


FORM OF ORDER SHEET

Court of

Appeal No. 1361/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/06/2023	<p>The appeal of Mr. Nizam Khan, presented today by Uzma Syed Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar; on</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1361 /2023

Nozam Khan

VS GOVT. OF KPK & OTHERS

APPLICATION FOR FIXATION OF THE ABOVE TITLED APPEAL AT
PRINCIPAL SEAT, PESHAWAR

Respectfully Sheweth:

1. That the above mentioned appeal is pending adjudication before this Hon'ble Tribunal in which no date has been fixed so far.
2. That according to Rule 5 of the Khyber Pakhtunkhwa Service Tribunal Rules 1974, a Tribunal may hold its sittings at any place in Khyber Pakhtunkhwa which would be convenient to the parties whose matters are to be heard.
3. That it is worth mentioning that the offices of all the respondents concerned are at Peshawar and Peshawar is also convenient to the appellant/applicant meaning thereby that Principal Seat would be convenient to the parties concerned.
4. That any other ground will be raised at the time of arguments with the permission of this Hon'ble tribunal.

It is therefore prayed that on acceptance of this application the appeal may please be fixed at Principal Seat, Peshawar for the Convenience of parties and best interest of justice.

Dated: 16-9-2023 Through

Appellant/Applicant

UZMA Syed
Advocate
COURT OF ORIGINAL JURISDICTION
ADVOCATE SUPREME COURT

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1361 /2023

Nizam Khan

V/S

Police Deptt:

INDEX

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	1-07
2.	Copy of judgment	-A-	08-11
3.	Charge sheet & Statement of allegation	-B-	12-13
4.	Copy of reply	-C-	14
5.	Copy of inquiry report	-D-	15-16
6.	Copy of show cause notice	-E-	17
7.	Copy of reply	-F-	18
8.	Copy of impugned order	-G-	19
9.	copy of Departmental appeal	-H-	20
10.	Copy of rejection order	-I-	21
11.	Vakalat Nama	-----	22

N. Zama
APPELLANT

THROUGH:

Uzma Syed
(UZMA SYED)
ADVOCATE, HIGH COURT
PESHAWAR

Syed Noman Ali Bukhari
&
SYED NOMAN ALI BUKHARI
ADVOCATE, HIGH COURT

(V)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2023

Nizam Khan, EX- Constable, No.40
Distt: Swat.

.....(Appellant)

VERSUS

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

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 07.12.2022 WHEREBY, APPELLANT WAS DISMISSED FROM THE SERVICE AND AGAINST REJECTION ORDER DATED 16/05/2023 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED FOR NO GOOD GROUNDS

PRAYER:

THAT ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE ORDERS DATED 07/12/2022 and 16/05/2023 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

2

FACTS:

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

1. That the appellant was the employee of the police and was on the strength of the police force Buner.
2. That during Taliban Militancy in Swat appellant was dismissed from the service by the respondent no.2 vide order dated 12.10.2009.
3. That, neither any show cause, charge sheet, statement of allegation, inquiry, opportunity of defense, final show cause notice, opportunity of personal hearing has been served and provided respectively nor any publication has ever been made calling him for assumption of his duty.
4. That some of the colleagues of the appellant have been re-instated by the respondent no.1 vide OB NO 6421-22/E dated 1.11.2011.
5. That appellant upon getting knowledge of the aforesaid re-instatement order, immediately preferred departmental appeal before respondent no.1 & requested therein that case of the appellant is at par with those police officer, who have been re-instated in to service vide order dated 01.11.2011, so the appellant has also entitled to re-instatement in principle of natural justice.
6. That the departmental appeal of the appellant was rejected by respondent no.1 vide order dated 29.11.2017 for no good grounds.
7. That appellant being aggrieved of the impugned order of respondent filled service appeal no: 5/2018 in this Hon'able Tribunal and Hon'able Tribunal is kind enough to accept the appeal of the appellant vide judgment dated 28/01/2022 and appellant was re-instated into service and intervening period treated as extra ordinary leave without pay. The respondent is at liberty to conduct denovo inquiry against the appellant in accordance with law. **Copy of judgment is attached as annexure-A.**

8. That the department reinstated the appellant into service vide order dated 22.07.2022 and issued charge sheet and statement of allegation dated 05/10/2022 to the appellant and which was properly replied by the appellant and denied the allegation specifically. A denovo Inquiry was conducted against the appellant in which no chance of defense was provided to the appellant. Thereafter show cause notice dated 21/11/2022 was issued to the appellant, which was properly replied by the appellant and denied the allegation specifically but the department without hearing the appellant passed the impugned order dated 07.12.2022. **(Copy of the charge sheet, statement of allegation, reply, inquiry report show cause, reply and impugned order is attached as Annexure-B, C, D, E, F & G).**
9. That the appellant was aggrieved from the said impugned order, therefore he filed departmental appeal dated 15.12.2022 which was rejected vide order dated 16/05/2023 without showing any cogent reason. **Copy of departmental appeal and rejection order are attached as Annexure-H & I).**
10. That the appellant having no other remedy and constrained to file service appeal to this Honourable Tribunal on the following grounds amongst the others.

GROUND:

- A) That the appellant has not been treated in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan 1973 by the respondents and the appellant has been dismissed from his legal service without adopting legal Pre-requisite mandatory Legal procedure. The order passed in violating of mandatory provision of law, such order is void and illegal order according to superior court judgment reported as 2007 SCMR 834. Hence the impugned order is liable to be set aside.
- B) That the impugned order was retrospective order which was void in the eye of law and also void according to Superiors Court Judgment reported as 2002 SCMR 1129, 2006 PLC 221 and KPK Service Tribunal Judgment titled as Abdul Shakoor Vs Govt of KPK.
- C) That the impugned order was void according to superior court judgment reported as 2015 SCMR 795 . so the impugned order is not maintainable.


W

- D) That the appellant has highly been discriminated. Other police officials, who were also dismissed with appellant have been reinstated by the respondent No.1, whereas, appellant has been denied the same treatment. The case of the appellant is similar and identical in all respect with those, who have been reinstated. Tribunal also granted relief to similar placed person in service appeal no 374/2019. So the appellant also entitled to the same relief.
- E) That neither the appellant was associated with neither the inquiry proceedings nor any statement of the witnesses have been recorded in the presence of the appellant. Even a chance of cross examination was also not provided to the appellant which is a violation of norms of justice.
- F) That the appellant has not been treated under the proper law despite he was a civil servant of the province, therefore, the impugned order is liable to be set aside on this score alone.
- G) That the department not obeys the judgment dated 28/1/2022 and not conducted proper inquiry, even as wholly the appellant condemned un-heard which is against the law and rule and the impugned order is liable to the set aside.
- H) That the appellant was deprived of his inalienable right of personal hearing and opportunity to cross examine witnesses. The opportunity of offering proper defense was snatched from the appellant. The Hon'able Service Tribunal has been consistently following this yardstick almost in all cases, so departure from the set pattern and that too without any cogent reason in the present case would cause irreparable damage to the appellant at the cost of substantial justice. Such inquiry proceeding could not be termed as fair, just and reasonable, as the respondents badly failed to prove that the appellant has leaked certain official information to the criminals. such practice has already been disapproved by the apex court contained in its judgments PLD 1989 SC 335, 1996 SCMR 802, 2018 PLC (CS)997 and 2019 SCMR 640.
- I) That the inquiry report along with the show cause was also not provided to the appellant, which is clear violation of Superior Court judgment. That principal is also held in the appeal of the **Waleed Mehmood vs Police Deptt and Zeeshan vs police**, so the impugned order was passed in violation of law and rules and norms of justice. The same principle held in the Superior Court judgments cited as 1981 PLD SC 176 and 1987 SCMR 1562, without which all the proceedings is nullity in the eyes of law. Reliance was placed on **2018 PLC (CS) 997 and 2019 SCMR 640**.
- J) That no chance of personal hearing was provided to the appellant and as such the appellant has been condemned unheard throughout.


(S)

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

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


APPELLANT
Nizam Khan

THROUGH:


(UZMA SYED)
ADVOCATE, HIGH COURT
PESHAWAR

(6)

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR

APPEAL NO. _____/2023

Nizam Khan

V/S

Police Deptt:

CERTIFICATE:

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

Nizam
DEPONENT

LIT OF BOOKS:

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

Uzma Syed
(UZMA SYED)
ADVOCATE, HIGH COURT
PESHAWAR

(1)

BEFORE THE KP SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. _____/2023

Nizam Khan

V/S

Police Deptt:

AFFIDAVIT

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

(Signature)
DEPONENT

Nizam Khan

Annexure A

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 6 /2018

Nizam Khan, EX- Constable, No. 1793
Distt: Swat.

Member Peshawar
Service Tribunal

Diary No. 1465

Dated 28/12/12

.....(Appellant)

VERSUS

1. The Deputy Inspector General police, Malakand, Saidu Sharif, Swat.
2. The District Police officer Swat.

.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER 18.12.2012 RECEIVED ON 29.11.2017 WHEREBY, THE DEPARTMENTAL APPEAL OF THE APPELLANT AGAINST THE ORDER DATED 25.02.2009 HAS BEEN REJECTED FOR NO GOOD GROUNDS.

PRAYER:

THAT ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL, THE ORDERS DATED 29.11.2017 AND 25.02.2009 MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED IN TO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

Filed to-day

Registrar

28/12/17

We-submitted to -day and filed.

Registrar

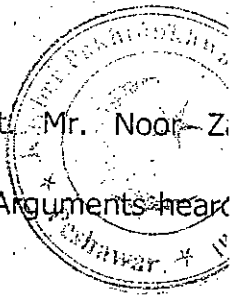
2/1/18

ATTESTED

MEMBER
KPK SERVICE TRIBUNAL
PESHAWAR

ORDER
28.01.2022

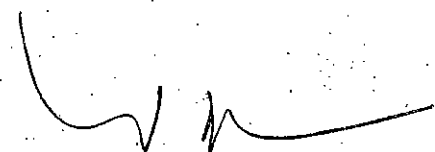
Learned counsel for the appellant present. Mr. Noor-Z
Khattak, District Attorney for respondents present. Arguments heard
record perused.



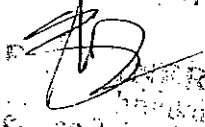
Vide our detailed judgment of today, placed on file of Se
Appeal bearing No. 5/2018 titled "Noor-Ul-Amin Versus The Reg
Police Officer, Malakand, Saidu Sharif Swat", the impugned orders ar
aside and the appellant is re-instated in service. Since the appe
decided on technical grounds more so while keeping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

ANNOUNCED
28.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


(ATIQ-UR-REHMAN WAZ
MEMBER (E)

Certified to be true copy.


Atiq-ur-Rehman Waz
Secretary
District Court
Peshawar

Date of Presentation of Application 19-4-22
Number of Words 800
Copying Fee 10/-
Urgent C
Total 10/-
Name of Copy _____
Date of Completion of Copy 20-4-22
Date of Delivery of Copy 20-4-22

9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 5/2018

Date of Institution ... 28.12.2017

Date of Decision ... 28.01.2022

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

(Appellant)

VERSUS

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

(Respondents)

Uzma Syed,
Advocate

For Appellant

Noor Zaman Khattak,
District Attorney

For respondents

AHMAD SULTAN TAREEN
ATIQU-UR-REHMAN WAZIR

CHAIRMAN
MEMBER (EXECUTIVE)

JUDGMENT

ATIQU-UR-REHMAN WAZIR MEMBER (E):-

This single judgment shall dispose of the instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

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

ATTESTED

(Signature)
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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

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

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

04. Learned District Attorney for the respondents has contended that the appellant willfully absented himself from lawful duty without permission of the competent authority, hence he was issued with charge sheet/statement of allegation and proper inquiry was conducted; that despite repeated reminders, the appellant did not join the disciplinary proceedings; that right from the date of his absence i.e. 06-01-2009 till his order of dismissal i.e. 12-10-2009, the appellant neither reported his arrival nor bothered to join inquiry proceedings

ATTESTED rather remain dormant which clearly depicts his disinterest in his official duty;

that after fulfillment of all the codal formalities, the appellant was awarded major

punishment of dismissal from service in absentia; that the appellant preferred

(100)


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

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

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

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

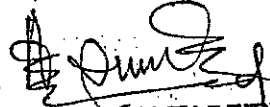
ATTESTED

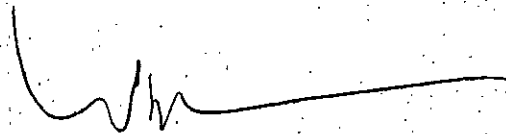

 JUDGE
 National Tribunal
 Islamabad

12

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

ANNOUNCED
28.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Certified to be true copy

EX. MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application

19-4-22

Number of

1600

...

18/-

...

18/-

...

20-4-22

Date of Issuance of Copy

20-4-22

DPO - Shangela

12

Amir B

CHARGE SHEET

I, Zahid Nawaz Marwat, PSP District Police Officer, Swat being competent authority, hereby charge you, Constable Nizam No.1793 while posted to Police Station Mingora as follows:-

You committed the following act/acts, which is/are gross misconduct on your part as defined in Rules 2 (iii) of Police Disciplinary Rules 197 with amendments 2014 vide Notification No.3859/Legal, dated 27-08-2014 of the General of Police, Khyber Pakhtunkhwa, Peshawar.

You Constable Nizam No.1793 while posted to Police Station Mingora, have absented yourself from duty vide DD No.19, dated 03/08/2008 and failed to report for duty. You were proceeded against departmentally and subsequently dismissed from service vide this office OB No. 31, dated 25-02-2009. You have preferred an appeal before the Service Tribunal which set aside the punishment and ordered a denove departmental enquiry. In compliance of the judgment dated 28/01/2022 of Service Tribunal in Service Appeal No. 06/2018 you have been reinstated into service vide this office OB No.101 dated 22/07/2022 for the purpose of denove departmental enquiry and as per direction of CPO Peshawar order No.988-90/CPO/IAB, dated 10-08-2022 and worthy Regional Police Officer Memo No.9574-77/E dated 09/09/2022. You are therefore issued this charge sheet and statement of allegations.

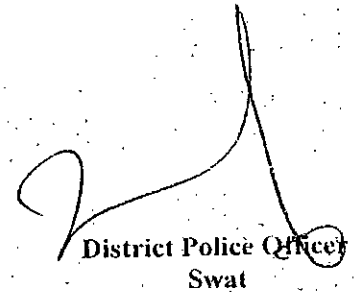
2. By reasons of the above, you appear to be guilty of misconduct and rendered yourself liable to all or any of penalties specified in Rule-4 of the Disciplinary Rules 197.

3. You are, therefore, required to submit your written reply within two (02) days of the receipt of this Charge Sheet to the Enquiry officer.

4. Your written reply, if any, should reach the Enquiry Officer within the specified period; failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.

5. Intimate as to whether you desire to be heard in person or not.

6. A statement of allegations is enclosed.


District Police Officer
Swat

No. 90 /PA,

Dated: 5/10 /2022.

13

DISCIPLINARY ACTION

I, Zahid Nawaz Marwat, PSP District Police Officer, Swat being competent authority, is of the opinion that he Constable Nizam No.1793 while posted to Police Station Mingora (Now JIS Police Line Kabal) has rendered himself liable to be proceeded against departmentally as he has committed the following acts/omissions as defined in Rule 2 (iii) of Police Rules 197 with amendments 2014 vide Notification No.3859/Legal, dated 27-08-2014 of the Inspector General of Police, Khyber Pakhtunkhwa, Peshawar, as per Provincial Assembly of Khyber Pakhtunkhwa Notification No. PA/Khyber Pakhtunkhwa/Bills/ 2011/44905, dated 16/09/2011 and C.P.O, K.P.K Peshawar Memo: No. 3037-62/Legal, dated 19/11/2011.

STATEMENT OF ALLEGATIONS

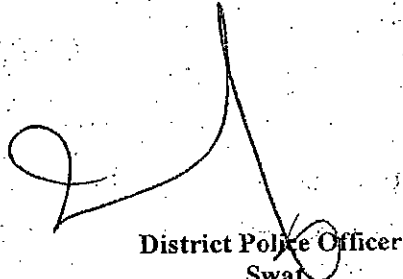
It has been reported that he while posted to JIS Police Line Kabal committed the following act / acts, which is / are gross misconduct on his part as defined in Rules 2 (iii) of Police Rules 197.

He Constable Nizam No.1793 while posted to Police Station Mingora, has absented himself from duty vide DD No.19, dated 03/08/2008 and failed to report for duty. He was proceeded against departmentally and subsequently dismissed from service vide this office OB No. 31, dated 25-02-2009. He has preferred an appeal before the Service Tribunal which set aside the punishment and ordered a denove departmental enquiry. In compliance of the judgment dated 28/01/2022 of Service Tribunal in Service Appeal No. 06/2018 he has been reinstated into service vide this office OB No.101 dated 22/07/2022 for the purpose of denove departmental enquiry and as per direction of CPO Peshawar order No.988-90/CPO/IAB, dated 10-08-2022 and worthy Regional Police Officer Memo No.9574-77/E dated 09/09/2022. He is therefore issued this charge sheet and statement of allegations.

2. For the purpose of scrutinizing the conduct of the said officer with reference to the above allegations, Mr. Muhammad Imran District Police Officer, Shangla and Mr. Naeem Hussain DSP Legal Swat are appointed as Enquiry Officers.

3. The enquiry officer shall conduct proceedings in accordance with provisions of Police Rules 197 and shall provide reasonable opportunity of defense and hearing to the accused officer, record its findings and make within two (02) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceedings on the date, time and place fixed by the enquiry officer.


District Police Officer
Swat

No. 99 /PA, Dated Gulkada the, 05/10 2022.

Copies of above to:-

1. Mr. Muhammad Imran District Police Officer, Shangla and Mr. Naeem Hussain DSP Legal Swat for initiating Denove Departmental proceeding against the accused Officer/Official namely Constable Nizam No.1793 under Police Rules, 197.

2. Constable Nizam No.1793

With the direction to appear before the Enquiry Officer on the date, time and place fixed by the

خوالہ چارج شیٹ نمبری ۹۹/۲۸۸ بحرحہ ۱۰/۵۲۲ ۵ مارچ جناب PPO سے

سوات معروہن خدمت پر کہ دوران کشیدہ حالات میں سٹریٹسز عامہ سڑک
میرے گھر میں راوا لول میں کنسٹبل کو گھر سے باہر نکالا اور کہا کہ
اگر تم نے پولیس کی توکری نہیں چھوڑی تو تمہیں مار دیا جائے گا
اور اگر تم باگھ نہ آئے تو تمہارے والدین سمیت برادران وغیرہ
مار دیا جائے گا۔ بدین وجہ میں کنسٹبل نے اصرار چھوڑا کہ
والدین بیرونی ضلع پھرتے کر کے لخرن میں آئی اور اپنے گھر والوں
کی جان بچانے کی خاطر چلا گیا۔ چونکہ میں کنسٹبل گھر کا واحد سربراہ
تھا۔ بدین وجہ سائل اپنی جائز ڈیوٹی سے غیر حاضر ہوا۔

ہدیو اپنے صاحبان سے گزارش ہے کہ چارج شیٹ والا کو
لخرن سٹی فالوئی کارروائی فائنل کیا جائے من کنسٹبل صاحبان
دعا گو رہے گا۔

نوٹ: سائل علی علم پولیس میں مورم ۰۷/۵۲۲ کو بھرتی ہوا تھا

سائل =

انظام خان سیکٹ ۴۰

مورم ۱۳/۵۲۲

Annex - D (15)

DENOVO DEPARTMENTAL ENQUIRY AGAINST CONSTABLE NIZAM KHAN

NO.40

BRIEF

Brief of the instant case is that Constable Nizam Khan No.40 while posted to JIS Police Line Kabal absented himself from lawful duty vide DD No.19 dated 03/08/2008 and failed to report for duty. He was proceeded departmentally and subsequently dismissed from service vide OB No.31 dated 25/02/2009 after completing all codal formalities under the law/rules. Later on, he preferred Service Appeal No.06/2018 before the Service Tribunal which was set aside by honorable Tribunal vide Judgment dated 28/01/2022, wherein the honorable Tribunal directed the respondent department to conduct Denovo departmental enquiry. In compliance of the judgment dated 28/01/2022 of Service Tribunal, the appellant was reinstated into service vide this office OB No. 101 dated 22/07/2022 for the purpose of Denovo departmental enquiry and as per direction of worthy Regional Officer letter No.9574-77/E dated 09/09/2022, DPO Shangla and DSP/Legal Swat were appointed as Enquiry Officers to conduct Denovo Departmental Enquiry against the appellant.

PROCEEDINGS:

In compliance of Judgment dated 28/01/2022 in Service Appeal No.06/2018, Denovo departmental enquiry was conducted against the appellant wherein charge sheet coupled with statement of allegations was issued to the appellant. He was called to appear before the Enquiry Officers and was also heard in person. The appellant also recorded his statement which is as under;

STATEMENT OF CONSTABLE NIZAM (APPELLANT)

On 13/10/2022, the concerned official got recorded his statement, wherein he stated that during the past insurgency in Swat, that militant threatened him to either opt for a Police job or death. He further added that he along with his family left his home and shifted to another district in order save the life of his family due to which he remained absent from duty.

FINDINGS:

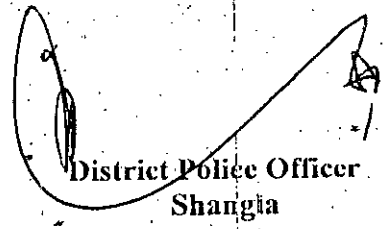
After completing enquiry proceedings against the delinquent Constable, wherein all codal formalities under the law/rules were provided to him and was also heard in person, it was found that the delinquent Constable could not produced any cogent reason in his defense. The delinquent Constable was dismissed from service in the year 2009 and after lapse of about 09 years he preferred departmental appeal before the worthy Regional Police Officer, Malakand Region which was badly time barred. Furthermore, after the end of insurgency period in 2009, a notice was also published in daily News Papers wherein all the Police officials/officers who left their jobs were directed to join their duties within 04 days positively otherwise strict departmental action

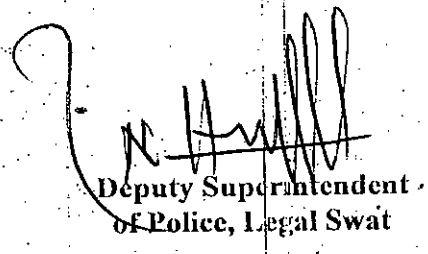
17/11/22

would be taken against them. In response of the same Notice, almost 253 Police officials/officers were returned to their duties. However, if the appellant was interested in his duty, he would have to returned but he did not come back to joined his duty. The delinquent Constable left his job at the time when his services were direly needed by the department to protect the lives and properties of the people but he showed cowardice and left his job. Furthermore as per section 118(c) of the KP Police Act, 2017, any Police Official who is guilty of cowardice or being a Police Officer, resigns his office or withdraws himself from duties without permission comes in the category of misconduct.

In view of above facts and circumstances, the Enquiry Officers are of the opinion that the delinquent Constable is guilty of cowardice by leaving his job without obtaining prior permission which in no sense/case is able to protect the lives and properties of general public. Therefore, the delinquent Constable is recommended for major punishment, please.

Submitted if approved, please.


District Police Officer
Shangla


Deputy Superintendent
of Police, Legal Swat

PA

ISSUE FSCN
DPO, Swat
17/11/22

Annexure - E

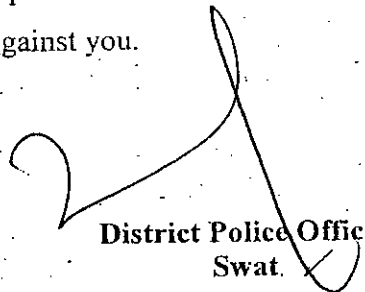
17

OFFICE OF THE DISTRICT POLICE OFFICER, SWAT
FINAL SHOW CAUSE NOTICE.

Whereas You Constable Nizam Khan No.40 while posted to JIS Police Line Kabal, have absented yourself from duty vide DD No.19, dated 03/08/2008 and failed to report for duty. You were proceeded against departmentally and subsequently dismissed from service vide this office OB No. 31, dated 25-02-2009. You have preferred an appeal before the Service Tribunal which set aside the punishment and ordered a denove departmental enquiry. In compliance of the judgment dated 28/01/2022 of Service Tribunal in Service Appeal No. 06/2018 you have been reinstated into service vide this office OB No.101 dated 22/07/2022 for the purpose of denove departmental enquiry and as per direction of CPO Peshawar order No.988-90/CPO/IAB, dated 10-08-2022 and worthy Regional Police Officer Memo No.9574-77/E dated 09/09/2022. You were issued Charge Sheet No.99/PA dated 05-10-2022 and District Police Officer, Shangla and DSP Legal Swat were appointed as inquiry officers to conduct denove departmental inquiry. The said officers conducted proper departmental inquiry against you wherein you were found guilty of the charges leveled against you, The Enquiry officers recommended you for Major Punishment.

You are, therefore, served with this Final Show Cause Notice to show cause in writing within seven (07) days of the receipt of this notice as to why major punishment as mentioned in Rule-4 of Police Disciplinary Rules-1975 should not be imposed on you. You should also state in writing as to whether you wish to be heard in person by the competent authority, your failure in this respect will be deemed that you have no defense to offer and ex-parte action will be taken against you.

Constable Nizam Khan No.40
JIS Police Line Kabal


District Police Officer
Swat.

No. 232 /PA,

Dated 21/11 /2022,

بیان اذان نسیل نظام خان نمبر 40

جان عالی!

حوالہ فائنل شوکار نوٹس نمبر 233/PA 23/11/22 اور چارج نہر ضلع

DPO صاحب ضلع سوات سے عرض خدمت میں سال 2008 میں ضلع سوات
دہشت گردی کی وجہ حالات انتہائی کشیدہ تھے اور مجھے اور میرے گھرانے
کو دہشت گردوں کی جانب سے مارنے کی دھمکیاں مارا جا رہی تھی جس کا
مخبرہ میں نے اپنے اور اپنی گھرانوں کی جان جانے خاطر ضلع سوات چھوڑ کر اپنی ڈیوٹی
غیر حاضر رہا، چونکہ میں گھر میں سب سے بڑا ہوں اور گھرانوں کی حفاظت
میرے ذمہ داری تھی۔

یہ کہ میں نے اپنی جائز ڈیوٹی سے براہ سرحد پوری اور اپنی گھرانوں کی حفاظت
کی خاطر غیر ہوا ہوں اس سبب عایدہ سائیل نے غلطی جاری فائنل شوکار
لا ماروائی فائنل میں کو سائیل تاحیا دی گورہے گا۔

AP/3819

نظام خان نمبر 40

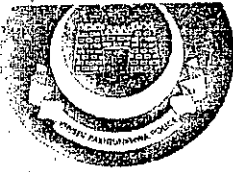
سیف پولیس لائن نسیل ضلع سوات

05-11-2022

OB, N-9-175

7.12.22

Order!
As suggested by EO
for Major Punishment
Hence dismissed
Pawan
DPO
District Police Officer
SWAT



ORDER

This order will dispose of the Denove-departmental enquiry conducted against Constable Nizam No.40, That he while posted to JIS Police Line Kabal Swat, has absented himself from his lawful duty vide DD No.19 dated 03/08/2008 and failed to report for duty. He has proceeded against departmentally and subsequently dismissed from the service vide this office OB No.31, dated 25-02-2009. He has preferred an appeal before the Service Tribunal, which set aside, the punishment of Dismissal and ordered a denove departmental inquiry. In the compliance of the judgment dated 28/01/2022 of Service Tribunal in service Appeal No.06/2018 He Have been reinstated into service vide this office OB No.101 dated 22/07/2022 for the purpose of Denove departmental inquiry. As per direction of CPO Peshawar order No.988-90/CPO/IAB, dated 10-08-2022 and worthy Regional Police Officer Memo No.9574-77/E dated 09/09/2022, Denove departmental inquiry is initiated.

He was issued charge sheet coupled with statement of allegations vide this office No 99/PA dated 05/10/2022. District Police Officer, Shangla and DSP Legal Swat was deputed as Inquiry Officers to conduct Denove-departmental inquiry against the defaulter official. The Inquiry Officers, District Police Officer, Shangla and DSP Legal Swat conducted proper departmental enquiry against the above named delinquent Constable, recorded statements of all concerned. The Inquiry Officers has provided ample opportunity to the delinquent Constable to defend the charges leveled against him. After conducting proper departmental enquiry, the Inquiry Officer submitted his findings report wherein he intimated that Constable Nizam Khan No.40 has badly failed to perform his duty correctly, also found negligent and the allegations leveled against him was proved. The IO recommended him for Major punishment. He was served with final Show.Cause notice No.233/PA, His replied was received which is found unsatisfactory.

Foregoing in view, the undersigned is of considered opinion that there are no chances that Constable Nizam No.40 will become an efficient Police Official. His further retention in service is bound to affect the discipline of the entire force. Therefore, in exercise of the powers vested in the undersigned under Rules 2 (iii) of Police Disciplinary Rules-1975, I, **SHAFIULLAH GANDAPUR**, District Police Officer, Swat as a competent authority, am agreed with the finding report of inquiry officers and award him major punishment of Dismissal from the date of Re-instatement i.e 22-07-2022.

Order announced.

[Signature]
District Police Officer
Swat

O.B. No. 175

Dated 07/12/2022.

OFFICE OF THE DISTRICT POLICE OFFICER SWAT

No. 345-50 /PA, dated Saidu Sharif the, 14/12 /2022.

Copy for information to the;

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

2559/L

Annexure - H

16211
19/12/22

20

مختصر جواب RPO صاحب ملاکانڈ رینج سائڈ سٹریٹ شریف سوات

20/12/22

ایڈیشنل ایس ایچ او سوات

جواب ملا

تقریر کی کاپی سائیکل سٹور پر ایس ایچ او 2007 کو برقی نوکر مورخہ 12-10-2009 پر ایس سے
ڈی نووا کے خلاف مورخہ 28-11-2022 کو نوادہ جیل کر کے
کو برقی نوکر کے نوادہ جیل فریڈ ہے

De-Novo آفیسری کے لئے ایس ایچ او کو نوادہ آرڈر کی نمبری 175 مورخہ 2022
07-12 مورخہ آرڈر کیس ڈسکس کیا گیا ہے۔

یاد رہے کہ آرڈر کے تحت ایس ایچ او کے مورخہ کے پیش نظر مورخہ پر خلاف کا حکم ہے۔

ایس ایچ او
کونسلنگ مقام نمبر 40 شیخ سوات
13/12/2022 مورخہ

No. 14150 / E
Date 15-12-2022

05418355058

Eo/ DPO - Swat

EC/DSP/legal

Per detailed Comments

For detail Comments

Service record along with
enquiry file may also

~~Signature~~
District Police Officer
SWAT. 16/12

be sent to this office

ACE
submit the case
along with S. Roll + F. missal
to DSP legal Swat for
Comments. (Signed) 19/12/22

Please

Regional Police Officer
Malakand Region,
Saidu Sharif, Swat



I 21 Annexure - II

**OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
AT SAIDU SHARIF SWAT.**
Ph: 0946-9240388 & Fax No. 0946-9249390
Email: eb.malakandregion@gmail.com


7286
19-05-23

ORDER

This order will dispose of appeal of Ex-Constable Nizam Khan No.40 of Swat District in connection with major punishment awarded by the District Police Officer, Swat vide OB No.175, dated 07-12-2022 i.e. dismissed from service from the date of re-instatement.

Brief facts of the case are that Ex-Constable Nizam Khan No.40 of Swat District while posted to JIS Police Line Kabal Swat, had absented himself from lawful duty vide OB No.31, dated 31-02-2008 and failed to report for duty. He was proceeded against departmentally and subsequently dismissed from the service by the District Police Officer, Swat vide OB No.31, dated 25-02-2009. He preferred an appeal before the Service Tribunal, wherein his order of dismissal from service was set aside and ordered for conducting de-novo departmental enquiry. In compliance of the judgment dated 28-01-2022 of Service Tribunal in Service Appeal No.06/2018, the appellant was re-instated into service for the purpose of de-novo departmental enquiry by the District Police Officer, Swat vide OB No.101, dated 22-07-2022. He was issued Charge Sheet coupled with statement of allegations and DPO. Shangla and DSP/Legal Swat were appointed as Enquiry Officers. The Enquiry Officers conducted de-novo enquiry and after fulfilling of all codal formalities, submitted their findings report wherein the allegations leveled against above constable were proved and recommend him for major punishment. Being found guilty of the charges leveled against him, the District Police Officer, Swat awarded him major punishment of dismissal from service from the date of re-instatement vide OB. No.175, dated 07-12-2022.

He was also called in Orderly Room on 10-05-2023 in the office of undersigned and heard him in person, but he could not produce any cogent reason to defend the charges leveled against him, therefore, his appeal is hereby rejected.

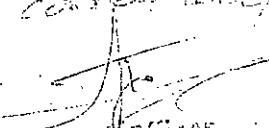

Regional Police Officer,
Malakand Region Swat

No. 7379 /E,
Dated 16-05-2023.

Copy to the District Police Officer, Swat for information and necessary action with reference to his office Memo: No.21757/E, dated 29-12-2022. Service Roll and Fujl Missal containing enquiry file of above-named Ex-Constable, received with your memo: under reference are returned herewith for record in your office.

Encls = S. Roll
F. Missal Containing
Enquiry file

EC/OASD
For info action
called the Service Book
to found correct roll in
roll


District Police Officer
SWAT

بعدالت

۱۴۹ Service Tribunal, Peshawar

۲۰۲۳ء منجانب
لغلام بنام
پولیس

مورخہ
مقدمہ
دعویٰ
جرم

باعث تحریر آنکہ

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

آن مقام پیشاور کیلئے علیٰ اسید ایدہ علیہ

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 ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ار 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 محتاج 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 مذکور با اختیارات حاصل ہوں گے

اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ ہوں گے سب 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 وکالت نامہ لکھ دیا کہ سندر ہے۔

۲۰۲۳ء

6

ماہ

۱۶

المرقوم

العبد گواہ العبد