of presentation 7-9-2015
No. 1200
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sd
Date 7-9-2015
Date 7-9-2015

Before The Service Tribunal, Khyber Pakhtun-khwa, Peshawar.
Service Appeal No:...74 /2015

Ziaullah, Police Constable.

(Appellant)

Versus

PPO, KPK etc.

(Respondents)

Rejoinder to written statement.

Respectfully, the appellant very humbly submits as under: -

On Preliminary Objections:-

Assertions made by the answering respondents from paras 1 to 5 are denied being incorrect, misconceived, against the law, without any substance or proof and an effort to colour the facts according to their own whims yet factually non-sustainable.

On Factual Objections:-

- 1to2. Need no response by the appellant.
3. Denied being factually and legally incorrect. The appellant relies on his averments made in corresponding para of his appeal. Since the entire official records are in custody of respondents the Tribunal may, in the ends of justice, call for actual records to see and evaluate the facts for itself, however, bias and prejudice on part of the respondents may not be ruled out in light of the relevant records.
4. Denied being factually and legally incorrect. The Tribunal may conveniently assess the high handedness of the respondents while dealing with the case of the appellant who has throughout been denied a fair trial.
5. Needs no reply.
6. Being matter of records need no reply.

7. Except that an inquiry was initiated following decision by the Apex Court as averred, rest of the contents of corresponding para of reply are Incorrect. The appellant has been discriminated by the respondents since a similarly placed employee namely HC Mir Ghaffar No.794, who was also charge-sheeted on the same allegation being incharge officer of the appellant has been treated not at par with the appellant and benefited due to an apparent patronizing on part of the respondents. Said HC Mir Ghaffar was reinstated in service by the departmental appellate authority, instead, as against award of punishment to the appellant. Also that the appellant was never afforded a fair trial. Copy of order in respect of HC Mir Ghaffar is placed at Mark-A.
8. Incorrect yet without any footings on part of respondents.

On Objections to Grounds:-

1. Denied being factually and legally incorrect.
2. Except for the denovo inquiry rest of the contents are denied being factually and legally incorrect. The appellant also relies on his averments made in corresponding para of his appeal besides law on the subject.
3. Denied being factually and legally incorrect. The criteria adopted by the respondents in treating two similarly placed persons/employees differently would speak volumes about the impropriety of action on part of the respondents. The appellant also relies on his averments made in corresponding para of his appeal.
4. Respondents have not replied to para-4 of the appeal hence needs no response.
5. Denied being factually and legally incorrect. The appellant relies on his averments made in corresponding para of his appeal.
6. Denied being factually and legally incorrect. The appellant relies on his averments made in corresponding para of his appeal.
7. Denied being factually and legally incorrect. The appellant relies on his averments made in corresponding para of his appeal.

8. Denied being factually and legally incorrect. The appellant relies on his averments made in corresponding para of his appeal.
9. Denied being factually and legally incorrect. Cases mentioned in corresponding para have no bearing on the present petition thus the averment is misconceived on part of respondents. The appellant relies on his submissions made in corresponding para of his appeal.
10. Needs no response.

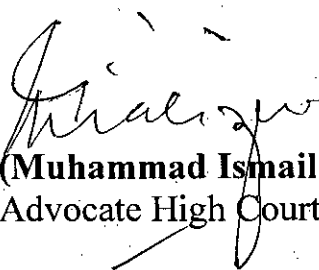
PRAYER:

In view of the facts and grounds, as mentioned above as well as in the main appeal, it is requested that by setting-aside the impugned orders of Respondents as prayed, declaring the same as illegal, void ab-initio, nullity in law and ultra-virus thus of no consequence on the rights of the appellant, to kindly allow the appellant grant of all back benefits from the date when he was actually deprived of the same. Any other remedy deemed appropriate by the Hon'ble Tribunal in the circumstances of the matter is solicited, too.

Humbly,

Dated... 30... 8.. /2016.

Appellant,
Through Counsel.


(Muhammad Ismail Alizai)
Advocate High Court.

Affidavit.

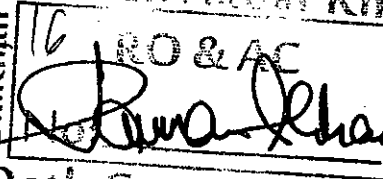
I, Ziaullah, the appellant, affirm and declare on oath that contents of this rejoinder are true & correct to the best of my knowledge and belief and that nothing is willfully concealed or kept from the Tribunal.

Attested -

Dated: 30-10-2016

Deponent.

25/10/16

Nauman Akbar Khan
Advocate
RO & AC

Oath Commissioner