

26.04.2023

Appellant present through counsel.

Muhammad Jan, learned District Attorney for respondents present.

Learned Member Executive (Mr. Muhammad Akbar Khan) is on leave, therefore, case is adjourned. To come up for arguments on 26.06.2023 before D.B. Parcha Peshi given to the parties.



(Rozina Rehman)  
Member (J)

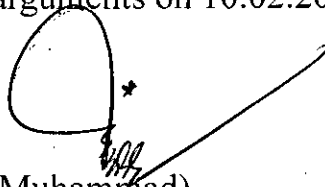
\*Mutazem Shah\*

SCANNED  
K-3T  
Peshawar

09.01.2023

Learned counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested that similar nature service appeal has been fixed for arguments on 10.02.2023, therefore, the appeal in hand may also be fixed on the said date. Adjourned. To come up for arguments on 10.02.2023 before the D.B.



(Mian Muhammad)  
Member (E)



(Salah-ud-Din)  
Member (J)

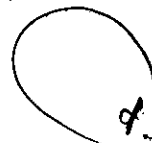
10.02.2023

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

Learned counsel for the appellant requested for adjournment in order to further prepare the brief. Granted. To come up for arguments on 26.04.2023 before the D.B.



(FAREEHA PAUL)  
Member (E)



(ROZINA REHMAN)  
Member (J)

SCANNED  
KPST  
Peshawar

SCANNED  
KPST  
Peshawar

19<sup>th</sup> Oct, 2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. To come up for arguments on 10.11.2022 before D.B.

SCANNED  
KPST  
Peshawar



(Fareeha Paul)  
Member(Executive)



(Kalim Arshad Khan)  
Chairman

10.11.2022


Counsel for the appellant present.

Naseer Ud Din Shah, learned Additional Advocate General for respondents present.

Former requested for adjournment on the ground that he has not made preparation of the case. Adjourned. To come up for arguments on 09.01.2022 before D.B



(Fareeha Paul)  
Member (E)



(Rozina Rehman)  
Member (J)

01.06.2022

Learned counsel for the petitioner present.

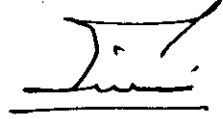
*reply as well as*

Notice be issued to the respondents for arguments on restoration application before the D.B on 25.07.2022.

SCANNED  
KFST  
Peshawar



(Mian Muhammad)  
Member (E)

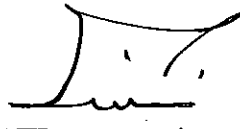


(Salah-ud-Din)  
Member (J)

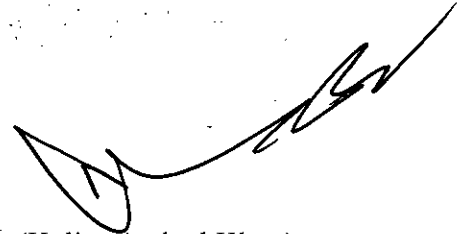
25<sup>th</sup> July 2022

Counsel for the petitioner present. Arguments on application for restoration of appeal heard and case file perused. Through instant petition the petitioner has prayed for setting aside order dated 15.10.2021 vide which the appeal of the present petitioner was dismissed in default for non-prosecution.

Since the instant application has been filed within time, therefore, the appeal be restored and registered on old number be fixed for its previous proceedings on 19.10.2022 before D.B.



(Salah Ud Din)  
Member(Judicial)






(Kalim Arshad Khan)  
Chairman

# Form-A

## FORM OF ORDER SHEET

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

Appeals Restoration Application No. 319/2021

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	04.11.2021	<p>The application for restoration of appeal no. 912/2019 submitted by Uzma Syed Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	14.02.2022	<p>This restoration application is entrusted to <del>D</del> Bench to be put up there on <u>14/02/2022</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 01.06.2022 for the same as before.</p> <p style="text-align: right;"> Reader</p>

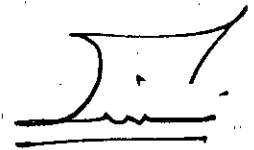
26.07.2021

Miss. Uzma Syed, Advocate, for the appellant present. Mr. Javed Ullah, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that she has not gone through the record. Adjourned. To come up for arguments before the D.B. on 15.10.2021.



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



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

15.10.2021

Nemo for appellant.

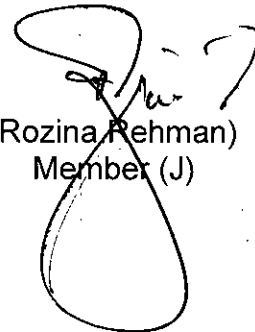
Kabir Ullah Khattak learned Additional Advocate General alongwith Tahir Muhammad A.S.I for respondents present.

Case was called time and again but neither appellant nor his counsel appeared. Consequently, instant service appeal is dismissed in default for non-prosecution. No order as to costs. File be consigned to the record room.

Announced  
15.10.2021



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



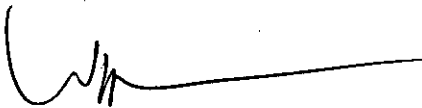
(Rozina Rehman)  
Member (J)

02.12.2020

Counsel for appellant present.

Kabirullah Khattak learned Additional Advocate General alongwith Noweshrwan Inspector for respondents present.

Former requests for adjournment; granted. To come up for arguments on 10.02.2021 before D.B



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

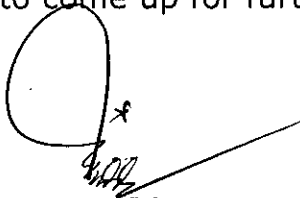


(Rozina Rehman)  
Member (J)

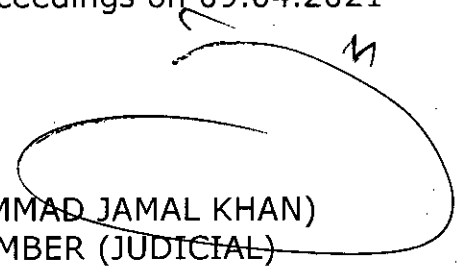
10.02.2021

Mr. Shahzullah, Advocate, for appellant is present. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Nowsherwan, Inspector (Legal), for the respondents are also present.

Irrespective of other issue involved in the instant lis one of the issue pertains by giving effect to the impugned order retrospectively which is pending adjudication before Larger Bench of this Tribunal constituted for the purpose, therefore, unless the issue is adjudicated proceedings are adjourned in the instant lis. File to come up for further proceedings on 09.04.2021 before S.B.



(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)



(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

9.4.21

*Due to COVID-19, the case is adjourned to 26.7-2021 for the hearing.*



15-5 .2020

07/8

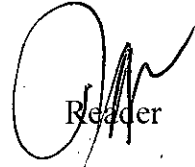
Due to COVID19, the case is adjourned to  
07/8/2020 for the same as before.



Reader

07.08.2020

Due to summer vacation case to come up for the same on  
08.10.2020 before D.B.




Reader

08.10.2020


Counsel for appellant present.

Mr. Kabir Ullah Khattak learned Additional Advocate General  
alongwith Sher Ali S.I for respondents present.

Former requests for adjournment. Adjourned. To come up  
for arguments on 02.12.2020 before D.B.



(Atiqur Rehman Wazir)  
Member (E)



(Rozina Rehman)  
Member (J)



Service Appeal No. 912/2019

23.01.2020

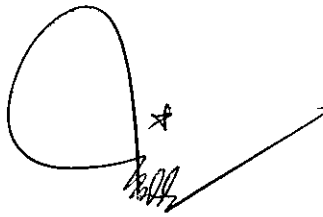
Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG for the respondents present. Adjourned to 16.03.2020 for rejoinder and arguments before D.B.

  
(Hussain Shah)  
Member

  
(M. Amin Khan Kundi)  
Member

16.03.2020

Clerk to counsel for the appellant present. Addl: AG alongwith Mr. Nowsherwan, SI for respondents present. Due to general strike on the call of Peshawar Bar Council, the instant case is adjourned. To come up for arguments on 15.05.2020 before D.B.

  
(MAIN MUHAMMAD)  
MEMBER

  
(M.AMIN KHAN KUNDI)  
MEMBER

27.08.2019

Counsel for the appellant present.

On the strength of decisions passed in Appeal No. 1385/2017 and Appeal No. 264/2012 instant appeal is admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 25.10.2019 before S.B.

Appellant Deposited  
Security & Process Fee

27/8/19

  
Chairman

25.10.2019

Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney alongwith Nowsherawan Inspector Legal for the respondents present.

Representative of the respondents requests for time to furnish requisite reply/comments. Granted. To come up for written reply/comments on 28.11.2019 before S.B.

  
Chairman

28.11.2019

Appellant in person and Addl. AG alongwith Noshawan, Inspector for the respondents present.

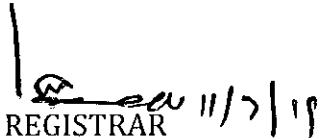

Parawise comments of respondents have been furnished, which ~~are~~ made part of the record. The appeal is assigned to D.B for arguments on 23.01.2020. The appellant may furnish rejoinder, within one month, if so desired.

  
Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No.- 919 /2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	11/07/2019	<p style="text-align: center;">The appeal of Mr. Israeel Shah resubmitted today by Uzma Syed, 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 11/7/19</p>
2-	5/07/19.	<p style="text-align: center;">This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/08/19.</u></p> <p style="text-align: right;"> CHAIRMAN</p>


RP

The appeal of Mr. Israeel Shah Ex-Constable No. 548 District Buner received today i.e. on 03.07.2019 is incomplete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days.

- 1- Copies of charge sheet, statement of allegation, 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 is not attached with the appeal which may be placed on it.

No. 1160 /S.T,

Dt. 4-7- /2019.

  
REGISTRAR 4/7/19  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

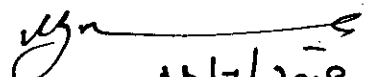
Uzma Syed Adv.Pesh.

Sir..

1.. No charge sheet and statement of allegation, nor any final show cause notice were issued/served to appellant. No inquiry were conducted in case of appellant.

2:- copy of Departmental Appeal is not available with appellant, <sup>which</sup> may be requisite from the department.

objections removed & resubmitted

  
10/7/2019

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

APPEAL NO. 912 /2019

Israel Shah

V/S

Police Deptt:

**INDEX**

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	1-4
2.	Copy impugned order	-A-	05
3.	Copy tribunal judgments	-B&C	06-13
4.	copy of rejection order	-D-	14
5.	Vakalat Nama	-----	15

**APPELLANT**

THROUGH:

  
**(UZMA SYED)**

  
**SYED NOMAN ALI BUKHARI**  
**(ADVOCATES, PESHAWAR)**

①

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

**APPEAL NO. 912 /2019**

Israel shah Ex-Constable No. 548  
District Buner

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 920

Dated 03/7/2019

.....(Appellant)

**VERSUS**

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

.....(Respondents)

**APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 02.05.2019 RECEIVED BY APPELLANT ON 1.7.2019 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 30.05.2009 WAS REJECTED FOR NO GOOD GROUNDS.**

Filed to-day

*Raw*  
Registrar

3/7/19

**PRAYER:**

**THAT THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 02.05.2019 and 30.05.2019 MAY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.**

Re-submitted to -day  
and filed.

*Raw*  
Registrar

11/7/19

**RESPECTFULLY SHEWETH:**

**FACTS:**

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

1. That the appellant was the employee of the police and was on the strength of the police force Buner.
2. That during Taliban Militancy in Buner appellant was dismissed from the service by the respondent no.2 vide order dated 30.05.2009. **Copy of impugned order is attached as Annexure-A.**
3. That, neither any show cause, charge sheet, statement of allegation, inquiry, opportunity of defense, final show cause notice, opportunity of personal hearing has been served and provided respectively nor any publication has ever been made calling him for assumption of his duty.
4. That some of the colleagues of the appellant have been re-instated by the Service tribunal, Peshawar . **Copy of Judgments is attached as Annexure-B & C**
5. That appellant Feeling Aggrieved, immediately preferred departmental appeal before respondent no.1 & requested therein that case of the appellant is at par with those police officer, who have been re-instated in to service by service tribunal Peshawar, so the appellant has also entitled to re-instatement in principle of natural justice. The copy of departmental appeal may be requisite from the department, the same is not available with the appellant.
6. That the departmental appeal of the appellant was rejected by respondent no.1 vide order dated 02.05.2019 received by the Appellant on 01.07.2019 for no good grounds. **Copy of rejection order is attached as Annexure-D.**
7. That appellant being aggrieved of the impugned order of respondent and having no other adequate and efficacious remedy, file this service appeal inter-alia on the following grounds amongst others.

**FOUNDATIONS:**

- A) That the appellant has not been treated in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan 1973 by the respondents and the appellant has been dismissed from his legal service without adopting legal Pre-requisite mandatory Legal procedure. The order passed in violating of mandatory provision of law, such order is void and illegal order according to superior court judgment reported as 2007 SCMR 834. Hence the impugned order is liable to be set aside.
- B) That the impugned order was retrospective order which was void in the eye of law and also void according to Superiors Court Judgment reported as 2002 SCMR 1129, 2006 PLC 221 and KPK Service Tribunal Judgment titled as Abdul Shakoor Vs Govt of KPK.
- C) That the appeal of the appellant was rejected on the ground that the appeal is time barred but according to superior court judgment reported as 2015 SCMR 795 there is no limitation was run against the void order. Moreover, the Supreme court of Pakistan has laid down vide reported judgment PLD 2003 SC 724 and 2003 PLC (CS) 796 that the delay if any shall be condoned in respect of employee where delay already condoned in identical circumstances. All the person shall be treated equally who are sailing in the same board,
- D) That the appellant has highly been discriminated. Other police officials, who were also dismissed with appellant have been reinstated by the respondent No.1, whereas, appellant has been denied the same treatment. The case of the appellant is similar and identical in all respect with those, who have been reinstated.
- E) That neither charge sheet, statement of allegation, show cause notice was not served upon the appellant nor was inquiry conducted against the appellant, which was necessary and mandatory in law before imposing major punishment which is violation of law, rules and norms of justice.
- F) That the appellant has not been treated according to law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- G) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.
- 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.

*i. shah*  
APPELLANT  
ISRAEL SHAH

THROUGH:

*uzma*  
(UZMA SYED)

*Noman* &  
(SYED NOMAN ALI BUKHARI)  
ADVOCATES, PESHAWAR

(A) (S)

Phone # 0939-510470  
Fax # 0939-510501

**ORDER.**

Where is your FC Israil Shah 548 While posted Gabd Ammaral according to the report received in this office vide D D No. 5 dated 5/5/2009 you left the place of duty with out valid cause and intimation to your office in charge, since then you have been un authorized absence from duty that is from this constitute mis conduct on your part and as such you are liable to action under section 5 sub section(4) of the removal from service (Special Power ordinance 2000)(Amended) Ordinance 2001.

I have come to the conclusion that either the accused police officer has ceased to be efficient and exhibit cowardice or reasonably suspected of being associated with those engaged in subversive activities during operation of the milita ts in Buner District.

I, as competent authority, am, therefore, satisfied to proceed under section (5) of sub section (4) of the removal from service (Special power ordinance 2000) (Amendment ordinance 2001) and dispense with the enquiry proceeding as laid down in the said ordinance and am further satisfied that there is no need of holding departmental enquiry since the accused Police official Israil Shah 548 has been found guilty of gross misconduct as defined in the ordinance, I, Mr. ABDUR RASHID D. P. O. Buner as competent authority, therefore impose major penalty by dismissing him from service from the date of his absence.

DISTRICT POLICE OFFICER  
BUNER.

OB No. 56

DATE 30.5 /2009 ✓

**ATTESTED**

Attested  
A  
2007B  
District Police Officer  
Buner

(B) (6)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 1385/2017

Date of Institution ... 11.12.2017

Date of Decision ... 29.01.2019



Aurangzeb Ex-Constable No. 390 District Buner. ... (Appellant)

VERSUS

The Regional Police Officer, Malakand Saidu Sharif, Swat and another.  
... (Respondents)

Present.

Miss Uzma Syed & S.Nauman Ali Bukhari,  
Advocates

... For appellant

Mr. Muhammad Riaz Paindakhel,  
Asstt. Advocate General

... For respondents.


MR. HAMID FAROOQ DURRANI,  
MR. HUSSAIN SHAH,

... CHAIRMAN  
... MEMBER(E)

JUDGMENT


HAMID FAROOQ DURRANI, CHAIRMAN:-

ATTESTED

  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

1. Appellant is aggrieved of orders dated 30.05.2009 and 29.11.2017 passed by the respondents No. 2 and 1, respectively. The former order pertains to dismissal of service of appellant while the latter is regarding rejection of his departmental appeal.

2. The facts, as gatherable from record, are that the appellant, while posted at Kingargalai was found absent from duty w.e.f. 05.05.2009. He

  
ATTESTED

was, therefore, proceeded against departmentally and the order dated 30.05.2009 was passed under the provisions of Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. Pertinently, the enquiry proceedings were dispensed with in the matter. The departmental appeal of appellant was rejected on the sole ground of being barred by time.

3. We have heard learned counsel for the appellant and learned Assistant Advocate General on behalf of the respondents.

It was the contention of learned counsel for the appellant that the impugned order of dismissal from service, though passed on 30.05.2009, was given effect from the date of absence of appellant i.e. 05.05.2009. In her view the order was, therefore, void and the delay in submission of departmental appeal was not to be counted to the detriment of appellant. It was further contended that admittedly no enquiry was conducted against the appellant, however, he was awarded major punishment of dismissal from service and there was consistent view of the Apex Court requiring holding of proper enquiry in similar matters. She relied on judgments reported as 2000-SCMR-1743 and 2008-SCMR-609.

On the other hand, learned Asstt. Advocate General argued that the departmental appeal of appellant was hopelessly time-barred and in view of the travel history of appellant starting from 20.08.2009 and ending on 15.06.2017, his appeal was rightly dismissed:

**ATTENDED**

**ATTENDED**

MEMBER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

4. It is conspicuously noted that proceedings against the appellant were held under the erstwhile Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000 which, no doubt, contained provisions for dispensing with the enquiry but <sup>for</sup> reasons to be recorded in writing. At the same time, the provisions contained in Section 3 of the Ordinance *ibid* made it mandatory for the departmental authority to issue order in writing and inform the accused of the action proposed to be taken with regard to him and the grounds of the action. Reasonable opportunity of showing cause against the proposed action was also to be given to the accused under the law *ibid*. The exceptions to the said mandatory provisions were in terms that where the competent authority was satisfied that in the interest of security of Pakistan or any part thereof it was not expedient to give such opportunity or in cases where a person, being proceeded against upon conviction by a court of law, was sentenced to imprisonment or fine.

In the case in hand the enquiry proceedings were admittedly not held

against the appellant while the dispensing with of such proceedings was not supported by reasons as required by the law. It is also a fact that no show

cause notice, as obligated by Section 3 of Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 was served upon the appellant before imposing major penalty of dismissal from service. In the circumstances, it can be safely held that the illegality on the part of departmental authority was not curable without setting aside the impugned orders regardless the delay in submission of departmental appeal.

*[Signature]*  
**ATTESTED**

9


5. In view of the above facts and also following the judgment of this Tribunal passed in Appeal No. 264/2012, decided on 06.10.2017, we allow the appeal in hand and remit the matter to departmental appellate authority for re-deciding the appeal of appellant, within three months, on its merits and in accordance with law.

Parties are left to bear their respective costs. File be consigned to the record room.

  
(HUSSAIN SHAH)  
MEMBER(E)

  
(HAMID FAROOQ DURRANI)  
CHAIRMAN

ANNOUNCED  
29.01.2019

*Certified to be true copy*  
  
Secretary  
Service Tribunal  
Rawalpindi

**ATTESTED**

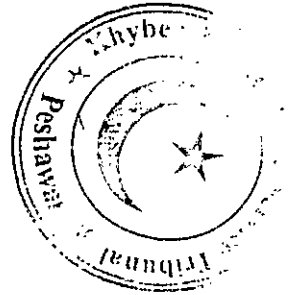
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Number of Words 2000  
Copying Fee 12  
Urgent —  
Total 12  
Name of Copyist [Signature]  
Date of Completion of Copy 14-2-18  
Date of Delivery of Copy 14-2-18

3

10

1. Date of  
2. order/  
3. proceeding

Order or other proceedings with signature of Judge or Magistrate



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No. 264/2012

Date of Institution ... 21.02.2012

Date of Decision ... 06.10.2017

Amanat Khan Ex-Constable No. 1157-C, District Buner

Appellant

Versus

1. The Deputy Inspector General of Police, Malakand, Region  
Saidu Sharif, Swat.

2. The District Police Officer, Buner

Respondents

06.10.2017

JUDGMENT

MUHAMMAD HAMID MUGHAL, MEMBER: - Appellant

present. Learned counsel for the appellant and Mr. Kabir Ullah  
Khattak, Assistant Advocate General for the respondents present.

2. The appellant Amanat Khan Ex-Constable, who was recruited  
in the year 2007, has filed the present appeal u/s 4 of the Khyber  
Pakhtunkhwa Service Tribunal Act, 1974 against the respondents  
and challenged therein the impugned order dated 26.08.2008 passed  
by respondent No. 2 whereby the appellant was awarded major  
penalty of removal of service on the ground of absence from  
duty/misconduct. The appellant has also made impugned the order

ATTESTED

Khyber Pakhtunkhwa Service Tribunal  
Peshawar

dated 20.08.2012 whereby his application for reinstatement in service was filed by respondent No. 1 being time barred.

3. Learned counsel for the appellant contented that before the issuance of impugned order of removal from service neither any charge sheet and statement of allegations were drafted, nor inquiry conducted, nor opportunity of defense was afforded nor final show cause notice and opportunity of personal hearing was given to the appellant. Further argued that no limitation runs against the illegal/void order. Further argued that the appellant has not been treated in accordance with law as such the impugned orders are liable to be set aside and the appellant be reinstated in service.

4. Learned Assistant Advocate General while opposing the present appeal argued that the present appeal is time barred. Further argued that the appellant was reported to have gone abroad without securing ex-Pakistan leave and the competent authority was satisfied with the dispensing with the inquiry proceeding against the appellant as provided in Removal From Service (Special Power) ordinance 2000 (Amendment) 2001. Further argued that the appellant was disinterested towards his duties and escaped there from. Further argued the impugned orders were validly passed and doesn't warrant any interference.

5. Arguments heard. File perused.

**ATTESTED**

**ATTESTED**

**EXAMINER**  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Done



ATTESTED

*[Handwritten signature]*

Director of Services  
Tamil Nadu  
Peshawar

*[Handwritten signature]*

ATTESTED

*[Handwritten signature]*

6. Perusal of the record shows that the appellant was removed from his service vide order dated 26.08.2008 and after a deep slumber he preferred appeal/presentation on 08.04.2011 which was dismissed by the respondent No. 1 vide order dated 14.05.2011. The appellant then filed another application before respondent No. 1 for his reinstatement which application was rejected being time barred.

7. Apparently the present appeal of the appellant is badly time barred, which fact also shows volumes about the conduct of the appellant that he was not at all interested to join the service. However, the fact cannot be lost sight of that serious irregularities/illegalities were committed by the respondent in the impugned order and in the proceeding culminating in the passage of the impugned order which go to the roots of the matter. No proper show cause notice was served upon the appellant prior to the issuance of the impugned order of removal from service. Similarly the appellant was awarded punishment of removal from service with retrospective effect. Consequently the impugned order of removal from service is set aside and the appellant is reinstated in the present appeal is decided on technical grounds more so while keeping in view the conduct of the appellant, he shall not be entitled to any back benefit hence the absence period as well as the intervening period during which the appellant has not performed

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duty shall be treated as extra-ordinary leave without pay. The department is at liberty to conduct de-novo proceedings/inquiry against the appellant in accordance with law. The present appeal is decided in the above terms. Parties are left to bear their own costs. File be consigned to the record room after its completion.

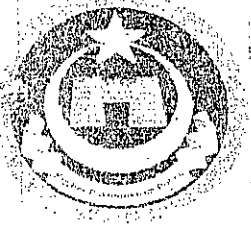
Announced SD/- M. Hamid Mughal,  
06.10.2017 Member

SD/- Ahmad Hassan,  
Member

Certified true copy  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Date of Presentation of Application 12-10-2017  
Number of Words 1600  
Copying Fee 10  
Urgent 2  
Total 12  
Name of Copyist [Signature]  
Date of Completion of Copy 12-10-2017  
Date of Delivery of Copy 12-10-2017

[Signature]  
**ATTESTED**



OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
Central Police Office, Peshawar.

No. SI/ 1405 /19, dated Peshawar the 02/05/2019.

To The Regional Police Officer,  
Malakand at Swat.

Subject: APPEAL.

Memo:

The Competent Authority has examined and filed the application submitted by Ex-Constable Israel Shah No. 548 of Buner District Police against the punishment of dismissal from service awarded by DPO/Buner vide OB No. 56, dated 30.05.2009, being badly time barred.

The applicant may please be informed accordingly.

Recd.

in TO day

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01.07.2019

(SYED ANIS-UL-HASSAN)  
Registrar.

For Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.

Recd  
of 30-04-2019

ATTESTED

KP Service Tribunal, Peshawar

2019ء منجانب

Israael Shah بنام

Adice de Pstt

مورخہ

مقدمہ

دعویٰ

جرم

### باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

ابتداءً

آن مقام پیشاورد کیلئے عظمیٰ سید ابد علیک، پشاور

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک درو پیہا عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختمنظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Accepted

Accepted

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2019ء

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ماہ

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المرقوم

العبد العبد

کے لئے منظور ہے۔

Peshawar

مقام

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Service Appeal No. 912/2019

Israel Shah Ex-Constable No. 548 District Buner ..... Appellant


**VERSUS**

1. Regional Police Officer, Malakand Region at Saidu Sharif Swat.
2. District Police officer Buner.

..... Respondents

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4.	Dismissal order copy	A	5
5.	Copy of Rejection order dated 26.04.2013 issued by Appellate Authority	B	6
6.	Order copy about second departmental appeal	C	7

  
**DISTRICT POLICE OFFICER,  
BUNER  
(RESPONDENT NO. 02)**

①

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

Service Appeal No. 912/2019  
Israel Shah Ex-Constable No. 548 District Buner ..... Appellant

**VERSUS**

1. Regional Police Officer, Malakand Region at Saidu Sharif Swat.
2. District Police officer Buner.

..... Respondents

**PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS.**

**Respectfully sheweth:**

**Preliminary Objections:-**

1. That the present service appeal is badly time barred.
2. That the service appeal is not maintainable in its present form.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. That the instant appeal is bad due to mis-joinder and non-joinder of necessary parties.
5. That the appellant has concealed material facts from this august tribunal.
6. That the appellant has got no cause of action and locus standi to file instant appeal.
7. That the appellant has been estopped due to his own conduct.

**ON FACTS:**

1. Para No. 01 relates to the record of the appellant, hence need no comments.
2. Correct to the extent. That the appellant had showed cowardice and was deliberately absented from his law full duty on 05.05.2009 without prior permission of his senior, resultantly he was rightly dismissed from service vide office order No. 56, dated 30.05.2009. **(Copy of the same is Annexed as Annexure "A")**.
3. Incorrect. In some cases as per rules, removal from service special power ordinance 2000 the competent authority has mandate to dispense the enquiry proceeding.
4. Pertains to record.
5. Incorrect. That the appellant has submitted departmental appeal before the respondent No. 01 against the impugned order, in the year of 2013 which has been filed by the respondent No. 01 being time barred. **(Copy of the same order is Annexed as Annexure "B")**.
6. Incorrect. That the appellant submitted another departmental appeal before the Worthy Inspector General of Police, Khyber Pakhtunkhwa Peshawar in the year of 2019 which was rejected being badly time barred. Further more the Worthy Inspector General has not arrayed as respondent in the present service appeal. **(Copy of rejection order is Annexed as Annexure "C")**.
7. That the service appeal of the appellant is liable to dismissed on the following grounds

**GROUND**

- a. Incorrect. That the appellant has been treated in accordance with law, rules and policy of the Government and the respondents have not acted against the constitution of Pakistan. Therefore the impugned order has been passed in according to the law, rules & justice.

- 2
- b. Incorrect. That the impugned order has been passed according to the law and rules, which is not a void order.
  - c. Incorrect. The rejection order of the departmental appellate authority has been passed according to the law & rules.
  - d. Incorrect. That the appellant has not been discriminated but he has estopped due to his own conduct because he was absented from his law full duty without prior permission of his senior and was failed to make his arrival to the respondent department.
  - e. Incorrect. In some cases the department has mandate to dispense the enquiry proceeding as per rules, removal special power ordinance 2000.
  - f. Incorrect. As explained in the above proceeding Paras the appellant has been treated in accordance with law & rules therefore the impugned order is not liable to be set aside.
  - g. Incorrect. That Police Department being a discipline Force, the appellant deliberately absented from his law full duty and did not appear before the respondent No. 02 to explain his compulsion.
  - h. That the respondents also seek permission of this Honorable Tribunal to adduce more points / grounds at the time of arguments.

✓ **PRAYER:**

In view of the above facts and grounds it is most humbly prayed that the appeal of the appellant may graciously be dismissed with costs.

  
**REGIONAL POLICE OFFICER,  
MALAKAND REGION AT SAIDU SHARIF SWAT**

*Res (Respondent No. 01)*  
Malakand at Saidu Sharif, Swat.

  
**DISTRICT POLICE OFFICER,  
BUNER.**

**(Respondent No. 02)**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

Service Appeal No. 912/2019

Israel Shah Ex-Constable No. 548 District Buner ..... Appellant

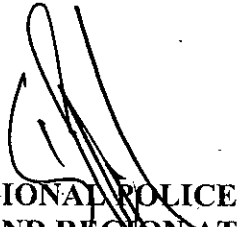
**VERSUS**

- 1. Regional Police Officer, Malakand Region at Saidu Sharif Swat.
- 2. District Police officer Buner.

..... Respondents

**AFFIDAVIT**

We the above respondents do hereby solemnly affirm and state on oath that the whole contents of the accompany Para-wise comments are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honorable Tribunal.



**REGIONAL POLICE OFFICER,  
MALAKAND REGION AT SAIDU SHARIF  
SWAT,  
Regional Police Officer,  
(Respondent No. 01)  
Malakand of Saidu Sharif, Swat**



**DISTRICT POLICE OFFICER,  
BUNER.  
(Respondent No. 02)**



4

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

**Service Appeal No. 912/2019**

**Israel Shah Ex-Constable No. 548 District Buner ..... Appellant**

**VERSUS**


- 1. Regional Police Officer, Malakand Region at Saidu Sharif Swat.
- 2. District Police officer Buner.

**..... Respondents**

**AUTHORITY LETTER**

We, the above respondent do hereby authorize and allow Mr. Nowsherwan Inspector Legal Buner to file the accompany Para wise comments in Honorable Tribunal Peshawar on our behalf and do whatever is needed in the court.

  
**REGIONAL POLICE OFFICER,**  
**MALAKAND REGION AT SAIDU SHARIF SWAT**  
*Regional Police Officer*  
**(Respondent No. 01)**  
*Malakand at Saidu Sharif Swat*

  
**DISTRICT POLICE OFFICER,**  
**BUNER.**  
**(Respondent No. 02)**

**ORDER.**

Where is your FC. Ismail Shah 548 While posted Gadd Ammawal according to the report received in this office vide D D No 5 dated 5/5/2009 you left the place of duty without valid cause and intimation to your office in charge, since then you have been an unauthorized absence from duty that is from this constitute misconduct on your part and as such you are liable to action under section 5 sub section(4) of the removal from service (Special Power ordinance 2000)(Amended Ordinance 2001).

I have come to the conclusion that either the accused police officer has ceased to be efficient and exhibit cowardice or reasonably suspected of being associated with those engaged in subversive activities during operation of the militants in Buner District.

I, as competent authority, am, therefore, satisfied to proceed under section (5) of sub-section (4) of the removal from service (Special power ordinance 2000) (Amendment ordinance 2001) and dispense with the enquiry proceeding as laid down in the said ordinance and am further satisfied that there is no need of holding departmental enquiry since the accused Police official Ismail Shah 548 has been found guilty of gross misconduct as defined in the ordinance, I, Mr. ABDUR RASHID-D. P. O. Buner as competent authority, therefore impose major penalty by dismissing him from service from the date of his absence.

DISTRICT POLICE OFFICER  
BUNER.

OB No. 56

DATE 30.5 /2009

Annexure B



From : The Regional Police Officer,  
Malakand, at Saidu Sharif, Swat.

To : The District Police Officer, Buner.

No. 2218 /E, dated Saidu Sharif, the 26 /4 /2013.

Subject: APPLICATION FOR REINSTATEMENT IN SERVICE

Memorandum:

Reference your office Memo: No. 1986/EC, dated 18/04/2013.

The application of Ex-Constable Israil Shah No. 548 of your District has been examined and filed by worthy Region Police Chief, being time barred.

The applicant may be informed accordingly.

*[Signature]*  
Office Supdt:

For: Regional Police Officer,  
Malakand, at Saidu Sharif Swat  
*[Signature]* \*Naqi\*

*EC*  
*Inform the applicant*  
*accordingly.*

*[Signature]*  
DPO/Buner  
26/4/2013



7  
Annexure C  
⑤ ⑭  
OFFICE OF THE  
INSPECTOR GENERAL OF POLICE  
KHYBER PAKHTUNKHWA  
Central Police Office, Peshawar.

No. SI 1405-119, dated Peshawar the 02.05.2019.

To The Regional Police Officer,  
Malakand at Swat.

Subject: APPEAL.

Memo:

The Competent Authority has examined and filed the application submitted by Ex-Constable Israel Shah No. 548 of Buner District Police against the punishment of dismissal from service awarded by DPO/Buner vide OB No. 56, dated 30.05.2009, being badly time barred.

The applicant may please be informed accordingly.

(SYED ANIS-ULL-HASSAN)  
Registrar.

For Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar.

Recd  
ole 30-09-2018