

28th March, 2023

Clerk of learned counsel for the appellant present.

Mr. Muhammad Jan, District Attorney for the respondents present.

Be fixed before a bench of which one of us (Mr. Salah-ud-Din) Member Judicial is not a member. Adjourned. To come up for arguments on 11.05.2023 before the D.B in which (Mr. Salah-ud-Din) Member Judicial is not a member. Parcha Peshi given to the parties.

SCANNED
11/05/23
Peshawar



(Salah-ud-Din)
Member (J)





(Kalim Arshad Khan)
Chairman

10.06.2022

Clerk of learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today due to strike of lawyers. Adjourned. To come up for arguments on 05.09.2022 before the D.B.


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

05.09.2022

Due to leave of the Worthy Chairman, the Bench is incomplete. Case to come up for the same on 07.11.2022 before the D.B.



Reader

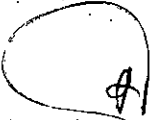
07.11.2022

Appellant present in person.

Naseer Ud Din Shah learned Assistant Advocate General for the respondents present.

Former requested for adjournment on the ground that his learned counsel is busy in hon'ble Peshawar High Court Peshawar. Last chance is given. To come up for arguments on 26.12.2022 before D.B.


(Fareeha Paul)
Member (E)


(Rozina Rehman)
Member (J)

26-12-2022

Due to winter vacation, the case is adjourned to 28-3-23 before the same.


Reader

SCANNED
KPST
Peshawar

14.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 01.06.2022 for the same as before.

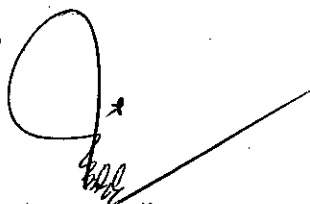


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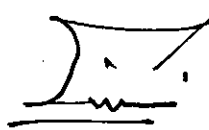
01.06.2022

Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents present.

Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 10.06.2022 before D.B.



(Mian Muhammad)
Member (E)




(Salah-ud-Din)
Member (J)


15.12.2020

Nemo for appellant.

Kabir Ullah Khattak learned Additional Advocate General alongwith Muhammad Raziq H.C for respondents present.

Issue involved in the present case is pending before Larger Bench of this Tribunal. Adjourned. To come up for arguments on 11.03.2021 before D.B.



(Atiq ur Rehman Wazir)
Member (E)


(Rozina Rehman)
Member (J)

11.03.2021

Due to non availability of Bench, the case is adjourned to 26.04.2021 for arguments before D.B

26.4.21



Due to COVID-19, the case is adjourned to 16.8.2021 for the same.

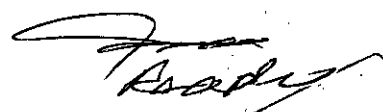

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16.08.2021

Since 16.08.2021 has been declared as Public holiday on account of Moharram, therefore, case is adjourned to 02.12.2021 for the same as before.

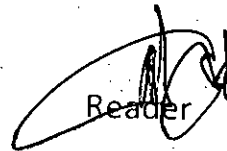
2.12.21


propter D.B on Term, ~~therefore~~ The case is adjourned to 14.2.22 for same.


Reader

4.5 .2020

Due to COVID19, the case is adjourned to
15/7/2020 for the same as before.

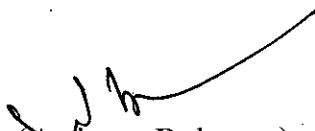

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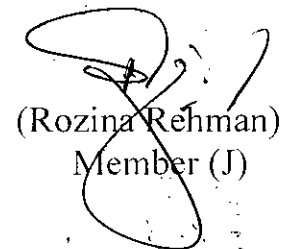
15.07.2020

Counsel for appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate
General for the respondents present.

Former requests for adjournment. Adjourned to
28.09.2020 before D.B, in order to avail the outcome of
cases pending before Larger Bench of this Tribunal.


(Attiq ur Rehman)
Member (E)

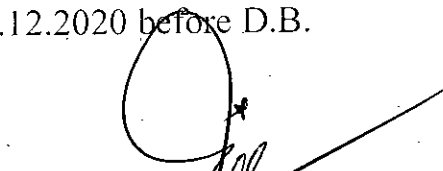

(Rozina Rehman)
Member (J)

28.09.2020

Appellant in person present.

Mr. Kabir Ullah Khattak learned Additional Advocate
General for respondents present.

A request was made for adjournment as issue involved
in the present case is pending before Larger Bench of this
Tribunal. Adjourned. To come up for arguments on
15.12.2020 before D.B.


(Mian Muhammad)
Member (E)


(Rozina Rehman)
Member (J)

29.11.2019

Appellant in person present. Addl: AG alongwith Mr. M. Raziq, H:C for respondents present. Appellant seeks adjournment as his counsel is not available today. Adjourn. To come up for arguments on 21.01.2020 before D.B.


Member


Member

21.01.2020

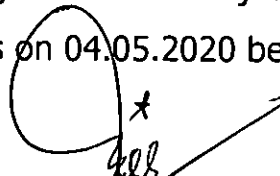
Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Adjourned to 04.03.2020 for arguments before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

04.03.2020

Counsel for the appellant present. Addl: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 04.05.2020 before D.B.


Member


Member

29.04.2019

Counsel for the appellant and Addl. AG for the respondents present.

Due to paucity of time the matter is adjourned to 15.07.2019 before the D.B.


Member


Chairman

15.07.2019

Learned counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Muhammad Raziq, Head Constable for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 27.09.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

27.09.2019

Clerk to counsel for the appellant present. Learned Asst: AG for respondents present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not available. Adjourn. To come up for arguments on 29.11.2019 before D.B.

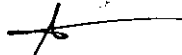

Member


Member

26.12.2018

Mr. Yasir Saleem Advocate for appellant and Mr. Muhammad Riaz Painda Khel, Asstt. AG for the respondents present.

Learned counsel for the appellant requests for adjournment due to attendance of a funeral. Adjourned to 27.02.2019 for arguments before the D.B.


Member


Chairman

27.02.2019

Counsel for the appellant, Addl. AG alongwith Bashir Ahmad, DSP (Legal) for the respondents present.

In response to the objection of learned counsel for the appellant regarding statement of allegations issued to the appellant on 11.07.2013 was signed by Senior Superintendent of Police, Headquarters Peshawar, The representative of respondents stated that, as a matter of fact, the said statement was issued by Superintendent of Police Headquarter Peshawar as no office exists having nomenclature of SSP Headquarter Peshawar. He further stated that in the first line it was clearly noted that the document was being issued by the S.P Headquarter Capital City Police, Peshawar as a competent authority.

In view of the above, learned counsel for the appellant seeks time to further prepare the brief. Adjourned to 29.04.2019 before the D.B.


Member


Chairman

08.05.2018

Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 24.7.2018.


Reader

24.07.2018

Clerk to counsel for the appellant and learned Additional Advocate General present. Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 17.09.2018 before D.B


Member


Member

17.09.2018

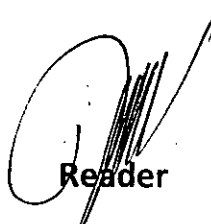
Appellant in person and Mr. Muhammad Jan learned Deputy District Attorney for the respondents present. Due to General Strike of the Bar, arguments could not be heard. To come up for arguments on 02.11.2018 before D.B.


(Hussain Shah)
Member


(Muhammad Amin Kundi)
Member

02.11.2018

Appellant in person and Mr. Riaz Ahmad Paindakhel, Assistant AG for the respondents present. Due to retirement of Hon'ble Chairman, the Tribunal is incomplete. Therefore, the case is adjourned. To come up for the same on 26.12.2018.


Reader

15.03.2018

Learned counsel for the appellant present. Mr. Riaz Paindakheil learned Assistant Advocate General on behalf of the respondents present. Partial arguments heard. Learned AAG seeks adjournment. Adjourn. To come up for further arguments on 19.03.2018 before D.B



(Muhammad Amin Kundi)
Member

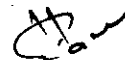


(Muhammad Hamid Mughal)
Member

19.03.2018

Appellant absent. Learned counsel for the appellant and Mr. Riaz Ahmed Painda Khail, Assistant AG for the respondents present. Further progress in the present appeal could not be made due to absence of Mr. Bashir Khan, DSP (legal). It may be mentioned in the present appeal the learned counsel for the appellant has raised objection that disciplinary action was initiated against the appellant by the Senior Superintendent of Police Headquarter Peshawar, final show-cause notice was issued by the Superintendent Police Headquarter and the original impugned order was issued by the Superintendent of Police City Peshawar. Adjourned. Representative of the department namely Mr. Bashir Khan, DSP (legal) be summoned for 08.05.2018. To come up for final hearing and arguments on 08.05.2018 before D.B.

(Muhammad Amin Khan Kundi)
Member



(Muhammad Hamid Mughal)
Member

07.03.2017

Counsel for the appellant and Addl: AG for respondents present. Rejoinder submitted. To come up for arguments on 10.07.2017 before D.B.



(ASHFAQUE TAJ)
MEMBER




(MUHAMMAD AAMIR NAZIR)
MEMBER

09. 10.07.2017

Counsel for the appellant and Mr. Kabir Ullah Khattak, Assistant AG for the respondents present. Counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 06.11.2017 before D.B.



(Ahmad Hassan)
Member



(Muhammad Hamid Mughal)
Member

06.11.2017

Counsel for the appellant present. Mr. Usman Ghani, District Attorney for the respondents also present. Learned District Attorney requested for adjournment. Adjourned. To come up for arguments on 22.01.2018 before D.B.



(Gul Zeb Khan)
Member



(Muhammad Amin Khan Kundi)
Member

22.1.2018

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Counsel for the appellant seeks adjournment. To come up for arguments on 15.3.2018 before the D.B.



Member



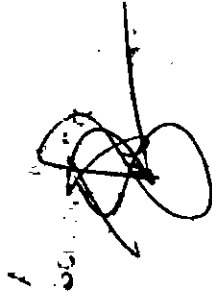
Chairman

714/16

27.09.2016

Counsel for the appellant and heard. In view of observations recorded in order sheet dated 15.7.2016, the appeal is admitted to regular hearing.

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/comments for 28.11.2016 before S.B.




Chairman

28.11.2016

Agent of counsel for the appellant and Addl AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 12.01.2017 before S.B.


Chairman

12.01.2017

Counsel for the appellant and Mr. Aziz Shah, Reader alongwith Additional AG for the respondents present. Written statement submitted. The appeal is assigned to D.B for rejo:nder and final hearing for 07.03.2017 before D.B.


Chairman

15.07.2016

SCANNED
KPST
Peshawar

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was enlisted as Constable on 26.10.2004. He served the department in the above capacity till 2013. Due to some domestic dispute and unavoidable circumstances the appellant was unable to perform duty. Disciplinary proceedings were initiated against him under Police Rules 1975 and was dismissed from service on 29.4.2014. Appellant filed departmental appeal on 4.5.2016 which was rejected on 6.6.2016. Learned counsel for the appellant when confronted with the issue of limitation between date of dismissal and departmental appeal, he argued that dismissal order dated 29.4.2014 was not officially communicated to the appellant. There-after he submitted a application to the S.P Head Quarters to provide copies of relevant orders under Khyber Pakhtunkhwa Right to Information Act, 2013.

Issue of limitation is involved and separate application for condonation of delay in filing the instant appeal has also been submitted by the learned counsel for the appellant.

Since the matter required further assistance, therefore, pre-admission notice be issued to SGP/respondents to argue the case particularly on the point of maintainability of appeal. To come up for preliminary hearing on 22.8.2016 before S.B.


Member

22.08.2016


Agent to counsel for the appellant and Additional AG for respondents present. Due to strike of the Bar learned counsel for the appellant is not in attendance before the Tribunal therefore, case is adjourned for preliminary hearing to 27.09.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

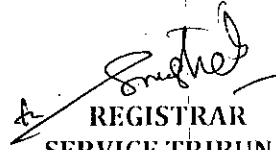
Case No. 714/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	12/07/2016	<p>The appeal of Mr. Nisar Khan resubmitted today by Mr. Sajid Amin Advocate may be entered in the Institution Register and put up to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	14-7-16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on. <u>15-7-16</u></p> <p style="text-align: right;">MEMBER</p>

The appeal of Mr. Nisar Khan Ex-Constable no. 5417 Distt. Police Peshawar received today i.e. on 04.07.2016 is returned to the counsel for the appellant with the direction to submit Two spare copies/sets of the memorandum of appeal along with annexures i.e. complete in all respect within 10 days.

No. 1126 /S.T,

Dt. 4/7 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Sajid Amin Adv. Pesh.

Sir,
Respected officer (Peshawar).

Sajid Amin

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Appeal No. 714 /2016

Nisar Khan, Ex- Constable No. 5417, District Police Peshawar
R/o Kaga Wala, Ali Zai PO Badaber Peshawar.

(Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa,
Peshawar and others.

(Respondents)

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Nisar Khan
Appellant

Through

Sajid Amin
SAJID AMIN
Advocate, High Court
Peshawar

Contact No. 0333-4584986

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

Khyber Pakhtunkhwa
Service Tribunal

Dist. No. 691

04-7-2016

Appeal No. 714 /2016

Nisar Khan, Ex- Constable No. 5417, District Police Peshawar
R/o Kaga Wala, Ali Zai PO Badaber Peshawar.

(Appellant)

VERSUS

1. The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, Headquarters, Peshawar.
4. Superintendent of Police, City Peshawar.

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the order dated 29.04.2014, whereby the appellant has been awarded the major punishment of Dismissal from Service, against which his Departmental Appeal of the appellant has also been rejected vide order dated 06.06.2016.

Prayer in Appeal:-

On acceptance of this appeal the orders dated 29.04.2014 and 06.06.2016, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.

Filed to-day
Sd/-
Registrar

Re-submitted to-day
and filed

12/7/16

Respectfully Submitted:

1. That the appellant was initially enlisted as constable on 26.10.2004. Ever since his enlistment the appellant had performed his duties as assigned with zeal and devotion and there was no complaint whatsoever regarding his performance. **(Copy of the enlistment order dated 26.10.2004 is attached as Annexure A)**
2. That while serving in the said capacity, in the year 2013, unfortunately a family dispute arose at the village of the appellant which later resulted into enmity. Since his enemies were influential and they often waylaid for the appellant to harm him, therefore in order to avoid any bloodshed, the elders of his locality advised the appellant to shift from his village and remain into hiding until the situation normalizes. Thus the appellant was constrained to shift along with his family. Due to unavoidable circumstances the appellant could not join his duty at the relevant time.
3. That the appellant was preceded in absentia, a charge sheet and statement of allegations dated 11.07.2013, was though issued but never served upon the appellant containing the allegations of absence from duty w.e.f 25.05.2013. **(Copies of statement of allegations is attached as Annexure B)**
4. Thereafter a partial inquiry was conducted and the inquiry officer without making any endeavor to associate the appellant with the inquiry proceedings, concluded inquiry and submitted his findings wherein the appellant was recommended for major punishment. **(Copy of the inquiry report is attached as Annexure C)**
5. That thereafter a show cause notice was also issued but again the same was not communicated to the appellant. **(Copy of the show cause notice is attached as Annexure D)**
6. That lastly the major penalty of dismissal from service was imposed upon me vide order dated 29.04.2014. The order was however never communicated to the appellant. **(Copy of the dismissal order dated 29.04.2014 is attached as Annexure E)**

7. That recently due to the intervention of the elders of the locality the dispute has been patched up between the family of the appellant their rivals. Therefore, after the situation normalized, the appellant went to reported to resume his duty, but he was informed that that he has been dismissed from service.
8. That the appellant time and again approached the concerned office for the provision of the copy of the dismissal order and other departmental proceedings conducted against him, however he was not provided the same, lastly the appellant submitted application dated 24.04.2016, under the right to information act for the provision of the relevant documents, where after on 28.04.2016, he was provided the copies of the dismissal order dated 29.04.2014 and other disciplinary proceedings conducted against him. **(Copy of the application dated 24.04.2016, is attached as Annexure F)**
9. That after the perusal of the record, from the letter dated 02.05.2014, it also confirmed that two parallel proceedings were conducted against the appellant for the same set of allegations, one by the Respondent No.3 and the other by the respondent No.4, who was not even the competent authority under the law and rules for the appellant but despite he passed the dismissal order of the appellant. **(Copy of the letter dated 02.05.2014, is attached as Annexure G)**
10. That aggrieved from the order dated 29.04.2014, the appellant submitted his departmental appeal to the Respondent No. 2, on 04.05.2016, however, it was also rejected vide order dated 06.06.2016. Copy of the rejection order was however communicated to the appellant on 16.06.2016. **(Copies of the departmental appeal and rejection order dated 06.06.2016, are attached as Annexure H & I)**
11. That the impugned orders are illegal unlawful against law and facts, hence liable to be set aside inter alia on the following grounds:

GROUND OF SERVICE APPEAL

- A. That the appellant has not been treated in accordance with law hence his rights secured and guaranteed under the law and constitution are badly violated.

- B. That no proper procedure has been followed before awarding the penalty of dismissal from service to the appellant. He has not been served with any charge sheet or show cause notice nor any endeavor has been made to associate the appellant with the inquiry, the whole proceedings are conducted ex-parte, hence liable to be set aside.
- C. That the appellant has not been allowed opportunity of personal hearing before his dismissal from service, thus condemned unheard.
- D. That no charge sheet or statement of allegations or any show cause notice has been served upon the appellant or his residential address. The charge sheet and show cause notices were served upon wrong person and on wrong address, one Mira Khan S/O Saida Khan R/O Ghani Colony who stated to have received the Show Cause Notice is not known to the appellant, nor the appellant resides at the same address on which the Show Cause Notice was sent. All the notices are thus not sent on proper address which makes the whole proceedings defective in the eye of law.
- E. That the impugned penalty order is issued by the Respondent No.4, who is not the competent authority in case of the appellant, the impugned order is thus without lawful authority and is of no legal effect.
- F. That the impugned order dated 29.04.2014, has been made effective from 22.05.2013, since no penalty can be made to operate with retrospective effect, therefore the impugned order is not tenable in the eyes of law and is liable to be set aside on this score alone.
- G. That even in the charge sheet, show cause notice the belt No.5410 was mention with the name of the appellant, while the actual the correct Number of the appellant is 5417, thus the whole proceedings are ambiguous and not clear.
- H. That the appellant has never committed any act or omission which could be termed as misconduct, the absence of the applicant was never willful but was due to the reason stated above.

- I. That the appellant has at his credit an unblemished and spotless service career of about 10 years, the penalty imposed upon him is too harsh and is liable to be set aside.
- J. That the appellant is young and energetic and wants to service for his department albeit he has been dismissal from service.
- K. That the appellant is jobless since his dismissal from service.
- L. That the appellant seeks permission of this Honourable Tribunal to rely on additional grounds at the hearing of the appeal.

It is, therefore, humbly prayed that on acceptance of this appeal the orders dated 29.04.2014 and 06.06.2016, may please be set-aside and the appellant may please be re-instated in service with full back wages and benefits of service.

Negor Khan
Appellant

Through

Sajid Amin
SAJID AMIN
Advocate, Peshawar

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

Appeal No. _____/2016

Nisar Khan, Ex- Constable No. 5417, District Police Peshawar
R/o Kaga Wala, Ali Zai PO Badaber Peshawar.

(Appellant)

VERSUS

The Provincial Police Officer, Khyber Pakhtunkhwa,
Peshawar and others.

(Respondents)

**APPLICATION FOR CONDONATION OF DELAY,
IF ANY IN THE TITLED APPEAL**

Respectfully submitted:

1. That the appellant has today filed the accompanied appeal before this Honorable Tribunal in which no date of hearing is fixed so far.
2. That the applicant prays for condonation of delay if any in filing the instant appeal inter alia on the following grounds:-

GROUND OF APPLICATION

- A. That the appellant throughout agitated the matter before the departmental authority and never remained negligent in perusing his remedy, since the charge sheet and show cause notices as well as the impugned order was never served upon the appellant, therefore he could not know about the proceedings conducted against him. After getting knowledge of the impugned action taking against him, the appellant duly submitted his departmental appeal within 30 days of the communication of the impugned penalty order dated 29.04.2014. the appellate authority also admitted in the appellate order that the notices were not served on proper address, therefore the appellate authority was not justified to reject the appeal being time barred. Since the delay was not on part of the appellant rather it was due to late non communication of the impugned order, therefore the same deserves to be condoned.
- B. That it is also a well settled law that limitation starts from the date of communication of the impugned action, therefore the appeal of the appellant could not be held as time barred.

- C. That no proper procedure has been followed before awarding the penalty of Dismissal from Service to the appellant, he has not been served with charge sheet, statement of allegations or any show cause notice. No endeavor has been made to associate him with the inquiry, the whole proceedings were conducted ex-party. Thus an order based on such defective proceedings is defective in nature and no period of limitation is applicable against a void order.
- D. That even the penalty order has been made with retrospective effect, since no penalty can be made to operate with retrospective effect, and moreover the order penalty order has been passed by incompetent authority is thus without jurisdiction. Therefore the impugned order is illegal and void ab initio and no period of limitation run against such an illegal and void order.
- E. That valuable rights of the appellant are involved in the instant case in the instant case, hence the delay if any in filing the instant case deserves to be condoned.
- F. That it has been consistently held by the superior courts that appeal filed within 30 days from the date of communication of the order on departmental representation / appeal would be in time. Reliance is placed on 2013 SCMR 1053 & 1997 SCMR 287 (b)
- G. That it has been the consistent view of the Superior Courts that causes should be decided on merit rather than technicalities including limitation. The same is reported in 2004 PLC (CS) 1014 2003 PLC (CS) 769.

It is therefore humbly prayed that on acceptance of this application the delay if any in filing the instant appeal may please be condoned.

Nisar Khan
Applicant

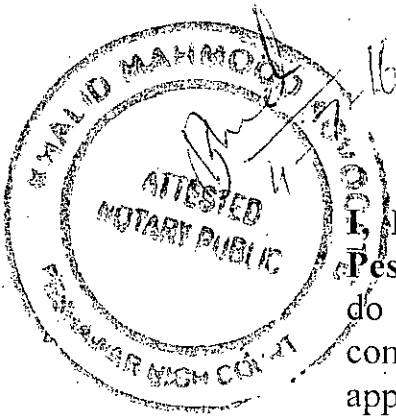
Through

Sajid Amin
SAJID AMIN
Advocate, Peshawar

AFFIDAVIT

I, Nisar Khan, Ex- Constable No. 5417, District Police Peshawar R/o Kaga Wala, Ali Zai PO Badaber Peshawar, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal as well as accompanied application for condonation of delay are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

Nisar Khan
Deponent



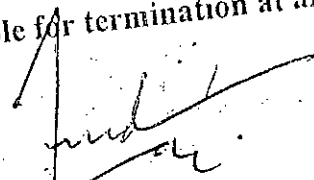
Annexure 'A'

ENLISTMENT ORDER

Recruit / Constable Nisar Khan s/o Said Khan
R/O Kaga Walâ Moh: Ali Zai PS B.Ber Distt: Peshawar
is hereby enlisted as recruit/ Constable in BPS (5) w.c.f
and allotted Constabulary No. 3336 FRP

Height 5' - 7½" Chest 33" x 34½"
Education BA D/o Birth 1.1.1980
Age on enrolment 24 Years 9 months and 25 days

His service is purely on temporary basis and liable for termination at any time without any notice.


SUPERINTENDENT OF POLICE,
HQRS: PESHAWAR

OB No. 3066
Dated 26/10 /2004



(9)

Annexure B

DISCIPLINARY ACTION

I, Superintendent of Police, Headquarters, Capital City Police Peshawar as a competent authority, am of the opinion that Constable Nisar No.5410 has rendered him-self liable to be proceeded against under the provision of Police Disciplinary Rules-1975

STATEMENT OF ALLEGATION

"That Constable Nisar No.5410 while posted at PS Pari Pura, Peshawar absented himself from duty w.e.f. 24.05.2013 till date without taking permission or leave. This amounts to gross misconduct on his part and is against the discipline of the force."

For the purpose of scrutinizing the conduct of said accused with reference to the above allegations an enquiry is ordered and SDPO Saddar circle is appointed as Enquiry Officer.

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

HW
SR: SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 417 /E/PA, dated Peshawar the 11 /07 /2013

1. SDPO Saddar circle is directed to finalize the aforementioned departmental proceeding within stipulated period under the provision of Police Rules-1975.
2. Official concerned

STFW!
Issue him copy
of SOA and CS
HW
SDPO / Saddar
21/7/13

478
12

MENTAL ENQUIRY AGAINST CONSTABLE NISAR NO 5410 OF PS PAHARI PURA DISTRICT
AR.

Constable Nisar No 5410 while posted to PS Pahari Pura District Peshawar absented himself from lawful duty without prior permission of the competent authority or leave w.e.f. 24/05/2013 till date and did not report his arrival to the place of posting. This act of the official amounts to lake of discipline and gross-miss conduct and rendered himself liable to be proceeded against under the provision of Police disciplinary Rulls-1975.

ALLEGATIONS.

Constable Nisar No 5410 while posted to PS Pahari Pura District Peshawar absented himself from lawful duty without prior permission of the competent authority or leave w.e.f.. 24/05/2013 till date and did not report his arrival to the place of posting. This act of the official amounts to lake of discipline and gross-miss conduct and rendered himself liable to be proceeded against under the provision of Police disciplinary Rulls-1975. To scrutinize the conduct of the defaulter official, the undersigned was appointed as enquiry officer.

PROCEEDINGS

Enquiry proceedings were initiated. The defaulter official was issued charge sheet and summary of allegations. Constable Nisar No 5410 was summoned time and again to offer defense against his miss-conduct but he did not bother to appear before the enquiry officer for the reason best known to him. Lastly the undersigned sent STENO of this office to duly inform the accused constable but it was found that the said official is still absent. So he did not attend the proceedings. The behavior of the accused constable shows that he has no defense to offer against his miss-conduct rather he is no more interested to serve this department any more.

FINDINGS.

Keeping in view the above facts Constable Nisar No. 5410 of PS Pahari Pura Peshawar, who does not, has any defense to offer against his miss-conduct of deliberate absence from lawful duty without prior permission of the competent authority or leave w.e.f. 24/05/2013 till date:

So the enquiry officer is of the view that ex-party action be initiated against Constable Nisar No. 5410, with the recommendations of major punishment, if agreed.

No. -----/SC
Dated Dec: -----/2013
Encl: (04) Papers.

*Major fine
show cause
notice*

(MUSHTAQ AHMAD)
Sub-Divisional Police Officer,
Saddar Circle Peshawar.

[Signature]

32-11-13

4/1/14

[Handwritten initials]

Annexure D

11

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Nisar No.5410 the final show cause notice.

⁵⁴¹⁷
The Enquiry Officer, Mr. Mushtaq Ahmad, after completion of enquiry proceedings, has recommended for major punishment for you Constable Nisar No.5410 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas the undersigned is satisfied that you Constable Nisar No.5410 deserve the punishment in the light of the above said enquiry reports.

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

1. You are, therefore, required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

2. If no reply to this notice is received within 7 days of its receipt, in normal course of circumstances, it shall, be presumed that you have no defence to put in and in that case as ex-parte action shall be taken against you.

3. The copy of the finding of the enquiry officer is enclosed.


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 417 /PA, SP/HQrs: dated Peshawar the 20/11 /2014.

Copy to official concerned

CAK
Q

11A

FINAL SHOW CAUSE NOTICE

I Superintendent of Police, Headquarters, Capital City Police Peshawar, as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve upon you, Constable Nisar No.5410 the final show cause notice.

5417

The Enquiry Officer, Mr. Mushtaq Ahmad, after completion of enquiry proceedings, has recommended for major punishment for you Constable Nisar No.5410 as the charges/allegations leveled against you in the charge sheet/statement of allegations.

And whereas the undersigned is satisfied that you Constable Nisar No.5410 deserve the punishment in the light of the above said enquiry reports.

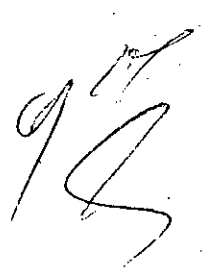
I, competent authority, have decided to impose upon you the penalty of minor/major punishment under Police Disciplinary Rules 1975 for absence willfully performing duty away from place of posting.

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


SUPERINTENDENT OF POLICE,
HEADQUARTERS, PESHAWAR

No. 417 /PA, SP/HQrs: dated Peshawar the 20/11 /2014.

Copy to official concerned



ORDER

12 Annexure E

Constable Nasir No. 5410 while posted at Police Station Paharipura absented himself from his lawful duty, with effect from 24.05.2013 till to date without prior permission or information from his superior officer. It shows that he is not taking interest in his legitimate duty. This act amounts to gross misconduct and is against the discipline of the force."

Disciplinary proceedings were initiated against him and he was issued Charge Sheet with statement of allegations. SDPO Faqirabad was appointed as enquiry officer. The enquiry officer was summoned the defaulter constable times and again but in vain.

Findings of the enquiry officer received, relevant record perused by the undersigned. He was issued Final Show Cause Notice vide this office No.588/SP-City dated 21.01.2014 which was sent to him on his home address through DFC Anwar Shah PS Paharipura. The defaulter Constable was not present at home the final show cause has received his relative Mira Khan s/o Saida Khan r/o Ghani Colony Colony but he not submitted his reply in the stipulated period. He wastes the opportunity of personal hearing.

The enquiry officer in his findings has recommended for major punishment. In the light of the recommendation of the enquiry officer the undersigned came to the conclusion to take stern action against him as experte and awarded the major punishment of "dismissal from service" under the existing rules 1975 from the date of his absence i.e 22.05.2013 with immediate effect.

Order announced.

(FAISAL MUKHTAR) PSP
Superintendent of Police City,
Peshawar.

OB: No. 1291

Dated 18-4-April 2014

No. 3423 /PA dated Peshawar, the 29/April, 2014.

Copy for information and necessary action to:-

1. The Capital City Police Officer, Peshawar
2. The SSP/Operations Peshawar.
3. The SP HQrs:
4. PO, SRC.OASI, I/C Computer Cell
5. Fauji Missal Branch with enquiry papers for record.
6. Official Concerned.

Handwritten signature/initials on the left margin.

1039
Date: 26/4/16

(13)

No 726-LB
27/4/2016

To

Annexure F

The Worthy Superintendent of Police HQrs,
Peshawar,

Subject:

Application for the provision of the copies of service record of the applicant including the departmental proceedings conducted against me and the order of my dismissal from service.

Respected Sir,

The applicant was serving in the Police department as Constable. In the year 2013, due to my domestic problems, I was unable to perform my duties, recently I have come to know that I have been proceeded against departmental and have been awarded the major punishment of dismissal from service.

It is, therefore, requested that the copies of the departmental proceedings, if any conducted against me and the order of dismissal from service, may kindly be provided to me under Clause 7 of the Khyber Pakhtunkhwa Right to Information Act, 2013.

Yours Obediently

Nisar

Nisar Khan

Ex- Constable No.5417
District Police Peshawar

Dated: 26.04.2016.

*As per legal
for you*

فقرا خود کتبه

Superintendent of Police
HQrs: CCP Peshawar.
26/4/2016

Nisar Khan

F.M.C
under The Law
By Supt: Police
Legal CCP/Peshawar
27.4.2016

[Handwritten signature]

14

Annexure G

ORDER

Encl
①

577
13
417
13

REFERENCE ATTACHED

Constable Nisar No.5417 posted at PS Paripura absented himself from duty w.e.f. 24.05.2013 till date without taking permission or leave.

The delinquent official has been dismissed by SP City vide No.1291-OB dated 18.04.2014 in the same absence period vide at F/A while the attached enquiry is also of the same period. It may require to be sent F.M.C for record.

①

If approved, may be sent the same enquiry to FMC for record or otherwise.

SP H.Ors

Para ① done
Approved
[Signature]

P.A
[Signature]
02/05/14

[Signature]

[Signature] 2
2014

15

1

Annexure

H⁴

To

The Worthy Capital City Police Officer,
Peshawar.

Subject: **Departmental appeal against the order dated 29.04.2014, whereby the applicant has been awarded the major punishment of dismissal from service.**

Prayer in departmental appeal

On acceptance of this appeal the order dated 29.04.2014, may please be set aside and the applicant may kindly be reinstated into service with all back benefits.

Respected Sir,

The applicant very humbly submits the following few lines for your kind and sympathetic consideration:

1. That I was initially enlisted as constable on 26.10.2004. Ever since my enlistment I had performed my duties as assigned with zeal and devotion and have never given any chance of complaint whatsoever regarding my performance.
2. That while serving in the said capacity, in the year 2013, unfortunately a family dispute arose at my village which later resulted into enmity. Since my enemies were influential and they often waylaid for me to harm me, therefore in order to avoid any bloodshed, the elders of my locality advised me to shift from my village and remain into hiding until the situation normalizes. I was thus constrained to shift along with my family. Due to unavoidable circumstances I could not join my duty at the relevant time.
3. That I was preceded in absentia, a charge sheet and statement of allegations was though issued but never served upon me. Thereafter a partial inquiry was conducted and the inquiry officer without making any endeavor to associate me with the inquiry proceedings, recommended me for major punishment.

4/10/14

4. That thereafter a show cause notice was not communicated to me.
5. That lastly the major penalty of dismissal upon me vide order dated 29.04.2014 of Police City, Peshawar.
6. That recently due to the intervic dispute has been patched up between us. Therefore I came back and reported for duty. I was informed that I have been dismissed from my post.
7. That I time and again approach the concerned authority for the provision of the copy of the dismissal proceedings conducted against me. I have submitted application for the same, lastly I submitted application for information act for the provision of the copy of the proceedings after I was provided the copies of the order dated 29.04.2014 and other disciplinary proceedings on 28.04.2016.
8. That I pray for the acceptance of my appeal inter alia on the following grounds

GROUND OF DEFENSE

- A. That I have not been treated fairly and my rights secured and guaranteed by law are badly violated.
- B. That no proper procedure has been followed in imposing the penalty of dismissal for any charge sheet or show cause notice made to associate me with the proceedings conducted against me ex-parte.
- C. That I have not been given opportunity of being heard before awarding me the penalty, hence

again the same

penalty was imposed
by the Superintendent

of our locality the
and our rivals.
duty; however I
am not.

I have approached the
office for the
inter departmental
not provided the
copy, under the right
documents, where
disciplinary order dated
29.04.2014 acted against me

inter departmental appeal

APPEAL

By law hence my
fundamental constitution is

Before awarding me
penalty I have not
been served with
notice and endeavor has been
made. The proceedings are
to be set aside.

Final hearing before
tribunal denied unheard.

(Handwritten signature)

D. That the impugned penalty order however he is not the proper authority, the impugned order is thus without legal effect.

E. That the impugned order dated 22.05.2013, since it is not tenable in the eyes of law and cannot be made to operate with retrospective effect, it should be set aside on this score alone.

F. That I have never committed any act which could be termed as misconduct, the absence of fault was never willful but was due to the reasons mentioned above.

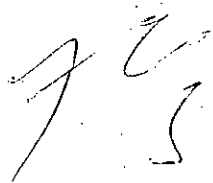
G. That I have at my credit an unblemished career of about 10 years, the penalty imposed is too harsh and is liable to be set aside.

H. That the appellant is young and has a long career in his department albeit my dismissal.

I. That I am jobless since my dismissal.

It is, therefore, humbly prayed that the appeal be allowed and the impugned order dated 22.05.2013 be set aside and I may be reinstated into service with all benefits.

Dated 04/05/2016



Worthy SP City,
The penalty, the
order is of no legal

as been made
cannot be made to
impugned order is
set aside on this

which could be
cannot was never

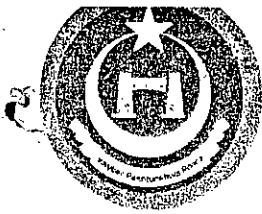
spotless service
upon me is too

is too service for

acceptance of this
case be set aside
with all benefits.

Respectfully,

Page No. 5417,
Peshawar.



12

C.

OF THE
POLICE OFFICER,
WAR

91-9210989
-9212597

Annexure I

ORDER

This order will dispose off departmental proceedings of constable Nisar No. 5410 who was awarded the major punishment of 18 days' suspension from Police Station Paharpura vide OB No. 1291 dated 18.4.2014 (To 24.5.2013 to 18.4.2014) (To 24.5.2013 to 18.4.2014) (To 24.5.2013 to 18.4.2014)

2- Proper departmental proceedings were initiated. SDPO-Faqirabad was appointed as the E.O. The E.O. summoned the appellant to associate with the enquiry but he remained absent. On receipt of the findings of the E.O., a Final Show Cause Notice was issued at his home address which was received by his close relative (Mirza Aslam Khan), but he failed to appear or submit his written reply. The Competent Authority awarded him the above major punishment.

3- He was called in O.R. on 3.6.2016. He was thoroughly examined. He remained absent for more than 18 days. He also admits that though his Show Cause Notice was received, he did not submit a written reply to the Show Cause Notice. On perusal of his reply to Show Cause Notice, it is crystal clear that he is habitual offender. He also deliberately avoided joining duty. He was also awarded punishment of 18 days' suspension from Police Station Paharpura vide OB No. 1291 dated 18.4.2014 (To 24.5.2013 to 18.4.2014) (To 24.5.2013 to 18.4.2014) (To 24.5.2013 to 18.4.2014)

4- In view of the above circumstances, his appeal is dismissed. Moreover, his appeal is also time barred for 1-year and is hereby upheld. Therefore, his appeal for re-instatement in service is dismissed.

No. 1246-51 /PA dated Peshawar the 6/1/2017

Copies for Information and n/a to the:-

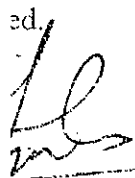
1. SP/City, Peshawar.
2. PO/OASI/ CRC along with S.Roll for making n/a
3. FMC along with FM
4. Official concerned.

ex- constable Nisar No. 5410 who was awarded the major punishment of 18 days' suspension from Police Station Paharpura vide OB No. 1291 dated 18.4.2014 (To 24.5.2013 to 18.4.2014) (To 24.5.2013 to 18.4.2014) (To 24.5.2013 to 18.4.2014)

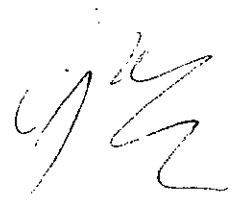
and Mr. Aslam Nawaz. The E.O. of enquiry repeatedly summoned him but he did not turn up and the enquiry was issued against him. His close relative (Mirza Aslam Khan) was issued a Show Cause Notice but he failed to appear or submit his written reply. As such the Competent Authority awarded him the above major punishment.

Enquiry file was not submitted with any legal justification. He was called in O.R. but he did not attend. His address but now he has been placed on O.R. which has been placed on O.R. as well as his verbal explanation. He is habitual offender and absent willfully without any justification. He was awarded punishment of 18 days' suspension from Police Station Paharpura vide OB No. 1291 dated 18.4.2014 (To 24.5.2013 to 18.4.2014) (To 24.5.2013 to 18.4.2014) (To 24.5.2013 to 18.4.2014)

service is not justified. The appeal passed by SP-City is hereby dismissed.


AK ZEB)
POLICE OFFICER,
WAR.

S.Roll.



بعدالت کا سرٹیفکیٹ

کلا 2016ء پنجاب ہائی کورٹ
نشا رخاں بنام لکھنوی

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کے لیے مساحرت میں لکھنوی
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
زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت 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 باختیارات حاصل ہوں گے
اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے
سبب سے وہ 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 لکھد یا کہ سندر ہے۔

المرقوم 7 ماہ 2016ء

مقام لکھنوی کے لئے منظور ہے۔

Sajid Anwar

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.714/2016.

Nisar Khan Ex- Constable No.5417 Police Line Peshawar.....Appellant.

VERSUS.

1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, Headquarters, Peshawar.
4. Superintendent of Police, City, Peshawar.....Respondents.

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

Respectfully shewth:-

PRELIMINARY OBJECTIONS.

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

FACTS:-

1. First part of Para No. 1 pertains to record while rest of para is denied on the ground that the appellant is a habitual absentee. This is his second major punishment of dismissal on wilful absence.
2. Para No. 2 is totally incorrect and denied. In fact the appellant deliberately absented himself from his lawful duty without any justification.
3. Para No. 3 is incorrect. The appellant was issued a charge sheet along with statement of allegations for wilful absence from duty. He was also issued final show cause notice, the appellant was not available thus was properly served upon his brother namely Sajid Khan but he did not turn up. (Copy of final show cause notice is annexed).
4. Para No.4 is totally incorrect and denied. The appellant was properly associated with the enquiry proceedings. He was called time and again to defend himself but he did not turn up. After fulfilling all codal formalities he was recommended for major punishment.
5. Para No.5 is incorrect. Proper show cause notice was issued to him on his home address which was served upon his brother but he failed to submit his written reply within stipulated period. (Copy annexed)

6. Para No.6 is incorrect. In fact after fulfilling all codal formalities he was awarded major punishment of dismissal from service vide OB No. 1291 dated 18.04.2014 on the charge of absence w.e.f 24.05.2013 to 18.04.2014 (total 10 months and 24 days).
7. Para No.7 is totally incorrect. The appellant remained absent for a long time without any justification.
8. Para No.8 is incorrect and denied. In fact the appellant was called time and again but he remained absent without taking permission or leave.
9. Para No.9 is incorrect. Proper departmental enquiry was conducted by SDPO Faqirabad Peshawar. All codal formalities were fulfilled but he did not appear before the E.O to defend himself.
10. Para No.10 is correct to the extent that the appellant filed a departmental appeal which was also time barred for about 01 year 11 months and 16 days. However after due deliberation, it was filed/rejected because the charges of deliberate absence were stood proved against him. It is worth to mention here that prior to this he was also awarded major punishment of dismissal from service for wilful absence which shows that he is not interested in his lawful duties.(Previous punishment order is annexed)

GROUND:-

- A) Incorrect. The appellant was treated as per law and rules. No right of appellant has been violated.
- B) Incorrect. Proper departmental enquiry was conducted against him. He was called time and again to appear before the E.O and defend himself but he did not turn up.
- C) Incorrect. The appellant was called and heard in person in OR on 03.06.2016. He was given full opportunity of defence, but he badly failed to defend himself.
- D) Incorrect. The appellant was issued final show cause notice but he was not available at home thus was properly served upon his brother namely Sajid Khan.(Copy annexed)
- E) Incorrect. The punishment order was passed by the competent authority.
- F) Incorrect. The punishment order was passed in pursuance of his long absence period as per law and rules.
- G) Incorrect. Charge sheet and final show cause notice was properly addressed to him and his belt No.5417 was rightly mentioned in final show cause notice.(Copy annexed)
- H) Incorrect. The appellant is a habitual absentee. This is his second dismissal on allegations of wilful absence from duty.
- I) Incorrect. He was also awarded major punishment of dismissal once before vide OB No.1770 dated 18.05.2010 by SP Hqrs: Peshawar.
- J) Incorrect. The appellant is-not interested in his duties. He is a habitual absentee.

K) That the 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.



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



**Capital City Police Officer,
Peshawar.**



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



**Superintendent of Police,
City, Peshawar.**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No.714/2016.


Nisar Khan Ex- Constable No.5417 Police Line Peshawar.....Appellant.

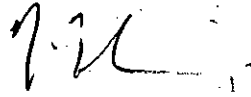
VERSUS.


1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, Headquarters, Peshawar.
4. Superintendent of Police, City, Peshawar.....Respondents.


AFFIDAVIT.

We respondents No. 1,2 , 3 & 4 do hereby solemnly affirm and declare that the contents of the written reply are true and correct to the best of our knowledge and belief and nothing has concealed/kept secret from this Honorable Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.


Capital City Police Officer,
Peshawar.


Superintendent of Police,
HQrs: Peshawar.


Superintendent of Police,
City, Peshawar.

ORDER.

This office order relates to the disposal of formal departmental enquiry against Constable Nisar Khan No.5517 of Capital City Police Peshawar. He absented himself from lawful duty with effect from 11.11.2009 to 27.03.2010 (04-months & 16-days) without taking permission or leave.

In this regard, he was issued charge sheet and summary of allegations vide No.63/E/PA, dated 12.01.2010. DSP Civil Secretariat was appointed as Enquiry Officer. He conducted the enquiry and submitted his findings/report that the accused official was summoned through Moharrir Police Lines many time but lastly the Moharrir Police Lines reported that he still remained absent till that date. The Enquiry Officer further recommended major punishment for the accused official vide Enquiry Report dated 08.04.2010.

Upon the finding of Enquiry Officer, he was issued final show cause notice vide No.63/E/PA, dated 23.04.2010 to which he received. He submitted reply of the said notice along with photo copies of medical prescription. The medical prescription seems to be doubtful on the basis of which he was required to be produced before Enquiry Officer at the time of enquiry proceeding but he failed to do so. Moreover, he was also heard in person but his explanation found unsatisfactory.

In light of the finding of Enquiry Officer and other material available on record it has been proved beyond any shadow of doubt that he is guilty of this misconduct as the official is extremely casual and takes no interest in his official duty.

Therefore, in exercise of the power vested in me under the Removal from Service (Spl: Powers) Ordinance-2000; he is hereby awarded the major punishment of Dismissal from Service with immediate effect. Hence, the period of absence from 11.11.2009 to 27.03.2010 (04-months & 16-days) is treated without pay.

Amashed
(ABDUR RASHID)
SUPERINTENDENT OF POLICE
HEADQUARTERS PESHAWAR

O.B No. 1770 / Dated 18-5- /2010

No. 1177-85/PA, dated Peshawar, the 19 15 /2010.

Copy forwarded for information & n/action to:-

- ✓ The Capital City Police Officer, Peshawar.
- ✓ The SSP/Operation Peshawar.
- ✓ Pay Officer/RI, LQ Police Lines Peshawar.
- ✓ OASI, CRC & FMC along-with complete departmental enquiry file.
- ✓ Officials concerned.

Encl
(27)

V. J. ...

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No. 714/2016

Nisar Khan Ex. Constable No. 5417, District Police, Peshawar.
(Appellant)

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa, Peshawar &
others. *(Respondents)*

REJOINDER ON BEHALF OF THE APPELLANT

Respectfully submitted:

ON PRELIMINARY OBJECTIONS:

- a. Contents incorrect and misleading, the instant appeal has been filed well within the prescribed period of limitation.
- b. Contents incorrect and misleading all necessary parties are arrayed in the instant appeal.
- c. Contents incorrect and misleading, the appellant has come to the court with clean hands.
- d. Contents incorrect and misleading, the appellant has illegally been awarded the penalty of dismissal from service, he being an aggrieved civil servant has got the cause of action and Locus standi to file the instant appeal.
- e. Contents in correct and misleading no rule of esstople is applicable in the instant case.
- f. Contents incorrect and misleading, all facts necessary for the disposal of appeal are brought before this honorable court and nothing has been concealed.
- g. Contents incorrect and misleading, the appellant is an aggrieved civil servant, and moreover the matter relates to its term and condition of his service hence only this honorable tribunal has got jurisdiction to entertain and adjudicate the instant appeal

ON FACTS

1. Contents of Para-1 of the appeal are correct, the reply submitted to the Para- is incorrect and misleading.
2. Contents of Para-2 of the appeal are correct, the reply submitted to the Para- is incorrect and misleading.
3. Contents of Para-3 of the appeal are correct, the reply submitted to the Para- is incorrect and misleading.
4. Contents of Para-4 of the appeal are correct, the reply submitted to the Para- is incorrect and misleading.
5. Contents of Para-5 of the appeal are correct, the reply submitted to the Para- is incorrect and misleading.
6. Contents of Para-6 of the appeal are correct, the reply submitted to the Para- is incorrect and misleading.
7. Contents of Para-7 of the appeal are correct, the reply submitted to the Para- is incorrect and misleading.
8. Contents of Para-8 of the appeal are correct, the reply submitted to the Para- is incorrect and misleading.
9. Contents of Para-9 of the appeal are correct, the reply submitted to the Para- is incorrect and misleading.
10. Need no comment to the extent of admission, rest of the Para is incorrect, Contents of Para-10 of the appeal are correct.

GROUND

The Grounds (A to K) taken in the memo of appeal are legal and will be substantiated at the time of arguments.

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

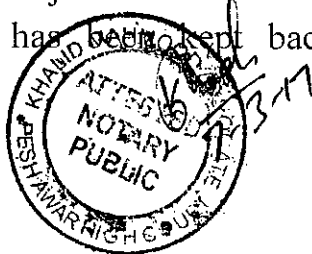
Nizar
Appellant

Through

YASIR SALEEM
Advocate, Peshawar.

AFFIDAVIT

I do, hereby solemnly affirm and declare on oath that the contents of the above rejoinder as well as titled appeal are true and correct and nothing has been kept back or concealed from this Honourable Tribunal.



Deponent *Nizar*