FORM OF ORDER SHEET

Court of _____

Case No.- 902 /2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/05/2023	The appeal of Mr. Ubaid Ullah resubmitted today by Uzma Syed Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on _____ By the order of Chairman REGISTRAR

The appeal of Mr. Ubaid Ullah Ex-Constable no. 1662 of District Swat received today i.e. on 13.04.2023 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal which may be placed on it.
2- The documents that are to be provided must be legible/readable.

No. 1206 /S.T,

Dt. 14/4 /2023

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Uzma Syed Adv.
High Court Peshawar.

Sir,

Charge sheet, statement of allegation was submitted with reply to Deptt, Now Deptt not Providing the same. So, the same may be requisition from Deptt.

=> Enquiry report was not provided to appellant may also be requisition from Deptt.

=> Showcause notice was also submitted with reply. and may also be requisition from Deptt.

Further it is submitted the delay may be condoned for re-submitting the appeal For the reason that the counsel for the appellant moved to her native village for Eid Holidays, on returned today submitting the same.

Uzma 21/5/23.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 202 /2023

Ubaid ullah V/S Police Deptt:

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APPELLANT

THROUGH:

(UZMA SYED)
ADVOCATE, HIGH COURT
PESHAWAR

(7)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 902 /2023

Ubaid ullah, EX- Constable, No.1662
Distt: Swat.

.....(Appellant)

VERSUS

1. The Regional Police Officer, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 07.12.2022 WHEREBY, APPELLANT WAS DISMISSED FROM THE SERVICE AND AGAINST NOT TAKING ACTION ON DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN STATUTORY PERIOD OF 90 DAYS.

PRAYER:

THAT ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE ORDERS DATED 07/12/2022 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE 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.

(2)

RESPECTFULLY SHEWETH:

FACTS:

Facts giving rise to the present service appeal are as under:

1. That the appellant was the employee of the police and was on the strength of the police force Buner.

2. That during Taliban Militancy in Swat appellant was dismissed from the service by the respondent no.2 vide order dated 12.10.2009.

3. That, neither any show cause, charge sheet, statement of allegation, inquiry, opportunity of defense, final show cause notice, opportunity of personal hearing has been served and provided respectively nor any publication has ever been made calling him for assumption of his duty.

4. That some of the colleagues of the appellant have been re-instated by the respondent no.1vide OB NO 6421-22/E dated 1.11.2011.

5. That appellant upon getting knowledge of the aforesaid re-instatement order, immediately preferred departmental appeal before respondent no.1& requested therein that case of the appellant is at par with those police officer, who have been re-instated in to service vide order dated 01.11.2011, so the appellant has also entitled to re-instatement in principle of natural justice.

6. That the departmental appeal of the appellant was rejected by respondent no.1 vide order dated 29.11.2017 for no good grounds.

7. That appellant being aggrieved of the impugned order of respondent filled service appeal no: 8/2018 in this Hon'able Tribunal and Hon'able Tribunal is kind enough to accept the appeal of the appellant vide judgment dated 28/01/2022 and appellant was re-instated into service and intervening period treated as extra ordinary leave without pay. The respondent is at liberty to conduct denovo inquiry against the appellant in accordance with law. **Copy of judgment is attached as annexure-A.**

That the department reinstated the appellant into service vide order dated 22.07.2022 and issued charge sheet and statement of allegation dated 05/10/2022 to the appellant and which was properly replied by the appellant and denied the allegation specifically. A denovo Inquiry was conducted against the appellant in which no chance of defense was provided to the appellant. Thereafter show cause notice dated 21/11/2022 was issued to the appellant, which was properly replied by the appellant and denied the allegation specifically but the department without hearing the appellant passed the impugned order dated 07.12.2022. **(Copy of the impugned order is attached as Annexure-B).**

9. That the appellant was aggrieved from the said impugned order, therefore he filed departmental appeal dated 19.12.2022 which was not responded with in the statutory period of 90 days. **Copy of departmental appeal is attached as Annexure-C).**

10. That the appellant having no other remedy and constrained to file service appeal to this Honourable Tribunal on the following grounds amongst the others.

GROUNDS:

A) That the appellant has not been treated in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan 1973 by the respondents and the appellant has been dismissed from his legal service without adopting legal Pre-requisite mandatory Legal procedure. The order passed in violating of mandatory provision of law, such order is void and illegal order according to superior court judgment reported as *2007 SCMR 834*. Hence the impugned order is liable to be set aside.

B) That the impugned order was retrospective order which was void in the eye of law and also void according to Superiors Court Judgment reported as*2002 SCMR 1129,2006 PLC 221* and KPK Service Tribunal Judgment titled as *Abdul Shakoor Vs Govt of KPK*:

C) That the impugned order was void according to superior court judgment reported as *2015 SCMR 795* . so the impugned order is not maintainable.

D) That the appellant has highly been discriminated. Other police officials, who were also dismissed with appellant have been reinstated by the respondent No.1, whereas, appellant has been

denied the same treatment. The case of the appellant is similar and identical in all respect with those, who have been reinstated. Tribunal also granted relief to similar placed person in service appeal no 874/2019. So the appellant also entitled to the same relief.

E) That neither the appellant was associated with neither the inquiry proceedings nor any statement of the witnesses have been recorded in the presence of the appellant. Even a chance of cross examination was also not provided to the appellant which is a violation of norms of justice.

F) That the appellant has not been treated under the proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.

G) That the department not obeys the judgment dated 28/1/2022 and not conducted proper inquiry, even as wholly the appellant condemned un-heard which is against the law and rule and the impugned order is liable to the set aside.

H) That the appellant was deprived of his inalienable right of personal hearing and opportunity to cross examine witnesses. The opportunity of offering proper defense was snatched from the appellant. The Hon'able Service Tribunal has been consistently following this yardstick almost in all cases, so departure from the set pattern and that too without any cogent reason in the present case would cause irreparable damage to the appellant at the cost of substantial justice. Such inquiry proceeding could not be termed as fair, just and reasonable, as the respondents badly failed to prove that the appellant has leaked certain official information to the criminals. such practice has already been disapproved by the apex court contained in its judgments PLD 1989 SC 335, 1996 SCMR 802, 2018 PLC (CS)997 and 2019 SCMR 64o.

I) That the inquiry report along with the show cause was also not provided to the appellant, which is clear violation of Superior Court judgment. That principal is also held in the appeal of the **Waleed Mehmood vs Police Deptt and Zeeshan vs police,** so the impugned order was passed in violation of law and rules and norms of justice. The same principle held in the Superior Court judgments cited as ***1981 PLD SC 176 and 1987 SCMR 1562,*** without which all the proceedings is nullity in the eyes of law. Reliance was placed on **2018 PLC (CS) 997 and 2019 SCMR 640.**

J) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.

K) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

(5)

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

APPELLANT
Ubaid ullah

THROUGH:

(UZMA SYED)
ADVOCATE, HIGH COURT
PESHAWAR

(6)

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO._____/2023

Ubaid ullah V/S Police Deptt:

CERTIFICATE:

It is certified that no other service appeal earlier has been filed between the present parties in this Tribunal, except the present one.

DEPONENT

LIT OF BOOKS:

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. The ESTA CODE.
3. Any other case law as per need.

(UZMA SYED)
ADVOCATE, HIGH COURT
PESHAWAR

(7)

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO._____/2023

Ubaid ullah V/S Police Deptt:

AFFIDAVIT

I, Ubaid ullah, (Appellant) do hereby affirm that the contents of this service appeal are true and correct, and nothing has been concealed from this honorable Tribunal.

DEPONENT

Ubaid ullah

ATTESTED
Muhammad Mustafa Advocate
Distt. Courts Peshawar

Appeal No. 8/2018

ORDER
28.01.2022

Learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today, placed on file of Service Appeal bearing No. 5/2018 titled "Noor-Ul-Amin Versus The Regional Police Officer, Malakand, Saidu Sharif Swat", the impugned orders are set aside and the appellant is re-instated in service. Since the appeal is decided on technical grounds more so while keeping in view the conduct of the appellant, he is not entitled to any of the back benefits, hence the absence period as well as the intervening period during which the appellant not performed duty shall be treated as extra-ordinary leave without pay. The department is at liberty to conduct de-novo inquiry against the appellants in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 12/4/23
Number of Words 570
Urgent 10/-
Total
Name
Date
Date of Delivery of Copy 12/4/23
12/4/23

A 9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5/2018

Date of Institution ... 28.12.2017
Date of Decision ... 28.01.2022

Noor-Ul-Amin, Ex-Constable No. 75/RR Distt: Swat.

... (Appellant)

VERSUS

The Regional Police Officer, Malakand, Saidu Sharif, Swat and one another

... (Respondents)

Uzma Syed,
Advocate ... For Appellant

Noor Zaman Khattak,
District Attorney ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- This single judgment shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

1. Service Appeal bearing No. 6/2018 titled Nizam Khan
2. Service Appeal bearing No. 7/2018 titled Saeed Ullah
3. Service Appeal bearing No. 8/2018 titled Ubaid Ullah

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

02. Brief facts of the case are that the appellant while serving as Constable in Police Department was proceeded against on the charges of absence from duty and was ultimately dismissed from service vide order dated 12-10-2009. Feeling aggrieved, the appellant filed departmental appeal, which was rejected vide

(10)

order dated 29-11-2017, hence the instant service appeal with prayers that the impugned orders dated 12-10-2009 and 29-11-2017 may be set aside and the appellant may be re-instated in service with all back benefits.

03. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the law had badly been violated; that the impugned order has been passed in volition of mandatory provision of law, hence such order is void and illegal. Reliance was placed on 2007 SCMR 1129 and 2006 PLC CS 221; that departmental appeal of the appellant was rejected being barred by time, but since the impugned order is void, hence no limitation would run against void order. Reliance was placed on 2015 SCMR 795; that delay if any is condonable if delay already condoned in identical cases. Reliance was placed on PLD 2003 SC 724 and 2003 PLC CS 796; that this tribunal in similar cases has already granted condonation of delay and granted relief, hence the appellant is also entitled to the same under the principle of consistency; that the appellant has been discriminated, as other police officials, who were dismissed with the appellant, have been re-instated, whereas the appellant has been denied the same treatment.

04. Learned District Attorney for the respondents has contended that the appellant willfully absented himself from lawful duty without permission of the competent authority, hence he was issued with charge sheet/statement of allegation and proper inquiry was conducted; that despite repeated reminders, the appellant did not join the disciplinary proceedings; that right from the date of his absence i.e. 06-01-2009 till his order of dismissal i.e. 12-10-2009, the appellant neither reported his arrival nor bothered to join inquiry proceedings rather remain dormant which clearly depicts his disinterest in his official duty; that after fulfillment of all the codal formalities, the appellant was awarded major punishment of dismissal from service in absentia; that the appellant preferred

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

departmental appeal after lapse of 8 years, which was rejected being barred by time; that stance of the appellant being devoid of merit may be dismissed.

05. We have heard learned counsel for the parties and have perused the record.

06. Placed before us is cases of police constables, who alongwith many other police personnel had deserted their jobs in the wake of insurgency in Malakand division and particularly in District Swat. Police department had constituted a committee for cases of desertion and taking humanitarian view, re-instated such personnel into service in large number. Placed on record is a notification dated 01-11-2010, where 16 similarly placed employees had been re-instated on the recommendation of the committee constituted for the purpose. Other cases of similar nature have been noticed by this tribunal, where the provincial government had taken a lenient view keeping in view the peculiar circumstances in the area at that particular time and re-instated such deserted employees in service after years of their dismissal. Even this tribunal has already granted relief in similar nature cases on the principle of consistency. Appellants are also amongst those, who had deserted their jobs due to threats from terrorists. Coupled with this are dents in the departmental proceedings, which has not been conducted as per mandate of law, as the appellant in case of willful absence was required to be proceeded under general law i.e. Rule-9 of E& D Rules, 2011. Regular inquiry is also must before imposition of major punishment of dismissal from service, which also was not conducted.

07. Consequently, keeping in view the principle of consistency, the impugned orders are set aside and the appellants are re-instated in service. Since the appeals are decided on technical grounds more so while keeping in view the conduct of the appellants, they shall not be entitled to any of the back benefits, hence the absence period as well as the intervening period during which the appellants has not performed duty shall be treated as extra-ordinary leave

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without pay. The department is at liberty to conduct de-novo inquiry against the appellants in accordance with law. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
28.01.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

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

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 12/4/23
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Date of Delivery of Copy 12/4/23

OFFICE OF THE
DISTRICT POLICE OFFICER, SWAT
Ph: 0946-9240393 & Fax No. 0946-9240402,
Email: dposwat@gmail.com

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B/

ORDER

This order will dispose of the Denove-departmental enquiry conducted against Constable Ubaid Ullah No.39, That he while posted to JIS Police Line Kabal Swat, has absented himself from his lawful duty vide DD No.52 dated 02/08/2008 and failed to report for duty. He has proceeded against departmentally and subsequently dismissed from the service vide this office OB No.231, dated 18-12-2008. He has preferred an appeal before the Service Tribunal, which set aside, the punishment of Dismissal and ordered a denove departmental inquiry. In the compliance of the judgment dated 28/01/2022 of Service Tribunal in service Appeal No.08/2017 He Have been reinstated into service vide this office OB No.101 dated 22/07/2022 for the purpose of Denove departmental inquiry. As per direction of CPO Peshawar order No.988-90/CPO/IAB, dated 10-08-2022 and worthy Regional Police Officer Memo No.9574-77/E dated 09/09/2022, Denove departmental inquiry is initiated.

He was issued charge sheet coupled with statement of allegations vide this office No.98/PA dated 05/10/2022. Dis.rict Police Officer, Shangla and DSP Legal Swat were deputed as Inquiry Officers to conduct Denove-departmental inquiry against the defaulter official. The Inquiry Officers, District Police Officer, Shangla and DSP Legal Swat conducted proper departmental enquiry against the above named delinquent Constable, recorded statements of all concerned. The Inquiry Officers has provided ample opportunity to the delinquent Constable to defend the charges leveled against him. After conducting proper departmental enquiry, the Inquiry Officer submitted his findings report wherein he intimated that Constable Ubaid Ullah No.39 has badly failed to perform his duty correctly, also found negligent and the allegations leveled against him was proved. The IO recommended him for Major punishment. He was served with final Show Cause notice No.234/PA, His replied was received which is found unsatisfactory.

Foregoing in view, the undersigned is of considered opinion that there are no chances that Constable Ubaid Ullah No.39 will become an efficient Police Official. His further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, **SHAFIULLAH GANDAPUR**, District Police Officer, Swat as a competent authority, am agreed with the finding report of inquiry officers and award him major punishment of Dismissal from the date of Re-instatement i.e 22-07-2022.

Order announced.

District Police Officer
Swat

O.B. No. 175
Dated 07/12/2022.

****

OFFICE OF THE DISTRICT POLICE OFFICER SWAT

No. 639-44 /PA, dated Saidu Sharif the, 14/12 /2022.

Copy for information to the;

1) Regional Police Officer, Malakand with reference to region office letter No.13240-42/E dated 28/11/2022, please.
2) District Police Officer, Shangla,
3) DSP Legal Swat, DSP HQ, OASI, EC.

بخدمت جناب RPO صاحب ملاکنڈ رینج سیدو شریف سوات

عنوان:۔ اپیل بسلسلہ بحالی سروس

جناب عالی!

گزارش کیجاتی ہیکہ سائیل محکمہ پولیس میں 2007 کو بھرتی ہو کر مورخہ 18-12-2009 پولیس سے ڈسمس ہو چکا تھا۔ سائیل کو سروس ٹریبونل نے مورخہ 28-01-2022 کو دوبارہ بحال کر کے De-Novo انکوائیری کرنے کا حکم صادر فرمایا ہے۔

De-Novo انکوائیری ہونے کے بعد سائیل کو بحوالہ آرڈر بک نمبری 175 مورخہ 07-12-2022 کو دوبارہ نوکری سے ڈسمس کیا گیا ہے۔

بذریعہ درخواست ھذا استدعا ہیکہ کے مجبوری اور مہنگائی کے دور کے پیش نظر سروس پر بحالی کا حکم صادر فرمادیں۔ سائیل تاحیات دعاگو رہیگا۔

العارض:
کنسٹیبل عبیداللہ نمبر 39 ضلع سوات
المرقوم: 19/12/2022

VAKALAT NAMA

NO._____/20

IN THE COURT OF KP Service Tribunal, Peshawar

Ubaid Ullah — Appellant / Petitioner / Plaintiff

VERSUS

Police Deptt — Respondent (s) / Defendants (s)

I Ubaid Ullah (Appellant) do hereby appoint and constitute the ***UZMA SYED Advocate High Court*** for the aforesaid Appellant(s), Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party to commence and prosecute / to appear and defend this action / appeal / petition / reference on my / our behalf and al proceedings that may be taken in respect of any application connected with the same including proceeding in taxation and application for review, to draw and deposit money, to file and take documents, to accept the process of the court, to appoint and instruct council, to represent the aforesaid Appellant, Petitioner(S), Plaintiff(s) / Respondent(s), Defendant(s), Opposite Party agree(s) ratify all the acts done by the aforesaid.

DATE_____/20

(CLIENT)

ACCEPTED

UZMA SYED
ADVOCATE HIGH COURT

CELL NO: 0311-9440376