



09th May, 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

2. Learned counsel for the appellant seeks adjournment as he has not prepared the brief. Adjourned. To come up for arguments on 08.06.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

Kaleem Ullah

16th Dec. 2022

Counsel for the appellant present. Mr. Naseerud Din Shah, Assistant Advocate General for the respondents present. Mrs. Rozina Rehman, learned Member (J) is on leave, therefore, D.B is incomplete. The case is adjourned to 09.03.2023 for arguments before the D.B.

SCANNED
K.P.S.T
Peshawar

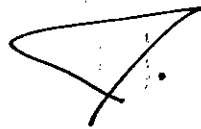

(Fareeha Paul)
Member(E)

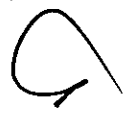
09th March, 2023

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

Learned counsel for the appellant sought time for preparation of arguments. Adjourned. To come up for arguments on 09.05.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
K.P.S.T
Peshawar


(Salah-ud-Din)
Member (J)


(Kalim Arshad Khan)
Chairman

3rd Nov. 2022

01. Counsel for the appellant present. Arguments on restoration application heard.

02. Instant application, submitted on 20.04.2022, is for restoration of Service Appeal No. 177/2018, which was dismissed in default on 11.04.2022. The ground mentioned in the application is that on the relevant day the learned counsel for the appellant was busy in other courts.

03. Considering contention of learned counsel for the appellant and in the interest of justice, the instant appeal is restored to its original number. Notices be issued to the respondents. To come up for arguments on 16.12.2022 before the D.B.

04. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of November, 2022.


(FAREEHA PAUL)
Member(E)


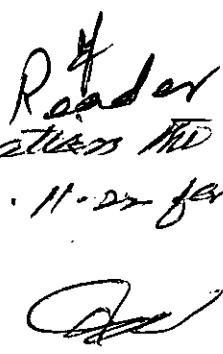

(KALIM ARSHAD KHAN)
Chairman

*Only respondent
No 2 was put
on notice*

Form-A
FORM OF ORDER SHEET

Court of _____

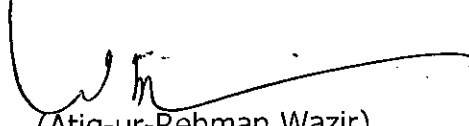
Restoration Application No. 241/2022

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	20.04.2022	<p>The application for restoration of appeal No.177/2018 submitted today by Mr. Taimur Ali Khan may be entered in the relevant register and put up to the Court for proper order please.</p> <div style="text-align: right;">  REGISTRAR </div>
2	<p><i>Noted GK. 26/4/22</i></p> <p><i>2-6-2022</i></p> <p><i>16-8-22</i></p>	<p>This restoration application is entrusted to Single Bench at Peshawar to be put up there on <u>02-06-22</u>. Original file be requisitioned. Notices to the appellant be also issued for the date fixed.</p> <div style="text-align: center;"> <p><i>9</i></p> CHAIRMAN </div> <p><i>Proper DB not available the case is adjourned to 16-8-2022</i></p> <p><i>Due to summer vacations the case is adjourned to 3.11.22 for June.</i></p> <div style="text-align: right;">  Reader </div>

03.01.2022

Counsel for the appellant and Mr. Kabirullah Khattak,
AAG for the respondents present.

Learned counsel for the appellant seeks adjournment
in order to further prepare the brief. Request accorded. To
come up for arguments on 11.04.2022 before the D.B.


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


Chairman


11th April, 2022

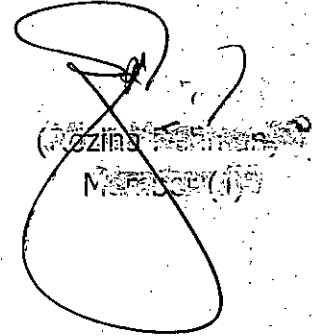
No one is present for appellant. Mr. Kabirullah Khattak,
learned Addl. AG for the respondents present.

2. Case was called time and again but none appeared on
behalf of the appellant till closing hours. Consequently the
present service appeal is dismissed in default.

3. *Pronounced in open court at Peshawar and given
under our hands and seal of the Tribunal this 11th day of
April, 2022.*



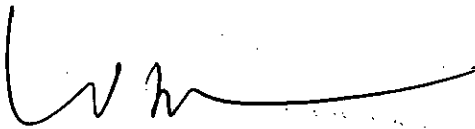

(Kalim Arshad Khan)
Chairman



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

16.06.2021

Mr. Taimur Ali Khan, Advocate, for the appellant present.
Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents present.

Learned counsel for the appellant stated at the bar that the issue of retrospective effect is involved in the instant appeal, regarding which a Larger Bench has already been constituted, therefore, the appeal in hand may be adjourned. Adjourned. To come up for arguments before the D.B on 06.10.2021.


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


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

06.10.2021

Appellant with counsel present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Learned counsel for the appellant seeks adjournment in order to prepare the case. Request is accorded. To come up for arguments on 03.01.2022 before the D.B.



(Mian Muhammad)
Member(Executive)


Chairman

13.10.2020

Learned counsel for the appellant is present. Mr. Kabirullah, Additional Advocate General for respondents are present.

Learned Counsel for the appellant invited attention of the Bench to the impugned order dated 05.08.2016 on the strength of which retrospective effect has been given to the dismissal order of the appellant and since the issue of retrospectivity is pending before the Larger Bench of this august Tribunal constituted for the purpose, therefore, let this appeal be kept pending till decision of the Larger Bench of this Tribunal. File to come up for further proceedings on 23.12.2020 for arguments before D.B.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member(J)

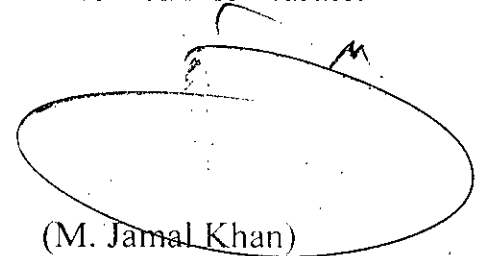
23.12.2020

Counsel for appellant and Mr. Kabirullah Khattak learned Additional Advocate General for respondents present.

The issue of retrospectivity had not been adjudicated so far, therefore, the appeal is adjourned to 12.03.2021 for further proceedings before D.B.



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



(M. Jamal Khan)
Member (J)

12.3.21

D.B is not available, therefore the case is adjourned to 16.6.2021 for the same.



30-4 .2020

Due to COVID19, the case is adjourned to

14/7/2020 for the same as before.

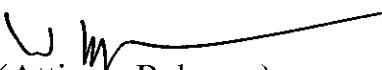

Reader


14.07.2020

Counsel for the appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General alongwith Fayyaz H.C. for the respondents present.

Learned counsel for appellant seeks adjournment. Adjourned to 13.10.2020 before D.B, in order to avail the outcome of cases pending before Larger Bench of this Tribunal.


(Attiq ur Rehman)
Member (E)


(Rozina Rehman)
Member (J)

23.10.2019

Learned counsel for the Appellant present. Mr. Kabirullah Khattak learned Addl. AG alongwith Mr. Fayyaz Shah Head Constable for the respondents present.

Learned counsel for the appellant requests for adjournment due to engagement of learned senior counsel for the appellant before the Honourable High Court today.

Adjourned to 27.12.2019 for arguments before D.B.



Member


Chairman

27.12.2019

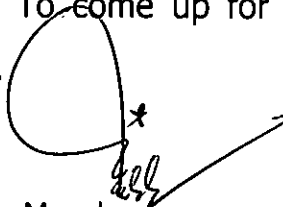
Counsel for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Fayaz, H.C for respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 04.03.2020 before D.B.


Member


Member

04.03.2020

Counsel for the appellant present. Addl: AG alongwith Mr. Fayaz, HC for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 30.04.2020 before D.B.



Member


Member

25.03.2019

Appellant alongwith his counsel and Mr. Kabirullah Khattak, Additional AG for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned to 11.06.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

11.06.2019

Appellant alongwith counsel and Mr. Ziaullah, DDA alongwith Muhammad Fayaz, H.C for the respondents present.

Due to paucity of time hearing is adjourned to 31.07.2019 before the D.B. To come up alongwith other appeals involving proposition regarding award of retrospective penalty to a civil servant.

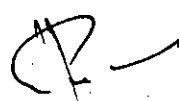

Member


Chairman

31.07.2019


Learned counsel for the appellant and Mr. Usman Ghani learned District Attorney alongwith Fiaz H.C present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 23.10.2019 before D.B.



Member


Member

09.10.2018

Counsel for the appellant present. Mr. Muhammad Fayaz, H.C alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Counsel for the appellant seeks adjournment. Granted. Case to come up for arguments on 23.11.2018 before D.B.



(Ahmad Hassan)
Member



(M. Amin Khan Kundi)
Member

23.11.2018

Appellant in person and Addl. AG for the respondents present.


Former seek adjournment on the ground of non-availability of his learned counsel who has proceeded to Islamabad. Adjourned to 21.01.2019 for arguments before D.B.


Member


Chairman

21.01.2019

Appellant in person present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Appellant requested for adjournment on the ground that his counsel is not available today due to strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 25.03.2019 for arguments before D.B.


(HUSSAIN SHAH)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

Service Appeal No: 177/2018

02.05.2018

Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG for the respondents present. The Tribunal is non-functional due to retirement of our Hon'ble Chairman. Therefore, the case is adjourned. To come up for same on 25.06.2018.


Reader


25.06.2018

Appellant absent. However his counsel present. Mr. Muhammad Jan, DDA alongwith Mr. Fayaz Khan, H.C for the respondents present. Written reply submitted on behalf of respondents which are placed on file. To come for rejoinder, if any and arguments on 15.08.2018 before D.B.


Chairman

15.08.2018

Clerk to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney present. Due to general strike of the bar, the case is adjourned. To come up on 09.10.2018 before D.B.


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

26.02.2018

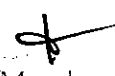
Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that on the allegations of absence from duty disciplinary proceedings were initiated and upon conclusion major penalty of dismissal from service with retrospective effect was awarded vide impugned order dated 05.08.2016. Feeling aggrieved he filed departmental on 21.09.2017 which was rejected on 13.12.2017. Thereafter he filed review petition before IGP, Khyber Pakhtunkhwa copy of which not available on file but was rejected on 05.01.2018. Reliance was placed on 1985 SCMR 1178. Learned counsel for the appellant confronted on the point that the present appeal was time barred was unable to give a plausible explanation.

Points urged need consideration. Admit, subject to limitation. Appellant is directed to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments for 16.04.2018 before S.B.

Appellant Deposited
Security & Process Fee


(AHMAD HASSAN)
MEMBER



16.04.2018 Appellant alongwith counsel and Addl: AG for the respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on **02.05.2018** before S.B.


Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 177/2018


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08/02/2018	<p style="text-align: center;">The appeal of Mr. Sabir Shah resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	08/02/18.	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26/02/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Sabir Shah Ex-Constable no. 363 Police Station Tariq Abad Nowshera received today i.e. on 29.01.2018 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- Copy of departmental appeal and revision petition mentioned in the memo of appeal are not attached with the appeal which may be placed on it.
- 3- Annexure-C of the appeal is illegible which may be replaced by legible/better one.

No. 215 /S.T,


Dt. 29/01 /2018


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv. Pesh.

Respected Sir,

- 1- copies of charge sheet, show cause notice and enquiry report was not communicated to the appellant
- 2- copy of departmental appeal is attached as Annexure D.
- 3- Renewed ✓

Resubmitted
after compliance


BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 177 /2018

Sabir Shah

V/S

Police Deptt:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal	-----	1-3
2.	Copy of medical prescription	A	4-5
3.	Copy of show cause notice	B	6
4.	Copy dismissal order	C	7
5.	Copy of departmental appeal	D	8
6.	Copy of rejection order	E	9
7.	Copy of rejection of revision	F	10
8.	Vakalat Nama	-----	11

APPELLANT

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,


&
ASAD MAHMOOD
(ADVOCATE HIGH COURT)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 77/2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 151

Dated 29-1-2018

Sabir Shah, Ex- Constable, No.363,
Police Station Tariq Abad, Nowshera.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Regional Police officer, Mardan.
3. The District Police Officer, Nowshera.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 05.01.2018, WHEREBY THE REVISION OF THE APPELLANT UNDER RULE 11-A OF POLICE RULES 1975 AMENDED IN 2014 FOR REINSTATEMENT HAS BEEN REJECTED FOR NO GOOD GROUND AND AGAINST THE ORDER DATED 13.12.2017, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS ALSO BEEN REJECTED AGAINST THE ORDER DATED 05.08.2016 FOR NO GOOD GROUND.

Filed to-day

Registrar

29/1/18

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 05.01.2018, 13.12.2017 AND 05.08.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO 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.

Re-submitted to -day
and filed.

Registrar

8/2/18

RESPECTFULLY SHEWETH:

FACTS:

1. That the appellant joined the police force in the year 2011 and completed all his due training etc and also have good service record throughout.
2. That the appellant became a patient of limber spine due to which he rushed different hospitals and was unable to performed his duty and was remained absent from his duty. **Copy of medical reports is attached as Annexure-A)**
3. That one sided inquiry was conducted against the appellant and the basis of that inquiry, the show cause notice was served to the appellant, but as the appellant was under treatment therefore he could not reply to show cause notice. **(Copy of show cause notice is attached as Annexure-B)**
4. That on the basis above mentioned reason the appellant was dismissed from service from the date of his absence under police rules 1975 vide order dated 05.08.2016. **(Copy of order dated 05.08.2016 is attached as Annexure-C)**
5. That against the impugned dismissal order, the appellant filed departmental appeal which was rejected on 13.12.2017, then the appellant filed revision under rule 11-A of the police rules 1975 amended in 2014, but the same was also rejected on 05.01.2018 however the appellant did not keep the copy of revision which may be requisite from the department. **(Copy of departmental appeal rejection order, and rejection of revision are attached as Annexure-D, E&F)**
6. That now the appellant come to this august tribunal on the following grounds amongst others.

GROUND:

- A) That the impugned order dated 05.01.2018, 13.12.2017 and 05.08.2016 are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has been condemned unheard and has not been treated according to law and rules.

- 6
- C) That one sided inquiry was conducted against the appellant and the appellant was dismissed on the basis of one sided inquiry, which is not permissible in law. Even the inquiry report was handed over to the appellant, therefore, the impugned order is liable to be set aside on this ground alone.
- D) That no charge sheet was served to the appellant before passing the impugned order of discharge from service, which is the violation of law and rules.
- E) That the penalty of dismissal from service has been imposed upon the appellant from the date of absence i.e with retrospective and as per Superior Courts judgments executive/departmental authority has no power to pass orders with retrospective effect and such like order are void orders.
- F) That the penalty of dismissal from service is very harsh which is passed in violation of law and, therefore, the same is not sustainable in the eyes of law.
- G) That the appellant did not intentionally absent from his duties but due to illness he was unable to perform his and was compel to remain absent from his duty.
- H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

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


APPELLANT
Sabir Shah

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,


(ASAD MAHMOOD)
ADVOCATE HIGH COURT

OFFICE OF THE DISTRICT POLICE OFFICER, NOWSHERA

SHOW CAUSE NOTICE

B (6)

(Under Rule 5 (3) KPK Police Rules, 1975)

1. That you FC Sabir Ali No.363 while posted at Inv: Wing PS, Nizampur have rendered yourself liable to be proceeded under Rule 5 (3) of the Khyber Pakhtunkhwa Police Rules 1975 for following misconduct:-
Transferred to Police Post Tariq Abad but did not report at new place of posting and remained absent from duty without any leave/permission of the competent authority vide D.D.No.21 dated 01.04.2016 PS, Nizampur till date.
2. That by reasons of above, as sufficient material is placed before the undersigned; therefore it is decided to proceed against you in general Police proceeding without aid of enquiry officer
3. That the misconduct on your part is prejudicial to good order of discipline in the Police force;
4. That your retention in the Police force will amount to encourage inefficiency and unbecoming of good Police officers;
5. That by taking cognizance of the matter under enquiry, the undersigned as competent authority under the said rules, proposes stern action against you by awarding one or more of the kind punishments as provided in the rules.
6. You are, therefore, called upon to show cause as to why you should not be dealt strictly in accordance with the Khyber Pakhtunkhwa Police Rules, 1975 for the misconduct referred to above.
7. You should submit reply to this show cause notice within 07 days of the receipt of the notice failing which an ex-parte action shall be taken against you.
8. You are further directed to inform the undersigned that you wish to be heard in person or not.
9. Grounds of action are also enclosed with this notice.

Received by _____

Dated: ___/___/2016


(Wahid Mehmood)PSP
District Police Officer,
Nowshera.

ATTESTED


142/PA
28-4-2016

C 7

POLICE DEPARTMENT

NOWSHERA DISTRICT

ORDER

This order will disposed off a departmental enquiry under Police Rules-1975 initiated against Constable Sabir No. 363, under the allegations that while posted at Investigation Wing, Police Station Nizampur was transferred to Police Post Tariq Abad but he failed to report at his new place of posting and thus remained absent from duty without any leave/permission of the competent authority vide DD report No. 21 dated 01.04.2016 and is still absent.

In this connection, he was served with a Show Cause Notice on 16.05.2016, issued vide this office Enrst: No. 142/PA, dated 22.04.2016. He was bound to submit his reply within stipulated time, but failed, therefore, he was proceeded against departmentally through Mr. Bashir Dad Khan the then DSP Hqrs: Nowshera and on his transfer entrusted to Hayatullah Khan, DSP Hqrs: Nowshera, who after completing necessary process submitted his finding report vide his office No.1598/St: dated 18.07.2016, wherein he reported that he is still absent and seems that he is no more interested in Police Job and recommended for major punishment.

In the light of recommendations of Enquiry Officer, he was served with Final Show Cause Notice through his home Police Station, Pabbi on 27.07.2016. He was bound to submit his reply within the stipulated time, but failed once again.

The undersigned agreed with the recommendations of the inquiry Officer and Constable Sabir No. 363 is hereby awarded Major punishment of dismissal from service from the date of his absence, in exercise of the powers vested to me under police Rules, 1975.

OB. 1103
Dated 5/8/2016.

(WAHID MEHMOOD)
District Police Officer
Nowshera.

No. 5108-11 /PA, dated Nowshera, the 05/08 /2016.
Copy for information and necessary action to the:-

1. Pay Officer.
2. E.C.
3. OHC.
4. FMC with relevant papers (10 sheets).

284/PA

20-7-2016

✓

ATTESTED
Ah



4

ORDER

This order will dispose off a departmental enquiry under Police Rules 1975 initiated against Constable Sabir No.363, under the allegations trial while posted at Investigation Wing, Police Station Nizampur was transferred to Police Post Tariq Abad but he failed to report at his new place of posting and thus remained absent from duty without any leave/permission of the competent authority vide DD report No. 21 dated 01.04.2016 and is still absent.

In this connection, he was served with a Show Cause Notice on 16.05.2016, issued vide this office Endst: No. 142/PA dated 22.04.2016. He was bound to submit his reply within stipulated time, but failed, therefore, he was proceeded against departmentally through Mr. Bashir Dad Khan the then DSP Hqrs: Nowshera and on his transfer entrusted to Hayatullah Khan, DSP Hqrs: Nowshera, who after completing necessary process submitted his finding report vide his office No.1598/St: dated 18.07.2016, wherein he reported that he is still absent and seems that he is no more interested in Police Job and recommended for major punishment.

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The undersigned agreed with the recommendations of the inquiry Officer and Constable Sabir No. 363 is hereby awarded Major punishment of dismissal from service from the date of his absence, in exercise of the powers vested to me under Police Rules, 1975.

OB 1103

Dated 5/8/2016

(WAHID MEHMOOD)
District Police Officer
Nowshera

No. 5108-11 /PA dated Nowshera, the 05/08/2016

Copy for information and necessary action to the:

1. Pay Officer
2. E.C
3. ONC
4. FMC with relevant paper (10 sheets)

انٹرنیٹ جہان ڈی ای جی صحابہ سردان

Ⓧ D Ⓧ

رفرواست بھدار، بمال

2030
21-09-12

جناب عالی

گزارش کی جاتی ہے کہ سائل محمد بھدا سے 2011 کا بھرتہ ہے اور محکمہ

بھدا میں نیپاٹ فوش ایلووی سے ڈیوٹ سرانجام دے رہا تھا۔

یہ کہ سائل محمد بھدا بوجہ بھجوان غیر حاضر رہا جس کی نسبت ڈی ای ٹو شپدرہ بھدار

نے محمد بھدا سے پیرخاست کیا۔ یہ کہ سائل کو کوئی دوسرہ ذریعہ معاش نہیں ہے اور

بھجوان کی وجہ سے کافی صعروض ہو چکا ہے اور والدین بھی پریشان ہے

مڈیکل ریفیصلٹ وغیرہ بھراہ لے ہے۔

بھجوان بھجوان سے ذریعہ رفرسٹ اسدرا کے لئے کو عمل کرنے کا حکم صادر فرمادو

سائل اور سائل داد الدین تارستان کا پور ہے۔

Legal
FOR COMMENTS

363
عائزہ بلبل
خلع نوشہ

ATTESTED

2012/9/21

No. 7159/ESict: 21/09/12
DPO/Non Sherg
For Comments please.

279

Office Supdt:
For Regional Police Officer
Marran

E (9)

ORDER.

This order will dispose-off the appeal preferred by Ex- Constable Sabir Shah No. 363 of Nowshera District Police against the order of District Police Officer, Nowshera, wherein he was awarded Major punishment of dismissal from service vide OB No. 1103 dated 05.08.2016.

Brief facts of the case are that the appellant while posted at Investigation Wing, Police Station Nizampur was transferred to Police Post Tariq Abad but he failed to report at his new place of posting and thus he remained absent from duty without any leave/permission of the competent authority with effect from 01.04.2016 till the date of dismissal. He was served with Show Cause Notice also bound to submit his reply but he failed. Consequently he was proceeded against departmentally through DSP/Hqrs: Nowshera and on his transfer entrusted to Hayat Ullah Khan the then DSP/Hqrs: Nowshera. The Enquiry Officer completed necessary process submitted his findings report to District Police Officer, Nowshera and recommended him for Major Punishment. Therefore, awarded him Major Punishment of dismissal from service.

He was again called in orderly room held in this office on 06.12.2017 and heard him in person; but he did not produce any substantial evidence about his absence. Therefore, I find no grounds to intervene the order passed by the District Police Officer, Nowshera. Appeal is rejected.

ORDER ANNOUNCED.

o/c (Muhammad Atam Shinwari) PSP
Regional Police Officer,
Mardan

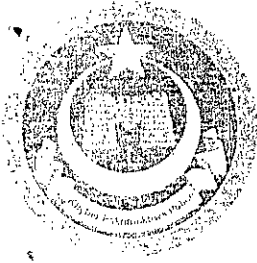
No. 8865 /ES, Dated Mardan the 13-12 /2017.

Copy to District Police Officer, Nowshera for information and necessary action w/r to his office Memo: No. 7752/PA dated 02.10.2017. The Service Record is returned herewith.

(*****)

ATTESTED

[Signature]



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
CENTRAL POLICE OFFICE,
PESHAWAR.

F 10

No. S/ 64 /18, dated Peshawar the 05/01/2018.

To : The Regional Police Officer,
Mardan Region, Mardan.

Subject: APPEAL (EX-FC SABIR SHAH NO. 363)

Memo :

Ex-Constable Sabir Shah No. 363 of District Police Nowshera had submitted appeal to the Worthy Inspector General of Police, Khyber Pakhtunkhwa, Peshawar for reinstatement into service. His appeal was processed / examined at Central Police Office, Peshawar and filed by the competent authority being badly time barred for about 01 year and 03 months.

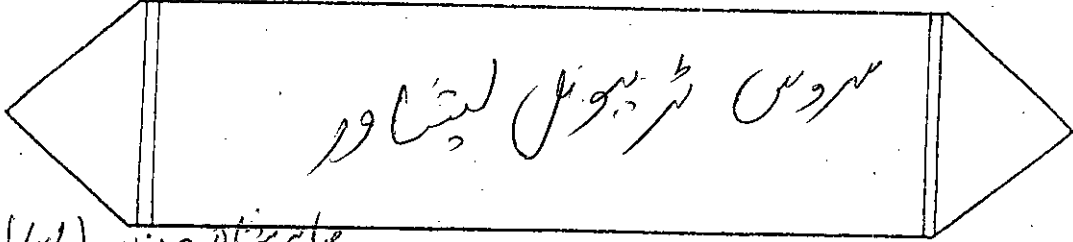
The applicant may please be informed accordingly.

2/11/18

(SYED ZIA ALI SHAH),
Registrar,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

ATTESTED

بعد الت



صاحبزادہ شاہ 2، منجانب (ایڈوائسٹ)
صاحبزادہ جننام حکیم پورس

موزخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکل کارروائی متعلقہ
آن مقام لیٹاور کیلئے ڈپٹی کمشنر (خان) اور اسد محمود ایڈوائسٹ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار دیا گیا۔ نیز
دیکل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور
بسورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی براندگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو کبھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
مذکور کریں۔ لہذا ادکالت نامہ لکھ دیا کہ سند ہے۔

المرقوم _____ ماہ _____ 20

_____ واہ العب _____

کے لئے منظور ہے۔

بمقام

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 177/2018

Sabir Shah Ex-Constable No. 363,
Police Station, Tariq Abad, Nowshera.

.....Appellant

V E R S U S

1. The Provincial Police Officer, khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan-I, Mardan.
3. The District Police Officer, Nowshera.

.....Respondents

REPLY ON BEHALF OF RESPONDENTS No. 1,2&3

Respectfully Sheweth: -

PRELIMINARY OBJECTIONS

1. That the appellant has got no cause of action or locus standi.
2. That the appeal is badly time-barred.
3. That the appellant has been estopped by his own conduct to file the appeal.
4. That the appeal is not maintainable in its present form.
5. That the appellant has not come to the Honourable Tribunal with clean hands.


On Facts

1. Para is correct to the extent of enlistment in Police Department.
2. Para is for the appellant to prove.
3. Incorrect. That he was served with show cause notice on 16-05-2016 vide office No. 142/PA, dated 22-04-2016 but he failed to submit his reply within stipulated time i.e 07 days. (Copy of Show Cause Notice is Annexure "A").
4. Para is incorrect. Regarding the prolonged and unauthorized leave or permission, a proper departmental enquiry was conducted and after fulfillment of all legal and codal formalities, the appellant was dismissed from service. (Copy of enquiry is Annexure "B").
5. Correct to the extent of filing departmental appeal which was rejected on 13-12-2017 by respondent No. 02, later on filed a revision application to respondent No. 01 which was also filed with the reasons being badly time barred 01 year and 03 months and the rest of the para is incorrect.
6. That the appeal of the appellant is liable to be dismissed on the following grounds: -

GROUNDS

- A. Incorrect. The orders of the respondents are in accordance with law, facts and norms of justice.
- B. Incorrect. That the appellant remained absent for a long period without any justification and it reflected that he was no more interested in Police job and later on he was called by respondent No. 02 in Orderly Room held in office on 06-12-2017 and heard him in person but he did not produce any substantial evidence about his absent. Prior to this he had been called by the enquiry officer as well as by respondent no 03 but he did not bother to appear before them.
- C. Incorrect. The appellant was contacted time and again by different sources but he failed to come/attend the office of enquiry officer.
- D. Incorrect. The appellant was served with the Final Show Cause Notice on 18-07-2016 vide No. 284/PA and the back of the said notice, the appellant endorsed his twice signatures CNIC and mobile phone number being a part and parcel of law.
- E. Incorrect. The penalty of dismissed from service does commensurate with the misconduct of appellant.
- F. Incorrect. The penalty of dismissal from service is in accordance with law.
- G. Incorrect. That the appellant could not produce any cogent/reasonable evidence regarding his alleged illness.
- H. That the respondents will also urge more grounds at the time of arguments with the permission of this Honourable Tribunal.

It is, therefore, most humbly prayed that on acceptance of above submissions the appeal of the appellant may very kindly be dismissed with cost.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No.01


Regional Police Officer,
Mardan Region-I, Mardan
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No.03

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR

Service Appeal No. 177/2018

Sabir Shah Ex-Constable No. 363,
Police Station, Tariq Abad, Nowshera.

.....Appellant

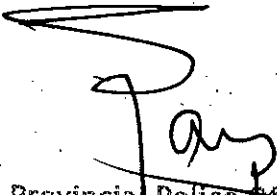
V E R S U S


1. The Provincial Police Officer, khyber Pakhtunkhwa, Peshawar.
2. The Regional Police Officer, Mardan-I, Mardan.
3. The District Police Officer, Nowshera.

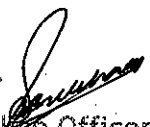
.....Respondents

AFFIDAVIT

We the respondents No. 1, 2 & 3 do hereby solemnly affirm and declare on Oath that the contents of reply to the appeal are true and correct to the best of our knowledge and belief and nothing has been concealed from the Honourable Tribunal.


Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
Respondent No.01


Regional Police Officer,
Mardan Region-I, Mardan
Respondent No. 02


District Police Officer,
Nowshera.
Respondent No.03

A

FINAL SHOW CAUSE NOTICE

Whereas, you **Constable Sabir Ali No.363**, while posted at **Investigation Wing PS, Nizampur** was transferred to PP Tariq Abad, but you do not report at your new place of posting and remained absent vide DD report No. 21 dated 01.04.2016. On account of which, you were served with a Show Cause Notice on 16.05.2016, issued vide this office No. 142/PA, dated 22.04.2016. You were bound to submit reply within stipulated time, but neither you, submit reply nor reported for duty.

To ascertain facts, you were proceeded against departmental through Mr. Bashir Dad Khan, the then DSP Hqrs: Nowshera and on his transfer, entrusted to Mr. Hayatullah Khan DSP Hqrs: Nowshera, who, after fulfillment of legal formalities, submitted his finding report to undersigned vide his office No. 1598/ST, dated 18.07.2016, suggesting therein that constable Sabir Ali No. 363 is still absent & no more interested in Police service, hence, recommended for Major punishment

Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4(b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence, I, Wahid Mehmood, PSP, District Police Officer Nowshera, in exercise of the powers vested in me under Rules 5(3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you to Show Cause Finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach this office within 07 days of the receipt of this notice, failing which; it will be presumed that you have no defense to offer.

You are liberty to appear for personal hearing before the undersigned.

Dismissed from service
5/8/16
(Wahid Mehmood) PSP
District Police Officer,
Nowshera.

No. 284 /PA,

Dated 18.07 /2016.

Copy to STo Pabbi with the
 direction to serve this notice (original
 up a cassette Sabir Ali NO. 363
 S/O rman (خان) Street
 P. S Pabbi or his close relative
 and duplicate copy of same
 duly signed be returned to this
 office within (03) days for
 further needful action.

صاحب شاہ ولی خان
 0333-9206858

17201-2448312-1
 0315-9872378

363

صاحب شاہ ولی خان

27/16

27/16

re B

DEPARTMENTAL ENQUIRY AGAINST CONSTABLE SABIR ALI NO.363

ALLEGATIONS:

Constable Sabir Ali. No.363 while posted at Inv; wing PS Nizampur transferred to PP Tariq Abad but did not report at his new place of posting and remained absent from duty without any leave/permission of the competent authority vide DD No.21 dated 01-04-2016 PS Nizampur. On account of which he was served with a show cause notice on 16-05-2016, issued vide DPO office No.142/PA dated 22-04-2016. He was bound to submit his reply within stipulated time of 07 days, as envisaged in Rules but he failed.

For the purpose to conduct departmental enquiry against him, Mr Bashir Dad the then DSP/HQr Nowshera was nominated as enquiry officer and on his transfer the subject enquiry was entrusted to undersigned.

PROCEEDINGS:

The defaulter official was contacted time and again through different sources in order to serve the charge sheet upon him, but he did not bother to come/ attend the office and to collect his Charge Sheet/Statement of Allegations and reportedly absent from 01-04-2016 till date.

Furthermore, the statement of Muharir PS Kalan was also recorded which reveals that Constable Sabir Ali No.363 was transferred from PS Nizampur to PP Tariq Abad Vide DD No.21 dated 01-04-2016 but he did not report there and remained absent from duty vide DD NO.31 dated 01-04-2016 (DD attached) PS Kalan and is still absent.

Moreover, his service record was also checked, which reveals that he has been enlisted in Police department on 20-03-2011 and earned 5 bad entries with no good entry during his short service which shows his disinterest in Police Service.

FINDING:

In view of above and his prolong absence, the Enquiry Officer has reached to the conclusion that delinquent official Sabir Ali No.363 is being absent from 01-04-2016 and has not reported his arrival to his new place of posting till date which transpired that he is no more interested in Police service, hence recommended for major punishment, if so agreed.

No. 1598 / S.C.N.
Dated 18/07/2016.

Final
SCN
Dismissal

(Signature)
(HAYAT ULLAH)
DSP/HQrs: Nowshera

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 177/2018

Sabir Shah

Vs

Police Department

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1to 5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Admitted correct hence no comments.
- 2 The appellant annexed medical report as Annexure-A which is the proof of his illness.
- 3 First portion of Para-3 was not replied by the respondent which shows that first portion of Para-3 is correct. While the rest of Para is incorrect as the appellant was under treatment, therefore, he could not reply to the Show Cause Notice.
- 4 Incorrect. The appellant was ill due to which he was unable to perform his duty and one sided inquiry was conducted against the appellant and was dismissed on the basis of that one sided inquiry, which is not permissible under the law.
- 5 Admitted correct that the departmental appeal and the revision of the appellant were rejected, but without any solid reason.
- 6 Incorrect. The appeal of the appellant is liable to be accept on the following grounds.



GROUND:

- A) Incorrect. The orders of respondent are not accordance with law and fact, norms of justice and material on record, therefore, not tenable and liable to be set aside.
- B) Incorrect. The appellant was ill due to which he was unable to perform his duty and was compel to remain absent from his duty. Moreover one sided inquiry was conducted against the appellant, which is not permissible under the law.
- C) Incorrect. While Para-C of the appeal is correct.
- D) Not replied according to para-D of the appeal. Moreover the Para-D of the appeal is correct.
- E) Not replied according Para-E of the appeal. Moreover the Para-E of the appeal is correct.
- F) Incorrect. While Para-F of the appellant is correct.
- G) Incorrect. The medical certificate of the illness of the appellant is annexed with the appeal which is the proof of his illness.
- H) Legal.

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

Through:-

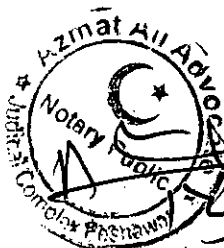

APPELLANT


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
&

(ASAD MAHMOOD)
ADVOCATE HIGH COURT

AFFIDAVIT

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

ATTESTED




DEPONENT

8-218

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

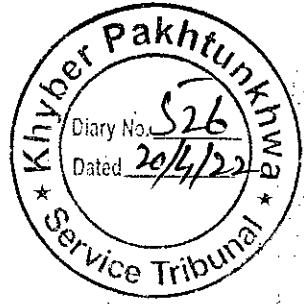
Service Appeal No. 177/2018

Restoration Application no. 241/2022

Sabir Shah

V/S

Police Deptt:



.....
APPLICATION FOR RESTORATION OF INSTANT
APPEAL WHICH WAS DISMISSED IN DEFAULT ON
11.04.2022.

.....
RESPECTFULLY SHEWETH:

1. That the instant appeal was fixed on 11.04.2022 in arguments before this Honourable august Service Tribunal.
2. That the counsel for the appellant was busy in other court at the time of the calling of the case due to which he was unable to appear before this august Tribunal at the time of the calling of the case on 11.04.2022 and the instant appeal was dismissed in default due to non appearance on behalf of the appellant. **(Copy of order dated sheet dated 11.04.2022 is attached as Annexure-A)**
3. That the application is within time for restoration of instant appeal and it is interest of justice to decide the instant appeal on merit rather to be dismissed in default.

It is, therefore, most humbly prayed that on acceptance of this application, the instant appeal may kindly be restored to decide the case on merit to meet the ends of justice.

[Signature]
APPELLANT

THROUGH:

[Signature]
TAIMUR ALI KHAN
ADVOCATE HIGH COURT

AFFIDAVIT

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

[Signature]
DEPONENT



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR



Khyber Pakhtunkhwa
Service Tribunal

Diary No. 151

Dated 29-1-2018

APPEAL NO. 177/2018

Sabir Shah, Ex- Constable, No.363,
Police Station Tariq Abad, Nowshera.

(APPELLANT)

VERSUS

1. The Provincial Police Officer, KPK, Peshawar.
2. The Regional Police officer, Mardan.
3. The District Police Officer, Nowshera.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 05.01.2018, WHEREBY THE REVISION OF THE APPELLANT UNDER RULE 11-A OF POLICE RULES 1975 AMENDED IN 2014 FOR REINSTATEMENT HAS BEEN REJECTED FOR NO GOOD GROUND AND AGAINST THE ORDER DATED 13.12.2017, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS ALSO BEEN REJECTED AGAINST THE ORDER DATED 05.08.2016 FOR NO GOOD GROUND.

Filed to-day

Registrar

29/1/18

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 05.01.2018, 13.12.2017 AND 05.08.2016 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO 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.

8/2/18

Certified to be true copy

Registrar
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Appeal No. 177/18
Sabir Shah vs Govt



03.01.2022

Counsel for the appellant and Mr. Kabirullah Khattak,
AAG for the respondents present.

Learned counsel for the appellant seeks adjournment
in order to further prepare the brief. Request accorded. To
come up for arguments on 11.04.2022 before the D.B.

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

Chairman

11th April, 2022

No one is present for appellant. Mr. Kabirullah Khattak,
learned Addl. AG for the respondents present.

2. Case was called time and again but none appeared on
behalf of the appellant till closing hours. Consequently the
present service appeal is dismissed in default.

3. *Pronounced in open court at Peshawar and given
under our hands and seal of the Tribunal this 11th day of
April, 2022.*

Certified to be true copy.

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(Kalim Arshad Khan)
Chairman

Date of Presentation of Application 18/4/22
Number of Words 800
Copying Fee 10/-
Urgent _____
Total 10/-
Name of Copyist _____
Date of Completion of Copy 18/4/22
Date of Delivery of Copy 18/4/22

(Rozina Rehman)
Member(J)