

S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	03.06.2016	<p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO.330/2015</p> <p style="text-align: center;">(Khalid Khan-vs-Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH , MEMBER:</u></p> <p>Appellant with counsel (Mr. Muhammad Asif Yousafzai, Advocate) and Mr. Ihsanullah, ASI (Legal) alongwith Mr. Muhammad Jan, GP for respondents present.</p> <p>2. Appellant joined the Police Force as Constable on 01.08.2009. He was dismissed from service by Deputy Commandant FRP vide his order dted 22.01.2015 on the ground of his absence from duty and his departmental appeal was also rejected vide order dated 26.3.2015, hence this appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal, 1974.</p> <p>3. Arguments heard and record perused.</p> <p>4. The Plea of the appellant is that he was suffering from sciatica pain and could not come on duty. The record does not reveal that the charge sheet and statement of allegations or his summoning for enquiry was directly served and made on him and when the final show cause notice was issued to him the appellant has personally received the same and also submitted his reply to the</p>

show cause notice in which he took the plea of his illness due to sciatica. It is thus evident that in the previous proceedings of the charge sheet and enquiry against the appellant, no sufficient efforts were made to serve the appellant like the one in case of the final show cause notice nor he would have responded to the same. The above situation shows that full opportunity of defense is required^{to} be provided to the appellant so that his plea of illness may be thrashed out. Consequently, the Tribunal is constrained to set aside the impugned orders of the respondents and to reinstate the appellant into service with the direction to the respondents to proceed *de-novo* against the appellant. Full opportunity of defense and hearing be provided to the appellant and the matter of his back benefits be also decided by the respondent-department in the light of outcome of the *de-novo* proceedings. Appeal is allowed in the above terms. Parties are left to bear their own cost. File be consigned to the record room.



(ABDUL LATIF)
MEMBER



(PIR BAKHSH SHAH)
MEMBER

ANNOUNCED
03.06.2016

01.09.2015

Appellant with counsel and Mr. Sahil Khan, H.C alongwith Assistant A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 12.11.2015 before S.B.


Chairman

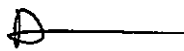
12.11.2015

Counsel for the appellant and Mr. Ihsanullah, ASI (legal) alongwith Addl: A.G for respondents present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 29.4.2016.


Chairman

29.04.2016

Counsel for the appellant and Mr. Muhammad Ghani, S.I alongwith Addl:AG for respondents present. Rejoinder submitted. Arguments could not be heard due to paucity of time. To come up for arguments on 03.06.2016.


Member


Member

3

29.04.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was dismissed from service on the ground of willful absence vide impugned order dated 22.1.2015 regarding which he preferred departmental appeal which was rejected on 26.3.2015 and hence the instant service appeal on 13.4.2015.

That the inquiry was not conducted in proper manners and evidence in respect of illness of the appellant was not taken into account.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for 27.7.2015 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

4

27.07.2015

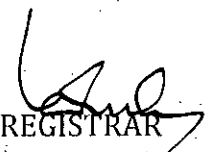
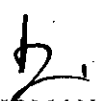
Counsel for the appellant and Mr. Ihsanullah, ASI (legal) alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 1.9.2015 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 330/2015


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	16.04.2015	<p>The appeal of Mr. Khaled Khan resubmitted today by Mr. Muhammad Asif Yousafzai 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> <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>29-4-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2	<u>27-4-15</u>	

The appeal of Mr. Khaled Khan Ex-Constable No. 1580 FRP HQrs Peshawar received to-day i.e. on 13.04.2015 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Copy of departmental appeal mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexures-B, C and G of the appeal are illegible which may be replaced by legible/better one.

No. 498 /S.T.

Dt. 15/4/2015


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Asif Yousafzai Adv. Pesh.

1. Copy of departmental appeal is only mentioned in appeal but not mentioned in index of appeal as copy of that is not available with us.
- ② Ann-B & C are replaced by better copies while G are made legible



BEFORE THE KPK SERVICE TRIBUNAL PESHAWARAPPEAL NO. 330 /2015

Khalid Khan

V/S

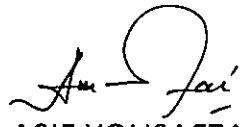
Police Deptt:

INDEX


S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-3
2.	Copy of medical prescriptions	A	4-12
3.	Copy of charge sheet	B	13
4.	Copy of statement of allegations	C	14
5.	Copy of inquiry report	D	15
6.	Copy of final show cause notice	E	16
9.	Copy of reply to final show cause notice	F	17
10.	Copy of order dated 22.1.2015	G	18
11.	Copy of rejection order	H	19
13.	Copy of Deputy Commandant opine	I	20
14	Vakalat nama	-----	21

APPELLANT

THROUGH:


(M.ASIF YOUSAFZAI)

&


(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 330 /2015

Khalid Khan. Ex- constable No.1580,

FRP HQrs: Peshawar.

(APPELLANT)

VERSUS

**P.W.F Provincial
Service Tribunal**
Diary No. 335
Dated 13-4-2015

1. The Provincial Police Officer, KPK, Peshawar.
2. The Commandant Frontier Reserve Police KPK, Peshawar.
3. The Deputy Commandant Frontier Reserve Police KPK, Peshawar.

(RESPONDENTS)

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT,
1974 AGAINST THE ORDER DATED 26.03.2015, WHEREBY THE
DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER
DATED 22.01.2015 HAS BEEN REJECTED FOR NO GROUNDS.**

PRAYER:

**THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED
26.03.2015 AND 22.01.2015 MAY BE SET ASIDE AND THE
APPELLANT MAY BE REINSTATED WITH ALL BACK AND
CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS
AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO
BE AWARDED IN FAVOUR OF APPELLANT.**

R. SHEWETH:

FACTS:

1. That the appellant joined the police force on 01.08.2009 and completed all his due training etc and also has good service record throughout.
2. That the appellant has problem of Sciatica and the problem became serve due to which the appellant rushed to Hospital and the treatment of the appellant took about 6 months. (Copy of the medical prescriptions are attached as Annexure-A.).

13/4/15

re-submitted to-day
and filed.

13/4/15

3. That as the appellant was under treatment, therefore the appellant could not performed his duty and remained absent from the duty.
4. That the no charge sheet and statement of allegation was served to the appellant for absenteeism. Rather the same were given to the cousin of appellant who never given those to appellant. (Copy of the charge sheet and statement of allegations are attached as Annexure-B&C)
5. That then one sided inquiry was conducted against the appellant but none of the statement was recorded or record examine in presence of the appellant. However even then the appellant was held responsible by the inquiry officer. (Copy of the inquiry report is attached as Annexure-D)
6. That the final show causes notice was served to the appellant which was duly replied by the appellant in which he denied all allegations. (Copy of final show cause notice and reply to show cause are attached as Annexure E&F)
7. That on 22.01.2015 the penalty of dismissal from service under Police Rule 1975 was imposed upon appellant without chance of personal hearing. (Copy of order dated 22.01.2015 is attached as Annexure-G)
8. That against the order dated 22.01.2015, the appellant filed departmental appeal on 29.01.2015 but the same was also rejected for no good ground on 26.03.2015. (Copies of penalty order and rejection order are attached as Annexure-G&H).
6. That now the appellant come to this august tribunal on the following grounds amongst others.

GROUND:

- A) That the impugned order dated 22.01.2015 and 26.03.2012 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.
- C) That neither the appellant was associated with the enquiry proceedings nor has any statement of witnesses been recorded in presence of appellant. Even a chance of cross examination was

also not provided to the appellant which is violation of norms of justice.


- D) That the Deputy Commandant opined that the appellant was ill and produce medical certificate but he totally failed to submit that in time. It was the responsibility of the inquiry officer to inquire about those medical certificates from the concerned doctor and Hospital, but the inquiry officer was failed to do so, meaning by that the inquiry was conducting without fulfilling its codal formalities which is against the verdict of Superior Courts. (Copy of the Deputy Commandant opine is attached as Annexure-I)
- E) That the appellant has not been treated under proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- F) That the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law, especially when absence was treated as E.O.L by condoning the absence.
- G) That the appellant did not intentionally remained absent from his duties but due to severe Sciatica problem due to which he was unable to perform his duty. As the illness is beyond the control of humans, therefore the appellant remained absent due to compelling circumstances.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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

APPELLANT 
Khalid Khan

THROUGH:


(M.ASIF YOUSAFZAI)

& 
TAIMUR ALI KHAN
ADVOCATES.



Lady Reading Hospital
Peshawar
Out-Patients Department

A
④

Yearly No: 333589077
Name: Sa'id Khan

Date: 29.03.2014
Specialty: Orthopedic

Lumbar & Sciatics
Distraction patches

Bril 76
15

X-ray Spinal cord

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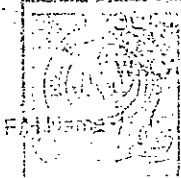
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investigation

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Room

07-MAY-14

5



Lady Reading Hospital NEUROSURGERY

Peshawar

Age 25

Out-Patients Department

8488599098

Khalid Khan

29.04.2014

Orthopedic

Lumbago/Sciatica
Dipriction

Tab Voltaren

Tab-Paracetamol

Tab Cozart / 40mg
3 Tds bid

Tab Surbax Z

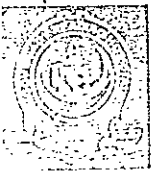
Advice complete bed rest via home
for one month

Attested
Medical Officer

Caused
Medical Officer
Govt Lady Reading Hospital

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6



Lady Reading Hospital Peshawar Out-Patients Department

Case No:
Name:

8488589699
Khalid Khan

Date: 29-May-2014
OPD: Orthopedic

137
 Pain in knee
 L & R knee
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7



Lady Reading Hospital Peshawar

Out-Patient Department

Yearly No: 8488589699

Date: 29-June-2014

Name: Khalid Khan

OPD: Orthopedic

137 پور کورس

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Tce Mebion
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Tce Yelum
5 Sm

Adm (one) Mark Sica

Adm w.e from 29/06/2014

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Resident Medical Officer
Lady Reading Hospital
Peshawar

Orthopedic
L.R. Peshawar
USA

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8



Lady Reading Hospital
Peshawar
Out-Patients Department

Yearly No: 747885868

Date: 29-July-2014

Name: Khalid Khan

OPD: Orthopedic

فردیہ کے لیے 137

Pain at Back
has two months

Tae Mubsoo

1 + 1

Tae Voben

1 + 1 Jomp

Tae Jueber 2

فردیہ کے لیے 137

Adverse (Core) Month Sick
Lario w. c. tow 29/07/2014

Signature
Date: 29/07/2014

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9



Lady Reading Hospital Peshawar Out-Patients Department

Yearly No: 9596979000
Name: Khalid Khan

Date: 29-Aug-2014
OPD: Orthopedic

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1 2 1

Tab: Dantrol

1 2 1

Tab: Leeshial

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Admission (one) month

W. o. from 29/08/2014

Dr. Khalid Khan
Orthopedic
Lady Reading Hospital
Peshawar

Resident Medical Officer
Lady Reading Hospital
Peshawar

Dr. Khalid Khan
Orthopedic
Lady Reading Hospital
Peshawar

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10



10929278711

29-Sep-2014

Khalid Khan

Orthopedic

Fracture of Humerus Distal
Just Two Months

Handwritten signature or scribble.

R. Tab. Phalgen

1 + 1 SR

Tab. Voltol

1 + 1 SR

Tab. Celebrex

Admission (One) month back

Law w.e. train 29/9/2014

SR w 60 w

OS 3

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11

74777524701

29-Oct-2014

Khalid Khan

Orthopedic

Patient: Hussain Bhatti
Case: 05 months

Handwritten signature and scribbles.

Dr. Tariq Tariq Vazirani
1st 1st

Dr. Vafatul
1st 2nd

Dr. Eadsoo
1st 1st

Dr. ...
Dr. ...

Dr. ... (one) mention ...
Date: 29/10/2014
Ortho ...
L.R. ...

Handwritten signature.

Text: ... Hospital ...

Handwritten mark at the bottom.

12



Lady Reading Hospital

Peshawar

Out-Patients Department

Yearly No: 8588686838

Date: 29-Nov-2014

Name: Khalid Khan

Orthopedic

Point of Pain
Just of mentho
Impose New

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w.e. fou 29/11/2014

Ortho
L.R.
29/11/2014

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B

(13)

A
2

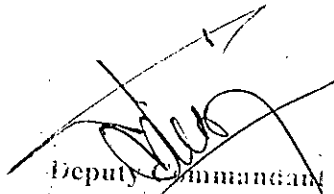
CHARGE SHEET 1/S 6(1) (A) POLICE RULES 1975

You Constable Khalid No. 1580 posted at FRP, HQrs: Peshawar is hereby charged for committing the following omission/commissions.

Whereas you Constable Khalid No. 1580 posted in FRP, HQrs: Peshawar remained absent from duty w.e. from 29.03.2014 till to date without taking any leave permission of the Competent Authority

You are hereby called upon to submit your written defense against the above charges before the enquiry officer

Your reply should reach the enquiry officer within seven (7) days from date of receipt of this Charge Sheet, failing which ex-parte action shall be taken against you.


Deputy Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

03/04/14
فصل 107

فصل 107
2/11

Mob: 0301 8836263
Ati 0344 9229265

ATTESTED


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Annexure-B
(Page-13)

CHARGE SHEET U/S 6(1) (A) POLICE RULES 1975

You Constable Khalid No.1580 posted at FRP, HQrs Peshawar are hereby charged for committing the following omission/commissions:

Whereas you Constable Khalid No.1580 posted in FRP, HQrs, Peshawar remained absent from duty w.e.from 29.03.2014 till to date without taking leave permission of the Competent Authority.

You are hereby called upon to submit your written defense against the above charges before the enquiry committee.

Your reply should reach the enquiry officer within seven (7) days from the date of receipt of this Charge sheet, failing which ex-parte action shall be taken against you.

Sd/-
Deputy Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

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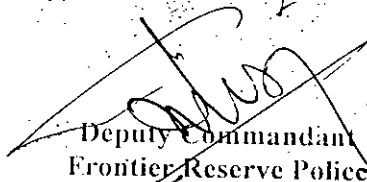
A

C (14) 6

SUMMARY/STATEMENT OF ALLEGATIONS U/S 6(D) (A) POLICE
RULE 1975

Whereas you Khalid No. 1580 of ERP Hqrs Peshawar, remained absent from duty w.e from 29.03.2014 till to date without taking any leave/permission of the competent authority.

The act falls within the purview of misconduct as contained u/s 2(iii) of Police Rule 1975.


Deputy Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

ATTESTED


خالد بن 1580 ولد محمد بن محمد بن آزاد خان زاربان بگلوئی صاحب دہلی 11/11/11

موسم -

لکھنؤ

بم آزاد خان زاربان بگلوئی صاحب دہلی

خالد بن 9229265 0344

سازگار - فصل کام 11/11/11

BETTER COPY

Annexure-C
(Page-14)

Summary / statement of allegations U/S 6 (1) (A) POLICE
RULES 1975

Whereas you Khalid No.1580, FRP, HQrs, Peshawar remained absent from duty w.e.from 29.03.2014 till to date without taking leave permission of the Competent Authority.

The act falls within the purview of misconduct as contained u/s-2(iii) of Police Rules, 1975.

Sd/-
Deputy Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

ATTESTED
A

D (15) 3
از دفتر انسپکشن لیگل

ایف۔ آر۔ پی۔ ہیڈ کوارٹر پشاور۔

(انکوائری رپورٹ ازان کا نشیمل خالد خان نمبر 1580)

جناب عالی!

بجوال بشمول انکوائری کا نشیمل بالا گزارش ہے۔ کہ کا نشیمل خالد خان نمبر 1580 مورخہ 01.08.2009 کا بھرتی شدہ ہے۔ جو کہ دوری 29.03.2014 سے 27.09.2014 تک کل 182 غیر حاضر رہنے پر مذکورہ کیناف چارج شیٹ و سمری آف الگیشن بحوالہ تھنی انگریزی نمبر PA/1120 مورخہ 02.10.2104 جاری ہو کر برائے انکوائری میرے حوالہ ہوئی۔ کا نشیمل بالا پر چارج شیٹ اور سمری آف الگیشن بذریعہ DFC شاکر حسب ضابطہ تقسیم ہوئی۔ مگر کا نشیمل مذکورہ چارج شیٹ وغیرہ وصول کرنے کے باوجود سن انکوائری ایفیسر کو تادم تحریر بند تو پیش ہوا اور مذہبی غیر حاضری کی وجوہات منظر عام پر لاسکا ہے۔ علاو ازیں روزنامہ FRP/HQrs: Peshawar سے بدریافت معلوم ہوا کہ مذکورہ کا نشیمل دوبارہ نمبر 24 روز نامہ 01.10.2014 سے بدستور غیر حاضر ہے۔

سابقہ ریکارڈ ازان کا نشیمل خالد خان نمبر 1580: بمطابق فوجی مشل کلرک رپورٹ کا نشیمل خالد خان نمبر 1580

سال 2009 میں 01 یوم غیر حاضر رہنے پر عرصہ غیر حاضری بلا تخواہ جبکہ سال 2010 میں 05 یوم غیر حاضری پر عرصہ غیر حاضری بلا تخواہ جبکہ سال 2011 میں 01 یوم غیر حاضر رہنے پر عرصہ غیر حاضری بلا تخواہ اور 02 یوم ایکسز اڈرل اور 400 روپے جرمانہ جبکہ سال 2012 میں 07 یوم غیر حاضر رہنے پر عرصہ غیر حاضری بلا تخواہ جبکہ سال 2013 میں 06 یوم غیر حاضر رہنے پر عرصہ غیر حاضری بلا تخواہ کا سزا لیا گیا ہے۔

قائد گب رپورٹ: سختیت انکوائری ایفیسر میں اس نتیجہ پر پہنچا ہوں کہ کا نشیمل خالد خان نمبر 1580 نے چارج شیٹ اور سمری آف الگیشن وصول کرنے اور بار بار ایٹیفون سے طلب کرنے کے باوجود بھی چارج شیٹ و سمری آف الگیشن کا پیش ہو کر نہ تو کوئی جواب دیا ہے اور نہ ہی اپنی غیر حاضری سے متعلق کسی قسم کی وجوہ کا اظہار کیا ہے جس سے صاف عیاں ہے کہ کا نشیمل مذکورہ نوکری میں کوئی دلچسپی نہیں رکھتا ہے۔ مذکورہ کا نشیمل دوبارہ 24 مورخہ 01.10.2014 سے بدستور غیر حاضر ہے۔ مستقبل قریب میں بھی مذکورہ کے حاضر آنے کے کوئی آثار نظر نہیں آتے لہذا ان گزارشات کی روشنی میں مذکورہ کیناف سخت سے سخت محکمانہ کارروائی کی سفارش کی جاتی ہے انکوائری رپورٹ برائے صدور حکم ارسال خدمت ہے۔

محمد یاسین انسپکشن لیگل

FRP/HQrs: peshawar.

01-01-2015

ATTESTED

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11

FINAL SHOW CAUSE NOTICE UNDER POLICE RULES 1975.

I, Deputy Commandant, FRP, KPK as competent authority do hereby serve you Constable Khalid Khan No. 1580 of FRP/HQrs, Peshawar.

(1) i- That consequent upon the completion of enquiry conducted against you by Insp: Legal/FRP/HQrs for which you were given full opportunity of hearing.

ii- On going through the findings/recommendations of the Enquiry Officer, the material available on record and other connected papers I, am satisfied that you have committed the following acts/omissions per Police Rules 1975.

Whereas you Constable Khalid Khan No. 1580 of FRP/HQRS: Peshawar remained absent from duty w.c. from 29.03.2014 to 27.09.2014 for a total period of (182) days without any leave/permission of the competent authority..

(2) Therefore, I, Deputy Commandant, FRP, KPK as competent authority has tentatively decided to impose upon you Major/Minor penalty including dismissal from service under the said Rules.

(3) You are, therefore, required to Show Cause as to why not the aforesaid penalty should not be imposed upon you.

(4) If no reply to this Final Show Cause Notice is received within the seven days of it delivery in the normal course of circumstances, it shall be presumed that you have no defence to put in and consequently ex-parte action shall be taken against you.

Deputy Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

میں نے ریپورٹنگ آفیسر کو نوٹس جاری کیا ہے
دست خود خود لکھی ہے

ATTESTED

06/9/15
0307-7906196

جدا جان!

تائیں شوکاراؤں میں تجا رہہ دفتر صاحب ڈپٹی ایڈمنسٹریٹو صاحب

مصر و حق صرف یعنی کہ میں سائنس عرفہ انعام، بیجا، میں سائنس اٹھا۔ اور علیہ پر

میں سائنس کا تامل نہیں تھا۔ یہ یوں سائنس FAP میں سائنس کا

میں سائنس کا تامل نہیں تھا۔ یہ یوں سائنس FAP میں سائنس کا

میں سائنس کا تامل نہیں تھا۔ یہ یوں سائنس FAP میں سائنس کا

میں سائنس کا تامل نہیں تھا۔ یہ یوں سائنس FAP میں سائنس کا

میں سائنس کا تامل نہیں تھا۔ یہ یوں سائنس FAP میں سائنس کا

میں سائنس کا تامل نہیں تھا۔ یہ یوں سائنس FAP میں سائنس کا

ATTESTED

O.R.D.E.R.

9
18

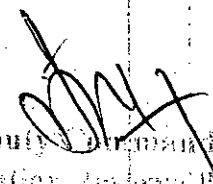
This Office Order so far it relates to the Disposal of Departmental Enquiry against Constable Khalid Khan No. 580 of FRP/HQrs: Peshawar absented himself from duty w.e.from 29.03.2014 to 27.09.2014 and from 01.10.2014 to date without taking any leave/permission of the Competent Authority.

In this regard formal departmental proceedings were initiated against him and Inspector Legal FRP/HQrs: Peshawar was nominated as Enquiry Officer. He conducted enquiry into the matter and submitted his report.

Upon the findings of Enquiry Officer he was issued final Show Cause Notice to which he received. His reply was not received in the prescribed period. Accordingly he was summoned to appear before the undersigned in Orderly Room but failed to do so.

Keeping in view the recommendations of the Enquiry Officer and other material available on record it has come crystal clear that the ~~delinquent~~ ^{delinquent} official is a habitual absentee and does not take interest in official duty and service. ~~It also shows that~~ ^{It also shows that} previously he has repeatedly absented from official duties for ~~prolong~~ ^{prolong} periods in his short span of service. It is evident that he is not fit for Police service, which requires discipline coupled with punctual performance of official duty especially in the prevailing law & Order ~~difficulty~~ ^{difficulty}. Therefore, Constable Khalid Khan No. 1580 of FRP/HQrs: ~~is dismissed from~~ ^{is dismissed from} Service under Police Rules, 1975 from the date of his absence for 29.3.2014 and the period of absence is treated as leave without pay.

Order announced.


Deputy Commandant
Frontier Regions, District
Khyber Pakhtunkhwa Peshawar

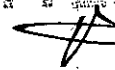
No. 59-164 of FRP/HQrs: dated Peshawar, the 22/01/2015.

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

1. The Commandant, FRP Khyber Pakhtunkhwa.
2. The Assistant /FRP/HQrs: Peshawar.
3. The FRP/HQrs: Peshawar.
4. The SSG/FRP/HQrs: Peshawar.
5. The G. FRP/HQrs: Peshawar.
6. The FMC/FRP/HQrs: Peshawar with original copy.

D/A - 29.1.15
Final order - 26.3.15
joined on - 1-8-09

ATTESTED



BETTER COPY

Annexure-G
(Page-18)

Office of the Deputy Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

ORDER

This office order so far it relates to the Disposal of Departmental Inquiry against Constable Khalid Khan No.1580 of FRP, HQrs, Peshawar absented himself from duty w.e.from 27.03.2014 and from 01.10.2014 to-date without taking any leave/permission of the Competent Authority.

In this regard formal departmental proceedings were initiated against him and Inspector Legal FRP/HQrs: Peshawar was nominated as Inquiry Officer. He conducted enquiry into the matter and submitted his report.

Upon the findings of Enquiry Officer he was issued final Show Case notice to which he received. His reply was not received in the prescribed period. Accordingly he was summoned to appear before the undersigned in Orderly Room but failed to do so.

Keeping in view the recommendations of the Inquiry Officer and other material available on record it has come crystal clear that the delinquent official a habitual absentee and does not take interested in official duty and service period also shows that previously he has repeatedly absented from official duties for prolong periods in his show span of service. It is evident that he is not fit for police service, which requires discipline coupled with punctual performance of official duty especially in the prevailing Law and Order difficulty. Therefore, Constable Khalid Khan No.1580 of FRP/HQrs is dismissed from Service under Police Rules, 1975 from the date of his absence from 29.03.2014 and the period of absence is treated as leave without pay.

Order announced.

Sd/-
Deputy Commandant,
Frontier Reserve Police,
Khyber Pakhtunkhwa, Peshawar.

No.59-64/A./FRP/HQrs; Dated, Peshawar, the 22.01.2015

ATTESTED

ORDER.

H (19)

This order shall dispose off the appeal of Constable Khalid Khan No. 1580 of FRP HQrs: Peshawar against the order of Deputy Commandant FRP KPK Peshawar.

Constable Khalid Khan No.1580 of FRP HQrs: Peshawar absented himself from lawful duty w.e.f 29.03.2014 to 27.09.2014 and from 01.10.2014 till date without prior permission. Proper departmental proceedings were initiated against him. Neither any reply was received from him nor he submit any defence in his favour. The official was held responsible during the course of enquiry. It was established that the official was habitual absentee and the absence on his part was intentional and deliberate. He was therefore, dismissed from service by Deputy Commandant vide his office order Endst; No.59-64/PA FRP HQrs: Peshawar, dated 22.01.2015. The applicant submitted the present appeal without sound grounds. The contents of the appeal are not reasonable.

However from the perusal of record and finding of Enquiry officers there are no cogent reasons to interfere in the order of Deputy Commandant FRP KPK Peshawar. **Therefore his appeal is rejected.**

Anwar Khan

Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar.

24/03/2015

Q

No. *2712 - 13* /EC dated Peshawar the *26 / 3* /2015.

Copy of above is sent for information and necessary action to the:-

1. SRC FRP HQrs: Peshawar with service record.
2. Constable Khalid Khan No. 1580 S/o Sher Bahadar Khan Village Khanmai Distt: Charsadda

ATTESTED

A

REFERENCE ATTACHED, PUC.

20

Constable - Khalid Khan No. 1580 of FRP/HQRS: Peshawar remained absent from duty w.e. from 29.03.2014 to 27.09.2014 for the total period of (182) days without any leave/ permission of the competent authority.

Accordingly he was issued Charge Sheet and Statement of Allegation and Insp: Legal/FRP/HQrs; was nominated as enquiry officer to conduct enquiry into the matter and submit his finding. The enquiry officer after completion of all codal formalities submitted his report which is placed at F/A.

Submitted for favour of perusal and orders.

W/Dy: Commandant, FRP.

[Handwritten signature]

[Handwritten signature]
PA to I/O FRP

Deputy Commandant
Frontier Reserve Police
KPK Peshawar

Accordingly he was issued PCSO on his home address. His reply to PCSO mentioned when he mentioned that he was ~~ill~~ ill and produced medical certificate. He totally failed to submit his medical leave and rest bill in time. Also failed to submit the copy of charge sheet. He was called in many times to the BO. but failed to do so and submit any written defence.

Therefore if approved he may be deemed from service and his absence period be counted as leave without pay.

[Handwritten signature]
Deputy Commandant
Frontier Reserve Police
KPK Peshawar

ATTESTED

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 330 /2015

Khalid Khan. Ex- constable No.1580,

FRP HQrs: Peshawar.

(APPELLANT)

VERSUS

S.W.P Provincial
Service Tribunal
Diary No. 335
Dated 13-4-2015

1. The Provincial Police Officer, KPK, Peshawar.
2. The Commandant Frontier Reserve Police KPK, Peshawar.
3. The Deputy Commandant Frontier Reserve Police KPK, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 26.03.2015, WHEREBY THE DEPARTMENT APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 22.01.2015 HAS BEEN REJECTED FOR NO GROUNDS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 26.03.2015 AND 22.01.2015 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

R. SHEWETH:

FACTS:

1. That the appellant joined the police force on 01.08.2009 and completed all his due training etc and also has good service record throughout.
2. That the appellant has problem of Sciatica and the problem became serve due to which the appellant rushed to Hospital and the treatment of the appellant took about 6 months. (Copy of the medical prescriptions are attached as Annexure-A).

Filed as per
13/4/15

re-submitted to-day
and filed.

13/4/15

S.No	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	03.06.2016	<p style="text-align: center;">3</p> <p style="text-align: center;"><u>KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">APPEAL NO.330/2015</p> <p style="text-align: center;">(Khalid Khan-vs-Provincial Police Officer Khyber Pakhtunkhwa, Peshawar and others).</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>PIR BAKHSH SHAH, MEMBER:</u></p> <p>Appellant with counsel (Mr. Muhammad Asif Yousafzai, Advocate) and Mr. Ihsanullah, ASI (Legal) alongwith Mr. Muhammad Jan, GP for respondents present.</p> <p>2. Appellant joined the Police Force as Constable on 01.08.2009. He was dismissed from service by Deputy Commandant FRP vide his order dated 22.01.2015 on the ground of his absence from duty and his departmental appeal was also rejected vide order dated 26.3.2015, hence this appeal under section-4 of the Khyber Pakhtunkhwa Service Tribunal, 1974.</p> <p>3. Arguments heard and record perused.</p> <p>4. The Plea of the appellant is that he was suffering from sciatica pain and could not come on duty. The record does not reveal that the charge sheet and statement of allegations or his summoning for enquiry was directly served and made on him and when the final show cause notice was issued to him the appellant has personally received the same and also submitted his reply to the</p>

show cause notice in which he took the plea of his illness due to sciatica. It is thus evident that in the previous proceedings of the charge sheet and enquiry against the appellant, no sufficient efforts were made to serve the appellant like the one in case of the final show cause notice nor he would have responded to the same. The above situation shows that full opportunity of defense is required ^{to} be provided to the appellant so that his plea of illness may be thrashed out. Consequently, the Tribunal is constrained to set aside the impugned orders of the respondents and to reinstate the appellant into service with the direction to the respondents to proceed *de-novo* against the appellant. Full opportunity of defense and hearing be provided to the appellant and the matter of his back benefits be also decided by the respondent-department in the light of outcome of the *de-novo* proceedings. Appeal is allowed in the above terms. Parties are left to bear their own cost. File be consigned to the record room.

VAKALAT NAMA

NO. _____ /20

IN THE COURT OF Service Tribunal Peshawar

Khalid Khan (Appellant)
(Petitioner)
(Plaintiff)

• VERSUS

Police Dept. (Respondent)
(Defendant)

I/We Khalid Khan (Appellant)

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate, Peshawar**, ^{& Taimur Ali Khan (Adv)}
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 costs.

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. The Advocate/Counsel is also at liberty to leave my/our
case at any stage of the proceedings, if his any fee left unpaid or is
outstanding against me/us.

Dated _____ /20

[Signature]
(CLIENT)

ACCEPTED

[Signature]
M. ASIF YOUSAFZAI
Advocate

M. ASIF YOUSAFZAI
Advocate High Court,
Peshawar.

OFFICE:
Room No.1, Upper Floor,
Islamia Club Building,
Khyber Bazar Peshawar.
Ph.091-2211391-
0333-9103240

[Signature]
TAIMUR ALI KHAN
ADVOCATE
[Signature]
GOHER SAJJAD KHAN
Adv

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR.

Service Appeal No. 330/2015

Khalid Khan Ex-Constable No. 1580 FRP/HQrs: Peshawar
.....(Appellant)

VERSUS

- 1. Provincial Police Officer KPK/Peshawar.**
- 2. Commandant Frontier Reserve Police KPK/Peshawar.**
- 3. Deputy Commandant Frontier Reserve Police KPK Peshawar**
.....(Respondents)

Subject:- COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth!

Preliminary Objections:-

1. That the appellant has no cause of action.
2. The appeal is not maintainable in the present form.
3. The appeal is bad for non-joining necessary and mis-joining of the necessary parties.
4. The appellant is e-stopped by his own conduct to file the appeal.
5. The appeal is barred by law and limitation.
6. The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

- 1) Para No. 1 pertains to the appellant record needs no comments.
- 2) Incorrect, that the appellant absented himself from lawful duties w. e. from 29.03.2014 and from 01.10.2014 till the date of his removal from service i.e. 22.01.2015 without permission or leave.
- 3) Incorrect that the appellant is a member of disciplined force and therefore he was bound to submit information regarding his illness in writing or telephonically to his superiors.
- 4) Incorrect, the allegation are false and baseless, as the Charge Sheet alongwith summary of allegations were issued to the appellant and served upon of his cousin namely Fazal Wahab on his home address through special messenger (DFC) and his signature was obtained as a token on the Photocopy of charge sheet as the appellant was not present in his home at that time, but hoverer, the appellant willfully did not submit his reply. (copy of charge sheet attached as annexure-A")

- 5) Incorrect, that the appellant was summoned time and again by the Enquiry Officer but he failed to submit his reply of charge sheet, or appear before the Enquiry Officer for defending himself. The Enquiry Officer found him guilty of the charges leveled against him. After fulfillment of all the codal formalities the Enquiry Officer submitted his findings in which he recommended the appellant for major punishment.
- 6) Correct to the extent that after receiving the findings of Enquiry Officer the Competent Authority served the appellant with Final Show Cause Notice to which the appellant submitted his written reply, but his reply was found unsatisfactory.
- 7) Incorrect, the appellant willfully failed to avail the opportunity of personal hearing which was already provided to him by the Competent Authority and after fulfillment of all the codal formalities the appellant was removed from service under the relevant law.
- 8) Correct to the extent that departmental appeal of the appellant was thoroughly examined and rejected on sound grounds.
- 9) Detailed reply of the grounds is as under.


GROUND:-


- (A) Incorrect, that the order issued by the respondents are legally justified and in accordance with law.
- (B) Incorrect, that the appellant was dealt via proper enquiry proceeding as he was issued Charge Sheet and the Enquiry Officer was nominated. The Enquiry Officer served the appellant with Charge Sheet through special messenger on his home address, but he failed to submit his reply or appear before the Enquiry Officer, an opportunity of personal hearing was also given to him by the Competent Authority but he did not bother to avail this opportunity, after fulfillment of the codal formalities the appellant was removed from service.
- (C) Incorrect, however the Para has already been explained in the preceding Para No. B”
- (D) Incorrect, that the appellant failed to submit his medical prescription neither before the Enquiry Officer or his high-ups therefore, the Deputy Commandant correctly opined that the appellant failed to submit his Medical prescription for consideration within time. Moreover, all the codal formalities were also fulfilled according to law, which is evident from charge sheet and Show cause notice thus the verdict of Superior Court was not violated.

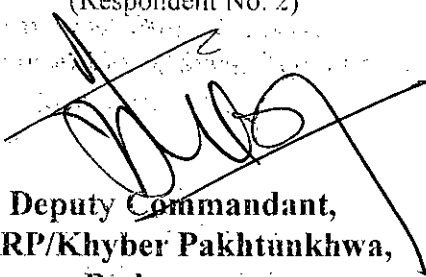
- (E) Incorrect, that the appellant was treated according to the relevant laws provided by Police Rules 1975 and after fulfillment of all the codal formalities he was dismissed from service.
- (F) Incorrect, actually, the appellant absented himself from duty for a long period without prior permission or leave, and the Enquiry Officer found him guilty of the charges leveled against him. After fulfillment of the codal formalities he was awarded the major penalty and discharged from service, which commensurates with the gravity of misconduct of the appellant, while the absence period has been correctly treated as without pay because the appellant did not deserve such benefits as he did not perform the official duties during the period of absence. Moreover, leave without pay is not considered as penalty as per rules.
- (G) Incorrect, the appellant willfully remained absented from lawful duties without permission or leave, the appellant was supposed to submit Medical certificate regarding his illness before the high-ups for information, but he failed to do so, meaning thereby, that he was not interested in serving the Police Department.
- (H) The respondents may also be permitted to advance other grounds at the time of hearing.

PRAYERS:

Keeping in view the above facts/submissions the instant appeal may very kindly be dismissed with cost.


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


Commandant,
Frontier Reserve Police
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)


Deputy Commandant,
FRP/Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 3)

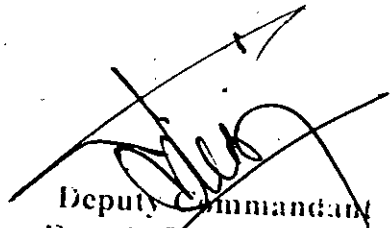
CHARGE SHEET U/S 6(I) (A) POLICE RULES 1975

You Constable Khalid No. 1580 posted at FRP, HQrs: Peshawar is hereby charged for committing the following omission/commissions.

Whereas you Constable Khalid No. 1580 posted in FRP, HQrs: Peshawar remained absent from duty w.e. from 29 .03.2014 till to date without taking any leave permission of the Competent Authority

You are hereby called upon to submit your written defense against the above charges before the enquiry officer.

Your reply should reach the enquiry officer within seven (7) days from date of receipt of this Charge Sheet failing which ex-parte action shall be taken against you.


Deputy Commandant
Frontier Reserve Police
Khyber Pakhtunkhwa Peshawar

فصل 5
03/11/14

فصل 5
03/11/14

Mob: 0301 8836263
Ati 0344 9229265

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 330/2015

Khalid Khan

VS

Police Deptt:

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-6) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Admitted correct by the respondents as the service record of the appellant is in the custody of department.
- 2 Incorrect. While Para-2 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, appellant was absent due to severe illness.
- 3 Incorrect and not replied according to Para-3 of the appeal. Moreover, Para-3 of the appeal is correct as mentioned in the main appeal of the appellant.
- 4 Incorrect. While Para-4 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, the appellant was admitted in hospital at that time. Charge sheet and statement of allegation were never communicated to the appellant.
- 5 Incorrect. While Para-5 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, no codal formalities were fulfilled and

impugned order was passed which is against the law and rules:

- 6 In para-6 of the reply respondent's department admitted First portion of para-6 of the appeal as correct hence no comments, while the rest of the para-6 of the reply is incorrect, hence denied, While Para-6 of the appeal is correct.
- 7 Incorrect. While Para-7 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover, not given chance of personal hearing, which is violation of principle of "Audi Alteram Partem".
- 8 Incorrect. While Para-8 of the appeal is correct as mentioned in the main appeal of the appellant. Moreover. Moreover, the respondents through illegal order 26.3.2015 without following the proper and legal procedure rejected the departmental appeal on no good grounds without showing cogent reason.
- 9 Not denied which means admitted correct by the respondents.

GROUNDS:

- A. Incorrect. While Para-A of grounds of the appeal is correct as mentioned in the main appeal, of the appellant. Moreover, the impugned order dated 22.1.2015 and 26.3.2015 were against the law, facts and norms of justice.
- B. Incorrect. While Para-B of grounds of the appeal is correct as mentioned in the main appeal, of the appellant.
- C. Incorrect. While Para-C of grounds of the appeal is correct as mentioned in the main appeal, of the appellant.
- D. Incorrect. While Para-D of grounds of the appeal is correct as mentioned in the main appeal, of the appellant. The appellant filled his medical prescription which was admitted by the deputy commandant which copy is already attached with

main appeal. Moreover, the appellant not filled his medical prescription in time due to his illness because appellant was admitted in hospital.

- E. Incorrect. While Para-E of grounds of the appeal is correct as mentioned in the main appeal, of the appellant.
- F. Incorrect. While Para-F of grounds of the appeal is correct as mentioned in the main appeal, of the appellant.
- G. Incorrect. While Para-G of grounds of the appeal is correct as mentioned in the main appeal, of the appellant. Moreover, as explained in the Para-G of the grounds of rejoinder of the appeal.
- H. Legal.

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

APPELLANT

Through:



**(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.**

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the Hon'able Tribunal.



DEPONENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 1002 /ST

Dated 10 / 6 / 2016

To


The Deputy Commandant FRP,
Peshawar.

Subject: -

JUDGMENT

I am directed to forward herewith a certified copy of Judgement dated 3.6.2016 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.