

19<sup>th</sup> Jan, 2023

Lawyers are on strike today.

To come up for arguments on 03.03.2023 before the

D.B. Office is directed to notify the next date on the notice

board as well as the website of the Tribunal.

**SCANNED**  
**KPST**  
**Reshawar**

(Fareeha Paul)  
Member(E)

(Rozina Rehman)  
Member (J)



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

Miss. Uzma Syed, Advocate present and submitted Wakalatnamat on behalf of the appellant. Syed Nascir Ud Din Shah, Asst: AG for respondents present.

Learned counsel for the appellant wants to amend the memo of appeal in order to challenge the original order dated 25.05.2004 which according to the learned counsel was not challenged by the ex-counsel for the appellant. She may do so within a week subject to all legal and just objections regarding limitation. To come up on 22.11.2022 before D.B.



(Fareeha Paul)  
Member(Executive)



(Kalim Arshad Khan)  
Chairman

22.11.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come for arguments before the D.B. on 19.01.2023.

**SCANNED**  
**KPST**  
**Peshawar**



(Fareeha Paul)  
Member (E)



(Kalim Arshad Khan)  
Chairman

11.05.2022

Appellant in person present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Appellant requested for adjournment as his counsel is not available today. Last opportunity is granted. To come up for arguments before the D.B on 27.06.2022.



(Fareeha Paul)  
Member (E)



Chairman

27.06.2022

Learned counsel for the appellant present. Mr. Atta-ur-Rehman, Inspector (Legal) alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that she has not made preparation for arguments. Adjourned. To come up for arguments on 27.07.2022 before the D.B.



(Rozina Rehman)  
Member (J)



(Salah-ud-Din)  
Member (J)

27<sup>th</sup> July 2022

Miss. Rabia Muzaffar, junior of learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Atta-ur-Rehman, Inspector (Legal) for respondents present.

Junior of learned counsel for the appellant seeks adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 12.10.2022 before the D.B.



(Salah-Ud-Din)  
Member (J)



(Kalim Arshad Khan)  
Chairman

Stipulated period passed reply not submitted.

15.09.2021

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


D

  
Chairman

11.11.2021

Ms. Uzma Syed, Advocate, for the appellant present and submitted fresh Wakalat Nama in favour of the appellant, which is placed on file. Mr. Kheyal Roz, Inspector (Legal) alongwith Mr. Javed Ali, Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents submitted, which is placed on file and copy of the same is handed over to learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, as well as arguments on 04.02.2022 before the D.B.

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

  
(Salah-Ud-Din)  
Member (J)

04.02.2022

The Tribunal is non-functional, therefore, the case is adjourned to 11.05.2022 before D.B for the same.

  
Reader

28.02.2004 but failed to report his arrival on due date followed by continuous absence without any leave. This act of the appellant in terms of the impugned order was treated as misconduct and consequently he was dismissed from service in exercise of powers under N.W.F.P Removal from Service (Special Power) Ordinance, 2000. Obviously, the ground of absence of the appellant was not covered under definition of misconduct as defined in Section 3(1)(b) of N.W.F.P Removal from Service (Special Power) Ordinance, 2000. Apart from misapplication of the ground for proceedings, there is a point for arguments whether the continued absence of the appellant after expiry of his leave could be treated as habitual absenteeism when previously he had availed the approved leave. Subject to all just and legal objections including limitation, this appeal is admitted for regular hearing. Let the respondents come up with their written reply/comments to justify the validity of the proceedings culminating in the impugned order. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 11.11.2021 before the D.B.



Chairman

Appellate Deposited  
Security & Process Fee

28/11

**1564/2018**

29.06.2021

Counsel for the appellant present. Preliminary arguments heard.

Although there is violation on part of the appellant himself that on expiry of leave granted to him, he did not report for duty within the meaning of Rule 28 of the Civil Servants Revised Leave Rules 1981, which obviously is a burden on him to discharge but the narrative set up in the impugned order is arguable. Section 11 of the Khyber Pakhtunkhwa Removal from Service (Special Power) Ordinance, 2000 relates to overriding effect of the Ordinance viz-a-viz other laws. Accordingly, the provisions of the said Ordinance shall have effect notwithstanding anything to the contrary contained in the Khyber Pakhtunkhwa Civil Servants Act, 1973 and the rules made there-under and any other laws for time being in force. In view of the non-obstante clause in Section 11 ibid, if there is any provision in the Ordinance; and the Khyber Pakhtunkhwa Civil Servants Act 1973 and rules made there-under contain a provision contrary to the provisions of ordinance, the latter shall prevail within the meaning of Section 11 ibid. Section 3 of the Ordinance ibid enumerates the ground for dismissal, removal and compulsory retirement etc and amongst them one is being guilty of habitually absenting himself from duty without prior approval of leave. This ground is similar to ground in clause(b) of Rule 3 of the Government Servants (E&D) Rules, 2011. It is evident from discussion in the impugned order about facts that the appellant was granted nine months leave and he was due to turn back for duty on


1564/2018

22.09.2020

Appellant present in person.

Requests for adjournment as learned his learned counsel is indisposed today. Adjourned to 2.12.2020 before S.B.

Chairman



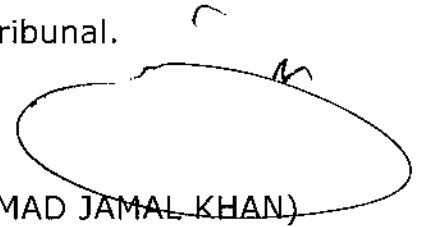
02.12.2020

Counsel for appellant is present.

Learned counsel requests for adjournment to a date after the decision of proposition regarding retrospective punishment by a Larger Bench of this Tribunal.

Adjourned to 17.02.2021 before S.B.

(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)



17.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 29.06.2021.



**Reader**

22.01.2020

Junior to counsel for the appellant present.

Requests for adjournment due to general strike of the Bar. Adjourned to 20.02.2020 in order to avail the outcome of case(s) pending before the Larger Bench regarding retrospective punishment.



Chairman

20.02.2020

Counsel for the appellant present and seeks adjournment. Adjourned to 06.04.2020 in order to avail the outcome of case (s) pending before the Larger Bench regarding retrospective punishment.



(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

06.04.2020

Due to public holiday on account of COVID-19, the case is adjourned to 30.06.2020 for the same. To come up for the same as before S.B.



Reader

30.06.2020

Learned counsel for the appellant present and seeks adjournment. Adjourned to 22.09.2020 before S.B in order to avail the outcome of cases pending before Larger Bench of this Tribunal, regarding retrospective punishment.



Member (J)



25.07.2019

Counsel for the appellant present.

Learned counsel states that a number of cases regarding similar proposition are fixed for hearing on 28.08.2019. Instant matter, therefore, be adjourned to a date thereafter.

Adjourned to 16.09.2019 for preliminary hearing before S.B.

Chairman 

16.09.2019

Junior to counsel for the appellant present.

A request for adjournment is made due to general strike of the bar. Adjourned to 25.11.2019 for preliminary hearing before S.B.

Chairman 

25.11.2019

Appellant present in person.


Requests for adjournment on account of general strike of the Bar. Adjourned to 22.01.2020 before S.B.

Chairman 

07.02.2019

Appellant requests for adjournment due to over occupation of his learned counsel before the honourable High Court.

Adjourned to 14.03.2019 before S.B.

  
Chairman

14.03.2019

Counsel for the appellant present and seeks adjournment.

Adjourned to 25.04.2019 for preliminary hearing before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

25.04.2019

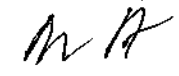
Counsel for the appellant present and seeks adjournment.

Adjourned to 18.06.2019 for preliminary hearing before S.B.

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

18.06.2019

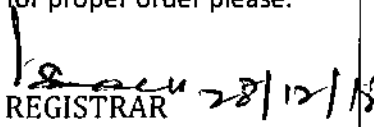


Appellant in person present and requested for adjournment on the ground that his counsel is not available today. Adjourned to 25.07.2019 for preliminary hearing before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

Form- A  
FORM OF ORDER SHEET

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

Case No. 1564/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/12/2018	<p>The appeal of Mr. Muhammad Hamayun presented today by Mr. Fazal Shah Mohmand 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 28/12/18</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>4-2-19</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-	04.2.2019	<p>Appellant requests for adjournment as his learned counsel is engaged in many cases before the Honourable High Court. Adjourned to 07.02.2019 before S.B.</p> <p style="text-align: right;"> Chairman</p>

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

Service Appeal No: 1564/2018

Muhammad Hamayun.....Appellant

**V E R S U S**

RPO & others.....Respondents

**I N D E X**

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit		1-3
2.	Application for condonation of delay with affidavit		4
3.	Copy of order dated 25-05-2004, departmental appeal and order dated 31-01-2014	A, B and C	5-7
4.	Wakalat Nama		8

Dated:-26-12-2018

Through

  
Appellant

Fazal Shah Mohmand  
Advocate Peshawar.

**OFFICE:-** Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841  
**Email:-** fazalshahmohmand@gmail.com

①

**BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR**

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

Muhammad Hamayun Ex Constable No 173 District Police Mardan.  
.....Appellant

**V E R S U S**

1. Reginald Police Officer Mardan.
2. District Police Officer Mardan.
3. Provincial Police Officer KPK Peshawar.....Respondents

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974  
AGAINST THE ORDER DATED 31-01-2014 PASSED BY  
RESPONDENT NO 1 WHERE BY DEPARTMENTAL APPEAL  
OF THE APPELLANT FILED AGAINST THE ORDER DATED 25-  
05-2004 OF RESPONDENT NO 2 HAS BEEN REJECTED/FILED.**

**PRAYER:-**

On acceptance of this appeal the impugned orders dated 31-01-2014 of respondent No 1 and Order dated 25-05-2004 of respondent No 2 may kindly be set aside and the appellant may kindly be ordered to be reinstated in service with all back benefits.

**Respectfully Submitted:-**

1. That the appellant joined the respondent Department as constable on 01-08-1999 remained posted to various Police Stations and since then he performed his duties with honesty and full devotion.
2. That in the year 2003 the appellant while lastly posted to Police Station Rustam Mardari, was granted nine months leave and was due for duty on 21-02-2004. However in the meanwhile he was landed in domestic problems which resulted in mental order of his wife and as such the appellant was unable to have attended his duties, therefore informed the SHO concerned.
3. That the appellant was dismissed from service by respondent No 2 vide order dated 25-05-2004, where after he obtained copy of the order and filed departmental appeal before respondent No 1 which was filed vide order dated 31-01-2014.  
**(Copy of the Order dated 25-05-2014, Departmental appeal**

(2)

and order dated 31-01-2014 is enclosed as Annexure A, B and C).

4. That the impugned order dated 31-01-2014 of respondent No 1 and order dated 25-05-2004 of respondent No 2 are against the law, facts and principles of justice on grounds inter alia as follows:-

**GRUNDS:-**

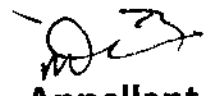

- A. That the impugned orders are illegal and void ab-initio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules and the appellant did nothing that amounts to misconduct.
- C. That no charge sheet and show cause notice were communicated to the appellant.
- D. That exparte action has been taken against the appellant and he has been condemned unheard.
- E. That no inquiry was conducted to find out the true facts and circumstances.
- F. That the impugned order is not maintainable being passed with retrospective effect.
- G. That even otherwise the absence from duty was neither willful nor deliberate rather the same was because of circumstances compelling in nature and were beyond the control of the appellant as well.
- H. That the impugned orders are not speaking orders and thus not tenable in the eyes of law.
- I. That the appellant was not provided the opportunity of personal hearing and the impugned order is defective as well.
- J. That the appellant did nothing that would amount to misconduct.
- K. That the appellant has about 5 years of service with unblemished service record and is jobless since his illegal removal from service.

(3)

L. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.


It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Dated:-26-12-2018.

  
Appellant  
Through   
Fazal Shah Mohmand  
Advocate, Peshawar

**AFFIDAVIT**

I, Muhammad Hamayun Ex Constable No 173 District Police Mardan, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by   
Fazal Shah Mohmand  
Advocate Peshawar

  
DEPONENT

الحمد لله رب العالمين

⑤

السلامة

في سنة ۱۳۲۱ هـ الموافق ۱۹۰۲ م  
 في مدينة بغداد العراقية  
 في يوم الاثنين ۱۱ من شهر ربيع الثاني  
 في سنة ۱۳۲۱ هـ الموافق ۱۹۰۲ م  
 في مدينة بغداد العراقية  
 في يوم الاثنين ۱۱ من شهر ربيع الثاني  
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 في يوم الاثنين ۱۱ من شهر ربيع الثاني

⑤

في سنة ۱۳۲۱ هـ الموافق ۱۹۰۲ م  
 في مدينة بغداد العراقية  
 في يوم الاثنين ۱۱ من شهر ربيع الثاني



ORDER.

(7) "C"

This order will dispose-off the appeal preferred by Ex-Constable Muhammad Humayun No. 173 of Mardan District Police against the order of District Police Officer, Mardan wherein he was dismissed from service vide District Police Officer, Mardan OB: No. 667 dated 25.05.2004.

Brief facts of the case are that he while posted to Investigation Wing Police Station Rustam was granted 09 Months leave and he was due to turn back for duty on 21.02.2004 but he failed to report his arrival on due date. He is still absent without any leave or prior permission of the competent authority. He was charge sheeted and served with statement of allegation for the above willful absence an enquiry committee comprising of the then Deputy Superintendent of Police Headquarter, Mardan and the then RI Police Lines, Mardan was constituted to conduct proper departmental enquiry into the allegation. The enquiry committee completed the enquiry and submitted its findings who found guilty the Constable for the above misconduct. The appellant was called for Orderly Room on 25.05.2004 by the District Police Officer, Mardan but he failed to appear for personal hearing. From the perusal of enquiry papers, it has been noticed that the appellant has gone abroad for earning livelihood and there is no hope of his return to join his duty. Therefore he was dismissed from service.

I have perused the record and also heard the appellant in Orderly Room held in this office on 29.01.2014. He failed to justify his absence period and could not advance any cogent reason in his defence, the appeal time barred so far. Therefore, I MUHAMMAD SAEED Deputy Inspector General of Police, Mardan Region-I, Mardan in exercise of the powers conferred upon me reject the appeal, not interfere in the order passed by the competent authority, thus the appeal is filed.

ORDER ANNOUNCED.

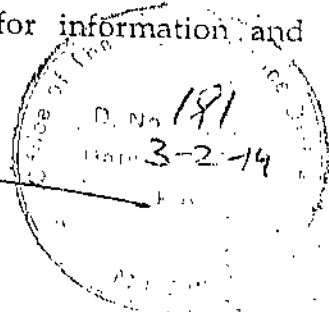
(MUHAMMAD SAEED)PSP  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan.

No. 753 /ES, Dated Mardan the 31-01 /2014.

Copy to District Police Officer, Mardan for information and necessary action.

(\*\*\*\*\*)

OB/EC/OASI



DPO Mardan

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پتہ

KP Service Tribunal, Peshawar

2011ء

محمد سعید ایف ایم

پولیس

مورخہ  
مقدمہ  
دعویٰ  
جرم

باعث تحریر آئینہ

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

آن مقام پشاور کیلئے عطا شدہ ایڈووکیٹ

مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا۔ نیز  
وکیل صاحب کو راضی نامہ کرنے و تقریر نمائش و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور  
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق  
ذرائع پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یا طرفہ یا اپیل کی برادگی  
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت محرکیت  
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 داخہ منقولہ قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جائز التوا کے مقدمہ کے  
سبب سے 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 لکھنڈیا کہ مندر ہے۔

Accepted

M

2011

10

06

11

الرقوم

کے لئے منظور ہے۔

Peshawar

مقام

C P/195

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

**Service Appeal No. 1564/2018**

Muhammad Hamayun EX Constable No. 173 District Police Mardan  
.....Appellant

**VERSUS**

The Provincial Police Officer , Khyber Pakhtunkhwa, Peshawar and others  
.....Respondents

**INDEX**

<b>S. No.</b>	<b>Description of Documents</b>	<b>Annexure</b>	<b>Pages.</b>
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2.	Affidavit.	----	4
3.	Copy of Bad entries & order	A	5-7
4.	Copy of letter No.207/LB dated 10.19.2021	B	8
5.	Copy of Authority Letter.	----	9

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,  
PESHAWAR.

**Service Appeal No. 1564/2018**

Muhammad Hamayun EX Constable No. 173 District Police Mardán

.....Appellant

**VERSUS**

The Provincial Police Officer , Khyber Pakhtunkhwa, Peshawar and others

.....Respondents

**Para-wise comments on behalf of respondents:-**

**Respectfully Sheweth,**

**PRELIMINARY OBJECTIONS**

1. That the appellant has not approached this Hon'ble Tribunal with clean hands.
2. That the appellant has concealed the actual facts from this Hon'ble Tribunal.
3. That the appellant has got no cause of action or locus standi to file the instant appeal.
4. That the appellant is estopped by his own conduct to file the instant Service Appeal.
5. **That appeal of the appellant is badly time barred.**
6. That the appeal is unjustifiable, baseless, false, flawless and vexatious and the same is liable to be dismissed with special compensatory cost in favour of respondents.

**REPLY ON FACTS**

1. Para to the extent of enlistment in Police Department of appellant pertains to record needs no comments. While rest of para is incorrect because every police officer / official is under obligation to perform his duty regularly and with devotion because in this department no room lies for lethargy. Moreover, the perusal of service record of the applicant revealed that the appellant has short span of service i.e 4 years 9 months 24 days including nine months leave in the said service period and due to his lethargic attitude his entire service record is tainted with bad entries (Copy of list of bad entries with dismissal orders are attached as Annexure "A").
2. Correct to the extent that the appellant while posted at PS Rustam and the competent authority had granted nine months leave, while rest of para is incorrect because the appellant had neither informed the concerned SHO nor submitted any application for leave and failed to report for duty on 21.02.2004 and remained absent from his lawful duty without any leave/permission of the competent authority. On the said allegations he has been properly proceeded against departmentally by issuing him Charge Sheet with Statement of Allegations and enquiry was entrusted to the then DSP HQrs and the then RI Police Lines Mardán. The Enquiry Officers after fulfilling of all legal and codal formalities, submitted findings and found the appellant guilty for misconduct. The appellant was also summoned by the competent authority in Orderly Room on

25.05.2004, but he failed to appear for personal hearing. From the perusal of enquiry papers, the competent authority noticed that the appellant has gone abroad for earning livelihood and there is no hope of his return to join his duty, therefore, he was awarded major punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant.

3. Correct to the extent that the appellant preferred departmental appeal which was also decided on merit because he was provided full-fledged opportunity of defending himself by the appellate authority but he bitterly failed to produce any cogent reasons in his defense. **The same was filed being badly time barred. It is worth to mention here that he has preferred the instant service appeal with a delay of 04 years 10 months 26 days after his departmental appeal.**
4. Incorrect. Stance taken by the appellant is totally false and baseless, the orders passed by the respondents No. 1& 2 are not against but according to law, fact and principles of justice. Moreover, the appeal of the appellant is liable to be dismissed being badly time barred besides on the following grounds amongst the others.


**REPLY ON GROUNDS:**


- A. Incorrect. Plea taken by the appellant is not plausible the orders passed by the competent authority as well as appellate authority are legal, lawful hence, liable to be maintained.
- B. Incorrect. That the respondents did not violate any law & rules and the appellant has been treated in accordance with law, rules, policy & norms of natural justice. Hence plea of the appellant is devoid of any merits.
- C. Incorrect. Plea taken by the appellant is not plausible because he has been properly proceeded against departmentally by issuing him Charge Sheet with Statement of Allegations, but the appellant was not present in Pakistan and he was gone abroad for earning livelihood. In this connection a letter No. 207/LB dated 10.09.2021 has been sent to the Director, Federal Investigation Agency (HQrs) Integrated Border Management System, Islamabad for provision of travel history of the appellant, but still reply has not received (letter enclosed is attached as annexure "B").
- D. Incorrect. During the course of enquiry the appellant was called by enquiry officers but at that time he was not present in Pakistan and he had gone abroad for earning livelihood, however, after fulfilling all legal and codal formalities, the enquiry officers submitted findings and found the appellant guilty of misconduct. The appellant was also summoned by the competent authority in Orderly Room on 25.05.2004, but this time too he failed to appear for personal hearing, moreover, from the perusal of enquiry papers, it has been noticed by the competent authority that the appellant has gone abroad for earning livelihood and there is no hope of his return to join his duty, therefore, he was awarded major punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant.


- E. Incorrect. Para already explained needs no comments.
- F. Incorrect. Para already explained needs no comments.
- G. Para pertains to personal affairs of the appellant needs no comments.
- H. Incorrect. The impugned orders are speaking one and thus tenable in the eye of law.
- I. Incorrect. Stance taken by the appellant is not plausible, because he has been properly proceeded against departmentally by issuing him Charge Sheet with Statement of Allegations and enquiry was entrusted to the then DSP HQrs and the then RI Police Lines Mardan, after fulfilling all legal and codal formalities the enquiry officers submitted his findings and found the appellant guilty of misconduct. The appellant was also summoned by the competent authority in Orderly Room on 25.05.2004, but he failed to appear for personal hearing, from the perusal of enquiry papers, it has been noticed that the appellant has gone abroad for earning livelihood and there is no hope of his return to join his duty, therefore, he was awarded major punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant.
- J. Incorrect. Para earlier explained needs no comments.
- K. Incorrect. Plea taken by the appellant is not plausible from the perusal of service record of the applicant revealed that the appellant has short span of service i.e 4 years 9 months 24 days including nine months leave in the said service period and due to his lethargic attitude his entire service record is tainted with bad entries
- L. The respondents also seek permission of this honorable tribunal to adduce additional grounds at the time of arguments.

**PRAYER:-**

It is therefore, most humbly prayed that on acceptance of above submissions, appeal of the appellant may very kindly be dismissed **being a badly time-barred** and devoid of merits.

  
**Provincial Police Officer,**  
**Khyber Pakhtunkhwa,**  
**Peshawar.**  
 (Respondent No. 03)

  
**Regional Police Officer,**  
**Mardan.**  
 (Respondent No. 01)

  
**District Police Officer,**  
**Mardan.**  
 (Respondent No. 02)

4

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

**Service Appeal No. 1564/2018**


Muhammad Hamayun EX Constable No. 173 District Police Mardan  
.....Appellant

**VERSUS**

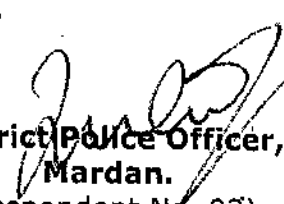
The Provincial Police Officer , Khyber Pakhtunkhwa, Peshawar and others  
.....Respondents

**COUNTER AFFIDAVIT**

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.

  
**Provincial Police Officer,  
Khyber Pakhtunkhwa,  
Peshawar.**  
(Respondent No. 03)

  
**Regional Police Officer,  
Mardan**  
(Respondent No. 01).

  
**District Police Officer,  
Mardan.**  
(Respondent No. 02)




ANNEXURE A

ORDER

He is hereby Dismissed from service from the date of his absence i.e. 23-2-2004 under NWF P removed from service effective from 01-6-2004

OB No. 667

DT. 25-5-04


  
YDPO, Mad.

APPEAL

The appeal is hereby filed finding no merit and also time barred vide DIG MBI Mardam Memo No 3827/ES, dt. 25-8-2006.

OB No. 1546

DT 28/8/2006

  
YDPO Mardam

(order enclosed)

Appeal filed in office  
Serial No. 753/E; dt. 31-10-2006 in copy attached

  
YDPO Mardam



16.—LEAVE, ABSENCE AND BREAKS IN SERVICE.

All periods not counting as "approved service" to be entered in red ink.

DATE		EXTENT			No. of District Order	Description of leave, i. e., privilege, hospital, sick leave, or furlough, or of absence or forfeiture of approved service.  All entries to be initialed, by Superintendent of Police.
From	To	Years	Months	Days		
5-5-03	To 20-5-2003			20 day	680 17.5.03	written on full pay. YOP/made
1-5-03	To 10-2-2004			120 day 1 1/4 day	654 14.5.03	120 days on full pay and 1 1/4 day on half pay. YOP/made

(ER)

O R D E R

This order will dispose off departmental enquiry conducted against Constable Hamayun No.173.

FACTS Facts of the enquiry are that the constable while posted to Investigation Wing PS Rustam was granted 9 months leave and he was due to turn back for duty on 23.2.2004 but he failed to report his arrival on due date. He is still absent without any leave or prior permission of the competent authority.

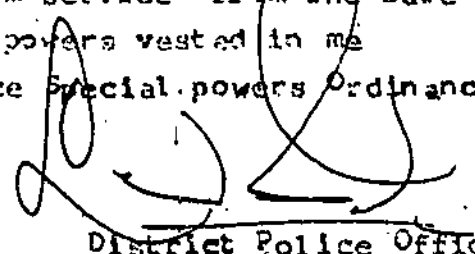
PROCEEDINGS. The constable was Charge Sheetted and served with statement of allegation for the above wilfull absence. an enquiry committee comprising of DSP/HQrs and R.I. Lines was constituted to conduct proper departmental enquiry into the allegation. The enquiry committee completed the enquiry and submitted its findings who found guilty the constable for the above misconduct.

CONCLUSION. The constable was called for O.R on 25.5.2004 but he failed to appear for personal hearing. From the perusal of enquiry papers, it has been noticed that the Constable has gone abroad for earning livelihood and there is no hope of his return to join his duty.

Keeping in view his long absence, the Constable Hamayun No.173 is hereby Dismissed from service from the date of his absence in exercise of powers vested in me under NWFP Removal from Service Special powers Ordinance 2000.

Order announced.

Dated \_\_\_\_\_, 2004.

  
District Police Officer,  
Mardan.

OFFICE OF THE DISTRICT POLICE OFFICER MARDAN.

NO. 1538-42/SB, Dated 25-5-, 2004.

Copies to the:-

1. DSP/HQrs.
2. Pay Officer.
3. EC.
4. QASI 14 PPs.

667

25/5/04



**OFFICE OF THE  
DISTRICT POLICE OFFICER,  
MARDAN**

Tel No. 0937-9230109 & Fax No. 0937-9230111  
Email: [dpomdn@gmail.com](mailto:dpomdn@gmail.com)

POST

Annexure  
"B"  
8

No. 207 /LB

Dated 10/09/2021

To

The Director,  
Federal Investigation Agency (Hqrs)  
Integrated Border Management System,  
Islamabad.

Subject: **REQUEST FOR PROVISION OF TRAVEL HISTORY.**

Memo:

Please refer to the above noted subject.

That Muhammad Hamayun Ex-Constable No.173 of this District was dismissed from service vide order dated 25.05.2004 due to his prolong absence hence he availed departmental remedy which was also rejected. Later on the said Police Official approached Khyber Pakhtunkhwa Service Tribunal by filing Service Appeal No. 1564/2018 which is pending and during arguments the Honorable Judge/members raised question of his being abroad and in this regard issued verbal directions to verify his departure arrival, if any, from all Air Ports of Pakistan through concerned authority.

It is therefore, requested that Travel History in terms of arrival/departure may be provided to this office from 25.05.2004 to 07.09.2021, before the next date of hearing i.e 11.11.2021. Bio data of the above named official is as under:-

Name: Muhammad Hamayun  
Father Name: Ajab Khan  
CNIC No: 16102-2301862-9  
Address: Village Hathian Lund Khwar Teshsil & District Mardan.

District Police Officer  
Mardan.

No. 208 /LB,

Copy to the Regional Police Officer, Mardan for favour of information, please.

District Police Officer  
Mardan.

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

**Service Appeal No. 1564/2018**

Muhammad Hamayun EX Constable No. 173 District Police Mardan

.....Appellant


**VERSUS**

The Provincial Police Officer , Khyber Pakhtunkhwa, Peshawar and others

.....Respondents

**AUTHORITY LETTER.**

Mr. Khyal Roz Inspector Legal, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

  
**Provincial Police Officer,**  
**Khyber Pakhtunkhwa,**  
**Peshawar.**  
(Respondent No. 03)

  
**Regional Police Officer,**  
**Mardan**  
(Respondent No. 01)

  
**District Police Officer,**  
**Mardan.**  
(Respondent No. 02)