

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR  
CAMP COURT ABBOTTABAD.

Service Appeal No. 1111/2018

Date of Institution ... 30.08.2018

Date of Decision ... 17.04.2019

Muhammad Ayub s/o Muhammad Latif no.30, Constable, District Police, Haripur.  
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Home and Tribal Affairs,  
Peshawar and three others. ... (Respondents)

MR. NASIR AYUB KHAN,  
Advocate

--- For appellant.

MR. MUHAMMAD BILAL,  
Deputy District Attorney

--- For respondents

MR. AHMAD HASSAN,  
MR. HAMID FAROOQ DURRANI

--- MEMBER (Executive)  
--- CHAIRMAN

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the  
parties heard and record perused.

ARGUMENTS.

2. Learned counsel for the appellant argued that he joined the Police Department as Constable on 31.03.1990. In 2017 the appellant met a serious accident and remained hospitalized for one month. He was also advised further bed rest by the doctor concerned. Due to deteriorating health, he submitted an application for early retirement. Vide order dated 03.06.2014, 365 days LPR w.e.f 01.06.2014 was granted to him and stood to retired from service on 01.06.2015. Thereafter, he submitted an undated application addressed to the PPO for withdrawal of un-availed portion of LPR, which remained un-responded. It was

followed by an application dated 09.05.2018 addressed to the DPO, Haripur but failed to evoke any response from the respondents. In support of his assertions, learned counsel for the appellant produced a letter dated 05.09.2018 issued by the Finance Department governing cases pertaining to LPR/recall from LPR. He also produced order dated 07.08.2015 through which a constable was recalled from LPR by the respondents.

3. Learned Deputy District Attorney argued that the appellant voluntarily submitted an application for grant of 365 days LPR which was accordingly allowed by the respondents. Moreover, at the time of sanction of LPR the DPO also granted him Rs. 10000/- for treatment. Recall from LPR was not permissible under the law/rules.

### CONCLUSION

4. It is established beyond doubt that the appellant met two serious accidents and remained hospitalized for more one month. This fact has been admitted by the appellant in application submitted for grant of LPR/early retirement. Furthermore, application was submitted by the appellant without any duress/coercion from the respondents. His request was honored vide order dated 03.06.2014, whereby 365 days LPR w.e.f.01.06.2014 was granted and upon completion of said leave, he was going to retire from service on 01.06.2015. Learned counsel for the appellant was unable to support his case with the help of relevant rules. During the course of arguments, he presented a letter dated 05.09.2018 circulated by the Finance Department governing issues pertaining to LPR. Through this notification a government servant can withdraw option of voluntarily retirement before retirement matures. But to make things clear, it is clarified that application for

cancellation/withdrawal of LPR was submitted by the appellant on 09.05.2018 prior to the issuance of policy referred to above. Police being a specialized force is governed by its own law/rules and we are afraid instructions referred to above are not applicable in the case in hand. There are numerous judgments of the superior courts that LPR once sanctioned cannot be withdrawn. .

5. As a sequel to above, the appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(HAMID FAROQQ DURRANI)  
Chairman



(AHMAD HASSAN)  
Member  
Camp Court Abbottabad.

ANNOUNCED  
17.04.2019

20.12.2018

None for the appellant present. Mr. M. Zahoor, Inspector (Legal) alongwith Mr. Usman Ghani, District Attorney for respondents present. Written reply/comments not submitted. Requested for adjournment. Adjourned. Case to come up for written reply/comments on 20.02.2019 before S.B at camp court, Abbottabad.



Member  
Camp court A/Abad

20.02.2019

Appellant in person present. Mr. Muhammad Bilal Khan, Deputy District Attorney alongwith Mr. Qazi Tariq, Reader for the respondents present. Written reply on behalf of respondents submitted. Adjourned to 17.04.2019 for rejoinder and arguments before D.B at Camp Court Abbottabad.



(Muhammad Amin Khan Kundi)  
Member  
Camp Court Abbottabad

Order

17.04.2019


Appellant with counsel present. Mr. Muhammad Bilal, Deputy District Attorney for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is dismissed. Parties are left to bear their own cost. File be consigned to the record room.

Announced:  
17.04.2019



(Hamid Farooq Durrani)  
Chairman



(Ahmad Hassan)  
Member  
Camp Court A/Abad

15.10.2018

Appellant in person present. Mr. Usman Ghani, District Attorney alongwith Numan Akhtar, Inspector (Legal) for respondents present. Due to general strike of the Khyber Pakhtunkhwa Bar Council, counsel for the appellant is not in attendance. Adjourned. To come up for preliminary hearing on 16.10.2018 before S.B at camp court, Abbottabad. Status quo be maintained till the date fixed.

*MA*

Member  
Camp Court, A/Abad

16.10.2018

Counsel for the appellant Muhammad Ayub present. Preliminary arguments heard. It was contended by the learned counsel for the appellant that the appellant was serving in Police Department. It was further contended that during service the appellant met an accident therefore, he applied for LPR and requested for LPR with effect from 01.10.2017 to 01.10.2018, the said application was allowed. It was further contended that after recovery the appellant again submitted application for cancellation of the LPR to Inspector General of Police. It was further contended that the appellant again submitted second application to DPO for cancellation of LPR. It was further contended that similar LPR was cancelled by the competent authority vide order dated 07.08.2015 of Ali Asghar. It was further contended that the appellant is a poor man and the competent authority was required to accept the cancellation application of LPR of the appellant but the competent authority has not accepted the same therefore, the application was liable to be accepted.

The contentions raised by the learned counsel for the appellant needs consideration. The appeal is admitted to regular hearing subject to deposit of security and process fee within 10 days. Thereafter notices be issued to the respondents for written reply/comments for 20.12.2018 before the S.B at Camp Court, Abbottabad. Learned counsel for the appellant also submitted application for seeking injunction restraining respondents not to initiate proceeding regarding finalization of the winding up of the service of appellant till final decision. Notice of the same be also issued to the respondents for the date fixed.

Appellant Deposited  
Security & Process Fee

*MA*  
Member

Camp court, A/Abad




The appeal of Mr. Muhammad Ayub son of Muhammad Latif Constable No. 30 Distt. Police Haripur received today i.e. on 30.08.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be attested.
- 2- One copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1757 /S.T.

Dt. 30/8 /2018.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Nasir Ayub Khan Adv.  
High Court Abbottabad.

Sirs

The appeal is resubmitted  
duly completed as desired.

Adv. NASIR AYUB KHAN  
Abbottabad  
5-9-18

**BEFORE THE SERVICES TRIBUNAL PESHAWER**

Service Appeal No. 111 / 2018

Muhammad Ayub

Versus

Government of KPK

**APPEAL**


**INDEX**

S.	Description of Documents	Annex.	Page
1	Writ Petition along with affidavit and certificate		1-6
2	Addresses of the parties		7
3	List of Books		8
4	Discharge Slip	A	9
5	Copy of the Application	B	10
6	Copy of application dated 04-10-2017	C	11
7	Copy of the application dated 09-05-2018	D	12-13
8	Copy of Order dated 07-05-2015	E	14-15
	Power of Attorney		16

Dated 29-08-2018

Through:

APPELLANT

  
Nasir Ayub Khan  
Advocate High Court



**BEFORE THE SERVICES TRIBUNAL PESHAWAR**

Service Appeal No. 1111 / 2018

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 1358

Dated 30/8/2018

Muhammad Ayub son of Muhammad Latif NO.30, Constable District  
Police Haripur.

.....APPELLANT

**Versus**

- 1- Government of KPK through Secretary Home and Tribal Affairs, Peshawar.
- 2- Inspector General of Police Khyber Pukhtoonkhua, Peshawar.
- 3- Regional Police Officer, Hazara at Abbottabad.
- 4- District police officer, ~~HARIPUR~~ HARIPUR.

.....RESPONDENTS

SERVICE APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT 1974, FOR DECLARATION TO THE AFFECT THAT THE PETITIONER APPLIED FOR THE RETIREMENT WITH LPR (LEAVE PENDING RETIREMENT) ON 20-09-2017, RESPONDENT NO.4 ALLOWED ONE YEAR LPR WITH EFFECT FROM 01-10-2017 TO 01-10-2018 , BUT AFTER THE EXPIRY OF TWO MONTHS, THE APPELLANT FILED APPLICATION FOR CANCELLATION OF EXPIRED PORTION OF LPR AND JOINING OF SERVICE VIDE APPLICATION DATED 04-12-2017 BUT THE RESPONDENT NO.4 DID NOT CANCELLED LPR OF THE APPELLANT AND ALLOWED THE PETITIONER TO JOIN SERVICE WITH EFFECT FROM THE DATE OF APPLICATION FOR CANCELLATION OF LPR WHICH IS PERVERSE AGAINST THE LAW, RULES NATURAL JUSTICE AND THE

Filed to -  
  
 Registrar  
 30/8/18

Re-submitted to -day  
 and filed.

  
 Registrar  
 6/9/18

RESPONDENTS ARE BOUND TO ACCEPT THE APPLICATION AS PER RULES IN VOGUE.

-----  
PRAYER ON ACCEPTANCE OF THE INSTANT SERVICE APPEAL RESPONDENT DEPARTMENT, SPECIALLY RESPONDENT NO MAY GRATIOUSLY BE DIRECTED TO CANCEL THE LPR WITH AFFECT FROM 04-12-2017 AND THE APPLICANT MAY GRACIOUSLY BE ALLOWED TO SERVE HIS DEPARTMENT AS CONSTABLE.. IT IS ALSO PRAYED THAT ANY OTHER RELIEF WHICH THIS HONORABLE COURT MAY GRACIOUSLY DEEM FIT AND APPROPRIATE IN THE CIRCUMSTANCES OF THE CASE MAY ALSO KINDLY BE GRANTED.  
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Respectfully Sheweth:

The facts giving rise to the instant appeal are arrayed as under:

1. That the appellant after getting the required education had joined the police department as constable on 31-03-1990.
2. That the appellant serves the department with complete devotion dedication to the entire satisfaction of the his superiors and always abide by the service laws.
3. That during the service while posted in Haripur, in August 2017 petitioner unfortunately met a life threathing accident, and had to remain in hospital for 25 long days.

4. That during the said medical treatment the appellant owing to his health condition was suggested by the concerned medical officer for a light duty and complete bed rest for two weeks. Copy of the discharge slip is annexed as "A".
5. That the appellant on the advice of the doctor, requested respondent No. 4 to assign light duty till complete restoration of health, the appellant was discouraged and was advised/ compelled to move an application for retirement and to go on LPR, consequently the appellant moved an application for retirement and LPR from 01-10-2017 to 01-10-2018. Copy of the application is annexed as "B".
6. That on complete recovery of the appellant, appellant moved an application to respondent No.3 &4 on 04-10-2017 for re-inclusion in service, the said application was moved to the respondent just after two months of the LPR. Copies of the applications are annexed as "C".
7. That the petitioner severally visited the concerned office of respondent No.4 to get information/decision of the respondents on the appellants application for the joining of duty and cancellation of the LPR, but was unable to get any response, thus the appellant moved an other application to the respondent on 09-05-2018. Copy of the application is annexed as "D".
8. That till date no reply or decision has been conveyed to the appellant, thus the appellant is left with no other option to file instant appeal interalia , on the following grounds.

## **Grounds**

- a. That the act of the respondents by not allowing the appellant to rejoin his duty is illegal, unlawful, discriminatory, perverse against the facts and the law on the subject.

4


- b. That the appellant is struck off duty but is still not struck off the strength/ strength thus has the right of rejoining the duty/ service.
- c. That the appellant has served the department with full dedication, honesty and with unblemished period of 28 long years, having vast experience.
- d. That the appellant is 51 years of age still long period/time to reach age of superannuation, healthy and fit to perform his duty.
- e. That the respondent No.4 has similarly accepted the application of one of the employees, who was allowed to rejoin the duty after retirement, thus the appellant deserves the similar treatment. Copy of the order is annexed as "E".
- f. That good governance demands that the law and the rules are to be strictly adhered to and rightful dues and other benefits, as per law be extended to the aggrieved persons without delay.
- g. That the court should not fold up its hands while granting relief to the appellant who is shuttling from pillar to post in the department to rejoin the duty.
- h. That the respondent department has led the appellant to the place which is utterly unknown to the principle of natural justice, law and jurisprudence.
- i. That this fact may not be left to fade in oblivion that the appellant is still not struck off the strength is just on LPR, and that too was applied in the circumstances when due to accident appellant was in not good health and under stress.
- j. That there is no other speedy, efficacious and adequate remedy available to the appellant, except the present appeal.

In the light of the facts mentioned above it is humbly prayed that on acceptance of the instant service appeal respondent department, specially respondent No.4, may graciously be directed to cancel the

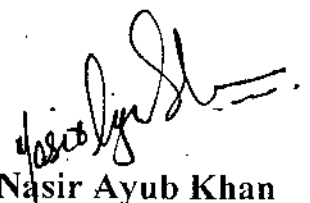
(5)

LPR with affect from 04-10-2017 and the applicant may graciously be allowed to serve his department as constable.. It is also prayed that any other relief/ order which this honorable court may graciously deem fit and appropriate in the circumstances of the case may also be granted.

Dated 29-08-2018

  
Appellant

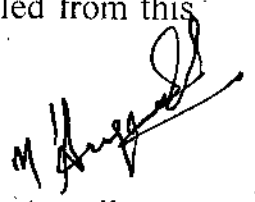
Through:

  
Nasir Ayub Khan  
Advocate High Court

**VERIFICATION:**

I, Muhammad Ayub son of Muhammad Latif NO.301 Constable District Police Haripur. Verify on oath that the contents of foregoing appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

Dated: 29-08/2018

  
...Appellant

**BEFORE THE SERVICES TRIBUNAL PESHAWER**

S.Appeal No. \_\_\_ / 2018

Muhammad Ayub

Versus

Government of KPK

APPEAL

AFFIDAVIT

I, Muhammad Ayub son of Muhammad Latif NO.301 Constable District Police Haripur, do hereby solemnly affirm and declare that the averments as contained in the accompanying Appeal are correct and true to the best of my knowledge and belief and nothing has been concealed there from. The contents of accompanying petition may kindly be read as integral part of this affidavit.



*M. Ayub*

Deponent

IDENTIFIED BY:-

*Nasir Ayub Khan*

Nasir Ayub Khan  
Advocate High Court

29/8/18

7

**BEFORE THE SERVICES TRIBUNAL PESHAWER**

S.Appeal No. \_\_\_ / 2018

Muhammad Ayub

Versus

Government of KPK

APPEAL

ADDRESSES OF THE PARTIES

Petitioner


Muhammad Ayub son of Muhammad Latif NO.301 Constable  
District Police Haripur.

Respondents

1. Government of KPK through Secretary Home and Tribal Affairs, Peshawar.
2. Inspector General of Police Khyber Pukhtoonkhua, Peshawar.
3. Regional Police Officer, Hazara at abbottabad.
4. District police officer, ~~HARIPUR~~

Appellant

Through:

  
Nasir Ayub Khan  
Advocate High Court

8

**BEFORE THE SERVICES TRIBUNAL PESHAWER**

Service Appeal No. \_\_\_ / 2018

Muhammad Ayub

Versus

Government of KPK

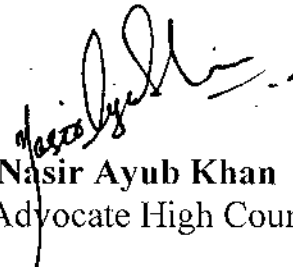
APPEAL

LIST OF BOOKS

1. The Constitution of the Islamic Republic of Pakistan, 1973.
2. Government of Gilgit Baltistan Order 2018.
3. \_\_\_\_\_
4. \_\_\_\_\_
5. Other case Law related books will be cited at the Bar.

Petitioner

Through:

  
Nasir Ayub Khan  
Advocate High Court





9

Anx AA

CARDIOTHORACIC SURGERY  
AYUB MEDICAL COMPLEX, ABBOTTABAD  
DISCHARGE CARD

Dr Syed Zahid Ali Shah  
MBBS, FCPS (Thoracic Surgery)

0992-381846 (3235)  
0992-381907 (3235)

Name: Ayub	S/D/W-O Umer Latif
Age: 52 yrs	Gender: M
Admission # 576095	Address: ATD
Date of Operation: ① 10-8-17. ② 20/08/17	Date of Admission: 7-8-17.
Diagnosis: RTA	Date of Discharge: 31-8-17.
Operation: Emergency thoracotomy (evacuation of injected clotted Hemothorax)	Depressed sternum, open wound ribs (External fixation)

[Received & admitted in surgical ward & BIL chest intubation done. shifted to thoracic surgery unit on 07-08-17]

TREATMENT AT HOME

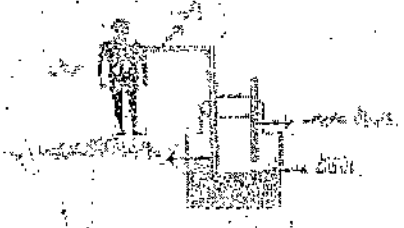
Inj Dact 2g IV x BD	(O/S) - 1st day
Inj Aveline 400mg IV x OD	(O/S) 2nd, 3rd day
Cef. Eskem 400mg PO x OD	4th, 5th, 6th, 7th day
Tab Pyrex 200mg PO x OD	8th, 9th, 10th day
Inj Zolrest	11th, 12th day
Tab Roxvitru	13th, 14th day
Tab Polymalt-F	15th, 16th day
Tab Aerocast	17th, 18th day

C.I.C.  
Adv. NASIR AYUB KHAN  
Abbottabad  
27-8-18

Handwritten notes in Urdu script, partially illegible.

Handwritten Urdu text: "کے لئے مکمل آرام کریں"

Complete bed rest for two weeks



ضابطہ نمبر 1

گزارش پیش رو کے مطابق دفعہ 31-3-2018ء کو...

مقررہ مدت کے اندر... 27 مارچ 2018ء...

26 مارچ 2018ء کو... 26 مارچ 2018ء...

10/2018... 10/2018... 10/2018...

10/2018... 10/2018... 10/2018...

C. T. C. ADV. NASIR AKBAR KHAN Abbottabad 29-3-18

30/3/2018... 30/3/2018...

P.O. Prepare case for welfare. Allowed

(11)

Ana "C"  
C

## بخدمت جناب آئی جی صاحب خیبر پختونخواہ پشاور

### درخواست برآمد منسوخی LPR

جناب عالی!

مودبانہ گزارش ہے کہ سائل 1990 میں بطور کانسٹیبل بھرتی ہو کر 28 سال سروس احسن طریقے سے سرانجام دی۔ سائل پولیس لائن ہری پور میں تعینات تھا کہ مورخہ 06.08.2017 کو سائل کا ایکسیڈنٹ ہو گیا۔ جو سول ہسپتال ہری پور برائے علاج معالجہ گیا۔ جو وہاں ڈاکٹر صاحب نے مزید علاج کے لیے سائل کو ایم سی ایبٹ آباد ریفر کیا۔ جو سائل 25 دن داخل ہسپتال رہا۔ پھر دو ہفتے مکمل میڈیکل بیڈ ریست دے کر گھر بھیج دیا۔ سائل مورخہ 04.10.2017 تک مکمل طور پر صحت یاب ہو گیا ہے جبکہ سائل کے اس دوران برائے پنشن LPR کی درخواست DPO صاحب کو دی جو منظور ہونے پر رخصت پر چلا گیا جبکہ سائل نے گورنمنٹ آف پاکستان سے کوئی واجبات حاصل نہیں کی۔ سائل ایک غریب آدمی ہے اور سائل کے چھوٹے چھوٹے بچے ہیں جو کہ سائل کی ذمہ داری ہیں جبکہ سائل کا نوکری کے علاوہ دوسرا کوئی ذریعہ معاش نہیں ہے اس لیے سائل نوکری پر واپس بحال ہونا چاہتا ہے۔

لہذا بذریعہ درخواست استدعا ہے کہ سائل چونکہ مکمل صحت یاب ہو چکا ہے اس لیے سائل کی گزری سے رخصت کو رخصت کلاں میں شمار کرنے کا حکم صادر فرما کر سائل کو نوکری پر دوبارہ واپس بحال کرنے کا حکم صادر فرما کر مشکور فرمائیں۔ سائل تاحیات دعا گور ہے گا۔  
عین نوازش ہوگی۔

C. T. C  
ADV. NASIR AYUB KHAN  
Abbottabad  
21-8-18

العارض۔

درخواست گزار۔ محمد ایوب نمبر 301 ضلع ہری پور پولیس حال LPR  
موبائل نمبر۔ 0345-9690638

To

The District Police Officer,  
Haripur.

(12)

Ana "D"

Subject:- APPLICATION SEEKING CANCELLATION OF LPR

Respected Sir,

1. That the applicant after an accident on 06/08/2017 whereof he remained in hospital for 21 days and on his discharge he was given complete rest by the doctor due to the major operation from which the petitioner underwent.
2. That the petitioner on joining the service requested for light duty and due to his physical and mental condition at that time move an application for LPR.
3. That on complete recovery, the applicant moved an application for the cancellation of LPR just after two months of his approval of LPR.
4. That the petitioner has served the department with full dedication and honesty for 28 years and having no source of income with children and family to maintain is still waiting for a positive response of yourself regarding the application moved for cancellation of LPR.
5. That the applicant is now 100% fit to perform his duty.

C.T.C  
Adv. NASIR AYUB KHAN  
Abbottabad  
29-8-18


Received

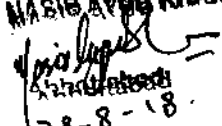
91571316

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It is therefore, humbly requested that the request/application of the applicant may kindly be considered sympathetically in the light of Notification No.F.1(1)R-4/2007-Vol-II(Pt) and the LPR previously sought/opted by the applicant may kindly be cancelled and the applicant may kindly be ordered to rejoin his duty.

Dated: \_\_\_\_\_/2018

  
**MUHAMMAD AYUB**  
S/o Muhammad Latif  
No.301 Constable District Police Haripur  
...APPLICANT

C.T.C  
ASST. MAGISTRAR AYUB KHAN  
  
22-8-18

(14)

Ann<sup>2b</sup> "E"

ORDER

Constable Ali Asghar No. 09 of this District, applied for LPR with effect from 01.06.2014 and availed the same. Instantly the said Constable submitted the application for with drawl of LPR and re-instated in service, the petition is accepted on the ground that he is trained police officials with bonafied service record and fulfilled the requirement as provided, his age also below according to law.

Therefore, the Constable Ali Asghar No.09 is hereby reinstated in District police and period which he remained on LPR is treated as earned leave.

District Police Officer  
Haripur

C.T.C  
ADV. NASIR AYUB KHAN  
Abbottabad  
25-8-18

No. 2618-21 /SRC

7/8/15

Copies for favour of information to the:-

- 1. Senior Superintendant of Police Investigation, Haripur
- 2. District Account Officer, Haripur.
- 3. Pay Officer, Pay Branch, Haripur.
- 4. OHC, DPO Office, Haripur
- 5. SRC/Pension Clerk, DPO Office, Haripur



District Police Officer  
Haripur

OB No. 781

DT. 11.5.15

18/5/15  
-

4

320/r

ficer

B/SRC

7/15

slom

07/8/15

15

ORDER

Constable Ali Ashghar No. 09 of this District has been granted 365 days LPR with effect from 01.06.2014 and permitted to retire from service with effect from 01.06.2015.

C.T.C  
Adj. NASIR AYUB KHAN  
Abbottabad  
28-8-13

O/E District Police Officer  
Haripur

No. LAA 91-98/SRC dt-3/8/14

Copies for favour of information to:-

1. The Superintendent of Police, Investigation, Haripur
2. The District Account Officer, Haripur.
3. Pay Officer, Pay Branch, Haripur.
4. OHC, DPO Office, Haripur
5. SRC/Pension Clerk, DPO Officer, Haripur

O/E District Police Officer  
Haripur

POWER OF ATTORNEY

**BEFORE THE SERVICES TRIBUNAL PESHAWER**

Service Appeal \_\_\_/ 2018

Muhammad Ayub

Versus

Government of KPK

I. the undersigned do hereby nominated and appointed the under signed advocate to be counsel in the above matter for me/us and on my/our behalf as agreed to appear, plead, act and answer in the above court or any appellate court or any court to which the business is transferred in the above matter as and is agreed to sign and file petition, appeals, statements, accounts, exhibits, compromises or other documents whatsoever, in connection with the said matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc and to apply for and issue summons and other writs or subpoena and to apply for and get issued any arrest, attachment or other execution, warrants or order and to conduct any proceedings that may arise there out; and to apply for and receive payment of any or all sums or submit the above matter to arbitration, and to employ an other legal practitioner authorizing him to exercise the power and authorities hereby conferred on the advocate whenever he may think fit to do so.

AND to do all acts legally necessary to manage and conduct the said case in all respects whether herein specified or not, as may be proper and expedient.

AND I/WE hereby agree to ratify and confirm all lawful acts done on my/our behalf; under or by virtue of these present or of the usual practice in such matter. PROVIDED always that I/We undertake at the time of calling of the case by the court I/my authorized agent shall inform the advocate and make him appear in the court, if the case, may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

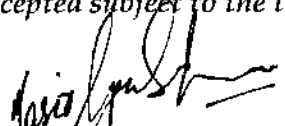
IN WITNESS WHERE OF I/we hereunto set my/our hand to these presents the contents of which have been explained to and understood by me/us this 29 day of Aug 2018.

EXECUTANT



Muhammad Ayub s/o Muhammad Latif

*Accepted subject to the terms regarding fees.*

  
**Nasir Ayub Khan**  
Advocate High Court

**ADV. NASIR AYUB KHAN**

**Abbottabad**



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

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1054

Dated 25-9-18

Muhammad Ayub.

... APPLICANT/APELLANT

VERSUS

Govt. of KPK & others.

...RESPONDENTS

**SERVICE APPEAL**

APPLICATION SEEKING INJUNCTION RESTRAINING  
RESPONDENTS NOT TO INITIATE PROCEEDING  
REGARDING FINALIZATION OF THE WINDING UP OF  
THE SERVICE OF APPELLANT, TILL FINAL DECISION  
OF THE MAIN CASE.

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---

Respectfully Sheweth;-

1. That the titled petition is pending in the Honourable court in which the next date of hearing is 16/11/2018.
2. That the appellant/applicant has brought a good prima facie case, balance of convenience tilts in favour of appellant if the status quo is not granted and the appellant is going to suffer irreparable loss.

*Put up to the court  
with relevant app. &  
25/9/18.  
Dooder*

It is, therefore, humbly requested that on acceptance of the instant application, status quo may kindly be granted as prayed for at the title of the application.

*M. Ayub Khan*

...APPLICANT/APPELLANT

Through;

Dated: 18 - 9 / 2018

*Nasir Ayub Khan*

(NASIR AYUB KHAN)  
Advocate High Court, Abbottabad

**AFFIDAVIT:**

I, Muhammad Ayub son of Muhammad Latif No.301 Constable District Police Haripur, do hereby affirm and declare on oath that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been suppressed from this Honourable Tribunal.



*M. Ayub Khan*  
DEPONENT



**MOST IMMEDIATE/TIME LIMIT CASE**  
**GOVERNMENT OF KHYBER PAKHTUNKHWA,**  
**HOME & TRIBAL AFFAIRS DEPARTMENT.**  
PHONE: 091-9210032 FAX # 9210201.

No.SO(Courts)/HD/3-1/2018  
Dated Peshawar, the 2<sup>nd</sup> October, 2018

To

The Regional Police Officer,  
Hazara at Abbottabad.

Subject: - **SERVICE PPEAL NO. 1111 OF 2018 (MUHAMMAD AYUB VERSUS GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH HOME & TA'S DEPARTMENT).**

Dear Sir,

I am directed to refer to the subject noted above and to annex herewith a copy of notice, alongwith enclosures, regarding the subject case, received from Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar, with the request that a well conversant officer may kindly be deputed alongwith entire relevant record of the case to attend the Khyber Pakhtunkhwa Service Tribunal on 15-10-2018, please.

Yours faithfully

Section Officer (Courts)

Copy to.

1. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. PS to Secretary Home, Khyber Pakhtunkhwa.

Placed on file

less  
- 4/10/18.

**BEFORE THE PESHAWAR HIGH COURT**  
**ABBOTTABAD BENCH**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 1055  
Dated 25-9-18

CM No. \_\_\_\_\_ -A/2018

IN

Service Appeal No. \_\_\_\_\_

Muhammad Ayub.

...APPELLANT

VERSUS

Govt. of KPK & others.

..RESPONDENTS

**SERVICE APPEAL**

**APPLICATION** SEEKING CORRECTION OF THE  
ADDRESS OF THE RESPONDENT NO. 4

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Respectfully Sheweth:-

1. That the above titled appeal is pending adjudication in the Honourable court in which next date of hearing is 16/11/2018.
2. That inadvertently due to the clerical mistake the respondent No. 4 is mentioned as "District Police Officer Abbottabad", which in-fact is "District Police Officer Haripur.

3. That the mistake was not intentional but is the result of clerical mistake during printing/ composing.

4. That the valuable rights of the petitioner are involved and the mistake needs correction to reach just and proper decision.

It is therefore, humbly requested that on acceptance of the instant application, the respondents No. 4 address may kindly be ordered to be corrected and read as Haripur instead of Abbottabad.

*M. Ayub Khan*

...PETITIONER/ APPELLANT

Dated: 25/09/2018

Through

*Nasir Ayub Khan*

(NASIR AYUB KHAN)

Advocate High Court, Abbottabad

**AFFIDAVIT:**

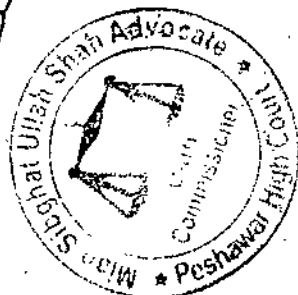
I, Muhammad Ayub son of Muhammad Latif No. 301 Constable District Police Haripur, do hereby affirm and declare on oath that the contents of foregoing application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

ATTESTED

*hkh*

25.09.18

DEPONENT



**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA, SERVICE  
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO.1111/2018

Muhammad Ayub S/o Muhammad Latif No.301 Ex-Constable District Police Haripur

.....(Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs  
Department, Peshawar and others

.....(Respondents)

**RESPECTFULLY SHEWETH!**

The Para-wise comments on behalf of respondent No. 1 to 4 are submitted  
as under:-

**PRELIMINARY OBJECTIONS:-**

1. That the instant Service Appeal is not maintainable in the present form.
2. That the appellant is estopped by his own conduct.
3. That the appellant has not come to the Hon'ble Tribunal with clean hands.
4. That the appellant has suppressed material facts from the Hon'ble Tribunal.
5. That the instant Service Appeal is not maintainable for non-joinder/ mis-joinder of unnecessary parties.
6. That the instant Service Appeal is badly time barred.
7. That the appellant did not file any departmental appeal / representation before the appellate authority, hence, the instant appeal is not maintainable under the law.

**OBJECTIONS ON FACTS:-**

1. Pertains to record, moreover, the appellant Ex-Constable Muhammad Ayub with middle passed (08) education was inducted in police department on 03.04.1990 as Constable.
2. Subject to proof, moreover a civil servant is required to serve the department efficiently, with devotion and dedication for which he is paid from public exchequer, however, the appellant did not perform any extraordinary duty which shows that he had not been a talented and highly professional police official.
3. In reply to this Para, it is submitted that the appellant moved an application to the then District Police Officer, Haripur for leaving the department on LPR, asserting therein the inability of appellant to serve the department on grounds of 02 road accidents happen to him for which he was also operated, the appellant willingly requested to go on pension from 01.10.2018 with one year LPR with effect from 01.10.2017, (Copy of application is attached as Annexure "A"), the appellant himself claimed that he was unable to serve, therefore, his application was allowed by the then District Police Officer, Haripur and he was permitted to retire after expiry of LPR ( copy of order is attached as Annexure "B").

4. Subject to proof, moreover, it is evident from the record that the appellant is not fit for reinduction as he suffered bad health issues and willingly opted to retire from service.
5. Incorrect, the appellant felt himself not fit for service on medical grounds, the appellant on his own sweet will moved an application to the then District Police Officer, Haripur for retirement from service with LPR, the District Police Officer, Haripur was kind enough who not only allowed the application but he also granted Rs. 10,000 to the appellant for welfare on humanitarian and sympathetic grounds, the appellant is generating false stories to get undue advantages.
6. Incorrect, as the appellant went on LPR with effect from 01.10.2017, he was also not fit for service due to his bad and deteriorating health, therefore, the appellant is not entitled for reinduction in police department.
7. Incorrect, the appellant was not fit for service as per his own application, therefore, his service is not required an unhealthy and ill person cannot perform the duties of police as it is essential requirement for a police person to have a good health.
8. Incorrect, as stated in the preceding Paras.

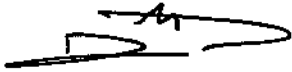
#### **GROUND:-**

- a. Incorrect, the appellant himself opted for retirement from service with LPR on grounds of health problems, therefore, the order of retirement of appellant with LPR by the respondent department is quite legal in accordance with law and maintainable.
- b. Incorrect, the appellant is not fit for service, therefore, he is not eligible for rejoining the police force.
- c. Incorrect, the appellant could not give any example of extra ordinary service rather he also could not undergo specific trainings or courses, so, his service is no more required in police department as it will burden the state exchequer with inefficient and sick person.
- d. Incorrect, as stated above, moreover, the appellant is suffering health problems and not fit for service.
- e. In reply to this Para, it is submitted that each and every case has its own merits, the appellant was not coercively separated from police department, rather he opted retirement with his own willingness and accord, he claimed to have health problems arising from 02 accidents, hence, he is not fit for service.
- f. In reply to this Para, it is submitted that the public interest is superior to individual interest, if such sick and infirm person is reinducted then ultimately the public interest will damage due to adjustment of unfit person for state duty, the respondent department upholds and abides by the rules and principles of law.
- g. Incorrect, the appellant is not fit for police service due to his bad health and old age, reinduction of appellant is also not beneficial for police department.
- h. Incorrect, it was the appellant who felt himself medically/physically unfit for duty and applied for retirement with LPR, the appellant took the initiative with his own will and accord for which he cannot blame the respondent department, the appellant was dealt with justly, fairly and in accordance with law.
- i. Incorrect, as the appellant had applied for LPR and retirement on grounds of inability to serve the department, so the then District Police Officer, Haripur

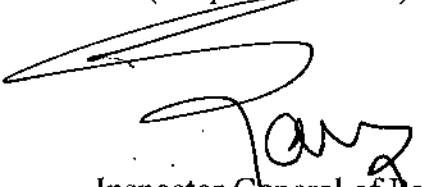
allowed the application of appellant and passed the order of LPR and retirement of appellant, hence, the appellant is not fit for readmission in police department as he is not physically and medically fit for service.

- j. Incorrect, the appellant is estopped by his own conduct, hence, the instant service appeal is not maintainable under the law.


In view of above, it is most humbly prayed that the instant service appeal does not hold any legal force which may graciously be dismissed.



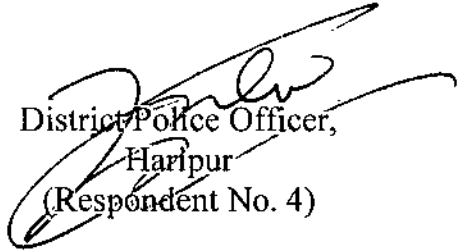
Government of Khyber Pakhtunkhwa,  
Through Secretary Home & Tribal  
Affairs Department,  
Peshawar  
(Respondent No.1)



Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar  
(Respondent No. 2)



Regional Police Officer,  
Hazara Region,  
Abbottabad  
(Respondent No. 3)



District Police Officer,  
Haripur  
(Respondent No. 4)



**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA, SERVICE  
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO.1111/2018

Muhammad Ayub S/o Muhammad Latif No.301 Ex-Constable District Police Haripur

.....(Appellant)

**VERSUS**

Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs  
Department, Peshawar and others

.....(Respondents)

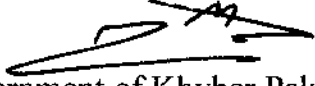
**Reply of Application For Grant of Injunction.**


**RESPECTFULLY SHEWETH!**


The reply of Application on behalf of respondents is submitted as under:-

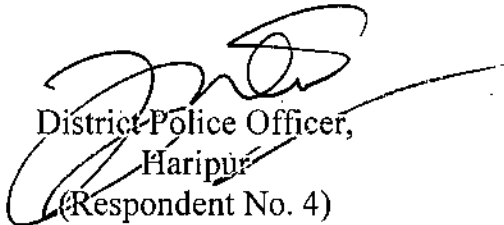
1. Subject to proof.
2. Incorrect, the appellant / applicant does not has any prima facie case, nor there is any balance of convenience in his favor as the respondent department has strong case against the appellant, moreover, the appellant will not suffer any irreparable loss.

In view of above, it is therefore, most humbly requested that status quo may not kindly be granted and the application of the appellant may kindly be dismissed.

  
Government of Khyber Pakhtunkhwa,  
Through Secretary Home & Tribal  
Affairs Department,  
Peshawar  
(Respondent No.1)

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar  
(Respondent No. 2)

  
Regional Police Officer,  
Hazara Region,  
Abbottabad  
(Respondent No. 3)

  
District Police Officer,  
Haripur  
(Respondent No. 4)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA, SERVICE  
TRIBUNAL PESHAWAR CAMP COURT ABBOTTABAD**

SERVICE APPEAL NO.1111/2018

Muhammad Ayub S/o Muhammad Latif No.301 Ex-Constable District Police Haripur

.....(Appellant)

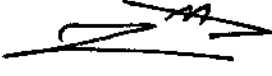
**VERSUS**


Government of Khyber Pakhtunkhwa, through Secretary Home & Tribal Affairs  
Department, Peshawar and others


.....(Respondents)

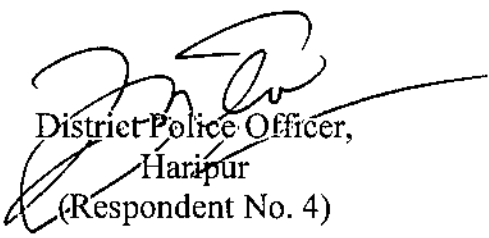
**COUNTER AFFIDAVIT**

We the following respondents do hereby solemnly  
affirm and declare that the contents of comments are true to the best of our knowledge  
and belief and nothing has been concealed from this Honorable Tribunal.

  
Government of Khyber Pakhtunkhwa,  
through Secretary Home & Tribal  
Affairs Department,  
Peshawar  
(Respondent No.1)

  
Inspector General of Police,  
Khyber Pakhtunkhwa,  
Peshawar,  
(Respondent No. 2)

  
Regional Police Officer,  
Hazara Region,  
Abbottabad,  
(Respondent No. 3)

  
District Police Officer,  
Haripur  
(Respondent No. 4)

جناب عالی!

گزارش دیکھ سہائی صبح 31/3/1990

کے لئے (پہلے) سرکاری دستاویز کے ساتھ درخواستیں

2 دفعہ ریٹرن ہوئے ہیں۔ درخواستیں سہائی کے لئے

مشترکہ ہیں۔ سہائی کے لئے 27 مارچ 1990

سہائی کے لئے درخواستیں سہائی کے لئے

26 مارچ 1990 کے لئے درخواستیں سہائی کے لئے

بذریعہ درخواستیں سہائی کے لئے (365) دن

LPR صبح 10/1/2017 سے 10/1/2018

10/1/2018 سے 10/1/2018

گزارش

سہائی کے لئے 30/3/1990

M. Anwar

100000/-  
Signature

P.O  
Prepare case for  
welfare.  
Signature

Allowed  
Signature



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

No.FD(SOSR-II)/4-35/2018 Dated Peshawar the 5/09/2018

To

1. All Administrative Secretaries,  
Government of Khyber Pakhtunkhwa.
2. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. All Commissioners / Deputy Commissioners of Khyber Pakhtunkhwa.
6. Registrar Peshawar High Court.
7. Chairman Public Service Commission, Khyber Pakhtunkhwa.
8. Chairman Service Tribunal, Khyber Pakhtunkhwa.
9. All Head of Attach Departments, Khyber Pakhtunkhwa.

Subject: CLARIFICATION OF WITHDRAWAL OF REQUEST OF LPR/RETIRED AFTER  
SANCTION / NOTIFICATION.

Dear Sir,

In pursuance of Finance Division Government of Pakistan O.M No.F.1(1)R-4/2007-  
Vol-II(Pt) dated 6.10.2015, the Competent Authority has been please to approve / adopt the  
Federal Government Policy with regard to the subject issue as envisaged in the O.M cited above  
which provides that a Government servant can withdraw option of voluntary retirement during the  
period for which encashment has been applied / granted subject to the following conditions:-

- i. He/She may withdraw his/her option of voluntary retirement before retirement  
matures;
- ii. It is binding on a government servant to return any amount of leave pay received by  
him/her, in lieu of encashment of LPR for that period;
- iii. Later on, on attaining the age of superannuation, if he / she again opts for 365 days  
leave encashment in lieu of 365 days LPR, such option of an individual may be  
treated as a fresh case and he / she will be allowed encashment of LPR in toto.

This supersedes Finance Department, letter No.SOSR-III/4-92/81 dated: 01.10.1981  
and the cases already decided thereunder shall not be reopened / reconsidered.

SECRETARY TO GOVERNMENT  
OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

Encls: No. & Date Even.

Copy is forwarded for information to:

1. The Secretary to Government of Punjab, Sindh and Balochistan, Finance Department.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.

(ABDUL MALIK)  
DEPUTY SECRETARY (REG-II)

Encls: No. & Date Even.

Copy is forwarded for information and necessary action to:

1. Director Treasuries & Accounts, Khyber Pakhtunkhwa.
2. All District Comptroller & Accounts in Khyber Pakhtunkhwa
3. Director Local Fund Audit, Khyber Pakhtunkhwa.
4. Director FMU, Finance Department, Khyber Pakhtunkhwa.
5. All District Agency Accounts Officers in Khyber Pakhtunkhwa.
6. All Section Officers/Budget Officers in Finance Department.
7. The Private Secretary to Minister Finance, Khyber Pakhtunkhwa.
8. The Private Secretary to Secretary / P.S. to Special Secretary, Additional Secretaries / Deputy  
Secretaries in Finance Department.
9. The Section Officer (Reg-1) Government of Pakistan, Finance Division, (Regulation Wing with  
reference to his letter referred above.
10. MR Finance Department (Assistant Director Web).

(NAEEM TADASSUQI)  
SECTION OFFICER (SR.II)

Annexure 'B'

## ORDER

Constable Muhammad Ayub No. of this district has been granted 365 days LPR with effect from 01.10.2017, and permitted to retire from service after expiry of LPR i.e 01.10.2018.

District Police Officer,  
Haripur

No. 57115 /15

/SRC 1st 10/10/17

Copy of above is forwarded to the:-

1. Superintendent of Police Investigation, Haripur
2. District Account Officer, Haripur
3. Pay Officer, Pay Branch Haripur
4. OHC, DPO Office Haripur
5. SRC, Pension Clerk, DPO, Office Haripur

4/11/17  
11/10/17

District Police Officer,  
Haripur