

2<sup>nd</sup> Feb, 2023

Clerk of learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Lawyers are on strike, therefore, the case is adjourned. Office is directed to notify the next date on the notice board as well as on the website of the Tribunal. To come up for arguments on 21.03.2023 before D.B.

SCANNED  
KPST  
Peshawar



(Muhammad Akbar Khan)  
Member (E)



(Kalim Arshad Khan)  
Chairman

21.03.2023

Junior to counsel for the appellant present.

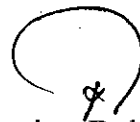
Fazal Shah Mohmand, Additional Advocate General for the respondents present.

As per order sheet dated 30.01.2023 respondents were directed to submit complete inquiry record but till today record was not produce they are warned to submit the same before the date and file to come up for arguments on 05.06.2023 before D.B. Parcha Peshi given to the parties.

SCANNED  
KPST  
Peshawar



(Muhammad Akbar Khan)  
Member (E)




(Rozina Rehman)  
Member (J)

09<sup>th</sup> Dec. 2022

Appellant present in person. Mr. Naseerud Din Shah,  
Assistant Advocate General for the respondents present.

Appellant states that his learned counsel was busy in  
Hounourable High Court and submitted an application for  
adjournment of the matter to 30.01.2023, the date himself given  
by the appellant's learned counsel. On the request of the  
appellant, the matter is adjourned to his desired 30.01.2023 for  
arguments before the D.B as last chance, failing which the  
matter will be decided on the basis of available record without  
the arguments.

SCANNED  
KFST  
Peshawar


  
(Fareeha Paul)  
Member (E)

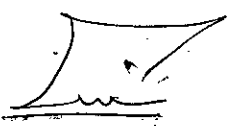
  
(Kalim Arshad Khan)  
Chairman

30-01-2023

Learned counsel for the appellant present. Mr. Umair Azam  
Khan, Additional Advocate General for the respondents present.

Complete inquiry record has not been submitted either by the  
appellant or by the respondents, therefore, respondents shall positively  
submit the same and to come up for arguments on 02.02.2023 before  
the D.B.

  
(Fareeha Paul)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

11<sup>th</sup> Oct., 2022

Appellant present in person. Mr. Kabirullah Khattak, Addl. AG alongwith Ahmad Jan, SI (Legal) for the respondents present.

Appellant seeks adjournment due to engagement of his learned counsel before Hon'ble Peshawar High Court. Adjourned. To come up for arguments on 09.11.2022 before the D.B.



**(Fareeha Paul)**  
Member (E)



**(Kalim Arshad Khan)**  
Chairman

09.11.2022

Since 9<sup>th</sup> November has been declared as public holiday, case is adjourned to 09.12.2022 for the same as before.

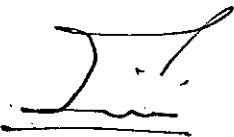


Reader

08.12.2021

Mr. Taimur Ali Khan, Advocate, for the appellant present. Mr. Noor Zaman Khattak, District Attorney for the respondents present.

The Worthy Chairman is on leave, therefore, the bench is incomplete. Adjourned. To come up for arguments on 04.02.2022 before the D.B.

  
(Salah-ud-Din)  
Member (J)

7-02-2022

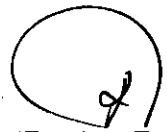
Due to retirement of the Honorable Chairman the case is adjourned to come up for the same as before on 18-5-2022.

  
Reader

18.05.2022

Learned counsel for the appellant present. Mr Muhammad Rasheed, Deputy District Attorney for respondents present.

Learned counsel for the appellant requested for adjournment as he has not made preparation of the brief. Adjourned. To come up for arguments on 01.07.2022 before the D.B.

  
(Rozina Rehman)  
Member (J)

  
(Salah-Ud-Din)  
Member (J)

01.07.2022


Bench is not available, therefore, case is adjourned to 11.10.2022 for the same as before.

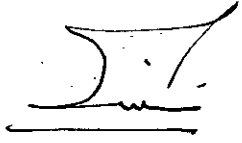
  
Reader

14.09.2021

Appellant alongwith his counsel Mr. Asad Mehmood, Advocate, present. Mr. Javed Ullah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not meet preparation for arguments. Adjourned. To come up for arguments before the D.B on 13.10.2021.

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)


  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)


14.10.2021

Syed Noman Ali Advocate present on behalf of learned counsel for appellant.

Kabir Ullah Khattak learned Additional Advocate General for respondents present.

Former made a request for adjournment as learned counsel for appellant is busy before Hon'ble Peshawar High Court, Peshawar; Adjourned by way of last chance. To come up for arguments on 08.12.2021 before D.B.

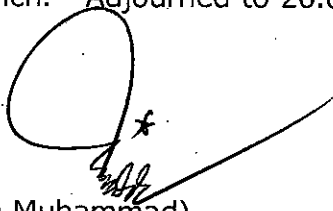
  
(Atiq-Ur-Rehman Wazir)  
Member (E)

  
(Rozina Rehman)  
Member (J)

15.02.2021

Mr. Asad Mahmood, Advocate on behalf of learned counsel for the appellant and Addl. AG for the respondents present.

Former states that the issue of retrospective penalty has not yet been decided by the Larger Bench of this Tribunal, therefore, it may be adjourned to a date after hearing by the Larger Bench. Adjourned to 26.05.2021 for hearing before the D.B.



(Mian Muhammad)  
Member(E)

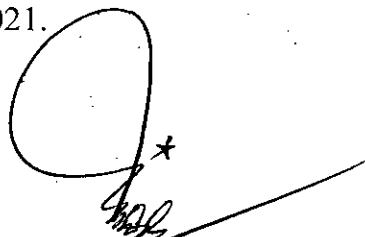


Chairman

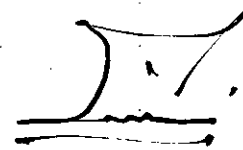
26.05.2021

Appellant in person alongwith Mr. Taimoor Ali Khan, Advocate as proxy for learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

Former sought adjournment on the ground that the issue involved in the present appeal is pending adjudication before Larger Bench of this Tribunal in other appeals. Adjourned. To come up for arguments before D.B on 14.09.2021.



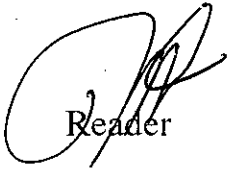
(Mian Muhammad)  
Member (E)



(Salah Ud Din)  
Member(J)

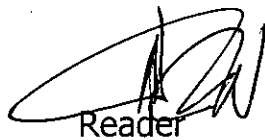
08.06.2020

Bench is incomplete as one learned Member (J) is on leave. Therefore the case is adjourned. To come up for the same on 21.08.2020 before D.B.

  
Reader

21.08.2020

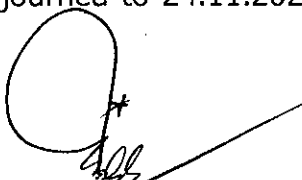
Due to summer vacation case to come up for the same on 23.10.2020 before D.B.

  
Reader

23.10.2020

Junior to counsel for the appellant and Mr. Muhammad Jan, DDA for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 24.11.2020 for hearing before the D.B.

  
(Mian Muhammad)  
Member

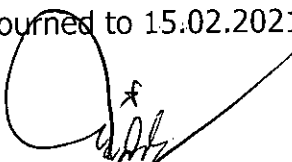
  
Chairman

24.11.2020

Counsel for the appellant and Assistant A.G for the respondents present.

Learned counsel states that the issue of retrospective effect of penalty is also involved in the instant matter while Larger Bench of this Tribunal is yet to decide the proposition. He, therefore, requests for adjournment to a date after the hearing by Larger Bench.

Adjourned to 15.02.2021 for hearing before the D.B.

  
(Mian Muhammad)  
Member

  
Chairman

11.11.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 13.01.2020 before D.B.

  
Member

  
Member

13.01.2020

Appellant in person present. Mr. Usman Ghani learned District Attorney present. Due to general strike of the Bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for arguments on 11.03.2020 before D.B.

  
Member

  
Member

11.03.2020

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 08.06.2020 before D.B.

  
Member

  
Member



12.04.2019

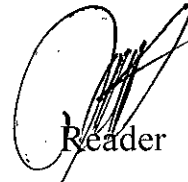
Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Learned counsel for the appellant was confronted with judgment of August Supreme Court of Pakistan reported on SCMR 1998, Page 1890. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 26.06.2019 before D.B.

  
Member

  
Member

26.06.2019


Counsel for the appellant and Addl. AG for the respondents present. Due to incomplete Bench case is adjourned to 27.08.2019 for arguments before the D.B.

  
Reader

27.08.2019

Learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Muhammad Raziq H.C present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 11.11.2019 before D.B.

  
Member

  
Member


07.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 12.12.2018.

  
Reader

12.12.2018

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned AAG present. Learned counsel for the appellant requested for adjournment. Adjourn. To come up for arguments on 04.02.2019 before D.B.

  
Member

  
Member

04.02.2019


Counsel for the appellant present. M. Kabirullah Khattak, Additional AG alongwith Mr. Muhammad Raziq, Head Constable for the respondents present. Learned counsel for the appellant requested for adjournment. Adjourned to 12.04.2019 for arguments before D.B.


  
(AHMAD HASSAN)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

28.02.2018

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 03.05.2018 before the D.B.

  
Member (Executive)

  
Member (Judicial)


03.05.2018


Due to retirement of the worthy Chairman, the Tribunal is incomplete, therefore the case is adjourned. To come up for same on 19.07.2018 before D.B

  
Reader

19.07.2018

Learned counsel for the appellant and learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 12.09.2018 before D.B.

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

12.09.2018

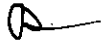
Since 12 September 2018 has been declared as public holiday on account of Muharam Ul Haram. Therefore, the case is adjourned. Adjourned. To come up for the same on

7-11-18

  
Reader

21.07.2016

Counsel for the appellant and Mr. Abdur Raziq, H.C. alongwith Additional AG for the respondents present. Written reply not submitted and requested for further time to file written reply. Last opportunity granted. To come up for written reply/comments on 19.09.2016 before S.B.



MEMBER

19.09.2016

Appellant in person and Mr. Muhammad Raziq, HC alongwith Addl: AG for respondents present. Written reply submitted. To come up for rejoinder and final hearing on 16.01.2017 before D.B.



Member

16.01.2017

Counsel for appellant and Mr. Kabirullah Khattak, Assistant AG for respondents present. Learned counsel for appellant submitted rejoinder which is placed on file. To come up for arguments on 06.06.2017 before D.B.




(AHMAD HASSAN)  
MEMBER




(ASHFAQUE TAJ)  
MEMBER

06.06.2017


Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondent present. Counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 04.10.2017 before D.B.

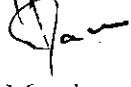
  
(Gul Zeb Khan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

04.10.2017

Learned counsel for the appellant present. Mr. Kabir Ullah Khattak, Assistant Advocate General for the respondents present. Learned counsel for the appellant submitted rejoinder which is placed on file. To come up for arguments 28.12.2017 before D.B

  
Member  
(Executive)

  
Member  
(Judicial)

28.12.2017

Clerk to counsel for the appellant and Addl: AG for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 28.02.2018 before D.B.

  
Member

23.02.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Constable when subjected to departmental proceedings and dismissed from service vide impugned order dated 18.3.2013 on the allegations of wilful absence where-against departmental appeal was preferred on 4.1.2015 which was rejected on 1.1.2016 and hence the instant service appeal on 28.01.2016.

That the departmental proceedings were not conducted in the prescribed manners.

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 28.4.2016 before S.B.

Appellant Deposited  
Security & Process Fee

  
Chairman

28.4.2016



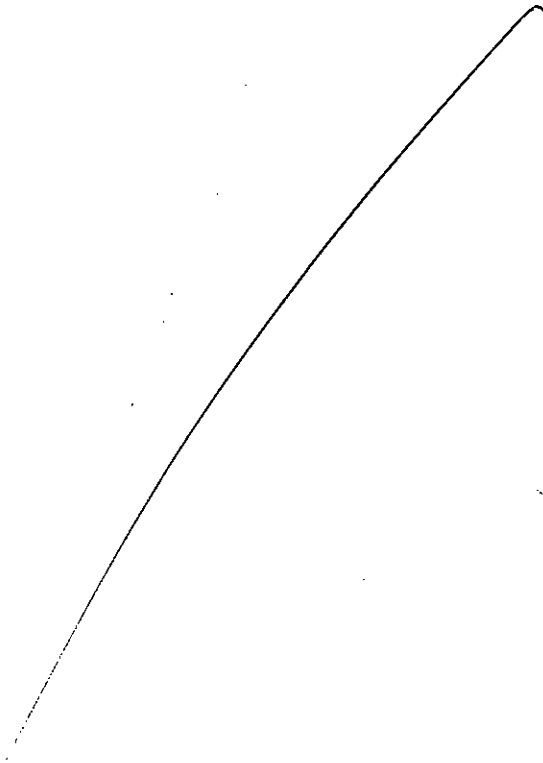
Agent of counsel for the appellant and Mr. Hayat Muhammad, H.C alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 21.07.2016 before S.B.

  
Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No. \_\_\_\_\_ **110/2016** \_\_\_\_\_

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28.01.2016	<p style="text-align: center;">The appeal of Mr. Muhammad Sohail presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy-Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2		<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>23-2-16</u>.</p> <p style="text-align: right;"> CHAIRMAN</p> 

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

Appeal No. 110 /2016

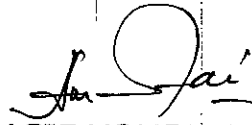
Mr. Muhammad Suhail V/S Police Department.

**INDEX**

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	----	01-03
2.	Copy of Termination Order	- A -	04
3.	Copy of Appeal	- B -	05
4.	Copy of Rejection Order	-C-	06
5.	Vakalat Nama	---	07

APPELLANT

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.



①

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

Appeal No. 110 /2016

**A.W.P. Province  
Service Tribunal**  
Diary No. 71  
dated 28-1-2016

Mr. Muhammad Suhail, Ex-Constable NO.4538,  
Police Station, Town, Peshawar.

**APPELLANT**

VERSUS

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

**RESPONDENTS**

.....

**APPEAL UNDER SECTION-4 OF THE  
KHYBER PAKHTUNKHWA, SERVICE  
TRIBUNAL ACT, 1974 AGAINST THE ORDER  
DATED 28.03.2013 WHEREBY THE  
APPELLANT HAS BEEN DISMISSED FROM  
SERVICE AND AGAINST THE ORDER DATED  
1.1.2016 WHEREBY THE DEPARTMENTAL  
APPEAL OF THE APPELLANT HAS BEEN  
REJECTED FOR NO GOOD GROUNDS.**

**PRAYER:**

.....

THAT ON ACCEPTANCE OF THIS APPEAL, THE  
ORDER DATED 01.01.2016 AND 28.03.2013 MAY  
BE SET ASIDE AND THE APPELLANT MAY BE  
REINSTATED WITH ALL BACK AND  
CONSEQUENTIAL BENEFIT. ANY OTHER REMEDY,  
WHICH THIS AUGUST TRIBUNAL DEEMS  
APPROPRIATE AND NOT SPECIFICALLY PRAYED  
FOR, THAT, MAY ALSO BE AWARDED IN FAVOUR  
OF APPELLANT.

.....

*Handwritten notes:*  
Office copy  
28/1/16

**RESPECTFULLY SHEWETH:**

1. That the appellant was enlisted as Constable in the year 2009 and completed all due trainings and courses with good record at his credit till the date of dismissal from service.
2. That the appellant's mother became ill in February, 2012 and as the appellant is the only mail carrying since it to look after her mother and to give her proper medical treatment, therefore, the appellant submitted various applications for leaves which were even not responded by the respondent department.
3. That on the basis of absence, the appellant was dismissed from service with retrospective effect on 18.3.2013. Copy of Termination Order is attached as Annexure-A.
4. That the appellant filed appeal before the respondent No.2 which was also rejected on 1.1.2016 for no good grounds. Copies of Appeal and Rejection order are attached as Annexure-B and C.
5. That now the appellant comes to this Honourable Tribunal on the following grounds amongst the others.

**GROUND:**

- A) That the impugned orders dated 1.1.2016 and 18.3.2013 are against the law, fact, rules, norms of justice and material on record which is not tenable under the law.
- B) That the appellant has not been dealt with according to law and rules.
- C) That the appellant's services have been dismissed without any legal procedures, which is the violation of law and rules.
- D) That no Charge Sheet and Statement of Allegations were ever served upon the appellant nor any order for summary proceedings have been passed by the respondent department. Thus, the respondents have violated mandatory provision of rules governing the appellant.

- E) That even the enquiry was conducted at the back of appellant and the appellant was not provided any chance of defence which amounts to condemnation un-heard.
- F) That even no final Showcase Notice was served and received by the appellant, otherwise the appellant would have defended himself.
- G) That the impugned orders of dismissal from service was passed with retrospective effect (17.2.2012) which under the commands of law and Supreme Court's Judgment, the Executive Authority can not pass any penalty order with retrospective effect.
- H) That the penalty of dismissal is very harsh and not commensurate to illness of his mother and his leave application was not allowed / acted upon by the concerned offices.
- I) That the appellant has not been treated according to law and rules and principle of fair justice.
- J) That the absence was beyond the control of the appellant, however, the appellant did apply for leave with application to the concerned offices.
- K) 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 maybe accepted as prayed for.

APPELLANT   
Muhammad Suhail

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

Annex A (4)

**ORDER**

This office order will dispose off the departmental proceedings against **Constable Sohail No. 4538** who while posted at Police Station Town, remained absent from his lawful duty w.e.f 17.02.2012 till to-date without any leave or permission from his senior

On the basis of the above mentioned allegations, disciplinary proceedings were initiated against him and he was issued Charge Sheet alongwith Statement of allegations. **SDPO/Town** was appointed as Enquiry Officer.

Findings of E.O, SDPO Town were received in which the E.O issued several Parwanas to defaulter constable to appear and defend himself but he remained absented from 17.02.2012 till to date. Therefore, the Enquiry Officer recommended him for "Dismissal from Service".

Subsequently, he was issued Final Show Cause Notice. He received Final Show Cause Notice on 27.09.2012 but did not bother to appear before the undersigned or submit his reply till now.

not received

Keeping in view of the above and recommendation of Enquiry Officer, I being a competent authority, agree with the recommendation of the enquiry officer. Therefore, **under Police Disciplinary Rules 1975, Constable Sohail No. 4538 is hereby awarded major punishment of dismissal from service** from the date of his absence.

O.B No: 1041  
Date: 18-3-2013 ✓

**SUPERINTENDENT OF POLICE,  
CANTT: PESHAWAR.**

No. 285-96 /SP/Cantt: dated Peshawar, the 12/03/2013. ✓

Copy for information and necessary action to the:-

1. The CCPO Peshawar.
2. The SSP, Operation, Peshawar.
3. The SP HQrs: Peshawar.
4. SDPO/Hayatnabad (E.O).
5. Pay Officer.
6. CRC,
7. OASI branch.
8. Fauji Missal branch with enquiry file for record.
9. Official concerned.

**ATTESTED**

**ATTESTED**

*[Handwritten signatures and notes]*

بخدمت جناب کینٹل شی پویس افسر پشاور۔

B  
A (5)  
جناب عالی!

گزارش عودبانہ ہیڈ سائل کا تعلق نیا بیت غربت گھرانہ ہے۔  
سائل 2009ء کو فحہ پویس پشاور میں بطور کینٹل بھرتی ہوا تھا۔ سال 2012ء  
کو گھر پر انتہائی ناعصابہ حالات کا سامنا کرنا پڑا، اور سائل اپنی ذہنی  
اداکاری سے قاصر رہا۔ اس دوران سائل کو آفسران بالڈ نے ملازمت سے  
برخواستہ کیا۔ اس دوران سائل نے آفسران بالڈ سے درخواستیں کیں لیکن کسی  
بھی قسم کی شنوائی یا دادرسی نہیں ہوئی۔ اور میں در بدر کی ٹوٹریں کھاتا رہا۔

جناب والا!

بوجہ لاعلمی سائل نے بروقت آفسران بالڈ کو اپیل نہیں کی۔ جبکہ اس وقت سائل  
کے خاندان کو انتہائی تنگی کا سامنا کرنا پڑ رہا ہے۔

اس لیے انتہائی عاجزی سے التماس کی جاتی ہے کہ سائل کو دوبارہ فحہ پویس  
میں ملازمت پر بحال کرنے کا حکم صادر فرمائیں۔

سائل بمع اہل خانہ ساری عمر ڈیپو رہے۔

العارض

آپ کا تابع زمان محمد سیپیل ولد مسافر شاہ ساکن سٹورینڈی ہالڈ پشاور

04.01.2015

عروج

0312 - 9374405

رابطہ نمبر:-



**OFFICE OF THE  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR**

Phone No. 091-9210989  
Fax No. 091-9212597

**ORDER**

This order will dispose off departmental appeal preferred by ex- constable **Muhammad Sohail No. 4538** who was awarded the major punishment of **Dismissal** from service under Police Rules-1975 vide OB No. 1041 by SP/Cantt Peshawar on the charge mentioned below:-

- He while posted at PS Town, absented himself from 17.2.2012 to 28.3.2013 total ( 1 Year, 1 Month, 11 Days).

2- Proper departmental proceedings were initiated against him and Mr. Shoaib Ashraf ASP-Town, was appointed as the E.O. The E.O summoned the delinquent official repeatedly but he failed to attend the departmental proceedings. As such the E.O concluded the enquiry and found him guilty on the charge of absence and recommended for major punishment of dismissal from service.

3- On receipt of the findings of the E.O, the delinquent constable Muhammad Sohail was issued Final show Cause Notice by SP/Cantt but he failed to submit his reply within stipulated period. Hence awarded the above major punishment.

4- He was called in O.R. on 1.1.2016, and heard in person. Enquiry file was thoroughly examined. He was provided full opportunity to defend himself but he failed to do so. The allegations leveled against him stand proved. Therefore, the order passed by SP-Cantt is upheld and his appeal for re-instatement in service is rejected/filed.

  
CAPITAL CITY POLICE OFFICER,  
PESHAWAR.

No. 20-26 /PA dated Peshawar the 11 / 1 /2016.

Copies for Information and n/a to the:-

2. SP/HQRs: Peshawar.
3. PO/OASI/ Complain Cell, CCP Peshawar.
4. CRC along with S.Roll for making necessary entry in his S.Roll.
5. FMC along with FM
6. Official concerned.

**ATTESTED**  


# VAKALAT NAMA

7

NO. \_\_\_\_\_/20

IN THE COURT OF Service Tribunal Peshawar

Mohammad Sohail (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

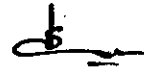
Police Dept. (Respondent)  
(Defendant)

I/We Muhammad Sohail (Appellant)

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

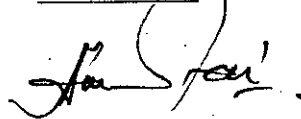
I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated \_\_\_\_\_/20



( CLIENT )

ACCEPTED



**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

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

**Service Appeal No 110/2016.**

Muhammad Sohail Ex- Constable No.4538 Police Station, Town Peshawar.Appellant.

**VERSUS.**

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

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

**Respectfully shewth:.**

**PRELIMINARY OBJECTIONS.**

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

**Facts:-**

- (1) Para No.1 pertains to record, hence needs no comments.
- (2) Para No.2 is totally incorrect and concocted. In fact the appellant wilfully absented himself from his lawful duty w.e.f 17.02.2012 to 28.03.2013 (total 01 year 01 month and 11 days) without taking permission/leave.
- (3) Para No.3 is correct to the extent that the appellant was proceeded departmentally on allegations of wilful absence from duty. He was summoned repeatedly but he failed to attend the departmental proceedings. He was recommended for major punishment and was also issued Final Show Cause Notice but he failed to submit his reply to FSCN. Thus after fulfilling all codal formalities, he was awarded major punishment of dismissal from service vide OB No.1041 dated 18.03.2013 by SP Cantt: Peshawar.
- (4) Para No.4 is correct to the extent that the appellant filed a departmental appeal but after due consideration was rejected/filed because the charges leveled against him were stand proved. It is worth to mention here that his appeal was also time barred for about 02 years, 01 month and 07 days.
- (5) That appeal of the appellant being devoid of merits may kindly be dismissed with cost.



**GROUNDS:-**

- (A) Incorrect. The punishment orders are in accordance with law/rules hence liable to be upheld.
- (B) Incorrect. The appellant was treated as per law and rules.
- (C) Incorrect. In fact proper departmental proceedings were conducted against him in which he was proved guilty.
- (D) Incorrect. Proper charge sheet and summary of allegations was issued to him and he was summoned repeatedly but he failed to appear before the E.O. All codal formalities were fulfilled.
- (E) Incorrect. The appellant was given full opportunity of defence. But he did not bother to appear before the Enquiry Officer and defend his long absence period.
- (F) Incorrect. Proper show cause notice was issued to him but he failed to appear before the Enquiry Officer.
- (G) Incorrect. The punishment order is in accordance with law being passed by the competent authority as per law and rules.
- (H) Incorrect. The punishment order is in accordance with law/rules.
- (I) Incorrect. The appellant was treated as per law and rules.
- (J) Incorrect. The appellant absented himself wilfully without taking permission/leave.
- (K) That respondents also seek permission of this Honorable Service Tribunal to raise additional grounds at the time of arguments.

**PRAYER.**

It is therefore most humbly prayed that in light of above facts and submissions, the appeal of the appellant being devoid of merits and legal footing, may kindly be dismissed.

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

  
**Capital City Police Officer,  
Peshawar.**

  
**Superintendent of Police,  
Cantt , Peshawar.**

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

**Service Appeal No 110/2016.**


Muhammad Sohail Ex- Constable No.4538 Police Station, Town Peshawar.Appellant.

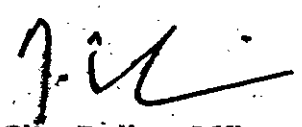
**VERSUS.**

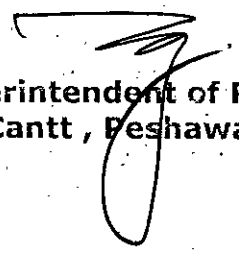
1. Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar.
2. Capital City Police Officer, Peshawar.
3. Superintendent of Police, Cantt, Peshawar.....Respondents.

**AFFIDAVIT**

We respondents No. 1 ,2 & 3 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,  
Cantt , Peshawar.**

**FINAL SHOW CAUSE NOTICE**

I Superintendent of Police, Cantt, Capital City Police, Peshawar as competent authority, under the provision of Police Disciplinary Rules 1975 do hereby serve you Constable Sohail No. 4538 of Capital City Police, Peshawar as follows.

1 (i) That consequent upon the completion of enquiry conducted against you by the enquiry officer for which you were given opportunity of hearing.

(ii) On going through the findings and recommendation of the enquiry Officer, the material on record and other connected papers produced before the E.O.

I am satisfied that you have committed the following acts/omissions specified in Police Disciplinary Rules 1975 of the said Ordinance.

"That you Constable Sohail No. 4538 while posted at PS/Town, Peshawar were absented from 17.02.2012 till to date without taking permission or leave. This act amounts to gross misconduct on your part and against the discipline of the force"

2. As a result thereof, I, as competent authority, have tentatively decided to impose upon you the penalty of major punishment under Police Disciplinary Rules 1975 for absence willfully performing duty away from place of posting.

3. 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.

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

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

  
SUPERINTENDENT OF POLICE,  
Cantt:, PESHAWAR.

No. 316 /PA, SP/Cantt: dated Peshawar the 27. 9 /2012.

Copy to official concerned

*Handwritten notes:*  
Cantt  
SP Cantt  
Sohail  
316  
27-9-12

*Handwritten mark:*  
51

To: - The Superintendent of Police,  
Cantt, Peshawar.

Subject: - DISCIPLINARY ACTION AGAINST CONSTABLE SOHAIL  
NO. 4538 OF PS TOWN, PESHAWAR.

MEMO:

Please refer to your office Endorsement No 46 E/PA dated 06.06.2012 on the subject noted above.


The instant enquiry has been initiated against Constable SOHAIL NO. 4538 on the order of SP/Cantt, Peshawar vide his letter No. 46-E/PA dated 06.06.2012 on the charge that while posted at PS Town, Peshawar remained absent from his lawful duty w.e.f 17.02.2012 to till-date. The undersigned was appointed to scrutinize the conduct of the accused official.

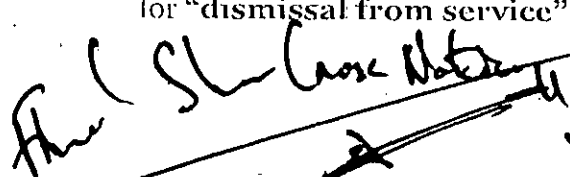
Various summons were issued to SHO Town, followed by last one vide No. 218, ST dated 20.06.2012 to inform the under enquiry constable to appear before the undersigned. His reply received which revealed that the defaulter police official did not get trouble to report at his place of posting after remained absent w.e.f 17.02.2012.

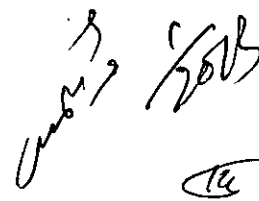
FINDING

I have gone through the enquiry papers & concluded that besides the subject absence duration, he remained absent from his lawful duty w.e.f 17.02.2012 to till-date, which amounts to gross misconduct at his part. It is worth mentioning here that this office tried various times to contact the delinquent police official through his cell phone, but his cell phone is running off & did not bother to receive this office cell #, his act shows that he has nothing to say in his self defense, nor have any cogent proof of his absence duration & badly failed to finalize the charges leveled against him.

The undersigned, is therefore, constrained to recommend his name for "dismissal from service".

  
(M. SOHAN ASIRAF) PSP  
Enquiry Officer,  
Sub-Divisional Police Officer  
Town Circle Peshawar.

  
No. 48-E/ST: DT: 13 / 08 / 2012.

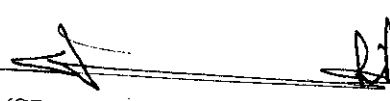


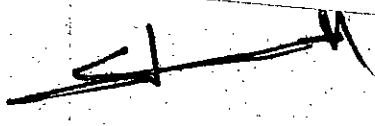
**CHARGE SHEET**

I, Shabih Hussain, PSP, Superintendent of Police Cantt, Capital City Police, Peshawar, as competent authority, hereby charge you **Constable Sohail NO. 4538** of **PS/Town** as follow:-

*"That you while posted at PS/Town remained absent from your lawful duty w.e.f.17.02.2012 till to date without leave or permission. This amounts to gross misconduct and against the discipline of the force"*

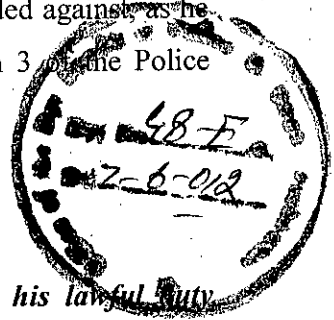
2. By reasons of the above, you appear to be guilty of misconduct under section 3 of Police Rules 1975 and have rendered yourself liable to all or any of the penalties specified in section 4 of the Rules.
3. You are, therefore, required to submit your written defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.
4. Your written defense, if any, should reason the Enquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put in and in that case an exparte action shall follow against you.
5. Intimate whether you desire to be heard in person.

  
**(SHABIH HUSSAIN)PSP  
SUPERINTENDENT OF POLICE,  
CANTT; PESHAWAR**



**DISCIPLINARY ACTION/STATEMENT OF ALLEGATION.**

I, **Shabih Hussain, PSP, Superintendent of Police Cantt, Capital City Police, Peshawar**, as competent authority, am of the opinion that: **Constable Sohail No.4538** posted at **PS/Town Peshawar**, has rendered himself liable to be proceeded against as he committed the following acts/omission within the meaning of section 3 of the Police Rules 1975:-



**STATEMENT OF ALLEGATIONS**

*"That he while posted at P.S/Town remained absent from his lawful duty w.e.f.17.02.2012 till to date without leave or permission. This amounts to gross misconduct and against the discipline of the force".*

2. For the purpose of scrutinizing the conduct of the said accused with reference of the above allegations an enquiry committee consisting of the following Police Officers is constituted:-

- i. ASP Town
- ii. \_\_\_\_\_

3. The enquiry committee/EO shall, in accordance with the provision of the ordinance, provide reasonable opportunity of hearing to the accused officer and make recommendation as to punishment or other appropriate action against the accused.

4. The accused and a well conversant representative of the department shall join proceedings on the date, time and place fixed by the enquiry committee.

(SHABIH HUSSAIN) PSP  
SUPERINTENDENT OF POLICE,  
CANTT: PESHAWAR.

No. <sup>46</sup> /PA, dated Peshawar the 6 / 6 /2012.

Copy of the above is forwarded to the E.O/Enquiry Committee for initiating proceeding against the accused under the provision of Police Rules 1975.

*Steno  
Call the constable*

*(Signature)*

*ACP Town  
07.06.2012.*

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 110/2016

Muhammad Sohail

VS

Police Deptt:

.....

**REJOINDER ON BEHALF OF APPELLANT**

.....

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(1-7) 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 is present with the respondent department.
2. Incorrect. The appellant did not remain willfully absent from his duty but his mother was ill and was engaged in the looking after and treatment of his mother and the appellant was compelled to remain absent from his duty to the mentioned reason. He also properly applied for leave but they department did not response on his application.
3. First portion of para 3 is admitted correct hence no comments while the rest of para is incorrect as the appellant was dismissed from service without fulfilling codal formalities.
4. First portion of para 4 is admitted correct hence no comments while the rest of para is incorrect hence denied.
5. Incorrect. The appellant has good cause of action and is liable to be accepted with cost on the following grounds.

**GROUND:**

- A) Incorrect. The impugned orders are not in accordance with law, facts, norms of justice and material therefore not tenable and liable to set aside.
- B) Incorrect. The appellant was not treated as per law and rules.
- C) Incorrect. In fact no proper departmental proceedings were conducted against the appellant which the violation of law and rules.
- D) Incorrect. While para D of the appeal is correct.
- E) Incorrect. While para C of the appeal is correct.
- F) Incorrect. No final show cause notice was issued to the appellant. Moreover show cause notice is issued after inquiry proceeding and not during the inquiry proceeding.
- G) Incorrect. The impugned dismissal from service order was passed with retrospective effect which is not permissible under the law and superior court judgment.
- H) Incorrect. The punishment order is not accordance with law and rules.
- I) Incorrect. The appellant was not treated as per law and rules.
- J) Incorrect. While para J of the appeal is correct.
- K) Legal.

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

Through: APPELLANT  
  
( M. ASIF YOUSAFZAI )  
ADVOCATE SUPREME COURT,  
&

( TAIMUR ALI KHAN )  
ADVOCATE HIGH COURT.



**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

*Deer*

DEPONENT

**ATTESTED**  
**Oath Commissioner**  
**Zahoor Khan Advocate**  
**Distt: Court Peshawar**

**16 JAN 2017**

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.**

Service Appeal No. 110/2016

Muhammad Sohail

VS

Police Deptt:

.....  
**REJOINDER ON BEHALF OF APPELLANT**  
.....

**RESPECTFULLY SHEWETH:**

**FACTS:**

1. No comments endorsed by the department that para 1 of the appeal is correct.
2. Incorrect. The appellant's mother and was engaged her mother treatment and also submitted various applications which were not responded by the respondent.
3. Incorrect. No proper procedure was adopted by the respondent department and dismissed the appellant in slip shod manner which is not permissible under the law and rules.
4. Incorrect. The departmental appeal of the appellant was rejected for no good ground. Moreover the departmental was rejected on merit and not on limitation and as per superior court judgment such appeal is competent before the Tribunal.
5. Incorrect. The appellant has good cause of action and liable to be accepted with cost.

**GROUNDS:**


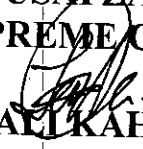
- A. Incorrect. The punishment orders are not in accordance with law and rules hence liable to be set-aside.
- B. Incorrect. The appellant was not treated as per law and rules.
- C. Incorrect. While para C of the appeal is correct.
- D. Incorrect. No proper charge sheet and statement of allegations was issued to the appellant which is mandatory under the law.

- E. Incorrect. No opportunity of defence was provided to the appellant and was dismissed in slip shod manner.
- F. Incorrect. While para F of the appeal is correct.
- G. Incorrect. While para G of the appeal is correct.
- H. Incorrect. While para H of the appeal is correct.
- I. Incorrect. The appellant was not treated as per law and rules.
- J. Incorrect. The appellant filed application to concerned offices for leave which was not responded.
- K. Legal.

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

APPELLANT

Through:

  
M.ASIF YOUSAFZAI  
ADVOCATE SUPREME COURT  
&   
(TAIMUR ALI KAHN)  
ADVOCATE HIGH COURT

**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



DEPONENT

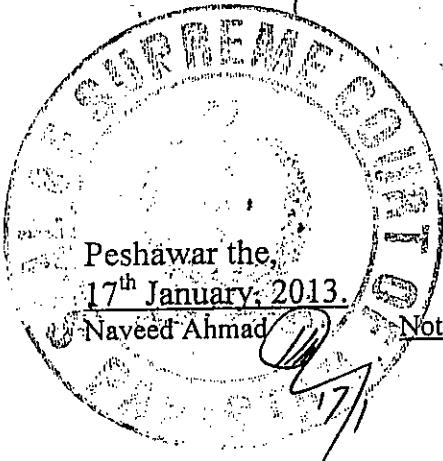


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dismissed on two grounds. Firstly that the Tribunal has not directed the promotion of the respondent but had only ordered that his case for promotion be placed before the Provincial Selection Board and secondly, that the order of the Tribunal for placing the respondent's case before the Provincial Selection Board within a period of three months has not been complied with. Leave to appeal is therefore declined and the petition dismissed, with the direction that the order of the Tribunal shall be implemented.

Sd/- Nasir-ul-Mulk, J  
Sd/- Tariq Parvez, J



Certified to be true copy

*[Signature]*  
Deputy Registrar,  
Supreme Court of Pakistan,  
Peshawar.

بعدالت

کروس ٹریبونل پشاور

2ء منجانب  
بنام

محمد سہیل

بنام

پولیس

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی کا حکم، ابا متعلقہ

کیلئے اسد محمود ایڈووکیٹ

آن مقام پشاور

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر خلف دیئے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی 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 کارروائی 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 پر داخنتہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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 لکھ دیا کہ سندر ہے۔

ASAD MAHMOOD  
Advocate 2021

۱۶ مئی ۲۰۲۱

المرقوم

لست

واہ العہد کے لئے منظور ہے۔  
مقام

(1) For Appellant

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 1185 /2019

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1932

Dated 05/09/2019

Hamyun Iqbal Ex-Constable No: 575  
Distirct Karak.

.....(Appellant)

**VERSUS**

1. The AIG Establishment For inspector Genral of Police, KP. Peshawar.
2. The deputy inspector General of Police Kohat, region kohat.
3. The District Police officer Karak.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER OF DATED 26.03.2009 WHEREBY, THE APPELLANT HAS BEEN DISCHARGED FROM SERVICE AND AGAINST THE REJECTION ORDER DATED 31.10.2012 WHEREBY THE DEPTT APPEAL OF THE APPELLANT HAS BEEN REJECTED AND AGAINST THE REJECTION ORDER DATD 08.08.2019 OF 11-A REVIEW PETITON FOR NO GOOD GROUNDS.

Filed to-day  
Registrar  
5/9/19

**PRAYER:**

Re-submitted

to-day 25/9/19

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDERS DATED 26.03.2009, 31.10.2012 and 08.08.2019 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.

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No.1185/2019

Date of Institution ... 05.09.2019

Date of Decision .... 27.01.2022

Hamayun Iqbal Ex-Constable No:575 District Karak

... (Appellant)

VERSUS

The AIG Establishment for Inspector General of Police Khyber Pakhtunkhwa  
Peshawar and others. ... (Respondents)

Syed Noman Ali Bukhari & Uzma Syed  
Advocates

... For Appellant

Muhammad Adeel Butt,  
Additional Advocate General

... For respondents

**AHMAD SULTAN TAREEN** ...  
**ATIQU-UR-REHMAN WAZIR** ...

**CHAIRMAN**  
**MEMBER (EXECUTIVE)**

JUDGMENT

**ATIQU-UR-REHMAN WAZIR MEMBER (E):-** Brief facts of the case

are that the appellant was appointed as Constable in Police Department in the year 2007. During the course of his service, the appellant was proceeded against on the charges of absence and was ultimately discharge from service vide order dated 26-03-2009, against which the appellant filed departmental appeal, which was rejected vide order dated 31-10-2012. The appellant filed revision petition, which was rejected vide order dated 08-08-2019, hence the instant service appeal with prayers that the impugned orders dated 26-03-2009, 31-10-2012 and 08-08-2019 may be set aside and the appellant may be re-instated in service with all back benefits.



02. Learned counsel for the appellant has contended that the impugned orders are against law, facts and norms of natural justice, hence not tenable and liable to be set aside; that the impugned order was passed with retrospective effect, which is void in the eye of law and according to superior courts judgments. Reliance was placed on 2002 SCMR 1129 and 2006 PLC CS 221; that no regular inquiry was conducted against the appellant nor there is any order in black & white to show that inquiry has been dispensed with; that the appellant was dismissed from service without adhering to the method prescribed in law; that the appellant has been condemned unheard and has not been treated in accordance with law; that neither any charge sheet/statement of allegations was served upon the appellant nor any show cause, thus skipped the mandatory steps provided in law; that absence of the appellant was not willful, rather due to compelling reason of illness of his mother, which was not taken into consideration; that the appellant has been discriminated as another employee, namely Umar Khan on the same footings was re-instated, whereas case of the appellant was not considered positively; that the appellant was proceeded against under two sets of law, as he was proceeded against under RSO 2000 but penalty was awarded under police rules, which is illegal and on this score alone, the impugned orders are liable to be set aside.

03. Learned Additional Advocate General for the respondents has contended that the appellant absented himself from lawful duty for longer, hence he was proceeded against departmentally on the charges of absence; that proper charge sheet/statement of allegations was served upon the appellant; that inquiry was dispensed with as the appellant was in probation period and there was no need of any inquiry; that after due process of law, the appellant was discharged from service vide order dated 26-03-2009; that departmental appeal of the appellant was rejected being barred by time; that

where departmental appeal is barred by time, the service appeal before this Tribunal is incompetent.

04. We have heard learned counsel of the parties and have perused the record.

05. We have observed that the petitioner remained absent for some time due to illness of his mother and the appellant has taken such stance in his departmental appeal. We are also mindful of question of limitation that the appellant spoiled time between his dismissal and departmental appeal and again filing revision petition at a belated stage. Contention of the learned Deputy District Attorney appearing on behalf of respondents to the effect that regular inquiry was not necessary in the case of appellant as he was proceeded against while still in the probation period, also hold force, but simultaneously the appellant was also a civil servant and the question as to whether the appellant was supposed to be proceeded against under RSO 2000 or Police Rules cannot be ignored, as RSO 2000 having overriding effect over other laws at that particular time and provision in ordinance existed for the appellant. The learned Deputy District Attorney for respondents was still of the opinion that he was rightly penalized under police rule, as there was no other option with the respondent to proceed him as the appellant was still in probation period. Contention of the learned Deputy District Attorney is correct to the extent of probation period, but section 11 of the ordinance bars the respondents to proceed him under any other law except the Ordinance and other option was also available in the Ordinance. The ordinance vide section 3 (a) provides:

"that dismissal, removal and compulsory retirement of certain persons in Govt. or corporation service etc, where in the opinion of the competent authority, a person in Govt. or corporation service is inefficient or has ceased to be efficient for any reason; or is

guilty of being habitually absent from duty without prior approval of leave, the competent authority, after inquiry by the committee constituted under section 5, may notwithstanding anything contained in any law or the terms and conditions of service of such person, by order in writing dismiss or remove such person from service, compulsory retire from service or reduce him to lower post or pay scale, or impose one or more minor penalties as prescribed in the Khyber Pakhtunkhwa Government Servant (Efficiency & Discipline) Rules, 1973 made under Section 25 of Civil Servant Act, 1973."


What we have observed and as is evident from the impugned order of discharge dated 26-03-2009 that the appellant was proceeded against under RSO 2000, whereas penalty was awarded under Police Rules, 1934, as the penalty of Discharge from service is nowhere available in RSO 2000. In a situation, since the impugned action was culminated into its logical conclusion under a misconception of law and under a wrong law, it has vitiated entire proceedings including final order, which could not be sustained under law, hence proceeding as well as final order is liable to be set aside on this score alone and which also disposes of the question of limitation as the impugned order is a void order and no limitation runs against void order. Reliance is placed on 2007 SCMR 229.


06. Without touching other merits of the case, when an order or act relating to disciplinary proceedings was contrary to law then all subsequent proceedings and actions taken thereon would have no basis and would fall. Respondents had penalized the appellant without complying with provisions of law and which smacks malafide on part of the respondents. Reliance is placed on 2009 SCMR 339.

07. In view of the foregoing discussion, the instant appeal is accepted. The impugned orders dated 26-03-2009, 31-10-2012 and 08-08-2019 are set aside

and the appellant is re-instated in service. The intervening period is treated as leave without pay; Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED  
27.01.2022

  
(AHMAD SUETAN TARBEN)  
CHAIRMAN

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (E)