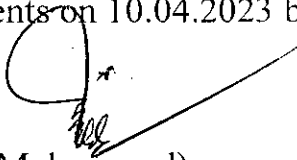


02.01.2023

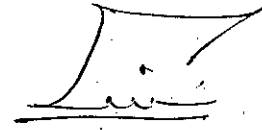
Clerk of learned counsel for the appellant present. Mr. Hakeem Zada, Superintendent alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

**SCANNED
KPST
Peshawar**

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is out of station today. Adjourned. To come up for arguments on 10.04.2023 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

10.04.2023

Appellant alongwith his counsel present.

Muhammad Jan, learned District Attorney for respondents present.

Former made a request for adjournment as he has not prepared the brief. Adjourned. To come up for arguments on 02.06.2023 before D.B. Parcha Peshi given to the parties.



(Fareeha Paul)
Member (E)

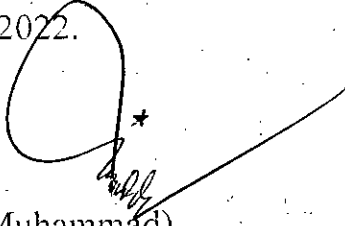



(Rozina Rehman)
Member (J)

**SCANNED
KPST
Peshawar**

13.10.2022

Appellant alongwith his counsel present. Mr. Muhammad Ibrahim, Finance Officer alongwith Mr. Muhammad Jan, District Attorney for the respondents present and submitted reply/comments on behalf of respondent No. 2. Reply/comments on behalf of respondents No. 1 & 3 not submitted even today, therefore, last opportunity given for submission of reply/comments and in case of failure, their defense for submission of reply/comments shall be deemed as struck off. Adjourned. To come up for reply/comments as well as arguments before the D.B on 14.11.2022.


(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

14.11.2022

Appellant present in person:

Muhammad Riaz Khan Paindakhel, learned Assistant Advocate General alongwith Muhammad Ibrahim for respondents present.

Learned Member (Judicial) is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments on 02.01.2023 before D.B



(Fareeha Paul)
Member (E)

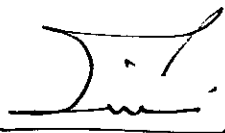
CA
KPT
Peshawar

08.11.2021

Clerk of counsel for the appellant present. Mr. Riaz Khan Paindakheil, Assistant Advocate General for the respondents present.

Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned To come up for arguments before the D.B. on 09.02.2022.


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

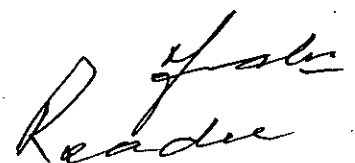

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

9-2-2021


Due to retirement of the Hon'ble Chairman the case is adjourned to come up for the same as before on 2-6-2022


Reader

2-6-22 Proper DB not available the case is adjourned to 11-8-22


Reader

11-8-2022 Proper DB not available the case is adjourned to 13-10-2022


Reader

Stipulated period passed reply not submitted.

29.07.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


Chairman

S.A No. 1612/2019

21.06.2021

Counsel for the appellant present. He states that appellant could not deposit the security and process fee due to unavoidable circumstances and submitted an application for extension of time to deposit the same.

Application is allowed and the appellant is directed to deposit security and process fee within three days positively. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of the notice, positively. If the written reply/comments are not submitted within the stipulated time, the office is directed to submit the file with a report of non-compliance. File to come up for arguments on 08.11.2021 before the D.B.

Appellant Deposited
Security & Process Fee


Chairman

02.02.2021

Counsel for the appellant present.

Contends that the appellant was terminated from service on 27.12.2010 on the ground of long absence on his part. His departmental appeal was decided on 09.04.2019 and was rejected on the point of delay.

In view of learned counsel the contents of impugned order do not provide exact period of absence attributable to the appellant. Similarly, the date(s) of absence are no where mentioned.

It is also argued that the appellant was not put to regular enquiry nor was issued any statement of allegations or the charge sheet. Despite, he was awarded major penalty which was not sustainable in the circumstances of the case.

In the light of available record and also the arguments of learned counsel, instant appeal is admitted to regular hearing subject to all just exceptions, more particularly, regarding the delay. Appellant is required to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 30.04.2021 before S.B.


Chairman

30.04.2021

Due to demise of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 21.06.2021 for the same as before.



Reader

19.08.2020

Counsel for the appellant present.

For clarification of few points, let pre-admission notice be issued to the learned Additional Advocate General. Learned counsel for the appellant is directed to provide spare copy of the instant appeal to learned AAG.

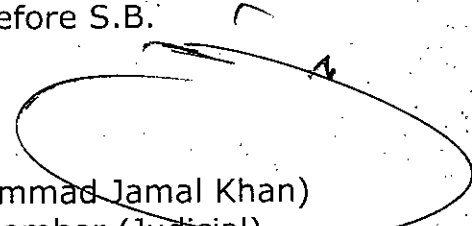
Adjourned to 23.10.2020 before S.B.


(Mian Muhammad)
Member(E)

23.10.2020

Mr. Kabirullah Khattak, Additional Advocate General for the respondents is present.

Since the Members of the High Court as well as of the District Bar Association Peshawar are observing strike today, therefore, the case is adjourned to 31.12.2020 on which date to come up for preliminary arguments before S.B.

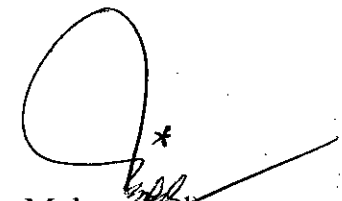

(Muhammad Jamal Khan)
Member (Judicial)

31.12.2020

Learned counsel for the appellant present. Mr. Noor Zaman Khattak, District Attorney for respondents present.

Learned District Attorney seeks adjournment as he has not prepared the brief.

Adjourned to 02.02.2021 before S.B.


(Mian Muhammad)
Member(E)

17.02.2020

Learned counsel for the appellant present. Heard.

The appellant has filed the present service appeal against the original order dated 01.06.2019 and order of appellate authority dated 29.04.2019. Learned counsel for the appellant when confronted the issue of limitation, seeks adjournment to assist this Tribunal on the issue of limitation. Adjourn. To come up for preliminary hearing including hearing on the issue of limitation on 31.03.2020 before S.B.

SCANNED
KPST
Behawar

7/1/2020

admission


Member

31.03.2020

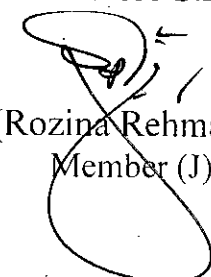
Due to public holiday on account of COVID-19, the case is adjourned for the same on 22.06.2020 before S.B.


Reader

22.06.2020

Nemo for the appellant. Learned counsel for the appellant requested for adjournment on 17.02.2020 in order to assist the Tribunal on the point of limitation but today, he is not available. The preceding order sheet shows that the date was adjourned on note reader, therefore notice be issued to the appellant and his counsel for preliminary hearing on 19.08.2020 before S.B.

Noted
Ch.
3/7/2020

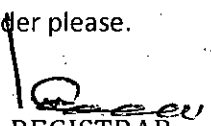



(Rozina Rehman)
Member (J)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 1612/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge		
1	2	3		
1-	02/12/2019	<p>The appeal of Mr. Sajjad Hussain presented today by Mr. Assadullah Taimur 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 02/12/19</p> <p>2-</p>	04/12/19	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>02/01/20</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>02.01.2020 </p> <p>Nemo for appellant. Notices be issued to appellant/counsel for preliminary hearing on 17.02.2020 before S.B.</p> <p style="text-align: right;"> Chairman</p>

P-33
Jalany

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1612 (P)CS/2019

Sajjad Hussain Versus Secretary Home & Tribal Affairs KPK

APPEAL U/S 10 OF THE REMOVAL FROM SERVICE SPECIAL
POWER ORDINANCE

INDEX

S. No.	Descriptions documents	Annex	Pages
1.	Memo of appeal with affidavit.	-	1-2
2.	The Impugned order No. 2341/LC of termination from service dated 15.05.2009 and Order 12025/LC dated 27.12.2010.	A	9-11
3.	Appeal before Commissioner Malakanad Division dated 21.09.2011	B	12-13
4.	Copy of order of reinstatement passed by commandant Malakand levies of another official dated 11.08.2009	C	14-15
5.	Copy of Appeal before FST along with affidavit &	D	16-27

Condonation Application.			
6.	Reinstatement orders of the Other Colleagues Passed in Appeal No 161 &162 (P)CS-2011	E	28-31
7.	Copy of the order dated 17.04.2018 passed by FST.	F	32
8.	Copy of MP No. 1698/2018	G	33-35
9.	Copy of the order dated 04.03.2019	H	36
10.	The copy of the report dated 29.04.2019	I	37-38
11.	Order of Honorable FST dated 30.10.2019	J	39
12	Exemption Application With affidavit.		40
13.	Application of Condonation with Affidavit		41-43
13.	Vakalat Nama		44

Jamrad
Appellant

Through

Asad
(Asad Ullah Taimur Muhmand)
Advocate High Court
Islamabad

BEFORE THE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Sajjad Hussain son of Zahid Hussain, Ex. Sepoy No 4836 Malakand Levies,
Malakank

....Appellant

VERSUS

1. Secretary Home & Tribal Affairs, Khyber Pakhtunkhwa.
2. DCO/Commandant Malakand Levies.
3. Commissioner Malakand Division.

.....Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKWA SERVICE TRIBUNAL ACT, 1974 AGAINST
THE ORIGINAL ORDER DATED 27-12-2010 AND REJECTION
OF DEPARTMENTAL APPEAL DATED 29-04-2019

Respectfully Sheweth

FACTS

1. That the appellant performed his duties at respondent departments as constable (Sepoy) honestly and with complete devotion. The appellant has good service record.
2. That the services of the appellant were terminated along with other servants without providing the opportunity of showing cause with allegation of unauthorized absence from duty. The Impugned order No. 12025/LC of termination from service dated 27-12-2010 is annexed A.
3. That soon after the above captioned termination, some officials submitted their appeals before the appellant authority and their appeals were accepted and they were reinstated into service. The appellant also submitted his appeal before commissioner Malakand

but it was not responded. On the other hand some of appellant's colleagues were reinstated by the Honorable Federal service Tribunal. The copy of departmental appeal of the appellant dated 21.09.2011 is annexed B and copy of order of reinstatement passed by commandant Malakand levies of another official dated 11.08.2009 in annexed C.

4. The appellant when came to know that some of his colleagues have been re-instated by Federal Service Tribunal, the appellant approached to the Federal Service Tribunal to seek the remedy/benefits by extension of tribunal's referred judgment as he had identical order of termination. The copy of the referred appeal No 773(P)CS/2017 is annexed D.
5. That an official named as Sepoy Hameed ul Rahman who was also terminated by the same impugned order but he has been re-instated into service. Reinstatement orders of the official dated 15.08.2011 are annex -E.
6. That in the above referred appeal filed by the appellant, the Honorable Federal Service Tribunal directed the concerned departmental authority on 17.04.2018 to decide the pending departmental appeal of the appellant in accordance with law after affording an opportunity of personal hearing to the appellants within a period of three months. Copy of the order dated 17.04.2018 is annexed F.
7. That after passing the above said order dated 17.04.2018, the appellant has approached to the respondent for doing the needful, but the departmental appeal was not decided by the respondent in accordance with law after affording opportunity of personal hearing within the period of three months.
8. That the appellant had been left with no other alternative option except to approach the Honorable Federal Service Tribunal for

redress of his grievances and filed MP No. 1698/2018. Copy is annexed G.

9. That in referred MP no 1698 & 1700/2018 in Appeal 773& 775 (P) CS/2017 filed by the appellant, the Federal Service Tribunal directed the Secretary Home & Tribal Affairs to give opportunity of personal hearing and decide the pending departmental appeals vide order dated 04.03.2019. The copy of the referred order dated 04.03.2019 annexed H.

10. That in view of the direction given by the FST the respondent conducted the personal hearing of the appellant and passed the impugned order of dismissal of departmental appeal based on being time bared. The copy of the said order dated 29.04.2019 is annexed I and Copy of Honorable FST final order on dated 30.10.2019 is annexed J.

11. That in above said circumstances feeling aggrieved by the impugned orders of termination of services dated 15.05.2009 and impugned order of dismissal of departmental appeal dated 29.04.2019, the appellant is left with no option invoke the appellate jurisdiction of this honorable tribunal for setting aside the above referred impugned orders on inter alia the following grounds:

GROUND

1. That the instant appeal has identical and similar facts and grounds as the appeal no. 1522 & 1523 (P) CS/2010 which were accepted and the appellants were reinstated into service. The copy of the judgment dated 12.03.2011 of Honorable FST.
2. That the impugned order of termination is illegal and void order as it is issued without the issuance of the show cause notice. The service of the civil servant cannot be terminated without assessing any reason or without issuance the show cause notice. The SHOW CAUSE meant to make clear or apparent, as by evidence testimony

or reasoning to prove some guilt. Reliance is place on 2006 SCMR 37 and 2007 CLC 1123.

3. That the imposition penalty of termination from service to the appellant is not the penalty prescribed by law so no one as legal sanctity in the eye of law. This is very clear in the ordinance 2000 that if a person in service found guilty of misconducts such person by order in writing can be dismissed or removed from service or imposed one or more minor penalties prescribed in Government Servant (Efficiency & Discipline) Rules 1973. The penalty imposed upon the appellant is not the penalty prescribed by law/ordinance 2000.
4. That the appellant presented medical certificate of his mother before the authorities and made clear that he was absent from duty without leave due to unavoidable circumstances. That same situation has been reported in a judgment where a civil servant was absent from the duty without prior permission and subsequently was dismissed from service but the service tribunal asked him to produce the medical certificate, but he was failed to do so, and service tribunal upheld the punishment. Reliance is placed on 2000 SCMR 1106.
5. That the appellant is accused of inefficient and of committed gross misconduct. A reported judgment of the Apex Court wherein it is stated that availing of medical leave without permission could not be considered an act of gross misconduct entailing major penalty of dismissal from service. Reliance is place in 2008 SCMR 214.
6. That the reinstatement of other officials who were terminated by the same order and finally they have been reinstated into services it clearly speaks discrimination and violation of Article 25 of Constitution of the Islamic Republic of Pakistan, 1973. (Reliance is place on 2002 SCMR 71 &82.)
7. That the termination of services of the civil servant is a major penalty and it is settled law that such major penalty cannot be imposed without regular inquiry. This view has been constantly maintained by this Honorable Tribunal as well as by the Honorable

5

Supreme Court of Pakistan. Reliance is placed on the following Judgments:

- a. 2001 TD (Service) 147
 - b. PLJ 2002 SC 525
 - c. NLR 2003 Service 133 (SC)
 - d. 2003 SCMR 681
 - e. 2003 TD (Service) 413
 - f. NLR 2004 Service 22 (SC)
 - g. 2004 SCMR 294
 - h. 2004 PLC (CS) 328 & 344 (SC)
 - i. 2005 PLC (SC) 256 & 263.
8. That by simply resorting to section 5(4) of the removal from service (special Powers) ordinance 2000, a gross miscarriage of justice has occurred resulting in innocent victimization if the appellant. It has been held in case reported as NLR 2003 Service 1 (Supreme Court of Pakistan) that, " It is incumbent of authority to pass an order informing accused official regarding dispensation of detail inquiry and its decision to proceed against him summarily as required under rule 5(4). The appellant was not informed in that regard neither conveyed what material exists for the dispensation of the detail inquiry.
- a. 2005 SCMR 824
 - b. NLR 2003 Service 1
 - c. PLJ 2004 Tr.C (Service) 1.
 - d. 2005 PLC (C.S) 203
9. That the law by now has been fully settle that no person could be condemned unheard. It is a part of every statute unless expressly or impliedly done away with. (Reliance is placed on 2002 SCJ 439, 2002 T.D (Service) 420 (SC), 2003 PLC(CS), 113 & 2001 TD (Service) 318.
10. That the rejection order was not a speaking order as against the section 24-A of the General Clause Act 1897, which

stipulate that every order should be speaking one and well reasoned. It has been held in a case reported as 2002 PLC (CS) 1480, that "any order passed by the executive/competent authority must be speaking one and shall be well reasoned", therefore, the rejection order being against the section 24-A of the General Clause Act 1897 is liable to be set aside.

11. That the whole proceedings were devoid of legal sanctity and void ab initio being conducted without the issuance of the show cause notice. Therefore no limitation runs against such order which is void ab initio. Reliance is placed on 2006 SCMR 37. On this ground the rejection of departmental appeal on this basis of being time bared was against the law and not sustainable in the eye of law.

12. That the delay in filing of the departmental appeal was not deliberate and was due to the compelling circumstances stated in the departmental appeal of the appellant. Therefore the delay if any may also be condoned on this ground.

PRAYER:

It is humbly prayed before this Honorable Tribunal may accept the instant appeal and set aside the impugned order of termination from services dated 15.05.2009 & impugned order of rejection of departmental appeal dated 09.04.2019 and may direct the respondents to reinstate the appellant into service with all back benefits in the interest of natural justice.

Appellant

Through

(Asad Ullah Taimur Muhmand)

Advocate High Court

Islamabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. _____(P)CS/2019

Sajjad Hussain Versus Secretary Home KPK

MEMO OF ADDRESS

1. Sajjad Hussain son of Zahid Hussain, Ex. Sepoy No 4836 Malakand Levies
2. Secretary Home & Tribal Affairs , KPK
3. DC/ Commandant Malakand Levies Malakand.

BEFORE THE PROVINCIAL SERVICE TRIBUNAL,
PESHAWAR

Appeal No. _____(P)CS/2019

Sajjad Hussain **Versus** Secretary Home & Tribal Affair KPK

AFFIDAVIT

I Sajjad Hussain son of Zahid Hussain Ex. Sepoy No 4836, Malakand Levies, Malakand, do hereby solemnly affirm on oath and state:-

1. That the contents of the accompanying appeal are true and correct to the best of my knowledge and belief and nothing relevant has been concealed there from.

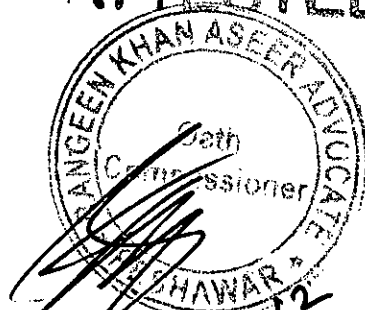
Sajjad Hussain

Deponent

Verification

Verified on oath at Peshawar that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed.

ATTESTED



02/19

Sajjad Hussain

Deponent

OFFICE OF THE DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

NO. 12025 /LC
DATED MALAKAND THE 27/12/10

OFFICE ORDER.

As reported by Subedar Major Malakand Levies that No. 4836 Sepoy
Eajid Hussain who was performing his duty at Levy Post Allahdand and absent from his
duty without any prior permission of the competent authority since long. He was issued
explanation to submit reply regarding his long absence from his duty but no such
satisfactory reply has been submitted by the individual concerned.

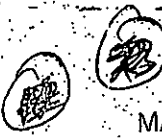
Hence, keeping in view his willful absence which amounts to misconduct,
he is hereby terminated from service with immediate effect.

DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

No. 12026-27 /LC
Copy forwarded to the:-

- 1. Agency Accounts Officer, Malakand.
 - 2. Subedar Major Malakand Levies.
- For information & necessary action.

DCO/COMMANDANT
MALAKAND LEVIES MALAKAND.



OFFICE OF THE DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

No. 2341 /LC
DATED MALAKAND THE 15/5/09


OFFICE ORDER.

As per report of Subedar Major Malakand Levies, that the Malakand Levy personnel have been absent from their duties without any prior permission from the competent authority till now. They were directed to report for their duties forthwith, but they did not reported for their duties:-

S.No Name of Levy person

- 1. 4718 Sepoy Nadeem Shah
- 2. 4782 Sepoy Asif Khan
- 3. 4940 Sepoy Muhammad Irshad ✓
- 4. 4938 Sepoy Jandad Khan
- 5. 5280 Sepoy Gohar Ali ✓
- 6. 5355 Sepoy Fazal Khuda
- 7. 5401 Sepoy Alamgir
- 8. 5394 Sepoy Hameed-ur-Rahman ✓
- 9. 5259 Sepoy Ihsan Ullah ✓
- 10. 5408 Sepoy Hayat Ullah
- 11. 5047 Sepoy Asghar
- 12. 5035 Sepoy Gohar Ali ✓
- 13. 4788 Sepoy Hazrat Shan ✓
- 14. 4895 Sepoy Bakht Muhammad
- 15. 4602 Sepoy Sajid Hussain ✓
- 16. 4683 Sepoy Tufail Ahmad
- 17. 4686 Sepoy Muhammad Ali
- 18. 4682 Sepoy Fawad Ahmad ✓
- 19. 5067 Sepoy Najeeb Alam

Attested as Authentic


Assistant Registrar
Federal Service Tribunal
(Islamabad)

(24) RL (25) (26)

- 20. 5252 Sepoy Sohrab.
- 21. 5292 Sepoy Tauseef Ali.
- 22. 5387 Sepoy Shafiq-ur-Rahman.
- 23. 4426 Sepoy Sardar Ali Shah.
- 24. 4865 Sepoy Ishfaq Hussain. ✓
- (25) 5263 Sepoy Ijaz Ahmad.
- 26. 4943 Sepoy Muhammad Qadoos.
- 27. 4815 Sepoy Muhammad Izhar.
- 28. 4762 Sepoy Asad Nabi.
- 29. 4791 Sepoy Nasar Khan.
- 30. 5226 Sepoy Muhammad Fahim.
- 31. 4644 Sepoy Noor Rahman.
- 32. 4646 Sepoy Wajid Khan.
- 33. 4669 Sepoy Riazul Mulk. ✓
- 34. 5333 Sepoy Amjad Khan.
- 35. 5369 Sepoy Shahab Ullah.
- 36. 5304 Sepoy Muhammad Qayyum.
- 37. Sepoy Azmat Ali.
- 38. Sepoy Salman.

Keeping in view the above, they are hereby terminated from service with immediate effect.

DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

No. 2342-43/LC
Copy forwarded to the:-

- 1. Agency Accounts Officer, Malakand.
 - 2. Subedar Major, Malakand Levies.
- For information, & necessary action.

DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

Approved as Assistant
Registrar
Federal Service Tribunal
(Malakand)

بھی انور جناب کوشنہ صاحب ملاکنڈ ڈویژن بمقام سید شریف منگورہ سوات

درخواست برائے لہجائی ملازمت بحیثیت لیوی سپاہی
ضلع ملاکنڈ

جناب عالی!

بسم اللہ

گزارش حسب ذیل ہے۔

یہ کہ من سائل صوبی سید حسین سابقہ لیوی سپاہی

رجمنٹ نمبر 4836 بحیثیت لیوی سپاہی و عمر پانچ سال سے اپنے ڈیوٹی

بمقام الاڈھنڈ لیوی پوسٹ میں ادا کر رہا تھا۔

یہ کہ من سائل نے گزشتہ سال 10/5 کو سات یومی

چھٹی لیکر اپنے گھر واقع ٹھکانہ "ضلع ملاکنڈ میں مقیم تھا کہ ایک رات

تقریباً 8 بجے مجھے اپنے محلہ سے چند نقاب پوش آدمیوں نے اٹھالیا

تھا اور اپنے ساتھ دو دراز پٹاری سلسلوں میں لے گیا۔

یہ کہ تقریباً گیارہ ماہ میں ان لوگوں کے قبضے میں تھا اور مجھے

لہجہ میں پتہ چلا کہ وہ لوگ طالبان ہیں اور مجھے افغانستان کے علاقے ننگر

اور نورستان میں رکھا گیا تھا جبکہ مجھے اب چھوڑ دیا گیا ہے

یہ کہ اب مجھے معلوم ہوا ہے کہ مجھے جناب "ڈی۔ سی۔ او" صاحب

ملاکنڈ نے بوجہ غیر حاضری نوٹری سے نکال دیا ہے جسکی ثبوت جواب طلبی

لف تھا ہے۔

یہ کہ من سائل نے طالبان کے خلاف ڈٹ کر مقابلہ کیا تھا اور

اُسی سخت وقت میں اپنے فوری لیوی اہلکاروں کے ساتھ شانہ نشان

(9)

سرٹاٹھا -

یہ کہ اس واقعہ میں میرے کسی قسم کا کوئی ذاتی قصور نہیں
 تھا جبکہ مجھے انوائٹ کیا گیا تھا۔ میں ان لوگوں کے ساتھ قید میں تھا اور مجھے
 ہر قسم کی جسمانی تکلیف میں مبتلا رکھا گیا تھا۔
 یہ کہ میں ایک ٹریڈ گھرانے سے تعلق رکھتا ہوں اور میرا زرعیہ
 معاش نہیں ہے اپنے گھرانے کا واحد کفیل ہوں، والد طرحہ العارہ سال
 پہلے وفات پا چکا ہے جبکہ میرے زبے دو چھوٹے بھائیوں اور ایک والدہ
 کا بوجھ بھی سسر پر ہے۔

لہذا استدعا ہے کہ من سائل کے ٹریڈ گھرانے، محبوبی اور
 ناکردہ گناہ کو مد نظر رکھ کر اپنے سابقہ لیوی سپاہی
 پر دوبارہ بحالی کا حکم صادر فرمادیں۔ کہ میں نواز شہری -
 میرے بیوہ والدہ اور سارے خاندان آپ کیلئے دعا گوہ رہے۔

العارض

This office got no jurisdiction
 to entertain such like appeals.
 Home Secretary has been declared
 as appellate authority for Levies
 in Khyber Pakhtunkhwa by the
 ministry of SWAT.

21/05/11
 Reader to Commissioner
 Malakand Division,
 Saidu Sharif Swat.

ایمانت ابدار Shaiikh

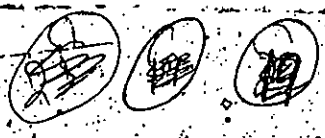
سجاد حسین سابقہ لیوی سپاہی

رجسٹرڈ نمبر 4836، محلہ بوٹہ چیم کفار

ضلع ملاکنڈ

Nic No: 15402-6868231-9

Mob No: 0345-5395691



ANNEX

OFFICE OF THE DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

NO _____ LC
DATED MALAKAND THE 17/05/2009

OFFICE ORDER

Review petition submitted by No. 5037 Sepoy Gohar Rehman of
Muhammad Guzar of Malakand Levies passed in the absence of the petitioner
not valid and the reasons presented in the petition is seems on facts. Therefore
the petition of the petitioner is hereby accepted and the termination order No
23410 LC dated 15-05-2009 at S.No. 12 of Sepoy Gohar Rehman of Malakand
levies is hereby withdrawn.

DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

2709-10 LC

Copy forwarded to the

- 1. Agency Accounts Officer, Malakand
 - 2. Subedar Major, Malakand Levies, Malakand
- For information & necessary action.

DCO/COMMANDANT
MALAKAND LEVIES MALAKAND

[Handwritten signature]
P. M. J. Khan

Attested as Accounts

[Handwritten signature]
Assistant Registrar
Federal Service Tribunal
Islamabad

[Handwritten signature]
S. M. Khan

(1)

(S)

ANNEX "B-I"

Better copy

OFFICE OF THE DCO/COMMANDANT

MALAKAND LEVIE'S MALAKAND.

OFFICE ORDER

Review petition submitted by No. 5035 Sepoy Gohar Rehman s/o Muhammad Gulzar of Malakand Levies pursued. The absence of the Sepoy is Not willful and the reasons presented in the petition is seems on facts. Therefor, The petition of the petitioner is hereby accepted and the termination order No. 2341/LC dated. 15-05-2009 at S.No. 12 of Sepoy Gohar Rehman of Malakand Levies is hereby withdrawn.

DCO/COMMANDANT

MALAKAND LEVIES MALAKAND

No. 2709-10 /LC

Copy forwarded to the:-

- 1. Agency Accounts Officer, Malakand.
- 2. Subedar Major, Malakand Levies, Malakand.

For information & necessary action.

Attested as Assistant Registrar

(Signature)
 Assistant Registrar
 Federal Service Tribunal
 Malakand

BEFORE THE FEDERAL SERVICE TRIBUNAL, ISLAMABADAppeal No. 773 (P)(CS)/2017

Sajjad Hussain

Vs

DCO/Commandant Malakand etc.

FILED TODAY
25 MAY 2017**APPEAL U/S 10 OF REMOVAL FROM SERVICE (SPECIAL POWERS) ORDINANCE 2000****INDEX**

S.No.	Description of documents	Annex	Pages
1.	Memo of appeal with affidavit		1-8
2.	Application for condonation of delay with affidavit		9-11
3.	Copy of Office Order of DCO Malakand dated 27.12.2010	A	12
4.	Appeal before Commissioner, Malakand Division dated 21.09.2011	B	13-14
5.	Copy of order 24.02.2017 of FST	C	15
6.	Copy of appeal before FST alongwith affidavit	D	16-22
7.	Copy of impugned office order for termination dated 15.05.2009	E	23-24
8.	Copy of re-instatement order of other officials alongwith better copy	F	25-26
9.	Copy of order dated 15.08.2011 of FST	G	27-30
10.	Wakalatnama		

Appellant

Through

Muhammad Shahzad Siddique
Muhammad Shahzad Siddique

Advocate

Supreme Court of Pakistan

BEFORE THE FEDERAL SERVICE TRIBUNAL
ISLAMABAD

Appeal No. 773 (P)(CS) /2017

Sajjad Hussain son of Zahid Hussain; Ex-Sepoy No. 4836 Malakand Levies, Malakand.

VERSUS

APPELLANT

1. DCO/Commandant Malakand Levies Malakand.
2. Commissioner Malakand Division, Malakand.

FILED TODAY
25 MAY 2017

RESPONDENTS

APPEAL UNDER SECTION 10 READ WITH SECTION 4 OF
THE SERVICE TRIBUNAL ACT 1974

Respectfully Sheweth:-

APPEAL: AGAINST THE IMPUGNED ORDER OF TERMINATION FROM SERVICE DATED 15.05.2009 (ANNEX) WHEREBY THE SERVICES OF THE APPELLANT HAS BEEN TERMINATED WITH IMMEDIATE EFFECT, AGAINST WHICH THE APPELLANT PREFERRED DEPARTMENTAL APPEAL WHICH WAS NOT RESPONDED WITHIN STATUTORY PERIOD OF 60 DAYS, HENCE THIS APPEAL BEFORE THE HONOURABLE

FACTS:

1. That the appellant perform his duties at the respondent department as Constable (Sepoy) honestly and with complete devotion. The appellant has a good service record.



2. That the services of the appellant were terminated along with other civil servants without providing the opportunity of showing cause with the allegation of unauthorized absence from duty. The impugned order No.2341/LC of termination from service dated 15.05.2009 is annex A
3. That soon after the above captioned termination, some officials submitted their appeals before the appellate authority and their appeals were accepted and they were reinstated into service. As regard the appellant his appeal not responded and some of appellant's colleagues were re-instated this Honourable Tribunal. The re-instatement order of other official dated 11.08.2009 is annex-B.
4. that the appellant also submitted his appeal before Commissioner Malakand but it was not responded. The appellant when came to know that his colleagues have been reinstated by the Federal Service Tribunal, the appellant has approach to this Tribunal to seek the remedy /benefits by extension of Tribunal's judgment as he has identical order of termination. The copy of Departmental appeal dated Nil is annex C.
5. That an official named as Sepoy Hameed ul Rahman who was also terminated by the same impugned order but he has been

(3)

reinstated into service. Re-instatement orders of the official dated 15.08.2011 is annex-D.

GROUNDS

1. That the instant appeal has identical and similar facts and grounds as the Appeal NO.1522 & 1523(P) CS/2010 which were accepted and the appellants were reinstated into service. The copy of the judgment dated 12.03.2011 of this Honourable FST is annex E.
2. That the impugned order of termination is illegal and void order as it is issued without the issuance of the show cause notice. The service of the civil servant cannot be terminated without assigning any reason and without issuing the show cause notice. The word "**SHOW CAUSE**" meant to make clear or apparent, as by evidence testimony or reasoning to prove some guilt. Reliance is placed on 2006 SCMR 37 & 2007 CLC 1123.
3. That the imposition penalty of termination from service to the appellant is not the penalty prescribed by law so no has legal sanctity in the eye of law. This is very clear in the Ordinance 2000 that if a person in service found guilty of misconducts such person by order is writing can be dismissed or removed from service or imposed one or more minor penalties

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(A)

prescribed in Government Servants (Efficiency & Discipline) Rules 1973. The penalty imposed upon the appellant is not the penalty prescribed by law/ordinance 2000.

4. That the appellant presented medical certificates of his wife before the authorities and made clear that he was absent from duty without leave due to unavoidable circumstances. The same situation has been reported in a judgment where a civil servant was absent from duty without prior permission and subsequently was dismissed from service but the service tribunal asked him to produce the medical certificate, but he was failed to do so, and service tribunal upheld the punishment. Reliance is placed on 2000 SCMR 1106.
5. That the appellant is accused of inefficient and of committed gross misconduct. A reported judgment of the Apex Court wherein it is stated that availing of medical leave without permission could not be considered an act of gross misconduct entailing major penalty of dismissal from service. Reliance is placed on 2008 SCMR 214.
6. That the reinstatement of other officials who were terminated by the same order and finally they have been reinstated into service it clearly speaks discrimination and violation to Article



25 of the Constitution of the Islamic Republic of Pakistan, 1973. Reliance is placed on 2002 SCMR 71 & 82).

7. That the termination of services of the civil servant is a major penalty and it is settled law that such major penalty cannot be imposed without regular inquiry. This view has been constantly maintained by this Honourable Tribunal as well as by the Honourable Supreme Court of Pakistan. Reliance is placed on the following judgments

- a. 2001 TD (Service) 147.
- b. PLJ 2002 SC 525
- c. NLR 2003 Service 133 (SC)
- d. 2003 TD (Service) 413.
- e. 2003 SCMR 681
- f. NLR 2004 Service 22 (SC)
- g. 2004 SCMR 294.
- h. 2004 PLC (CS) 328 & 344 (SC).
- i. 2005 PLC (CS) 256 & 263.

8. That by simply resorting to section 5(4) of the removal from service (special Powers) Ordinance, 2000, a gross miscarriage of justice has occurred resulting in innocent victimization of the appellant. It has been held in case reported as NLR 2003 Service 1 (Supreme Court of Pakistan) that, "It is incumbent of authority to pass an order informing accused official regarding dispensation of detail inquiry and its decision to proceed against him summarily as required under rule 5 (4). The appellant was not informed in that regard neither conveyed what material existed for the dispensation of the detail inquiry.

- a. 2005 SCMR 824.
- b. NLR 2003 Service 1.

6

- c. PLJ 2004 Tr.C. (Services) 1.
- d. 2005 PLC (C.S) 203.

- 9. That the law by now has been fully settled that no person could be condemned unheard. It is a part of every statute unless expressly or impliedly done away with. (Reliance is placed on 2002 SCJ 438, 2002 T.D (Service) 420 (SC), 2003 PLC(CS), 113 & 2001 T.D. (Service) 318.
- 10. That the rejection order was not a speaking order as against the section 24-A of the General Clauses Act, 1897, which stipulates that every order should be speaking one and well reasoned. It has been held in a case reported as 2002 PLC(CS) 1480, that, "Any order passed by the executive/competent authority must be speaking one and shall be well reasoned", therefore, the rejection order being against the section 24-A of the General Clauses Act 1897 is liable to be set aside.

PRAYER:

It is humbly prayed before this Honourable Tribunal may accept the instant appeal and set aside the impugned order of termination from service dated 15.05.2009 and may direct the respondents to reinstate the appellant into service with all back benefits in the interest of natural justice.

APPELLANT

Through

MUHAMMAD SHAHZAD SIDDIQ

Advocate

Supreme Court of Pakistan



BEFORE THE FEDERAL SERVICE TRIBUNAL,
ISLAMABAD

Appeal No. _____ (P) (CS)/2017

Sajjad Hussain **VERSUS** DCO/Commandant Malakand etc

MEMO OF ADDRESS

1. Sajjad Hussain son of Zahid Hussain , Ex-Sepoy No. ~~4836~~ ⁴⁸³⁶ *Amr*
Malakand Levies, Malakand.
2. DCO/Commandant Malakand Levies Malakand.
3. Commissioner Malakand Division, Malakand.

(8)

BEFORE THE FEDERAL SERVICE TRIBUNAL
ISLAMABAD

Appeal No. _____ (P) (CS)/2017

Sajjad Hussain **VERSUS** DCO/Commandant Malakand etc

AFFIDAVIT

I, Sajjad Hussain son of Zahid Hussain , Ex-Sepoy No. 4836
Malakand Levies, Malakand; do hereby solemnly affirm and declare that
the contents of my accompanying appeal are true and correct to the
best of my knowledge and belief. I further declare that I have not filed
any other appeal on the subject in any other tribunal in Pakistan.

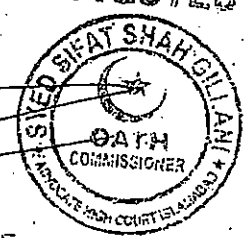
Sajjad Hussain
DEPONENT

Islamabad

The above affidavit is verified and attested today by me at Islamabad.

This Affidavit has been sworn
before me on this 25 Day of
May 2017 by the deponent
who is personally known to me
by Sajjad Hussain
Certified further that the contents of
the affidavit have been read
and explained to the deponent who
has understood and attested the same
Serial No. _____

ATTESTED



SYED SIFAT SIDDIQ GILLANI
ADVOCATE HIGH COURT
OATH COMMISSIONER
ISLAMABAD

25 MAY 2017



BEFORE THE FEDERAL SERVICE TRIBUNAL ISLAMABAD

Appeal No. _____ (P)(CS)/2017

Sajjad Hussain Versus DCO/Commandant Malakand etc.

APPLICATION FOR THE CONDONATION OF DELAY

Respectfully Sheweth:-

1. That the petitioner/appellant has filed the instant petition for the condonation of delay, the contents of which may kindly be read as integral part of the accompanied appeal.
2. That the whole proceedings were devoid of legal sanctity and void ab initio being conducted without the issuance of the show cause notice. No limitation runs against such order which is void ab initio. Reliance is placed on 2006 SCMR 37.
3. That the delay in filing of departmental appeal was not willful but it was because of unavoidable circumstances. Technicalities including limitation, even if established, could not override equity and justice. No rule existed that right should not be allowed to a civil servant, if he agitated the matter repeatedly. Reliance is placed on the following judgments;

2002 PLC (C.S) 1487
PLJ 2004 SC 435
2004 PLC (C.S) 1014 (SC)



- 4. That the case of the petitioner/appellant has strong merit as he has been awarded a major penalty without conducting a regular inquiry against the settled principle of law. Decision of cases on merit always to be encouraged instead of non suiting the litigants for technical reasons including limitations. (Reliance is placed on PLD 2003 SC 724 & 2003 PLC (CS) 796).
- 5. That the impugned order penalty was illegal and void ab intio being issued by the incompetent authority in the violation of the principle of natural justice. No limitation runs against such void order. (Reliance is placed on 2002 TD (Service) 150).

It is therefore, prayed that the delay, in filing the departmental appeal may kindly be condoned in the interest of justice.

Petitioner / appellant

Through

MUHAMMAD SHAHZAD SIDDIQ
 Advocate
 Supreme Court of Pakistan

(12)

BEFORE THE FEDERAL SERVICE TRIBUNAL ISLAMABAD

Appeal No. _____(P)(CS)/2017

Sajjad Hussain Versus DCO/Commandant Malakand etc.

APPLICATION FOR THE CONDONATION OF DELAY

AFFIDAVIT

I, Sajjad Hussain son of Zahid Hussain, Ex-Sepoy No.4836, Malakand, Levies, Malakand, do hereby solemnly affirm and declare that the contents of my above accompanying application are true and correct to the best of my knowledge and belief.

DEPONENT

VERIFICATION:-

verified on oath at Islamabad on May 24, 2017, that the contents of this affidavit is true and correct to the best of my knowledge and belief and nothing has been concealed therein.

DEPONENT

This Affidavit was read and sworn to before me on the 25th day of May 2017 at Islamabad by Sajjad Hussain who is the deponent in the above application. I have read the contents of the affidavit and explained to the deponent who has understood the same. Serial No. _____



SYED SIFAT SHAH GILLANI
ADVOCATE HIGH COURT
OATH COMMISSIONER
ISLAMABAD 25 MAY 2017

IN THE FEDERAL SERVICE TRIBUNAL
BLUE AREA, SHAHRAH-E-QUA

ISLAMABAD

ANNEX D

D. No. 3079

Dated. 15-08-11



SUBJECT:- ORDER PASSED IN APPEAL NO. 161 & 162(P)CS-2011
FILED BY MR. HAMEED ULLI REHMAN VS. ANOTHER VS. MALAKAND
LEVIES ETC.

A certified copy of the judgment passed by this Honourable
Tribunal in the appeal noted in the subject is sent herewith for your
information/compliance.

By Order

REGISTRAR

1. Mr. Hameed ul Rehman, R/o Village Khush Hal Garh, P.O. Sher Garh, Tehsil Takhat Bai, District Mardan.
- ✓ 2. Mr. Riaz-ul Mulk R/o Village Khaar, Mohallah Yaqoob Khel, Tehsil But Khela, District Malakand.
3. DCO/Commandant, Malakand Levies, Malakand.
4. Commissioner Malakand Division, Malakand.
5. The Secretary, Establishment Division, Government of Pakistan, Islamabad.
6. The Solicitor, Law & Justice Division, Islamabad.

RECEIVED AS ANNEX D

Assistant Registrar
Federal Service Tribunal
Islamabad

Federal Service Tribunal, Islamabad

Appeals No. 161 & 162(P)CS/2011

Hameed ul Rahman and Riaz Malik Vs. Malakand Levies

25.07.2011

Before: Mr. Moazzam Hayat and
Mr. Ghulam Qayyum Akbar

Present: Mr. Ghulam Ahmad Sheikh, Counsel for the appellants, M/s Hazrat Ali, HRDO and Muhammad Iqbal, S.O. Home Deptt., Peshawar as DRs.

Costs be deposited, if not already deposited.

With this judgment, we shall decide appeal No.161 & 162(P)CS-2011 filed by appellant Hameed ur Rahman and Riaz Malik. Both the appellants were Sepoys in Malakand Levies. They were terminated from service vide order dated 15.5.2009. Their departmental appeals were rejected.

The appeals have been resisted by the respondents. The DR has requested for further time to file comments. His request is declined. We have however heard him.

The services of the both the appellants were terminated on the charge of remaining absent from duty without permission. However, no show cause notice was ever issued to them. In this manner they were condemned unheard. The impugned order was passed in violation of the well established principle of natural justice that no person can be condemned unheard. In the above circumstances, we condone the delay in filing the appeals. The impugned orders are set aside. The appellants are reinstated in service. The respondents may initiate de novo proceedings against them. They shall be given an opportunity of showing cause against their absence. The competent authority may then pass an appropriate order in accordance with the rules. The appeals not only admitted to regular hearing but are also allowed. The payment of back benefits shall depend on the outcome of fresh proceedings.

The appeals stand disposed of as above.

Accepted as Authentic

Assistant Registrar
Federal Service Tribunal
Islamabad

05/8/11

Sd
MEMBER

Sd
MEMBER

CERTIFIED TRUE COPY

Registrar
Federal Service Tribunal
Islamabad

Form of Order Sheet
FEDERAL SERVICE TRIBUNAL

Appeal No. 1522 & 1523(P)CS/2010

Sajid Hussain & Fawad Ahmad

Vs

DCO / Commandant Malakand Levies

15.2011

BEFORE: Mr. Moazzam Hayat and
Mr. Farrakh Qayyum, Members.

PRESENT: Mr. Farooq Ahmed Seemab, Counsel for the appellants.
Mr. Ali Muhammad, Supdt. Malakand Division, as D.R.

With this judgment we shall decide the above
titled appeals as their facts are identical.

Both the appellants were serving in Malakand
Levies. Their services were terminated vide order dated
15.05.2009 on the charge of absence from duty without
permission. It is maintained on behalf of the appellants that
they were condemned un-heard.

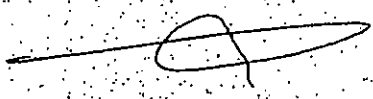
Today the cases were fixed for filing of
objections. However, on the request of the parties, final
arguments were also heard.

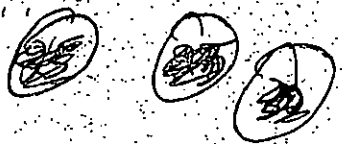
It is maintained by the respondents that the
appellants had run away from their duty point without
permission and had shown cowardice in the performance of
their duties, therefore, they were awarded the penalty in
question. It is a universally accepted principle of law that no
man can be condemned un-heard even a worst criminal is
entitled to defend himself. In the present case the appellants
were deprived of right to defend themselves. They might
have been proceeded against under 1915 Act but this does
not mean that they were not entitled to show cause notice
and right to defend themselves. In the circumstances, the
penalty imposed upon them cannot be up-held.

For the above reasons, both the appeals are
accepted. The impugned order is set aside and the
appellants are reinstated in service. The respondents may
proceed against them strictly in accordance with law. The

17/5-10

ADJUTANT GENERAL
FEDERAL SERVICE TRIBUNAL
Islamabad





payment of back benefits shall depend as the outcome of fresh proceedings which may be completed preferably within a period of three months from the date a copy of the order is received in the office of respondents.

No order as to costs.

Parties be informed.

MEMBER
[Signature]
MEMBER

[Signature]

Attested as Amicus

[Signature]
Assistant Registrar
Federal Service Tribunal
Islamabad

IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

BEFORE: Mr. Justice (R) Saeed Zahid Hussain, Chairman
Raja Hasan Abbas, Member

Appeal No.773(P)Cs/2017 with MP No.791/2018
Appeal No.774(P)CS/2017 and No.775(P)CS/2017 with
MP No.792/2018

Sajad Hussain, Shahab Ullah and Ejaz Hussain
Vs

DCO/Commandant Malakand Levies and another

17.04.2018: PRESENT: Mr. Muhammad Shahzad Siddique, Advocate along-
with the appellants
Malik Akhtar Hussain Awan, AAG, KPK from
respondents

Through these appeals under S.4 of the Service
Tribunal Act, 1973 the termination order dated 15.05.2009 is
sought to be assailed on the grounds mentioned therein.

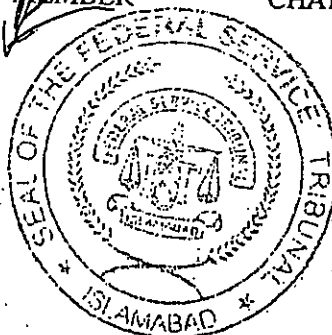
At the outset the learned counsel states that qua the
said order departmental appeals filed by the appellants are
pending before the departmental appellate authority, which have
remained un-responded. The contention of the learned counsel
finds mention also in paragraph 4 of the memorandum of
appeals to which there is no denial by the respondents in the
comments filed by them.

In such view of the matter when the departmental
appeals are pending before the authority concerned, we are
inclined to direct that the same may be taken up by the appellate
authority and decided in accordance with law after affording an
opportunity of personal hearing to the appellants within a period
of three months.

The appeals are disposed of accordingly.

Sd- MEMBER
Sd- CHAIRMAN

CERTIFIED TRUE COPY
[Signature]
Registrar
Federal Service Tribunal
Islamabad



BEFORE THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

M.P.No. 1698 /2018
In
Appeal No.773(P)CS/2017

Sajjad Hussain son of Zahid Hussain, Ex-Sepoy No.4836, Malakand Levies, Malakand.

...PETITIONER

VERSUS

1. DCO/Commandant Malakand Levies, Malakand.
2. Commissioner Malakand Divison, Malakand.

...RESPONDENTS

PETITION FOR DECISION OF APPEAL NO.773(P)CS/2017 FILED BY THE APPELLANT/PETITIONER AFTER NON IMPLEMENTATION OF ORDER DATED 17.04.2018 PASSED BY THIS HONORABLE FEDERAL SERVICE TRIBUNAL IN THE ABOVE SAID APPEAL BY THE RESPONDENTS

Respectfully Sheweth;-

1. That the above titled appeal was pending, which has been disposed off vide order dated 17.04.2018 by this Honourable Federal Service Tribunal in the following terms;

"---Through these appeals under S:4 of the Service Tribunal Act, 1973 the termination order dated 15.05.2009 is sought to be assailed on the grounds mentioned therein.

At the outset the learned counsel states that qua the said order departmental appeals filed by the appellants are pending before the departmental appellate authority, which have remained un-responded. The contention of the learned counsel finds mention also in paragraph 4 of the memorandum of appeals to which there is no denial by the respondents in the comments filed by them.

In such view of the matter when the departmental appeals are pending before the authority concerned, we are inclined direct that the same may be taken up by the appellate authority and decided in accordance with law after affording an opportunity of personal hearing to the appellants within a period of three months. The appeals are disposed of accordingly".

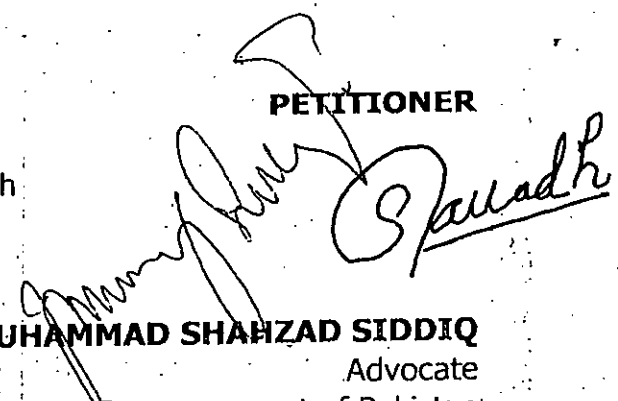
2. That after passing the above said order, the appellant through written application has approached the respondents for doing the needful, which has not been done so far, as the departmental appeal of the petitioner has not been decided by the respondents in accordance with law after affording an opportunity of personal hearing to the appellant / petitioner within a period of three months.
3. That the petitioner / appellant is left with no other alternative option except to approach this Honourable Tribunal for redressal of his grievance.

It is therefore, requested, that as the respondents have failed to comply with the order dated 17.04.2018 passed by this Honourable Tribunal, the appeal of the appellant/petitioner may kindly be decided on merits, in the best interest of justice.

Any other relief which this Honourable Court deems fit and appropriate may also be awarded to the appellant/petitioner.

PETITIONER

Through


MUHAMMAD SHAHZAD SIDDIQ
Advocate
Supreme court of Pakistan

35

BEFORE THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

M.P.No. _____/2018

In

Appeal No.773(P)CS/2017

Sajjad Hussain

VERSUS

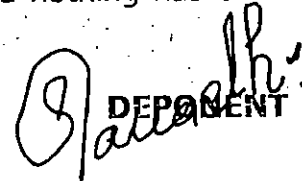
DCO/Commandant Malakand Levies and another

PETITION FOR DECISION OF APPEAL NO.773(P)CS/2017 FILED BY THE APPELLANT/PETITIONER AFTER NON IMPLEMENTATION OF ORDER DATED 17.04.2018 PASSED BY THIS HONORABLE FEDERAL SERVICE TRIBUNAL IN THE ABOVE SAID APPEAL BY THE RESPONDENTS

AFFIDAVIT

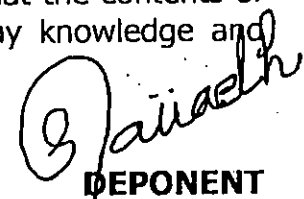
I, Sajjad Hussain son of Zahid Hussain, Ex-Sepoy No.4836, Malakand Levies, Malakand, do hereby solemnly affirm and declare as under;-

That the contents of above accompanying application are true and correct to the best of my knowledge and belief and nothing has been concealed.


DEPONENT

VERIFICATION:-

Verified on oath at Islamabad on August 18, 2018, that the contents of this affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therein.


DEPONENT

Order Sheet

IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD

M.Ps. No. 1698 to 1700/2018

In Appeals No. 773 to 775(P)CS/2017

Sajad Hussain & others.....Vs.....DCO/Malakand Levis

04.03.2019

**BEFORE: Raja Hasan Abbas, and
Mr. Manzoor Ali Khan, Members.**

**PRESENT: Mr. Muhammad Shahzad Siddique, Advocate
alongwith the petitioners.
Mrs. Farah Naz Awan, Assistant Attorney General
for the respondents alongwith Mr. Muhammad
Ibrahim and Mr. Saqib Khan, S.O Courts as D.Rs. ||**

Mr. Saqib Khan, S.O. (Courts) present on behalf of the respondents states that the issue regarding correction in the parent age has been resolved. So far as personal hearing is concerned, the appeals are available and have been received in the Office of Secretary, Home, & Tribal Affairs, Department KPK and would be decided in accordance with law.

Let Secretary Home & Tribal Affairs, Department, KPK, by giving the petitioners personal hearing, decide the pending departmental appeals, within a period of three weeks positively. A report be submitted before the next date of hearing.

Re-fix for 04.04.2019.



Superintendent
Federal Service Tribunal
Islamabad



MEMBER



MEMBER



GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

No. SO (Police)/HD/6-217/018/Sajad Hussain
Dated Peshawar the 29/04/2019

To

The Registrar,
Federal Service Tribunal
Islamabad

Subject: M.P.S. NO. 16992/700/2019 APPEALS NO. 114 Two
115(PCS)/2017 SAJAD HUSSAIN AND OTHERS.

Sir,
I am directed to refer to the subject noted above and to state that Department Appeal/Personal hearing of Levies Sepoy Sajad Hussain s/o Zahid Hussain of Malakand Levies, District Malakand, was processed in this department. Since the Appeal was badly time barred, as the appellant was terminated in 2010, therefore, the same was rejected as per Federal Levies Rules 2013 accordingly.
Submitted for your information, please

Yours Truly,

Section Officer (Police-II)

Endst. No. & date of even
Copy forwarded to:-

1. PS to Secretary Home & TA's Department
2. SO (Court) Home & TA's Department w.r to subject noted above



IN THE COURT OF SECRETARY HOME
MEMBER PAKHTUNKHWA
(APPEAL AUTHORITY)

APPELLANT: SAAD HUSSAIN S/O. ZAHID HUSSAIN LEVY SEPOY,
MALAKAND,
VERSUS
COMMANDANT LEVIES MALAKAND.


INTRODUCTION:-

The said Sepoy was performing his duty in Malakand Levies at the time of termination he was posted in Levy Post Aladand but was found absent from his duty without any prior permission of the competent authority. He was issued an explanation to attend his duty but he remained absent despite repeated reminders, he did not attend his duty and was hence terminated from service on 27.12.2010 (reply of DC office in this behalf can be perused vide p-19-23/c..

PROCEEDINGS:-

The applicant was heard on 21/03/2019. According to statement of the applicant, he was absent from duty for which he was terminated from services. He further stated that no proper inquiry was conducted and he was not given the chance of hearing. Furthermore, the said period was the height of talibanization and he was in his village looking after his mother who was seriously ill. He applied to various forums for re-instatement but was left unheard in this regard; he failed to produce any documentary evidence. Feeling aggrieved, he resorted to Federal Service Tribunal which has directed this Department to give him the opportunity of personnel hearing and decide the matter accordingly.

Since the appeal is badly time barred as the appellant was terminated in 2010 therefore, the same may be rejected and a copy of the rejection may be submitted to Federal Service Tribunal, Islamabad.


Special Secretary
9/4/19

Order Sheet

Federal Service Tribunal, Islamabad.

MPs No. 1698 & 1700/2018

In

Appeals No. 773 & 775(P)CS/2017

Sajad Hussain & another Vs DCO/Commandant Malakand Levies

30.10.2019 BEFORE: Mr. Ghaffar Jalil, and
Mr. Muhammad Humayun, Members.

PRESENT: Mr. Muhammad Shahzad Siddique, Advocate for the
petitioner/appellant
Mr. Qamar Javed, Assistant Attorney General, for
respondents with Mr. Muhammad Ibrahim, Finance
Division, as DR.

.....

ORDERGhaffar Jalil, Member:

Departmental representative has submitted a copy of the order dated 29.04.2019 whereby the appellate authority has rejected the departmental appeals of the petitioners/appellants namely (Sajad Hussain & Ejaz Hussain). Copy of the same has been provided to the learned counsel for the petitioners/appellants in the court today, wherefrom it divulges that the order of this Tribunal 17.04.2018 has been implemented.

However, petitioners/appellants are reserving the right to challenge the said order, before the competent legal forum.

Therefore, the instant MPs No. 1698/ & 1700/2018 stands disposed of having borne fruit.

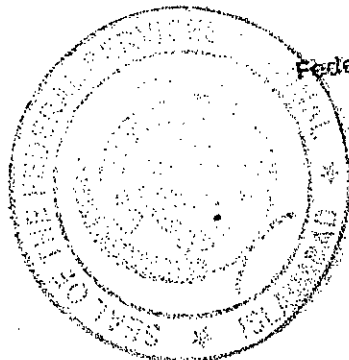
Parties be informed.

FEDERAL SERVICE TRIBUNAL ISLAMABAD	
Application No.	2398/2019
Date of Application	20-11-2019
No. of Copies	01
Copying fee	1
Urgent fee	2
Total fee	3
Prepared	20-11-2019
Date of	20-11-2019
Checked by	Qamar Javed
Signatures	Qamar Javed

Sd-
MEMBER

Sd-
MEMBER

CERTIFIED TRUE COPY
Registrar
Federal Service Tribunal
Islamabad



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

Appeal No. _____(P)CS/2019

Sajjad Hussain Versus Secretary Home and Tribal Affairs, KPK

APPEAL U/S 10 OF THE REMOVAL FROM SERVICE

**EXEMPTION PETITION FOR PRODUCTION OF
UN-CERTIFIED COPIES OF THE RELEVANT
DOCUMENTS**

AFFIDAVIT

I Sajjad Hussain son of Zahid Hussain Ex. Sepoy No 4836, Malakand Levies, Malakand, do hereby solemnly affirm on oath and state:-

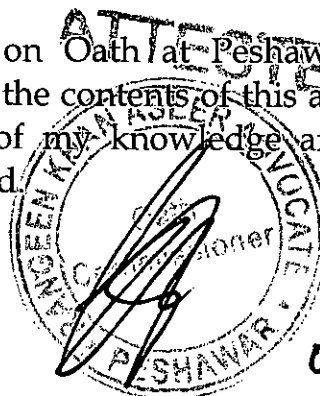
That the contents of the attached application are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld.



DEPONENT

VERIFICATION:

It is verified on Oath at Peshawar on 2nd day of November 2019 that the contents of this affidavit are true and correct to the best of my knowledge and belief has been concealed or withheld.



02/11/19

41

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. _____(P)CS/2019

Sajjad Hussain **versus** Secretary Home & Tribal Affairs KPK

APPLICATION FOR THE CONDONATION OF DELAY

Respectfully Sheweth:

1. That the appellant/ petitioner has filed the instant petition for the condonation of delay, the content of which may kindly be read as integral of the accompanied appeal.
2. That the final order has been passed on 30.10.2019 and sent by the appellant in 05.11.2019. So if there is any delay that may kindly be condoned.
3. That the whole proceedings were devoid of legal sanctity and void ab initio being conducted without the issuance of the show cause notice. No limitation runs against such order which is void ab initio. Reliance is placed on 2006 SCMR 37.
4. That the delay in filing of departmental appeal was not willful but it is was because of unavoidable circumstances. Technicalities including limitation, even if establish, could not override equity and justice. No rules existed that right should not be allowed to civil servant, if he agitated the matter repeatedly. Reliance is placed on the fowling judgments:
2002 PLC (CS) 1487
PLJ 2004 SC 435
2004 PLC (CS) 1014 (SC)
5. That the case of the petition/ appellant has strong merit as he has been awarded a major penalty without conducting a regular inquiry against the settled principle of law. Decision of cases on merit always to be encouraged instead of non suiting the litigation for technical reasons including limitations. (Reliance is placed on PLD 2003 SC 724 & 2003 PLC (CS) 796.)

- 42
6. That the impugned order penalty was illegal and void ab initio being issued by the competent authority in the violation of the principle of natural justice. No limitation runs against such void order. (Reliance is placed on 2002 TD(Service) 150).

It is therefore, prayed that the delay, in filing the departmental appeal may kindly be condoned in the interest of justice.

Asad
Petitioner

Through

Asad
(Asad Ullah Taimur Muhmand)
Advocate High Court
Islamabad

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. _____ (P)CS/2019

Sajjad Hussain Versus Secretary Home and Tribal Affairs, KPK

APPEAL U/S 10 OF THE REMOVAL FROM SERVICE

APPLICATION FOR CONDONATION OF DELAY

AFFIDAVIT

I Sajjad Hussain son of Zahid Hussain Ex. Sepoy No 4836, Malakand Levies, Malakand, do hereby solemnly affirm on oath and state:-

1. That the contents of the accompanying appeal are true and correct to the best of my knowledge and belief and nothing relevant has been concealed there from.

Sajjad
Deponent

Verification

Verified on oath at Peshawar that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed.

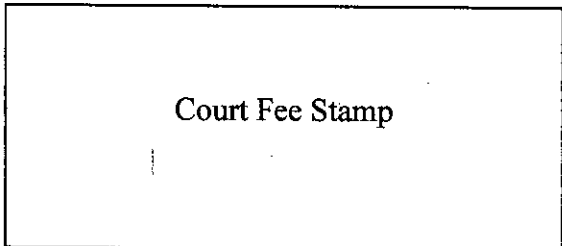


Sajjad
Deponent

7 02/12/19.

IMST INTERNATIONAL, ADVOCATES & LEGAL CONSULTANTS

Office # 8, 1st Floor, Al-Jannat Arcade, G-11 Markaz, Islamabad



VAKALATNAMA

IN RE:

SASSAD HUSSAIN

Applicant
Plaintiff
Appellant
Petitioner
Complainant

VERSUS

SECRETARY HOME KPK

Respondent
Defendant
Opponent
Accused

I/We SASSAD HUSSAIN above named APPEAL hereby appoint and constitute ASAD ULLAH TAIMUR MUHAMMAD **ADVOCATE(S)** to represent, appear and act for me/us on my/our behalf as my/our Advocate(s) in the above matter

I/We authorize the said Advocate(s) to compromise, withdraw and receive on my/our behalf all sums and amounts deposited in my/our account in the above matter and/or refer the above matter to arbitration or to compromise or to withdraw the same.

I/We undertake to appear in the above matter before the Court, my/our counsel shall not be held responsible in case the matter is dismissed/disposed off ex-parte due to my/our failure to appear/attend the case.

I/We also undertake to pay his full professional fees before the conclusion of the case. In case his full fees is not paid the counsel can withdraw his vakalatnama from the above matter.

Date: 02-12-2019

Accepted [Signature]
Asad Ullah Taimur Muhmand
Advocate High Court
Cell # 0333-5001574

(Signature/Thumb Impression of Client) [Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.1612(P)CS/2019
Sajjad Hussain son Zahid Hussain, Ex-Sepoy No.4836 Malakand Levies

.....Appellant

VERSUS

1. Secretary Home & TA's Department, Khyber Pakhtunkhwa, Peshawar.
2. Commissioner, Malakand Division at Saidu Sharif, Swat.
3. Deputy Commissioner/Commandant Malakand Levies at Malakand.

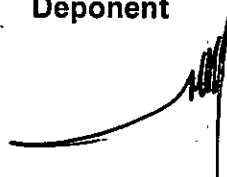
.....Respondents

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORIGINAL ORDER DATED: 27-12-2010 AND REJECTION OF DEPARTMENTAL APPEAL DATED: 29-04-2019

INDEX

S. No	Description of Documents	Annexure	Page No
1.	Comments	-	1-4
2.	Affidavit	-	5
3.	Authority	-	6
4.	Copy of Order Sheet of Federal Service Tribunal, Islamabad	A	7
5.	Copy of Order Sheet of Home & TA's Department, Khyber Pakhtunkhwa,	B	8

Deponent


MUHAMMAD IBRAHIM KHAN
Finance Officer District Secretariat,
Batkhela

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.1612(P)CS/2019
Sajjad Hussain son Zahid Hussain, Ex-Sepoy No.4836 Malakand Levies

.....Appellant

VERSUS

1. Secretary Home & TA's Department, Khyber Pakhtunkhwa, Peshawar.
2. Commissioner, Malakand Division at Saidu Sharif, Swat.
3. Deputy Commissioner/Commandant Malakand Levies at Malakand.

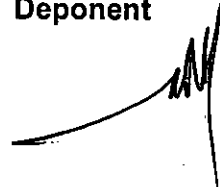
.....Respondents

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORIGINAL ORDER DATED: 27-12-2010 AND REJECTION OF DEPARTMENTAL APPEAL DATED: 29-04-2019

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Deponent



MUHAMMAD IBRAHIM KHAN
Finance Officer District Secretariat,
Batkhela

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.1612 (P)CS/2019

Sajjad Hussain son of Zahid Hussian, Ex-Sepoy NO.4836 Malakand Levies
.....Appellant

-----Versus-----

1. Secretary Home & TA's Department, Khyber Pakhtunkhwa, Peshawar.
 2. Deputy Commissioner/Commandant Malakand Levies.
 3. Commissioner, Malakand Division at Saidu Sharif, Swat.
-Respondents

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORIGINAL ORDER DATED 27-12-2010 AND REJECTION OF DEPARTMENTAL APPEAL DATED 29-04-2019

Para Wise Comments on Behalf of Respondent No.2 are as under:-

Respectfully Sheweth:-

Preliminary objection:-

1. The appellant has got no cause of action or locus standi to submit the instant petition.
2. The appellant is not maintainable in its present form.
3. The appellant has not come with clean hands to this Honorable Court.
4. Due to non-joinder/mis-joinder of necessary party their petition is liable to be dismissed.

Facts:-

1. It is correct. The appellant performed his duties in Malakand Levies.
2. It is incorrect. Brief of the case is as under:-

That on 28-09-2010 vide Roznamcha No.7 of Levy Post Alladand that Seven (7) days leave was granted to the appellant but after expiry of leave, the Sepoy concerned did not attend duty and remained long absent from his duty. On, 20-10-2010, vide No.11151/LC, an explanation was issued to the official concerned but he did not reply. This office issued a notice/reminder to the individual concerned vide No.11911/LC dated 21-12-2010 to submit his reply but he failed to clarify his position/absence from duty. Hence, this office had no option except to terminate him from service.

[Handwritten signature and date 19/12/20]

Hence, he was terminated from service vide this office order No.12025/LC dated 27-12-2010. After termination, the official concerned filed an appeal before the Honorable Commissioner, Malakand Division at Saidu Sharif, Swat on 21-09-2011, on which, the reader to Commissioner, Malakand Division at Saidu Sharif, Swat passed view/comments on the appeal of the appellant, which is reproduced below:-

"This office got no jurisdiction to entertain such like appeals. Home Secretary has been declare as appellant authority for Levies in Khyber Pakhtunkhwa by the Ministry of SAFRON"

Later on, the appellant moved an appeal before the Federal Service Tribunal, Islamabad on 25-05-2017, which is clearly time barred i.e. about 7-Years and 7-Months.

On. 04-03-2019, the Honorable Federal Service Tribunal, Islamabad passed Judgment order and direct the Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar for giving personnel hearing and decide the pending appeal within a period of three (3) months and submit report (Copy of Federal Service Tribunal, Islamabad order as annexure-A).

The Honorable Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar heard the case and gave a chance of personal hearing to the appellant. From perusal of the order of Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar dated 09-04-2019, the appellant give false statement before the Special Secretary Home & TA's Department, Khyber Pakhtunkhwa, Peshawar that he was in his village and looking after his mother, who was seriously ill. The appellant did not produced any documentary proof to this respect. Hence, the appeal was rejected (Copy as annexure-B).

[Handwritten signature]
19/11/2022

As the appellant stated in his appeal submitted before the Commissioner, Malakand Division at Saidu Sharif, Swat that he was in the custody of Taliban in Afghanistan. There is a great contradiction between the personal hearing and filed appeal before the worthy Commissioner, Malakand Division at Saidu Sharif, Swat.

3. No comments.
4. The appellant did not filed his appeal within time but badly time barred i.e. about 7-Years and 7-Months.
5. No comments.
6. It is correct.
7. It is incorrect. Personal hearing chance was given to the appellant by the Honorable. Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar.
8. No comments.
9. It is correct. Personal hearing chance was given to the appellant.
10. It is correct. The appeal was rejected by the appellant authority i.e. Secretary, Home & TA's Department, Khyber Pakhtunkhwa, Peshawar.
11. No comments

Grounds:-

1. No comments.
2. It is incorrect. Malakand Levies Force is a discipline Force and not Civil Servant.
3. It is incorrect. Malakand Levies is a discipline Force and has own Rules and Regulations. Detail of the case stated in facts as per para-2 above (Facts).
4. No comments.
5. No comments.
6. It is incorrect. Action taken as per Rules/L.w.

R. [Signature]
19/7/2022

- 7. It is incorrect. Malakand Levies is a discipline Force.
- 8. No comments.
- 9. No comments.
- 10. No comments.
- 11. No comments.
- 12. No comments.

Pray:-

Keeping in view of above, it is requested that the appeal may kindly be dismissed, please.

DC/Commandant Malakand Levies
Respondent No.2

~~Deputy Commissioner /
Commandant
Malakand Levies~~

~~*[Handwritten signature]*~~

[Handwritten initials]

*Please refer
D.O.*

[Handwritten signature]

19/7/22

*Vetted subject for necessary
connection, attachment of
annexures and affidavits.*

Assistant Advocate General
Khyber Pakhtunkhwa
Services Tribunal Peshawar

[Handwritten signature]
19/7/22

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.1612(P)CS/2019
Sajjad Hussain son Zahid Hussain, Ex-Sepoy No.4836 Malakand Levies.

.....Appellant

VERSUS

1. Secretary Home & TA's Department, Khyber Pakhtunkhwa, Peshawar.
2. Commissioner, Malakand Division at Saidu Sharif, Swat.
3. Deputy Commissioner/Commandant Malakand Levies at Malakand.

.....Respondents

AFFIDAVIT

I, Mr. Muhammad Ibrahim Khan Finance Officer District Secretariat Batkhela do hereby solemnly affirm and declare on oath that the contents of the accompanying Reply on behalf of the Respondent No.2 and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court please.

Deponent



MUHAMMAD IBRAHIM KHAN
Finance Officer District Secretariat,
Batkhela

ATTES TED



19/07/2022

6

PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.1612(P)CS/2019

Zahid Hussain, Ex-Sepoy No.4836 Malakand Levies

.....Appellant

VERSUS

Secretary Home & TA's Department, Khyber Pakhtunkhwa, Peshawar.
Commissioner, Malakand Division at Saidu Sharif, Swat.
Deputy Commissioner/Commandant Malakand Levies at Malakand.

.....Respondents

AUTHORITY:

Mr. Muhammad Ibrahim Finance Officer at Deputy Commissioner Office Malakand at Beshela is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal Peshawar and submit Comments/reply regarding subject case on behalf of the undersigned as Respondent No.3.

Deputy Commissioner/
Commandant
Malakand Levies Malakand

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7
Ammit
in An

Order Sheet
IN THE FEDERAL SERVICE TRIBUNAL, ISLAMABAD
M.Ps. No. 1698 to 1700/2018
In Appeals No. 773 to 775(P)CS/2017

Sajad Hussain & others.....Vs.....DCO/Malakand Levis

04.03.2019

**BEFORE: Raja Hasan Abbas, and
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PRESENT: Mr. Muhammad Shahzad Siddique, Advocate
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Mrs. Farah Naz Awan, Assistant Attorney General
for the respondents alongwith Mr. Muhammad
Ibrahim and Mr. Saqib Khan, S.O Courts as D.Rs. ||

Mr. Saqib Khan, S.O. (Courts) present on behalf of
the respondents states that the issue regarding correction in the
parent age has been resolved. So far as personal hearing is
concerned, the appeals are available and have been received
in the Office of Secretary, Home, & Tribal Affairs, Department
KPK and would be decided in accordance with law.

Let Secretary Home & Tribal Affairs, Department,
KPK, by giving the petitioners personal hearing, decide the
pending departmental appeals, within a period of three weeks
positively. A report be submitted before the next date of
hearing.

Re-fix for 04.04.2019.

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Superintendent
Malakand Malakand

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ATTESTED

Superintendent
Federal Service Tribunal
Islamabad

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MEMBER

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MEMBER

5

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8 Annex B.

IN THE COURT OF SECRETARY HOME
MEMBER PAFKUNJAWA
(APPELLATE AUTHORITY)

APPELLANT: SAJID HUSSAIN S/O ZAHED HUSSAIN EWAS SEPOY
MALAKAND
VERSUS
COMMANDANT LEVIES MALAKAND.

INTRODUCTION:-

The said Sepoy was performing his duty in Malakand Levies at the time of termination he was posted in levy Post Alladand but was found absent from his duty without any prior permission of the competent authority. He was issued an explanation to attend his duty but he remained absent despite repeated reminders he did not attend his duty and was hence terminated from service on 27.12.2010 (reply of DC office in this behalf can be perused vide p-19-23/c..

PROCEEDINGS:-

The applicant was heard on 21/03/2019. According to statement of the applicant, he was absent from duty for which he was terminated from services. He further stated that no proper inquiry was conducted and he was not given the chance of hearing. Furthermore, the said period was the height of talibanization and he was in his village looking after his mother who was seriously ill; He applied to various forums for re-instatement but was left unheard in this regard; he failed to produce any documentary evidence. Feeling aggrieved, he resorted to Federal Service Tribunal which has directed this Department to give him the opportunity of personnel hearing and decide the matter accordingly.

Since the appeal is badly time barred as the appellant was terminated in 2010 therefore, the same may be rejected and a copy of the rejection may be submitted to Federal Service Tribunal Islamabad.

[Signature]
Superintendent
Malakand Levies Malakand

[Signature]
Special Secretary
9/3/19