

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR**SERVICE APPEAL NO. 1278/2015**

Date of institution ... 10.11.2015

Date of judgment ... 29.01.2018

Bakht Zaman, Ex-Constable No. 330,  
Police Lines Mardan.

... (Appellant)

**VERSUS**

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

... (Respondents)

SERVICE APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORIGINAL IMPUGNED ORDER DATED 04.12.2014 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST THE APPELLATE ORDER DATED 31.08.2015 COMMUNICATED TO THE APPELLANT N 16.10.2015 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS.

Mr. Noor Mohammad Khattak, Advocate.

.. For appellant.

Mr. Usman Ghani, District Attorney

.. For respondents.

Mr. MUHAMMAD AMIN KHAN KUNDI

.. MEMBER (JUDICIAL)

MR. MUHAMMAD HAMID MUGHAL

.. MEMBER (JUDICIAL)

**JUDGMENT**

MUHAMMAD AMIN KHAN KUNDI, MEMBER: - Learned counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Atta-ur-Rehman, S:I (legal) for the respondents also present. Arguments heard and record perused.

*M. Amin*  
*29.1.2018*

2. Brief facts of the present service appeal are that the appellant was serving in Police Department and later on during service he was dismissed from service on the allegation of his absence from duty vide order dated 03.12.2014. The appellant filed departmental appeal on 12.08.2015 which was rejected on 31.08.2015 and communicated on 16.10.2015 hence, the present service appeal on 10.11.2015.

3. Learned counsel for the appellant contended that neither charge sheet was framed nor statement of allegation was served on the appellant nor proper inquiry was conducted, therefore, the appellant was not treated in accordance with law and rules. It was further contended that the appellant was not willfully absent from duty but due to unavoidable circumstances he could not attend the duty and preferred application for grant of leave but the respondents have not replied the same therefore, prayed that the appeal may be accepted with all back benefits.

4. On the other hand, learned District Attorney for the respondents opposed the contention of learned counsel for the appellant and contended that the appellant was willfully absent from duty without any leave or prior permission of the higher authority. It was further contended that after conducting proper inquiry the appellant was rightly dismissed from service by the competent authority vide order dated 03.12.2014. It was further contended that after dismissal of the appellant through impugned order dated 03.12.2014 the appellant was required to file departmental appeal within one month but the appellant has filed departmental appeal on 12.08.2015 after a delay of more than eight months. It was further contended that the departmental authority rejected the departmental appeal of the appellant on 31.08.2015 but the appellant has filed service appeal on 10.11.2015 after a delay of stipulated period therefore, it was vehemently contended that the appeal of the appellant is time barred and prayed for dismissal of the appeal.

5. Perusal of the record reveals that the appellant was dismissed from service on the allegation of absence from duty vide order dated 03.12.2014 therefore, the appellant was required to file departmental appeal within one month but the appellant


*M. Am. in*  
29.1.2018

has filed departmental appeal on 12.08.2015 after a delay of more than eight months therefore, without touching the merit of the case the present appeal being time barred is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
29.01.2018



(MUHAMMAD HAMID MUGHAL)  
MEMBER



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

Service Appeal No. 1278/2015

29.01.2018

Learned counsel for the appellant present. Mr. Usman Ghani, District Attorney alongwith Mr. Atta-ur-Rehman, S.I (legal) for the respondents also present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of three pages placed on file, the present appeal being time barred is dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

29.01.2018

*Spaw*

(MUHAMMAD HAMID MUGHAL)  
MEMBER

*Muhammad Amin*  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

18.07.2017

Counsel for the appellant present. Mr. Atta-ur-Rehman, S.I (legal) alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 13.11.2017 before D.B.



(Gul Zeb Khan)  
Member



(Muhammad Amin Khan Kundi)  
Member

13.11.2017

Counsel for the appellant and Mr. Muhammad Jan, DDA alongwith Mr. Attaur Rehman, SI(Legal) for respondents present. Arguments to some extent heard. To come up for further arguments on 12.12.2017 before D.B.



(Muhammad Hamid Mughal)  
Member



(Ahmad Hassan)  
Member

12.12.2017

Agent to counsel for the appellant. Mr. Kabir Ullah Khattak, Learned AAG for the respondents present. Due to general strike of the bar, the arguments could not be heard. To come up for arguments on 29.01.2018 before D.B.



(Gul Zeb Khan)  
MEMBER

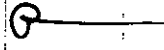


(Muhammad Hamid Mughal)  
MEMBER



04:08.2016

Appellant in person and Mr. Muhammad Ghani, S.I alongwith Additional AG for the respondents present. Rejoinder not submitted and requested for further time. Request accepted. To come up for rejoinder and arguments on 7-12-16

  
Member

  
Member

07.12.2016

Clerk counsel for appellant and Mr. Khalid Mehmood, H.C alongwith Assistant AG for the respondents present. Clerk counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments on 31-3-17 before D.B.

  
(ASHFAQUE TAJ)  
MEMBER

31.03.2017

Appellant in person and Mr. Usman Ghani, Sr. GP alongwith Mr. Ata-ur-Rehman S.I for respondents present. Appellant requested for adjourned as his counsel has gone for performing Umra. Adjourned. To come up for arguments on 18.07.2017.

  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

Appellant Deposited  
Security & Process Fee

24.11.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to inquiry and dismissed from service on the allegations of wilful absence vide impugned order dated 4.12.2014 where against departmental appeal was preferred on 12.8.2015 which was rejected on 31.8.2015 and hence the instant service appeal on 16.11.2015.

That the inquiry was not conducted in the prescribed manners. Regarding the delay learned counsel for the appellant places reliance on case-law reported as 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

Points urged need consideration. Admit, subject to all legal objections including limitation. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 3.3.2016 before S.B. Notice of application for condonation of delay be also issued for the date fixed.

  
Chairman


03.03.2016

Counsel for the appellant and Assistant AG for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 28.4.2016 before S.B.

  
Chairman

28.4.2016

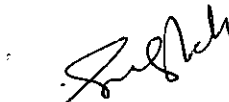

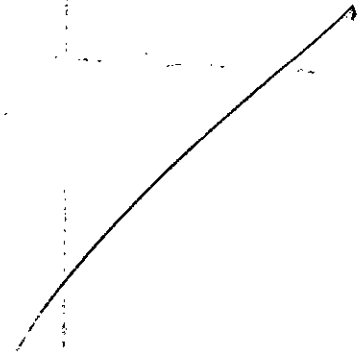
Agent of counsel for the appellant and Muhammad Ghani, SI alongwith Addl. AG for the respondents present. Written statement by the respondents submitted. The appeal is assigned to D.B for rejoinder and final hearing for 04.08.2016.

  
Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No. 1278/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	16.11.2015	<p>The appeal of Mr. Bakht Zaman presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>24-11-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> 




The appeal of Mr. Bakht Zaman Ex-Constable No.330 Police Line Mardan received to-day i.e. on 10.11.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Annexure- B of the appeal is illegible which may be replaced by legible/better one.

No. 1735/S.T,

Dt. 11/11/2015

  
REGISTRAR -  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

*Noted:*

*Sir,*

*That objection no. 1 has been removed,  
hence re-submitted today dated 16/11/2015.*

*16/11/2015*

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

APPEAL NO 1278 /2015

**BAKHT ZAMAN**

**VS**

**POLICE DEPTT:**

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**APPELLANT**

**THROUGH:**

  
**NOOR MOAHAMMAD KHATTAK**  
**ADVOCATE**

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

APPEAL NO. 1278 /2015

A.W.P. Province  
Service Tribunal  
Diary No. 336  
Dated 10-11-2015

Mr. Bakht Zaman, Ex. Constable No. 330,  
Police lines Mardan ..... **Appellant**

**VERSUS**

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

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE ORIGINAL IMPUGNED ORDER DATED 4-12-2014 WHEREBY THE APPELLANT WAS DISMISSED FROM SERVICE WITHOUT CONDUCTING REGULAR INQUIRY IN THE MATTER AND AGAINST THE APPELATE ORDER DATED 31-08-2015 COMMUNICATED TO APPELLANT ON 16.10.2015 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED ON NO GOOD GROUNDS**

**PRAYER:**

**That on acceptance of this appeal the impugned orders dated 4-12-2014 and 31-08-2015 may very kindly be set aside and the respondents may please be directed to re-instate the appellant with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.**

*Filed to-2015*  
*[Signature]*  
Registrar

*10/11/15* **R/SHEWETH:**  
**ON FACTS:**

- 1- That appellant was appointed as constable in the respondent Department and has served the respondent Department for quite considerable period. That after appointment the appellant started performing his duty quite efficiently and up to the entire satisfaction of his superiors.

Re-submitted to-day  
and filed.

*[Signature]*  
Registrar

That appellant while serving as constable in the police Department applied for leave due to some domestic problems but the respondent No.1 paid no heed to the said request of the appellant. Copy of the application is attached

as annexure ..... **A.**

- 2- That due to the above mentioned reason the appellant absented himself and due to that reason the appellant was dismissed from service vide order dated 4.12.2014. Copy of the impugned order is attached as annexure ..... **B.**
- 3- That feeling aggrieved from the impugned dismissal order dated 4-12-2014 the appellant filed departmental appeal before the appellate authority who rejected the Departmental appeal of the appellant vide order dated 31.8.2015 communicated to the appellant on 16.10.2015. Copies of the Departmental appeal, application and rejection order are attached as annexure ..... **C, D and E.**
- 4- That appellant having no other remedy prefer the instant appeal on the following grounds amongst the others.

**GROUND:**

- A- That the impugned orders dated 4-12-2014 and 31.8.2015 are against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be set aside.
- B- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That no charge sheet and statement of allegation has been served on the appellant before issuing the impugned order dated 4-12-2014.
- D- That no chance of personal hearing/ defense has been given to the appellant which is mandatory under amended E & D rules 2011.
- E- That no show cause notice has been served on the appellant by the respondent No.3 before issuing the impugned order against the appellant.
- F- That the absence of the appellant is not willful but caused due to unavoidable circumstances. Moreover the appellant also preferred application for the grant of leave but the respondents have not replied the same.

- G- That no regular inquiry has been conducted in the matter of appellant which is as per Supreme Court judgment is necessary in cases of punitive actions against the civil servant.
- H- That the respondent acted in arbitrary and malafide manner while issuing the impugned orders dated 4-12-2014 and 31.8.2015.
- I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 5.11.2015

**APPELLANT**



**BAKHT ZAMAN**

**THROUGH:**



**NOOR MOHAMMAD KHATTAK  
ADVOCATE**

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

**APPEAL NO. \_\_\_\_\_/2015**

**BAKHT ZAMAN**

**VS**

**POLICE DEPARTMENT**

**APPLICATION FOR CONDONATION OF**  
**DELAY IN FILING THE ABOVE NOTED**  
**APPEAL**

**R.SHEWETH:**

- 1- That the appellant has filed an appeal along with this application in which no date has been fixed so far.
- 2- That the appellant prays for the condonation of delay in filing the above noted appeal inter alia on the following grounds:

**GROUND OF APPLICATION:**

- A- That valuable rights of the appellant are involved in the case hence the appeal deserve to decide on merit.
- B- That it has been the consistent view of the Superior Courts that cases should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is therefore prayed that on acceptance of this application the delay in filing the above noted appeal may please be condoned.

**APPELLANT**

  
**BAKHT ZAMAN**

**THROUGH:**

  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

بخدمت جناب ڈسٹرکٹ پولیس آفیسر مردان A-4

درخواست برائے عطا کرائی جانے

جناب عالی،  
میرا نام صاحب ذیل عرضہ اسکاں ہے۔

میں نے کراچی پولیس میں بطور کانسٹیبل تعینات ہوئی

مگر میں اپنی ڈیوٹی انتہائی اہمیت اور اہمیت کے ساتھ سرانجام دیتا ہوں

تاہم مجھے کچھ کٹریوں مسائل درپیش ہے۔ جسکی وجہ سے میں ڈیوٹی سرانجام دینے سے قاصر ہوں

میرا نام صاحب ذیل عرضہ پانچ ماہ کے لئے درخواست ہے۔

لہذا تمہارے "کٹریوں مسائل کو مدنظر رکھ کر سرکار  
پانچ ماہ کی عہدہ فرائض  
مشکورہ سے

التوفیق 21/7/2014

محمد رفیق صاحبی فر 330

Attested  
[Signature]

**ORDER:**

It has been reported that you Constable Bakht Zaman No. 330, while posted at Police Lines Mardan committed the following act cross misconduct on his part as defined in Rule-02 (iii) of Police Rules 1975.

That Constable Bakht Zaman No. 330, was charge sheeted vice this office No. 716/R, dated 24.09.2014 and also proceeded him against departmentally through inspector Hayat Ullah Khan RI/Police Lines Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 603/RI, dated 03.12.2014, the allegation established against him.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Bakht Zaman No. 330, is dismissed from service and his absence period will be counted as without pay, in exercise of the power vested in me under the above quoted rules.

Order announced  
O.B No. 2449  
Dated 3/12/2014

(Gul Afzal Afridi)  
District Police Officer  
M a r d a n

No. 12120-25 dated Mardan the 4.12.2014

Copy forwarded to all concerned.

*Attested*  
*[Signature]*



B-5

ORDER

It has been reported that you Constable Bakht Zaman No. 330, while posted at Police Lines Mardan committed the following act/acts, which is are gross misconduct on his part as defined in Rules 02 (iii) of Police Rules 1975

That Constable Bakht Zaman No. 330, while posted at Police Lines Mardan, deliberately absented himself from the lawful duty vide DD No.12 dated 18.07.2014 to-date.


In this connection, Constable Bakht Zaman No. 330, was charge sheeted vide this office No. 716/R. dated 24.09.2014 and also proceeded with departmentally through Inspector Hayat Ullah Khan RI/Police Lines Mardan, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 603/RI, dated 03.12.2014, the allegation established against him.

The undersigned agreed with the findings of enquiry officer and the alleged Constable Bakht Zaman No. 330, is dismissed from service and his absence period will be counted as without pay, in exercise of the power vested in me under the above quoted rules.

Order announced

O.B No. 2449

Dated 3/12/2014

  
(G) Asif Afridi  
District Police Officer,  
Mardan.

No. 13136-23 dated Mardan the 4-12-2014

Copy for information and necessary action to

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P. Operations, Mardan.
3. The DSF/HQrs Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan.

*Attested*  
*[Signature]*

*[Handwritten signature]*

0342-4888423.

To

The Honourable,  
Dy: Inspector General of Police,  
Mardan Region-I, Mardan.

Subject: APPEAL FOR RE-INSTATEMENT IN SERVICE  
AGAINST THE ORDER OF WORTHY DISTRICT  
POLICE OFFICER, MARDAN DATED 24.12.2013  
VIDE WHICH THE PETITIONER WAS DISMISSED  
FROM SERVICE.

Respected Sir,

It is humbly submitted as under:-

FACTS.

It is alleged against the petitioner that while Posted at Police Line, Mardan deliberately absented himself from the lawful duty without prior permission or leave w.e. from 18.07.2014 till now. Consequent upon the said allegation the departmental enquiry was carried out through Inspector Hayatullah Khan RI/Police Lines, Mardan and the petitioner was found guilty of the alleged mis-conduct and hence dismissed from service by District Police Officer, Mardan vide OB NO.2449 dated 03.12.2014. Hence aggrieved this appeal against the said order.

GROUND FOR APPEAL.

1. That the order of worthy District Police Officer, Mardan is contrary to the law and facts on record.
2. That the order is severe, harsh and against Natural

*Attested*  
*[Signature]*

(7)

dispensation of justice.

3. That the absence of the petitioner from the duty was neither deliberate nor intentional.
4. That the petitioner was indulged in domestic ill will and was unable to performed his duty, due to which the petitioner was absented.
5. That the departmental enquiry carried out against the petitioner was suo-moto and opportunity was afforded to defend the allegations levelled against the petitioner.
6. That during the departmental proceeding neither any witness has been examined on Oath nor the plea of the petitioner has been properly addressed.
7. That the petitioner has been not given final Show Cause notice while passing the order of major punishment of dismissal which is mandatory under the law.
8. That the alleged mis-conduct has been neither established through oral nor documentary evidence.
9. That the petitioner belongs to a poor family and the single bread earner to support his family. The petitioner is ver keen to join his duty and serve his department in future. I have eight children i.e. 4 sons and 4 daughter who are undergoing to

*Attested*  
*G*

(8)

School and also bears his expenses alongwith house expenses.

10. That I was enlisted in Police Department in Police Department in the year 01.01.1995 and performed his duty very honestly but due to the domestic illwill I, was absented.

In view of the above it is earnestly requested that the petitioner may kindly be re-instated in his Service. The petitioner will be more Careful in future and will pray for your long life and prosperity.

Dated: 12.08.2015

Yours Obediently

*Attested*  
*EP*

( BAKHT ZAMAN )  
Ex. Constable NO. 330  
Police Lines, Mardan  
NIC NO. 0342-4858423  
r/o Dargai Malakang Agency.

صاحب عدالت!

D-9

موردیہ سزا کے ساتھ ساتھ اس میں

اپنی کی خود کاپی کی ضرورت ہے

مذکورہ درخواست اس کے ساتھ ساتھ اس میں

کاپی دے جانے کا حکم صادر ہوا ہے

عین نوٹس میں

الحاقاً

B4

محکمات زمانہ اس کی کاپی 330 کے تحت دیں

16/10/15

Attached  
of

The applicant send

copy of the filed order

Ver 16/10

Photo  
PE

ORDER

E-10

This order will dispose-off the appeal preferred by Ex-Constable Bakht Zaman No. 330 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was dismissed from service vide District Police Officer, Mardan OB No. 2449 dated 03.12.2014

I have perused the record and comments furnished by District Police Officer, Mardan in this case. The reply submitted by Ex-Constable Bakht Zaman No. 330 is unsatisfactory and stance taken to prove his innocence is unacceptable. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers under rule 11(4) (a) Khyber Pakhtunkhwa Rules, 1975, upheld the order of penalty and reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith being time barred.

ORDER ANNOUNCED.

(MUHAMMAD SAEED) PSP  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan.

No. 5168 /ES, Dated Mardan the 31-8- /2015.

Copy to District Police Officer, Mardan for information and necessary action w/r to his office Memo: No. 956/LB dated 18.08.2015. His service roll is returned herewith for record in your office.

(\*\*\*\*\*)

Att. as held  
Be

**VAKALATNAMA**

IN THE COURT OF KPK Service Tribunal Peshawar

OF 2015

Bakht Zaman (APPELLANT)  
(PLAINTIFF)  
(PETITIONER)

**VERSUS**

Police Department (RESPONDENT)  
(DEFENDANT)

I/we Bakht Zaman  
Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. \_\_\_/\_\_\_/2015



CLIENT



ACCEPTED

NOOR MOHAMMAD KHATTAK  
(ADVOCATE)

OFFICE:

Room No.1, Upper Floor,  
Islamia Club Building, Khyber Bazar,  
Peshawar City.

Phone: 091-2211391

Mobile No.0345-9383141



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

**Service Appeal No. 1278/2015.**

Bakht Zaman Ex-Constable No. 330.....Appellant.

**VERSUS.**

District Police Officer, Mardan

& others.....Respondents.

**Parawise comments on behalf of respondents are submitted as under:-.**

**Respectfully Sheweth:**

**PRELIMINARY OBJECTIONS:-**

1. That the appellant has not come to this Honourable Tribunal with clean hands.
2. That the appellant has got no cause of action.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct, by law to bring the instant appeal.
5. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed.
6. That the appeal is bad due to non-joinder of necessary parties and mis-joinder of unnecessary parties.
7. That the instant appeal is barred by law & limitation.

**REPLY ON FACTS.**

1. Reply to part-I of this para pertains to record, hence, no comments. However, the later part is totally incorrect, baseless & self-made in nature.
2. Correct to the extent of absence and dismissal from service vide order/O.B No. 2449 dated 03.12.2014.
3. Correct to the extent of dismissal from service & rejection of his departmental appeal vide order dated 31.08.2015. However, the later part of this para is incorrect as all punishment orders/penalties are always & immediately communicated to the officials affected thereof.
4. The appellant has deliberately absented himself & thereby committed misconduct, so, holds no legal grounds to stand on.


**REPLY ON GROUNDS:-**


- A. Incorrect. The impugned orders are just & in accordance with law, facts & norms of natural justice with material on record. Hence, tenable in the eyes of law.
- B. Incorrect. The appellant has been treated as per rules/law & there is no violation of any article of the Constitution of Pakistan, 1973.
- C. Incorrect. The appellant has been treated as per rules/law by conducting proper enquiry through Mr. Hayatullah Khan the then R.I Police Lines Mardan.  
**(Copies of Charge Sheet, Statement of allegations & enquiry file are attached as Annexure-A, B & C).**
- D. Incorrect the appellant was provided all opportunities of self-defence including personal hearing during departmental proceedings.
- E. Incorrect. The appellant was dealt under relevant rules/law.
- F. Incorrect. The appellant has not applied as per procedure before the competent authority. **Further**, the application attached herewith by the appellant does not specify his reasons for leave but contain only domestic problems. As domestic problems lies in each & every family & most of these could be avoided without effecting the routine life, in particular the service carrier of an official.


- G. Incorrect. Proper departmental enquiry under rules/law was conducted with all codal formalities.
- H. Incorrect & baseless & the two impugned orders are just & tenable in the eyes of law.
- I. The respondents also seek permission of this Honourable Tribunal to present further/additional, if any, grounds etc. at the time of arguments.

**PRAYER:-**

It is therefore, prayed that the appellant's plea holds no legal grounds and he does not deserve to be retained more in service as prayed for. His appeal may please be dismissed with costs.

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.**  
(Respondent No. 01)

  
**Dy: Inspector General of Police,  
Mardan Region-I, Mardan.**  
(Respondent No. 02)

  
**District Police Officer,  
Mardan.**  
(Respondent No. 03)

لوہیہ لائٹ

نقل و در ۱۲ روز یا ۱۸<sup>۵۷</sup>/<sub>۱۴</sub>

گوپر علی ما وقت 20:30 ۶: ۱۸<sup>۵۷</sup>/<sub>۱۴</sub>

گنتی حلازوان

رہنہ غیر حاضری

اس وقت گنتی حلازوان کدنگ - فارغ از

ڈیوٹی حلازوان میں سے کٹیٹل جنت زوان

330 عزم جو جو رہا گیا - میں نے ہذا

رہنہ غیر حاضری در ۱۲ روز یا ۱۸<sup>۵۷</sup>/<sub>۱۴</sub>

تقدیر صرفاً مناسب کاروائی استرمان بالا

کی صورت میں ارسال کی جائے گی -

صدا علی

نقل عطائی ۱۸<sup>۵۷</sup>/<sub>۱۴</sub>

Sir,

M. M. Pline

21-9-14

For worded

~~Ali~~

Le Pline Mardan

28-9-14

For worded

~~Ali~~

Return Mardan

26-9-14

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 716 /R/D.A-P.R-1975.

Dated 24-9- /2014

DISCIPLINARY ACTION UNDER NWFP POLICE RULES - 1975

I, Gul Afzal Khan District Police Officer, Mardan as competent authority am of the opinion that Constable Bakht Zaman No. 330, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (ii) of NWFP Police Rules 1975.

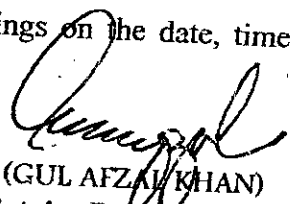
STATEMENT OF ALLEGATIONS

That Constable Bakht Zaman No. 330, while posted at Police Lines Mardan, deliberately absented himself from the lawful duty vide DD No. 12 dated 18.07.2014 to-date without any leave / permission of the competent authority. He is recommended for departmental action by DSP/HQrs., Mardan vide his office letter No. 465/HQrs., dated 10.09.2014.

2. For the purpose of scrutinizing the conduct of the said official with reference to the above allegations Inspector Hayat Ullah Khan RI/Police Lines Mardan is appointed as Enquiry Officer.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official, record its findings and make within twenty five (25) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the Enquiry Officer.

  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan

OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN

No. 716 /R, dated Mardan the 24-9- /2014.

Copy of above is forwarded to the:

1. RI/Police Lines Mardan for initiating proceedings against the accused official / Officer namely Constable Bakht Zaman No. 330 under Police Rules, 1975.
2. Constable Bakht Zaman No. 330, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.



19-10-2014

**OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN**

No. 716 /R/D.A-P.R-1975.

Dated 24-9- /2014

**DISCIPLINARY ACTION UNDER NWFP POLICE RULES - 1975**

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority am of the opinion that Constable **Bakht Zaman No. 330**, rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section-02 (iii) of NWFP Police Rules 1975.

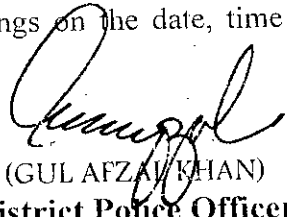
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(GUL AFZAL KHAN)  
District Police Officer,  
Mardan

**OFFICE OF THE DISTRICT POLICE OFFICER, MARDAN**

No. 716 /R, dated Mardan the 24-9- /2014.

Copy of above is forwarded to the:

1. RI/Police Lines Mardan for initiating proceedings against the accused official / Officer namely Constable Bakht Zaman No. 330 under Police Rules, 1975.
2. Constable Bakht Zaman No. 330, with the directions to appear before the Enquiry Officer on the date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

\*\*\*\*\* !!! \*\*\*\*\*


## CHARGE SHEET UNDER NWFP POLICE RULES 1975

I, **Gul Afzal Khan** District Police Officer, Mardan as competent authority hereby charge you **Constable Bakht Zaman No. 330**, as follows.

That you constable, while posted at Police Lines Mardan, deliberately absented yourself from the lawful duty vide DD No. 12 dated 18.07.2014 to-date without any leave / permission of the competent authority. You are recommended for departmental action by DSP/HQrs., Mardan vide his office letter No. 465/HQrs., dated 10.09.2014.

This amounts to grave misconduct on your part, warranting departmental action against you, as defined in section - 6 (1) (a) of the NWFP Police Rules 1975.

1. By reason of the above, you appear to be guilty of misconduct under section - 02 (iii) of the NWFP Police Rules 1975 and has rendered yourself liable to all or any of the penalties as specified in section - 04 (i) a & b of the said Rules.
2. You are therefore, directed to submit your written defense **within seven days** of the receipt of this charge sheet to the enquiry officer.
3. Your written defence if any, should reach to the enquiry officer within the specified period. failing which, it shall be presumed that you have no defense to put-in and in that case, an ex-parte action shall follow against you.
4. Intimate whether you desired to be heard in persons.

  
(GUL AFZAL KHAN)  
District Police Officer,  
Mardan.

جناب عالی

OB2551  
22.11.13

کوالا شنگار نوٹسز لمیٹڈ 250/PA  
4-6-13

دلت ہوں، میں خرم  $\frac{02}{13}$  تا  $\frac{05}{13}$  تک غریبا ہوں

عرض یہ ہے کہ میں حقانہ رسم میں تعینات تھا۔ میرا خرابیوں میں زانیہ ڈرگھوز سے اولاد ہوئی، میری والدہ صاحبہ اور والد سے دائمی بیمار ہے۔ اچانک گریوٹیشن ہو چکی ہے۔ میرا اہل گھری حالت میں دھت شہباشی ہر گھوزہ روانہ ہوا تو واقعہ میری والدہ بیمار حالت میں ڈی لئی ڈاکٹر سے رجوع کیا گیا۔ ڈاکٹر صاحب نے حدیث دی کہ والدہ انتہائی کمزور ہے۔ لہذا انکی خدمت گھوزہ میں کرانیے۔ خرم میں عدوہ ڈرگھوز میں کوئی دم دار خود نہیں ہے۔ بچے چھوٹے چھوٹے ہیں تو اس وجہ سے میرا غریب ہو کر اپنی والدہ صاحبہ کی خدمت کرنے لگا۔ اور آخر کار میری والدہ اس فانی دنیا سے چل بسی۔ بدینا وجہ میں بدستور غریب اور غریب ہی میرا جواب ہے۔

لہذا آپ صاحبان کے احساس حدیث میری جھوری کو مد نظر رکھتے ہوئے ان غریبوں کو حاف کیا جاوے اور شنگار نوٹسز کو بقیہ کسی کاروائی کے داخل دفتر کو مانی جاوے۔

Abblance (78) dan

اللہ اعلم

330 رقم کفالت رسم حال  
تفانہ پورہ

Summon him P.O.  
26/11

Conceded without pay  
and release his pay  
26/11

# فائل انکوآری اذان کا نشیبل بخت زمان نمبر 330 متعینہ پولیس لائن مرد

جناب عالی!

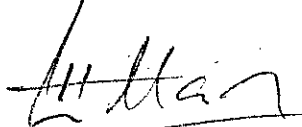
بحوالہ چارج شیٹ نمبری R/716 مورخہ 24.09.2014 کا نشیبل بخت زمان نمبر 330 کے خلاف انکوآری کاغذات موصول ہو کر جس میں مذکورہ کا نشیبل پر الزام لگایا گیا ہے کہ وہ پولیس لائن مردان سے بحوالہ مد 12 روز نامچہ 18.07.2014 سے تاحال غیر حاضر ہے۔

مورخہ 19.10.2014 کو ایک عد نقض چارج شیٹ بذریعہ لیوی اہلکاران ملاکنڈ ایجنسی کو ارسال کر کے واپسی پر کا نشیبل بخت زمان نمبر 330 نے ایک کاپی وصول کر کے دوسری کاپی پر اپنا دستخط ثبت کی مذکورہ کا نشیبل کے ساتھ بذریعہ موبائل فون نمبر 0343-9571433 پر رابطہ کیا جاتا ہے مگر کافی انتظار کے باوجود چارج شیٹ کا جواب نہیں دیا۔ جس سے معلوم ہوتا ہے کہ مذکورہ کا نشیبل نوکری کرنے کا خواہشمند نہیں ہے۔

محرر پولیس لائن کے بیان کے مطابق وہ پہلے بھی برخواست ہو چکا ہے اور تاحال غیر حاضر ہے پولیس روٹر باب 06 فقرہ 09 میں صاف بیان کیا گیا ہے کہ بار بار غیر حاضری کا مرتکب ہوا ہے اور اصلاح اور ملازمت پولیس کے قابل نہیں تو بالعموم اس کو ملازمت سے موقوف کر دیا جائے گا۔

انکوآری سے پایا گیا کہ کا نشیبل بخت زمان نمبر 330 کو بحوالہ مد 12 روز نامچہ 18.07.2014 سے غیر حاضر چلا آرہا ہے عنقریب حاضر آنے کا امکان نہیں۔

لہذا کا نشیبل بخت زمان نمبر 330 کو بوجہ طویل غیر حاضری کی بناء پر محکمہ ہذا سے برخواست کرنے کی سفارش کی جاتی ہے۔


  
ریز روائسپیکٹر پولیس لائن

مردان

کل قطعات (08)

RJ 603  
3-12-14

Dismissed from Service

  
3-12-014



**ORDER**

It has been reported that you **Constable Bakht Zaman No. 330**, while posted at Police Lines Mardan committed the following act/acts, which is are gross misconduct on his part as defined in Rules 02 (iii) of Police Rules 1975.

That **Constable Bakht Zaman No. 330**, while posted at Police Lines Mardan, deliberately absented himself from the lawful duty vide DD No.12 dated 18.07.2014 to-date.

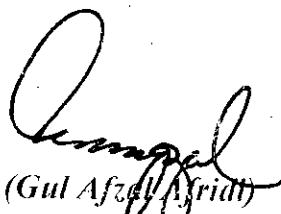
In this connection, **Constable Bakht Zaman No. 330**, was charge sheeted vide this office No. 716/R, dated 24.09.2014 and also proceeded him against departmentally through **Inspector Hayat Ullah Khan RI/Police Lines Mardan**, who after fulfilling necessary process, submitted his findings to the undersigned vide his office endorsement No. 603/RI, dated 03.12.2014, the allegation established against him.

The undersigned agreed with the findings of enquiry officer and the alleged **Constable Bakht Zaman No. 330**, is dismissed from service and his absence period will be counted as without pay, in exercise of the power vested in me under the above quoted rules.

**Order announced**

O.B No. 2449

Dated 3 / 12 / 2014

  
(Gul Afzal Afridi)  
District Police Officer,  
Mardan.

No. 12120-25 dated Mardan the 4-12- /2014

Copy for information and necessary action to:-

1. The Deputy Inspector General of Police Mardan Region-1, Mardan.
2. The S.P Operations. Mardan.
3. The DSP/HQrs Mardan.
4. The Pay Officer (DPO) Mardan.
5. The E.C (DPO) Mardan.
6. The OASI (DPO) Mardan.

**ORDER.**

This order will dispose-off the appeal preferred by Ex-Constable Bakht Zaman No. 330 of Mardan District Police against the order of District Police Officer, Mardan, wherein he was dismissed from service vide District Police Officer, Mardan OB No. 2449 dated 03.12.2014

I have perused the record and comments furnished by District Police Officer, Mardan in this case. The reply submitted by Ex-Constable Bakht Zaman No. 330 is unsatisfactory and stance taken to prove his innocence is unacceptable. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers under rule.11(4) (a) Khyber Pakhtunkhwa Rules, 1975, upheld the order of penalty and reject the appeal and do not interfere in the order passed by the competent authority, thus the appeal is filed forthwith being time barred.

ORDER ANNOUNCED:

*(Signature)*  
**(MUHAMMAD SAEED) PSP**  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan.

No. 5168 /ES, Dated Mardan the 31-8 /2015.

Copy to District Police Officer Mardan for information and necessary action w/r to his office Memo: No. 956/LB dated 18.03.2015. His service roll is returned herewith for record in your office.

(\*\*\*\*\*)

*EC*  
*for information*

*On*  
*DPO Mardan*  
*21/9/15*

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

**Service Appeal No. 1278/2015.**

Bakht Zaman Ex-Constable No. 330.....Appellant.


**VERSUS.**


District Police Officer, Mardan


& others.....Respondents.

**COUNTER AFFIDAVIT.**

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.  
(Respondent No. 01)**

  
**Dy: Inspector General of Police,  
Mardan Region-I, Mardan.  
(Respondent No. 02)**

  
**District Police Officer,  
Mardan.  
(Respondent No. 03)**

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

**Service Appeal No. 1278/2015.**

Bakht Zaman Ex-Constable No. 330.....Appellant.


**VERSUS.**


District Police Officer, Mardan

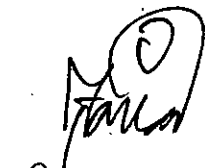
& others.....Respondents.

**AUTHORITY LETTER.**

Mr. Muhammad Shafiq Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa, Peshawar.**  
(Respondent No. 01)

  
**Dy: Inspector General of Police,  
Mardan Region-I, Mardan.**  
(Respondent No. 02)

  
**District Police Officer,  
Mardan.**  
(Respondent No. 03)

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

**APPEAL NO. 1278/2015**

**BAKHT ZAMAN**

**VS**

**POLICE DEPTT:**

**REJOINDER ON BEHALF OF THE APPELLANT IN**  
**RESPONSE TO REPLY SUBMITTED BY THE**  
**RESPONDENTS**

**PRELIMINARY OBJECTIONS:**

**1 TO 7:**

All the preliminary objections raised by the respondents are incorrect, baseless and not in accordance with law and rules rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

**ON FACTS:**

**(1 TO 4):**

- 1- Admitted correct by the respondents. Moreover, appellant has been served for the respondent for quite efficiently and upto the entire satisfaction of his superiors.
- 2- Admitted correct by the respondents. That appellant applied for leave due to some domestic problems but the no reply was received from the concerned authority. That during this period the appellant has been dismissed from service without issuing any show cause notice.
- 3- Admitted correct to the extent of dismissal order and rejection order of the Departmental appeal of the appellant which was communicated to the appellant on 16.10.2015.
- 4- Incorrect and not replied accordingly. That appellant was submitted application for leave but no response has been given.

**GROUND:**

**(A TO I):**

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondents are incorrect and baseless. That the impugned orders dated 4-12-2014 and 31.8.2015 are against the law, facts, norms of

natural justice and materials on the record hence not tenable and liable to be set aside. That no charge sheet and statement of allegation has been served on the appellant before issuing the impugned order dated 4-12-2014. That no chance of personal hearing/ defense has been given to the appellant which is mandatory under amended E & D rules 2011. That no show cause notice has been served on the appellant by the respondent No.3 before issuing the impugned order against the appellant. That the absence of the appellant is not willful but caused due to unavoidable circumstances. Moreover the appellant also preferred application for the grant of leave but the respondents have not replied the same. That no regular inquiry has been conducted in the matter of appellant which is as per Supreme Court judgment is necessary in cases of punitive actions against the civil servant. That the respondent acted in arbitrary and malafide manner while issuing the impugned orders dated 4-12-2014 and 31.8.2015.

It is therefore most humbly prayed that on acceptance of this rejoinder of the appellant may be accepted as prayed.

**APPELLANT**



**BAKHT ZAMAN**

**THROUGH:**



**NOOR MOHAMMAD KHATTAK  
ADVOCATE**