

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.

**SERVICE APPEAL NO. 703/2015**

Date of institution ... 22.06.2015

Date of judgment ... 11.07.2017

Aurangzeb son of Abdur Rauf Khan Ex-Constable No.2610, resident of Mohallah Sheikhan, Attockay, P.O. Shabqadar, Charsadda.

... (Appellant)

**VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police Rural, Peshawar.

... (Respondents)

APPEAL UNDER SECTION-4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER NO. 13/SP-R, DATED 10.04.2015 OF RESPONDENT NO.3 WHEREBY THE APPELLANT WAS DISMISSED FROM HIS SERVICES AND AGAINST THE ORDER OF RESPONDENT NO.2 WHEREBY THE APPEAL OF THE APPELLANT WAS REJECTED VIDE ORDER NO.2923-28/PA, DATED 08.06.2015.

Mr. Muhammad Fayyaz Mohmand, Advocate.

.. For appellant.

Mr. Kabirullah Khattak, Assistant Advocate General

.. For respondents.

MR. AHMAD HASSAN

.. MEMBER (EXECUTIVE)

MR. MUHAMMAD HAMID MUGHAL

.. MEMBER (JUDICIAL)

**JUDGMENT**

AHMAD HASSAN, MEMBER: Mr. Aurangzeb, hereinafter referred to as appellant, through the instant appeal under section-4 of Khyber Pakhtunkhwa Service Tribunal Act 1974 against order no. 13/SP-R, dated 10.04.2015 of respondent no.3 whereby the appellant was dismissed from his service and against the order of respondent no.2 whereby the appeal of the appellant was rejected vide order no.2923-28/PA, dated 08.06.2015, hence the instant service appeal.

2. Brief facts of the case giving rise to the instant appeal are that the appellant was appointed as Constable and served at different stations with full zeal and commitment. That during his posting at Police Station Daudzai, Peshawar, he fell ill and upon examination doctor advised him one month bed rest. In this regard he not only informed

SP Rural but also submitted a written application for leave. That after recovery the appellant reported for duty, but was informed to have been dismissed from his service. He preferred departmental appeal which was rejected, hence the instant service appeal.

3. Learned counsel for the appellant argued that during the course of posting of the appellant at Police Station, Daudzai, Peshawar, he fell ill and upon examination by the doctor was advised one month bed rest. He submitted written application for leave to the S.P Rural on 02.05.2015. Again after expiry of bed rest the appellant was examined by the doctor and recommended further rest for one month. After regaining health when the appellant went to join duty he came to know about his dismissal from service w.e.f. the date from absence vide impugned order dated 10.04.2015. He preferred departmental appeal which was rejected on 08.06.2015. The total absence period comes to 69 days. Learned counsel for the appellant further contended that the period of absence from duty was not deliberate and intentional rather he was forced by the circumstances. Enquiry was not conducted in the mode and manner prescribed by the rules. Ex-parte proceedings were initiated and concluded against him in violation of the judgment of the superior courts. He has 21 years' service at his credit. The punishment awarded is very harsh and does not commensurate with the guilt/charges leveled against the appellant. He further prayed at the bar that keeping in view long service of the appellant the punishment awarded may be reduced/modified. He relied on 2008 SCMR 214 and judgment of this Tribunal dated 27.09.2014 passed in service appeal no. 1015/14.

4. Learned Assistant Advocate General in his reply assailed the arguments of the learned counsel for the appellant and stated that as a government servant he should have obtained leave even if he was ill. Absence from duty without permission of the Competent Authority amounts to misconduct. All the prescribed formalities were observed while imposing major penalty of dismissal from service upon the appellant. Despite repeated reminders the appellant failed to join enquiry proceedings and the respondents were compelled to initiate ex-parte proceedings. The appeal being devoid of any merit be dismissed with cost.

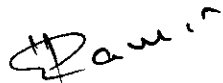
5. We have heard arguments of learned counsel for the appellant and learned Assistant Advocate General for the respondents and have gone through the record available on file.

6. Having gone through the record, it transpired that under Leave rules, 1981, leave on medical ground cannot be refused. The competent authority has the power to refer the case to the Standing Medical Board for opinion. Enquiry proceedings were conducted at the back of the appellant and as such the opportunity of fair trial, as enshrined in Article 10-(A) of the constitution was not provided. It is a well settled principle that no one should be condemned unheard. Show cause notice before imposition of penalty and opportunity of personal hearing was not afforded to the appellant. Similarly impugned penalty of dismissal from service from the date of absence is void as awarding punishment with retrospective effect is against the spirit of Article-12 of the constitution. Perusal of the record shows that imposition of major penalty of dismissal from service does not commensurate with the period of absence from duty and that too when circumstances were beyond his control as such the punishment seems too harsh.

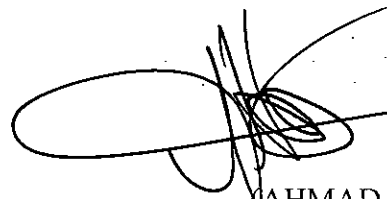
7. In view of the foregoing and candid admission of appellant in his departmental appeal that he remained absent from duty, we are constrained to partially accept the instant appeal and modify/convert the major penalty of dismissal from service into reduction of two steps in time scale for a period of two years. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED:

11.07.2017



(MUHAMMAD HAMID MUGHAL)  
MEMBER



(AHMAD HASSAN)  
MEMBER

10.03.2017

Counsel for appellant and Mr. Muhammad Raziq, H.C alongwith Mr. Kabirullah Khattak, Assistant AG for respondents present. Representative of respondent-department submitted record which is placed on file. Learned counsel for appellant also submitted rejoinder. To come up for arguments on 11.07.2017 before D.B.

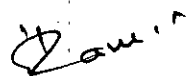
  
(ASHFAQUE TAJ)  
MEMBER

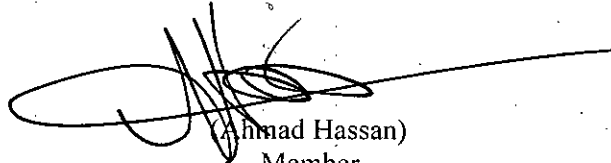
  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

11.07.2017

Appellant with counsel, Learned Asst: AG alongwith Mr. Muhammad Raziq, H.C for the respondent present. Vide separate judgment of today of this Tribunal placed on file, we are constrained to partially accept the instant appeal and modify/convert the major penalty of dismissal from service into reduction of two steps in time scale for a period of two years. No order as to costs, File be consigned to the record room.

**ANNOUNCED**  
11.07.2017

  
(Muhammad Hamid Mughal)  
Member

  
(Ahmad Hassan)  
Member

31.03.2016

Appellant with counsel and Mr. Aziz Shah, Reader alongwith Addl. A.G for respondents present. Written statement by respondents No. 2 & 3 submitted. Learned AAG relies on the same on behalf of respondent No. 1. The appeal is assigned to D.B for rejoinder and final hearing for 20.7.2016.

  
Chairman

20.07.2016

Counsel for the appellant and Additional AG for the respondents present. Learned counsel for the appellant submitted that he does not want to file rejoinder and case may be fixed for arguments. To come up for arguments on 17-11-16 before D.B.

  
MEMBER

  
MEMBER

17.11.2016

Appellant with counsel and Asst: AG for respondents present. During the course of arguments, the learned counsel for the appellant submitted that the appellant has been dismissed from service without any charge sheet and enquiry proceedings. This arguments was rebutted by Asst: AG who submitted that enquiry proceedings were conducted by SDPO Chamkanni against the appellant. Since the said report were not found on record therefore, respondent-department is directed to produce entire relevant record on the next date. Last opportunity for submission of rejoinder also given to the appellant. To come up for arguments on 10.03.2017.

  
(ABDUL LATIF)  
MEMBER

  
(PIR BAKHSH SHAH)  
MEMBER

29.06.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to inquiry on the ground of wilful absence and vide impugned order dated 10.4.2015 dismissed from service regarding which he preferred departmental appeal on 7.5.2014 which was rejected on 7.6.2015 followed by service appeal on 23.6.2015.

That the inquiry was not conducted in the prescribed manners and no opportunity of hearing was afforded to the appellant.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply for 12.10.2015 before S.B.

12.10.2015

Appellant in person present. Security and process fee not deposited. The same be deposited within a week, where-after notices be issued to the respondents for written reply for 26.01.2016 before S.B.

Chairman

Chairman

26.1.2016

Appellant in person and Mr. Aziz Shah, Reader alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 31.3.2016 before S.B.



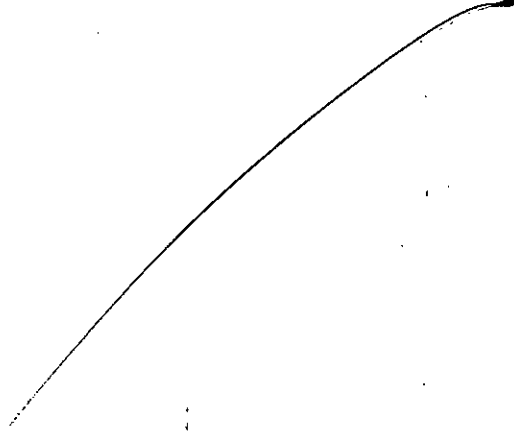
Chairman

Appellant Deposited  
Security & Process Fee

Form- A  
FORM OF ORDER SHEET

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

Case No. 703 /2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	23.06.2015	<p>The appeal of Mr. Aurang Zeb resubmitted today by Mr. Muhammad Fayaz Mohmand 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	25-6-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>29-6-2015</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> 

The appeal of Mr. Aurangzeb Khan son of Abdur Rauf Khan Ex-Constable No.2610 received to-day i.e. on 22.06.2015 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

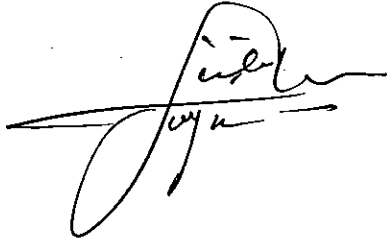
- 1- Memorandum of appeal may be got signed by the appellatant.
- 2- Annexures of the appeal may be attested.

No. 978 /S.T,

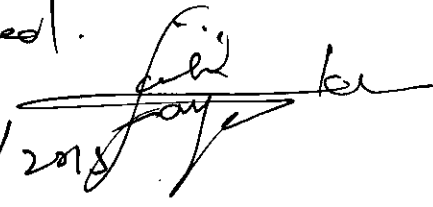
Dt. 22/6 /2015

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. M. Fayaz Mohmand Adv. Pesh.



objections answered  
and fulfilled.

23/04/2018 



**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**

**PESHAWAR**

S.A. NO. 703 /2015

Aurangzeb

**VERSUS**

Government of Khyber Pakhtunkhwa etc

**INDEX**

S.No	Description	Annexure	Pages
1.	Memo of appeal		1-5
2.	Copy of application, rest recommendation Hospital receipt	A	6-7
3.	Copy of hospital recommendation slip	B	8
4.	Copy of relevant receipt	C	9
5.	Copy of the order No. 13/SP-R, dated 10/04/2015	D	10
6.	Copy of the order No. 13/SP-R, dated 10/04/2015	E	11-14

Dated: 20/06 /2015

Appellant / applicant

Through

  
MUHAMMAD FAYYAZ MOHMAND

Advocate, High Court Peshawar

Contact No. 0345 9000466

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR

A.W.P. Province  
Service Tribunal  
Diary No. 734  
Dated 22/6/2015

S.A. NO. 703 /2015

Aurangzeb son of Abdur Rauf Khan Ex-Constable NO. 2610,  
residnet of Mohallah Sheikhan, Attockay, P.O. Shabqadar,  
Charsadda.

.. APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police Rural, Peshawar.

... RESPONDENTS

APPEAL UNDER SECTION 4 OF THE SERVICE  
TRIBUNAL ACT 1974, AGAINST THE ORDER NO.  
13/SP-R, DATED 10/04/2015 OF RESPONDENT  
NO.3, WHEREBY THE APPELLANT WAS  
DISMISSED FROM HIS SERVICES AND AGAISNT  
THE ORDER OF RESPONDENT NO. 2, WHEREBY  
THE APPEAL OF THE APPELLANT WAS  
REJECTED VIDE ORDER NO. 2923-28/PA, DATED  
08/06/2015

Filed to day  
22/6/15

re-submitted to-day  
in filed:

Registrar  
23/6/15

PRAYER: -

ON ACCEPTANCE OF THE INSTANT APPEAL  
BOTH THE ORDERS, BE SET ASIDE AND THE  
APPELLANT BE RE-INSTATED IN SERVICES TO  
CONTINUE ON WITH SERVICE ACCORDING AND  
ALONG WITH ALL BACK BENEFIT

RESPECTFULLY SHEWETH,

1. That the appellant was appointed as Constable and served at different stations with full zeal and commitment.
2. That the appellant during his posting at Police Station Daudzai, Peshawar, where he fell seriously ill and went to Lady Reading Hospital Peshawar to an Orthopedic Doctor on 31/01/2015 as the appellant's Spinal Cord had some serious problems, whereby the appellant was instructed one month compulsory rest, the appellant in this regard informed SP Rural and given a written application, as was unable to performed duties due to intense pain in his spin and continued with his treatment. (Copy of application, rest recommendation Hospital receipt are attached as Annexure "A").
3. That the appellant after completing the one month rest again went to the concerned hospital, as was not recovered from the pain and hence was recommended another month compulsory rest, hence the appellant orally

informed his bosses regarding the said situation. (Copy of hospital recommendation slip are attached Annexure "B").

4. That again when the appellant was not recovered even after completing two months rest went to the hospital and was again recommended 10 ~~days~~ rest, the appellant undergone the said rest successfully recovered. (Copy of relevant receipt is attached as annexure "C").
5. That thereafter the appellant reported for his duties, but the appellant was informed that he has been dismissed from his service and was given dismissal order No. 13/SP-R, dated 10/04/2015 by respondent no.3. (Copy of the order No. 13/SP-R, dated 10/04/2015 is attached as annexure "D").
6. That thereafter the appellant filed an appeal before respondent no. 2; where after the appellant was heard, but respondent no.2 without mentioning any solid reason dismissed the appeal of the appellant and upheld the order of respondent no.3. (Copy of order No. 2923-28/PA, dated 08/06/2015 is attached "E").
7. That the appellant hence feeling extremely aggrieved from both the orders of learned lower offices, files the instant appeal on the following grounds inter alia:-

Grounds: -

- a) That the appellant continued his treatment from authorized medical doctor where he was advised to take

4

rest for 2 month and 10 days as detailed above compulsory rest.

- b) That the appellant informed the competent authorities about his serious illness and treatment along with medical certificates, the authorities were also informed about the advice of doctors of taking compulsory rest.
- c) That the competent authorities instead of granting leave to the appellant initiated departmental proceedings / inquiry against the appellant and wrongly dismissed the appellant from his service.
- d) That the appellant was given no opportunity of fair hearing and rules of natural justice was clearly violated.
- e) That an ex-part inquiry was conducted the appellant was never heard in person.
- f) That it is also pertinent to mention here that mother of the appellant was also severely sick and the whole responsibility of the family is also upon the shoulders of the appellant.
- g) That furthermore the appellant during his whole service of 21 years have not even completed the allowed leaves, as one month per year leaves are allowed to a Service Man, but the appellant hasn't yet completed that amount of leaves, hence the impugned orders needs to be set aside.

5

h) That the absence was because of illness and was not intentional.

i) That both the orders are against the law fact and natural justice, hence liable to be set aside / cancelled.

j) That other points be raised at the time of arguments with permission of this Honourable Court.

It is, therefore, most humbly prayed that on acceptance of the instant appeal the orders of learned lower offices may kindly be set aside and the appellant may kindly be set aside and the appellant may kindly be re-instated in service with all back benefits.

Any other remedy deemed fit in the circumstance may also be granted in favour of the appellant.

ادریز  
Appellant

Through

MUHAMMAD FAYYAZ MOHMAND,  
Advocate, High Court Peshawar

*[Signature]*  
20/06/2015

### AFFIDAVIT

Declared on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

20 JUN 2015

ATTESTED



Deponent

ادریز

(6)

Annexure "A"

حکومت خیاب S.P. Rural صاحب، لہندہ

دو فراموش بجراد عطا شدگی مچھی اندیکہہ بوجہ بیماری

خیاب عالی ا

مؤدبانہ گزارش ہے کہ مسائل کا نشیہ نمبر 2610 ٹھکانہ داوردہ  
سہا لہنات ہے۔ گزشتہ چند دن سے مسائل کے مشیر بیمار ہے  
اور ڈاکٹر صاحب نے لہر معائنہ کے بعد ایک ماہ کا مکمل آرام  
کرنا کا مشورہ سے ہدایت کی ہے۔

مصلیٰ استدعا ہے کہ مسائل کو اندیکہہ کی مچھی عطا فرما کر  
مشکر و فرما رہیں۔

مسائل

اور نگزیب، کا نشیہ نمبر 2610

ٹھکانہ داوردہ

مورثہ نمبر 2 فروری 2015

اللہ تعالیٰ سے دعا ہے کہ  
یہ سب سچے سچے  
ہو اور  
آمین

7

Annexure - 'A'

Year: 65434523  
 Name: Aurang Zeb  
 Date: 31-Jan-2015  
 Orthopedic

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 Pao +1 Assocu  
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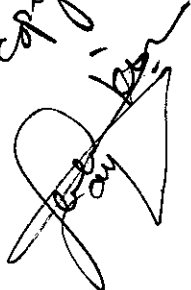
Adew (one) month sick  
 leave w. e for 21/01/2015

Resident Medical Officer  
 Lady Reading Hospital  
 Peshawar.

Medical Superintendent  
 Lady Reading Hospital  
 Peshawar.

Resident Medical Officer  
 Lady Reading Hospital  
 Peshawar.

Orthopedic Registrar  
 Lady Reading Hospital  
 Peshawar.

Attached to  
 be true copy  




(8)

Annexure - "B"



Lady Reading Hospital  
Peshawar  
Out-Patients Department

Yearly No: 657678891

Date: 02-March-2015

Name: Aurang Zeb

Orthopedic

friend of Beecher  
and Just Mehru ali

B Tel Nuboc D  
1 hi Feb

Tel VORU

Tel +1 SONG

Tel: Disk K  
+1 UONG

10/11/2015

Adew (one), menin bicta  
leu we-fou ca/oa/oa's

Medical Superintendent  
Lady Reading Hospital  
Peshawar.

Registrar  
Out Patient Medical Unit  
Lady Reading Hospital  
Peshawar.

Registrar  
Out Patient Unit  
Lady Reading Hospital  
Peshawar  
2/3/2015

Attested to be  
true copy  
[Signature]

9

Annexure-"c"



# Lady Reading Hospital

Peshawar

Orthopaedic Department

Medical No: 465465465

Date: 01-April-201

Name: Aurang Zeb

Orthopaedic

Impaired Nerve

& Tars Phalgen

1 + 02

Tao Fee henamp

1 + 1  
Tao Disk

Tao Leet 40

Adverse 10 days sick leave

w.e. from 01/04/2015

*[Handwritten signature]*

*[Handwritten signature]*

Medical Superintendent  
Lady Reading Hospital  
Peshawar

Resident Medical Officer  
Lady Reading Hospital  
Peshawar

Registrar  
Orthopaedic Department  
L.R.H. Peshawar

attested to  
be true  
copy

*[Handwritten signature]*

(10)  
Annexure "D"

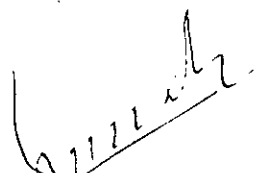
ORDER

This is office order for disposal of departmental proceedings against Constable Aurangzeb No. 2610 on the grounds that he while posted at PS Daudzai absented himself from his lawful duty with effect from: 31.01.2015 till to-date without leave or permission.

Departmental proceedings were initiated against him and SDPO Chamkani Circle was appointed as enquiry officer who vide his findings submitted that the alleged constable was summoned on his postal address through DFC P.S Daudzai but he was not present at home, however, a written parwana/notice was issued to him and in this regard signatures of his uncle and neighbour were also taken as token of receipt but did not bother to join the enquiry proceedings. The E.O further stated that the alleged constable has deliberately absented himself from his lawful duty without leave or permission as he has not reported at his place of posting till to-date which shows that he is not taking interest in his official duty. Thus he found him guilty and recommended him for major punishment of "Dismissal from Service".

Keeping in view the above and other material on record, the undersigned came to conclusion that the alleged Constable Aurangzeb No.2610 is guilty of the charges as he is still absent from his lawful duty without leave or permission. Therefore, the undersigned being a competent authority, award him the major punishment of "Dismissal from Service" under Police Rules 1975, as per recommendation of Enquiry Officer, from the date of his deliberate absence from his lawful duty.

Order announced.

  
(SHAKIR BANGASH)  
SUPERINTENDENT OF POLICE  
RURAL, PESHAWAR.

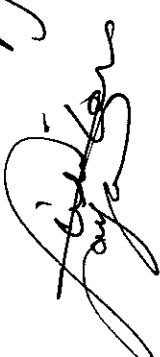
OB No. 1394

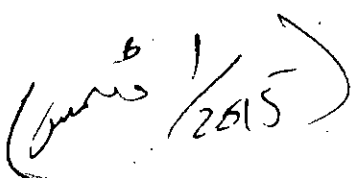
Dated: 10-4-15

No. 13 /SP-R, dated Peshawar the 10-4 /2015.

Copy to:-

- 1) The SP HQrs: Peshawar.
- 2) SDPO Chamkani Circle (E.O)
- 3) SDPO Rural.
- 4) DSP Legal, CCP, Peshawar.
- 5) SHO Daudzai.
- 6) Pay Officer.
- 7) Computer Cell, CRC, & OSI.
- 8) FMC (along-with enclosure)

attested to be  
true copy  


  
2015

**ORDER**

(11)

Annexure - "E"

This office order will dispose off departmental appeal of ex-constable **Aurangzeb No. 2610** who was awarded the major punishment of **dismissal** from service under PR-1975 by SP-Rural Peshawar on the charge of deliberate absence from lawful duty w.e.f. 31.1.2015 to 10.4.2015 (**69-days**) from PS Daudzai.

Proper departmental proceedings were initiated against him and DSP/Chamkani was appointed as the E.O. The Enquiry Officer repeatedly summoned the appellant time and again but he did not turn up to defend himself. As such the competent authority awarded him above major punishment.


The relevant record was perused along with his explanation. He was also heard in person in OR on 5/6/2015. He could not defend himself. The allegations stand proved against him. He deserves no leniency. The order of SP-Rural is upheld and his appeal for reinstatement in service is rejected/filed.

  
**CAPITAL CITY POLICE OFFICER,  
PESHAWAR.**

No. 2923-28 /PA dated Peshawar the 8.6. 2015

Copies for information and n/a to the :-

- 1/ SP-Rural, Peshawar
- 2/ PO/ OASI
- 3/ CRC for making necessary entry in his S.Roll.
- 4/ FMC encls: complete FM.
- 5/ Official concerned.

*attested  
To be true  
copy*  


(12)

Annexure 'E'

To

The Capital City Police Officer,  
Peshawar.

Subject: -

Appeal against the order dated 10/4/15 passed by Superintendent of Police Rural, Peshawar vide OB No. 1394 vide which the appellant has been dismissed from service.

Prayer: -

On acceptance of this appeal the order dated 10/4/15 passed by Superintendent of Police Rural, Peshawar may kindly be set-aside and the appellant be re-instated in service.

Respected Sir,

Most humbly it is submitted as under: -

1. That the appellant was posted as constable at PS. Daudzai and remained absent from his duty with effect from 31/01/2015.
2. That an enquiry was conducted against the appellant by the SDPO Chamkani who recommended the appellant for major of "Dismissal from Service" and in the light of the report of the enquiry officer, the appellant was dismissed from service by SP Rural vide order referred above.
3. The feeling aggrieved from the above order, the appellant prefers this appeal before your honour for his re-instatement on the following grounds: -

GROUND.

A.

That the father of the appellant was murdered in the year 2002 vide case FIR NO, 652 dated 26/5/14 under section 302/324/34 PPC. PS Shabqadar and the

attested to  
be true  
copy  
[Signature]

appellant being elder member of his family, remained busy in look after of his family members. Copy of FIR. is attached herewith.

B. That the mother of the appellant is seriously ill and is under treatment and the appellant use to take her to the Doctor on each 2<sup>nd</sup> or 3<sup>rd</sup> day, as beside the appellant there is no one to look after her. Prescription chits of the mother of the appellant are attached herewith.

C. That the sister-in-law of the appellant is missing since 17/9/10 and has not been traced out so far. The appellant went in search of her to Karachi and other different cities but in vain. The report to this effect has been made to the police of PS. Shabqadar vide DD No. 15 dated 17/9/10. Copy of Roznamecha report is also annexed herewith.

D. That the appellant also remained ill and was under treatment. Copies of prescription chits and report of Medical Laboratory are also attached.

E. That no Parwana was served upon the appellant nor any show cause notice or charge sheet was issued in this respect. According to the report of enquiry officer a Parwana issued to the appellant was signed by the uncle of the appellant but I was not informed by any one.

F. *attested to be true copy*  
*[Signature]*

That the absence of the appellant is neither intentional nor deliberate one but the appellant

remained absent from his duty due to the reasons explained above.

G. That the punishment awarded to the appellant is harsh one.

H. That the appellant has got 21 years spotless service into his credit.

I. That the appellant belongs to a poor family and he is only source of income of his family.

It is, therefore, requested that the above order passed by SP. Rural, Peshawar may kindly be passed and the appellant may kindly be re-instated in service with all back benefits.

Dated: - 7/5/15.

Appellant

اورنگزیب  
Aurangzeb,

Ex-Constable No. 2610,

PS. Daudzai.

Contact No. 03009777487.

*Attached to be  
true copy  
Fazal  
Fazal*

بعدالت کے پی سرورسز ٹریبونل



20/06/2015

مورخہ

مقدمہ

دعویٰ  
بلج

2، پنجاب

اوپلز بی بی نام گورنمنٹ آف ک.پ

Appeal

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام سرورسز ٹریبونل کیلئے محمد میاض احمد ایڈووکیٹ 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 ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

20/06

ماہ جون

20

المرقوم

العبد العبد العبد

لیٹا سرورسز ٹریبونل کے لئے منظور ہے

مقام

عناوانات سٹیشنری مارٹ

چوک مشگری پٹارشی فون: 2220193

Mob: 0345-9223239

Jay

20/06/2015

اورنگزیب ولہ عبد الرؤف ساکن بشقرد چارسدہ

Ex-embtable No-26/0

اورنگزیب



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

**Service Appeal No.703/2015.**

Aurangzeb Ex-Constable No.2610 Police Line Peshawar.....Appellant.

**VERSUS.**

1. Capital City Police Officer, Peshawar.
2. Superintendent of Police, Rural, Peshawar.....Respondents.

**Reply on behalf of Respondents No. 1,& 2.**

**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) Para No.1 pertains to record, hence needs no comments.
- (2) Para No.2 is incorrect and concocted. In fact the appellant absented himself deliberately and did not adopt proper procedure for taking leave/permission.
- (3) Para No.3 is incorrect. The appellant did not inform his seniors and absented himself wilfully.
- (4) Para No.4 is for the appellant to prove.
- (5) Para No.5 is correct to the extent that the appellant while posted at PS Daudzai absented himself wilfully from his lawful duty w.e.f 31.01.2015 to 10.04.2015 (total 69 days) without taking leave/permission. In this regard he was proceeded departmentally and was issued show cause notice, and charge sheet along with summary of allegations. The enquiry officer summoned him time and again to defend himself of charges of deliberate absence but he did not bother to defend himself, hence he was recommended for major punishment of dismissal from service. Hence after fulfilling all codal formalities he was awarded major punishment of dismissal from service vide OB No.1394 dated 10.04.2015 by SP Rural Peshawar.
- (6) Para No.6 is correct to the extent that the appellant filed a departmental appeal but after due consideration was filed/rejected because the charges of deliberate absence were stand proved against him.

(7) That appeal of the appellant being devoid of merits may kindly be dismissed.

**GROUND:-**

- (A) Incorrect. The appellant did not adopt proper procedure for leave/permission.
- (B) Incorrect. The appellant did not inform his seniors for taking leave/permission.
- (C) Incorrect. The punishment order passed by the competent authority is in accordance with law/rules.
- (D) Incorrect. The appellant was given full opportunity to defend himself.
- (E) Incorrect. The appellant was called time and again to defend himself. He was also heard in person in OR on 05.06.2015.
- (F) Incorrect. The appellant did not adopt proper procedure for leave.
- (G) Incorrect. The appellant is a habitual absentee and does not take interest in his duties.
- (H) Incorrect. The appellant absented himself wilfully from his lawful duties.
- (I) Incorrect. The punishment orders are in accordance with law/rules, hence liable to be upheld.
- (J) That respondents also seek permission of this Honorable Service Tribunal to raise additional grounds at the time of arguments.

**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.

  
**Capital City Police Officer,  
Peshawar.**

  
**Superintendent of Police,  
Rural, Peshawar.**

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

**Service Appeal No.703/2015.**

Aurangzeb Ex-Constable No.2610 Police Line Peshawar.....Appellant.

**VERSUS.**

1. Capital City Police Officer, Peshawar.
2. Superintendent of Police, Rural, Peshawar.....Respondents.

**AFFIDAVIT**

We respondents No. 1 & 2 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.



**Capital City Police Officer,  
Peshawar.**



**Superintendent of Police,  
Rural, Peshawar.**

**BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA,**  
**PESHAWAR**

*Services Appeal No. 703/2015*

*Aurangzeb Ex-Constable No. 2610*

**VERSUS**

- 1. Capital City Police Officer, Peshawar.*
- 2. Superintendent of Police, Rural, Peshawar.*

**REJOINDER ON BEHALF OF THE APPELLANT TO THE REPLY**  
**SUBMITTED BY RESPONDENT NO.1 AND 2**

*Respectfully Sheweth,*

*On preliminary Objections:*

*All the preliminary objections are illegal and incorrect. No reason in support of the same is ever given as to why the appellant has no cause of action, or how is he estopped by his own conduct to file present petition, or how is the appeal time barred and that how that the appellant has not come to the Honourable Tribunal with clean hands.*

**ON FACTS:**

- 1. Para No.1 needs no reply.*

2. Para No.2 of the reply is incorrect, as absence of the appellant was not deliberate but due to serious illness and for this he had informed the department through application for leave.
3. Para no.3 of the reply is incorrect as the appellant has informed his senior officers of his illness and tendered application thereof.
4. Para no.4 of reply needs no reply.
5. Para no.5 of the reply is incorrect. No show cause notice, charge sheet or summary of allegations was issued to the appellant. No opportunity of fair hearing was given to the appellant, neither he was summoned. No codal formalities were observed and the appellant was unlawfully awarded the major punishment of dismissal from service.
6. Para no.6 of reply is incorrect as the appeal of the appellant was rejected unlawfully and without showing any reason for doing so.

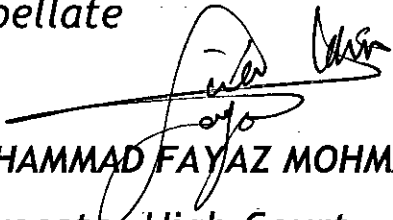
**ON GROUNDS:**

All grounds "A" to "J" take in the memo of appeal are legal and will be substantiated at the time of hearing of the appeal. However, all replies submitted to the grounds are incorrect, false and misleading one. The appellant has wrongly dismissed from services and has not been terminated in

accordance with law, rules and procedure, hence his rights are badly violated. The order of the dismissal from service is illegal and not tenable in the eye of law.

Prayer:

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

Appellate  
Through   
MUHAMMAD FAYAZ MOHMAND,  
Advocate, High Court  
Peshawar

Dated: 10/03/2017

ORDER

This office order will dispose off departmental appeal of ex-constable **Aurangzeb No. 2610** who was awarded the major punishment of **dismissal** from service under PR-1975 by SP-Rural Peshawar on the charge of deliberate absence from lawful duty w.e.f. 31.1.2015 to 10.4.2015 (**69-days**) from PS Daudzai.

Proper departmental proceedings were initiated against him and DSP/Chamkani was appointed as the E.O. The Enquiry Officer repeatedly summoned the appellant time and again but he did not turn up to defend himself. As such the competent authority awarded him above major punishment.

The relevant record was perused along with his explanation. He was also heard in person in OR on 5/6/2015. He could not defend himself. The allegations stand proved against him. He deserves no leniency. The order of SP-Rural is upheld and his appeal for reinstatement in service is rejected/filed.

  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR.

No. 2923-28 /PA dated Peshawar the 8.6. 2015

Copies for information and n/a to the :-

- 1/ SP-Rural, Peshawar
- 2/ PO/ OASI
- 3/ CRC for making necessary entry in his S.Roll.
- 4/ FMC encls: complete FM.
- 5/ Official concerned.


ORDER

This is office order for disposal of departmental proceedings against Constable Aurangzeb No. 2610 on the grounds that he while posted at PS Daudzai absented himself from his lawful duty with effect from: 31.01.2015 till to-date without leave or permission.

Departmental proceedings were initiated against him and SDPO Chamkani Circle was appointed as enquiry officer who vide his findings submitted that the alleged constable was summoned on his postal address through DFC P.S Daudzai but he was not present at home, however, a written parwana/notice was issued to him and in this regard signatures of his uncle and neighbour were also taken as token of receipt but did not bother to join the enquiry proceedings. The E.O further stated that the alleged constable has deliberately absented himself from his lawful duty without leave or permission as he has not reported at his place of posting till to-date which shows that he is not taking interest in his official duty. Thus he found him guilty and recommended him for major punishment of "Dismissal from Service".

Keeping in view the above and other material on record, the undersigned came to conclusion that the alleged Constable Aurangzeb No.2610 is guilty of the charges as he is still absent from his lawful duty without leave or permission. Therefore, the undersigned being a competent authority, award him the major punishment of "Dismissal from Service" under Police Rules 1975, as per recommendation of Enquiry Officer, from the date of his deliberate absence from his lawful duty.

Order announced.

  
(SHAKIR BANGASH)  
SUPERINTENDENT OF POLICE  
RURAL, PESHAWAR.

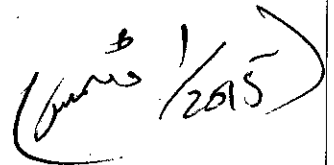
OB No. 1394

Dated: 10-4-15

No. 13 /SP-R, dated Peshawar the 10-4 /2015.

Copy to:-

- 1) The SP HQrs: Peshawar.
- 2) SDPO Chamkani Circle (E.O)
- 3) SDPO Rural.
- 4) DSP Legal, CCP, Peshawar.
- 5) SHO Daudzai.
- 6) Pay Officer.
- 7) Computer Cell, CRC, & OSI.
- 8) FMC (along-with enclosure)

  
(10/4/2015)



TO : THE SP RURAL, PESHAWAR  
FROM: THE SDPO CHAMKANI, PESHAWAR  
NO. 45 /ST, DATED: 2/4 /2014

SUBJECT: ENQUIRY AGAINST FC CONSTABLE AURANGZEB NO. 2610

MEMO:

Please refer to your office diary No. 13/PA; dated: 02.04.2015 on the subject cited above.

**ALLEGATIONS:**

According to the statement of allegations, FC Aurangzeb No. 2610 while posted at Police Station Daudzai absented himself from his lawful duty with effect from: 31.01.2015 till to-date without leave or permission.

**PROCEEDINGS:**


The alleged official was summoned on his postal address through DFC PS Daudzai but he was not present at his home. However, a written parwana/notice was issued to him and in this regard, the signatures of his uncle and neighbours were also taken as token of receipt (copy attached).

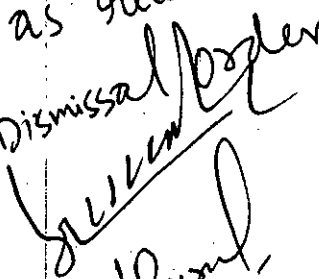
**FINDINGS:**

The alleged official has deliberately absented himself from his lawful duty as he has not reported his place of posting till now which shows that he is not taking interest in his legitimated duty.

**RECOMMENDATION:**

Keeping in view the above, it is recommended that he may be awarded the major punishment of dismissal from service please.

  
(ABID UR RAHMAN)  
SDPO Chamkani Circle

Approved as recommended by S.O  
Issue Dismissal Order.  
  
SP/Rural  
9/4/15

✓ A  
286  
13

ORDER

Constable Anwarzeb No. 2677 of Capital City Police Peshawar while posted at Police Lines, Peshawar absented himself from duty w.e.f 04.01.2013 to 04.03.2013 (02-months) without taking permission or leave.

In the light of commenda to of S.O, he was conferred with Deputy Attorney General Peshawar. Therefore, his period of absence from 04.01.2013 to 04.03.2013 is treated as such and enquiry is filed.

SUPERINTENDENT OF POLICE  
HEADQUARTERS PESHAWAR

Order No. 3708 /

Date: 26/11/2014

No. 236-48 PR/SP HQrs: dated Peshawar the 27/11/2014.

Copies to:

- ✓ DSO HQrs. Peshawar
- ✓ P. O. I/C DAR, Peshawar
- ✓ O. I. RC & FMC along with complete departmental file.
- ✓ Other concerned.

27  
Encl

ORDER

This office order will dispose off departmental appeal of ex-constable **Aurangzeb No. 2610** who was awarded the major punishment of **dismissal** from service under PR-1975 by SP-Rural Peshawar on the charge of deliberate absence from lawful duty w.e.f. 31.1.2015 to 10.4.2015 (**69-days**) from PS Daudzai.

Proper departmental proceedings were initiated against him and DSP/Chamkani was appointed as the E.O. The Enquiry Officer repeatedly summoned the appellant time and again but he did not turn up to defend himself. As such the competent authority awarded him above major punishment.

The relevant record was perused along with his explanation. He was also heard in person in OR on 5/6/2015. He could not defend himself. The allegations stand proved against him. He deserves no leniency. The order of SP-Rural is upheld and his appeal for re-instatement in service is rejected/filed.

  
**CAPITAL CITY POLICE OFFICER,  
PESHAWAR.**

No. 2923-28 /PA dated Peshawar the 8.6. 2015

Copies for information and n/a to the :-

- 1/ SP-Rural, Peshawar
- 2/ PO/ OASI
- 3/ CRC for making necessary entry in his S.Roll.
- 4/ FMC encls: complete FM.
- 5/ Official concerned.


ORDER

This is office order for disposal of departmental proceedings against Constable Aurangzeb No. 2610 on the grounds that he while posted at PS Daudzai absented himself from his lawful duty with effect from: 31.01.2015 till to-date without leave or permission.

Departmental proceedings were initiated against him and SDPO Chamkani Circle was appointed as enquiry officer who vide his findings submitted that the alleged constable was summoned on his postal address through DFC P.S Daudzai but he was not present at home, however, a written parwana/notice was issued to him and in this regard signatures of his uncle and neighbour were also taken as token of receipt but did not bother to join the enquiry proceedings. The E.O further stated that the alleged constable has deliberately absented himself from his lawful duty without leave or permission as he has not reported at his place of posting till to-date which shows that he is not taking interest in his official duty. Thus he found him guilty and recommended him for major punishment of "Dismissal from Service".

Keeping in view the above and other material on record, the undersigned came to conclusion that the alleged Constable Aurangzeb No.2610 is guilty of the charges as he is still absent from his lawful duty without leave or permission. Therefore, the undersigned being a competent authority, award him the major punishment of "Dismissal from Service" under Police Rules 1975, as per recommendation of Enquiry Officer, from the date of his deliberate absence from his lawful duty.

Order announced.

  
(SHAKIR BANGASH)  
SUPERINTENDENT OF POLICE  
RURAL, PESHAWAR.

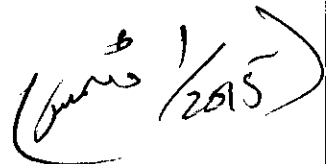
OB No. 1394

Dated: 10-4-15

No. 13 /SP-R, dated Peshawar the 10-4 /2015.

Copy to:-

- 1) The SP HQrs: Peshawar.
- 2) SDPO Chamkani Circle (E.O)
- 3) SDPO Rural.
- 4) DSP Legal, CCP, Peshawar.
- 5) SHO Daudzai.
- 6) Pay Officer.
- 7) Computer Cell, CRC, & OSI.
- 8) FMC (along-with enclosure)

  
(10-4-15)

TO : THE SP RURAL, PESHAWAR  
FROM: THE SDPO CHAMKANI, PESHAWAR  
NO. 45 /ST, DATED: 9/4 /2014

SUBJECT: ENQUIRY AGAINST FIC CONSTABLE AURANGZEB NO. 2610

MEMO:

Please refer to your office diary No. 13/PA, dated: 02.04.2015 on the subject cited above.

**ALLEGATIONS:**

According to the statement of allegations, FIC Aurangzeb No. 2610 while posted at Police Station Daudzai absented himself from his lawful duty with effect from: 31.01.2015 till to-date without leave or permission.

**PROCEEDINGS:**

The alleged official was summoned on his postal address through DFC PS Daudzai but he was not present at his home. However, a written parwana/notice was issued to him and in this regard, the signatures of his uncle and neighbours were also taken as token of receipt (copy attached).

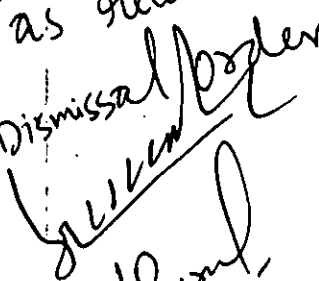
**FINDINGS:**

The alleged official has deliberately absented himself from his lawful duty as he has not reported his place of posting till now which shows that he is not taking interest in his legitimated duty.

**RECOMMENDATION:**

Keeping in view the above, it is recommended that he may be awarded the major punishment of dismissal from service please.

  
(ABID UR RAHMAN)  
SDPO Chamkani Circle

Approved as recommended by S.O.  
Issue Dismissal Order.  
  
SP/Rural  
9/4/15

✓ A  $\frac{286}{13}$

ORDER

Constable Ambar Singh No. 26111 of Capital City Police Peshawar while posted at Police Lines, Peshawar absented himself from duty w.e.f 04.01.2013 to 04.03.2013 (02-months) without taking permission or leave.

In the light of recommendation of S.O, he was on duty with Deputy Attorney General Peshawar. Therefore, his period of absence from 04.01.2013 to 04.03.2013 is created as duty and enquiry is filed.

SUPERINTENDENT OF POLICE  
HEADQUARTERS PESHAWAR

CR. NO. 3708

DATED 25/11/2014

No. 236-48/SP/HQrs: dated Peshawar the 27/11/2014

Copies to:

- ✓ DSP, Peshawar
- ✓ P.A. Officer / I/C DAR, Peshawar
- ✓ O.A.S., PRC & FMC along with complete departmental file.
- ✓ Other concerned.

27  
encl

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

No. 1782 /ST

Dated 28 /7/ 2017

To

The Superintendent of Police Rural,  
Government of Khyber Pakhtunkhwa,  
Peshawar.

Subject: -

JUDGMENT IN APPEAL NO. 703/2015, MR. AURANGZEB KHAN

I am directed to forward herewith a certified copy of judgement dated 11.07.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

RECEIVED  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL  
PESHAWAR.