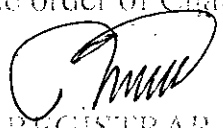


FORM OF ORDER SHEET

Court of

Appeal No. 1644/2023


| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | 2 | 3 By the order of Chairman |
| 1- | 10/08/2023 | <p>The appeal of Mr. Habib-ur-Rehman resubmitted today by Mr. Muhammad Rahim Shah Advocate. It is fixed for preliminary hearing before touring Single Bench at Swat on</p> <p>By the order of Chairman</p>  <p>REGISTRAR</p> |

The appeal of Mr. Habib-ur-Rehman son of Ziarat Khan Ly S.F. No. 376 resident of [redacted] Colony Daggar District Buner received today i.e. on 10.08.2023 is complete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of Check list is not attached with the appeal.
- 2- Annexures of the appeal are unaltered.
- 3- Memorandum of appeal is not signed by the appellant.
- 4- Copies of other relevant record mentioned in para 3 of the memo of appeal is not attached with the appeal be placed on it.
- 5- Copies of charge sheet, statement of allegations, show cause notice, enquiry report and replies thereto are not attached with the appeal be placed on it.
- 6- One more copy/set of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 3028/S.F.

Dt. 10/08/2023.


10/8/23
REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Muhammad Rahim Shah Adv.
High Court Swat.

Sir

Re-submitted after raising
the objections.

As for the objections No. 4 and 5
is concerned. The other record, charge sheet
and statement of allegation is not
available when the case is
received we will place on file.

So put before the court.

In objection No. 4 in the para relevant record
M. Rahim attached due to
clerical mistake.

M. Rahim

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

Service Appeal No 1644-M of 2023

Habib-ur-Rahman (Appellant)

VERSUS

District Police Officer Buner and others..... (Respondents)

INDEX

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| 3. | Affidavit | --- | 7 |
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| 5. | Copies of departmental appeal & order dated 13-06-2023 | B | 9-10 |
| 6. | Wakalatnama | | 11 |

Appellant

Through Counsel



MUHAMMAD RAHIM SHAH
Advocate, High Court

Office: Continental Plaza, Makaanbagh, Swat

Cell No: 0345-9524225

①

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

Service Appeal No. 16448 of 2023

Habib-ur-Rahman son of Ziarat Khan (Ex-SFP No. 376)
resident of Tehsil Colony Daggar, District Buner.

.....Appellant

VERSUS

1. District Police Officer, Buner.
2. Regional Police Officer / Deputy Inspector General
Malakand Division at Saidu Sharif, Swat.
3. Inspector General of Police Govt. of Khyber
Pakhtunkhwa at Peshawar.

.....Respondents

**SERVICE APPEAL UNDER
SECTION 4, OF THE KPK SERVICE
TRIBUNAL ACT, 1974, AGAINST THE
ORDER DATED 13-06-2023,
WHEREBY APPEAL FILED BY THE
APPELLANT WAS DISMISSED BY THE
RESPONDENT NO. 2, RESULTANTLY
THE APPELLANT WAS DISMISSED
FROM SERVICE AND UPHELD THE
ORDER DATED 29-01-2008**

M. Khan

PRAYER IN APPEAL

On acceptance of this appeal the orders passed by Respondents department dated 29-01-2008 & 13-06-2023 respectively be declared as illegal, against law, void ab-initio by setting aside the same and the appellant may be reinstated on service with all back benefits.

Any other relief which are proper in the instant circumstances of the may also be granted.

Respectfully Sheweth,

- 1) That on 1996 the appellant was appointed as Constable in Police Department in District Buner.
- 2) That the appellant was performing his duties honestly, devotedly up to the entire satisfaction of the higher throughout his career.
- 3) That on 29-01-2008 the appellant has been discriminated and dismissed from his service, which is unlawful & without giving opportunity to be heard, and the act of the respondents department is also against the fundamental rights and article 25 of Constitution Islamic Republic of Pakistan, 1973. (Copies of the dismissal order & other relevant record are attached as annexure "A")

M. Ch

3

- 4) That the appellant filed departmental appeal before the respondent No.2, but the respondent No. 2 dismissed the appeal of the appellant vide office order dated 13-06-2023. (Copies of department appeal & office order dated 13-06-2023 are attached as annexure "B")
- 5) That the appellant is approaching before this Honorable Tribunal for the redressal of his grievances against the action and inaction of the respondents on the following ground inter alia.

GROUNDS:-

- a. That the impugned order is illegal, against the law, void ab-initio, without lawful authority.
- b. That the impugned order is the result of mis-reading & non-reading of material present on case file.
- c. That the appellant has not been given opportunity of hearing as per law and rules.
- d. That the mandatory provisions of law was violated by the respondents.

mlk

(4)

- e. That it is to be mentioned here that the appellant was abroad for the reason that the brother of the appellant residing in abroad i.e. Malaysia for livelihood and wrongly involved in criminal case and confined at civil prison, so the action inaction of the respondents are illegal & unlawful.
- f. That no show cause notice has been given to the appellant.
- g. That the appellant has not been given opportunity a personal hearing before passing the impugned office order.
- h. That the action and inaction of the respondents is mockery with law and justice.
- i. That everyone is equal before the law and no one can be discriminated, the Respondents department was duty bound to consider the appellant in the matter of re-instatement as per law so, this Honorable Tribunal have ample powers under the law to resolve the agony which caused to appellant by the hands of Respondents because the appellant servicing in department of police almost nine (09) years without any single question against him.
- j. That the impugned office order is arbitrary, unilateral, and whimsical.

ML

(5)

- k. That after the appellant made an departmental appeal in the office of respondent No. 2, which was too dismissed.
- l. That some grounds may be argued at the time of arguments with the prior permission of this Honorable Tribunal.

Therefore in view of the above submissions, it is most humbly prayed that on acceptance of this appeal the orders passed by Respondent department dated 29-01-2008 & 13-06-2023 respectively be declared as illegal, against law, void ab-initio by setting aside the same and the appellant may be reinstated on service with all back benefits.. Any other relief which are proper in the instant circumstances of the may also be granted.

Appellant

Through Counsel




MUHAMMAD RAHIM SHAH

Advocate, High Court

CERTIFICATE:

(As per directions of my client) No such like Appeal earlier has been filed by the appellants on the subject matter before this Honorable Court.



ADVOCATE

6

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

Service Appeal No _____ -M of 2023

Habib-ur-Rahman (Appellant)

VERSUS

District Police Officer Buner and others..... (Respondents)

ADDRESSES OF THE PARTIES

APPELLANT

Habib-ur-Rahman son of Ziarat Khan (Ex-SFP No. 376)
resident of Tehsil Colony Daggar, District Buner.

Cell No: 03449-9276089

CNIC No: 15101-4569369-5

Respondents

1. District Police Officer, Buner.
2. Regional Police Officer / Deputy Inspector General
Malakand Division at Saidu Sharif, Swat.
3. Inspector General of Police Govt. of Khyber
Pakhtunkhwa at Peshawar

Appellant
Through Counsel



MUHAMMAD RAHIM SHAH
Advocate, High Court

(7)

BEFORE THE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA AT PESHAWAR

Service Appeal No _____ -M of 2023

Habib-ur-Rahman (Appellant)

VERSUS

District Police Officer Buner and others (Respondents)

AFFIDAVIT

I, **Habib ur Rahman (appellant)**, do hereby solemnly affirm and declare on oath that the contents of the above titled Appeal is true and correct to the best of my knowledge and belief.



DEPONENT

Annexure 'A'

8

ORDER.

This order shall dispose of the departmental enquiry carried out against defaulter constable Habibur Rahman No. 376 of this District Police.

Brief facts are that the defaulter Constable while posted at Police Post Jowar was proceeded on 15 days casual leave with effect from 11.05.2007. He was due back on 26.05.2007 but did not report back for duty, and marked as absent. He defaulter Constable was informed time and again at his home address as well as by publishing a notice in the daily news paper "Pakistan" dated 21-9-07 and "Daily Express" dated 09.08.2007 through Director Informations Peshawar but with no response. Thus Mr. Sirajul Hassan Khan DSP Investigation was appointed as Enquiry Officer to conduct a proper departmental enquiry against the delinquent concerned and submit his finding report as soon as possible.

After conducting thorough enquiry into the matter, the enquiry officer submitted his finding report along with other relevant papers, wherein he mentioned that the defaulter Constable being no more interested in the Police Service is left for abroad in connection with joining the service in foreign country. He further mentioned that the defaulter Constable is irresponsible unwilling worker and intentionally absented him self from the duty. Therefore, he is no more required to be retained in police service and recommend him to be discharged. On the receipt enquiry papers, the same were perused and the allegation level against the defaulter Constable were found proved beyond any shadow of doubt. Therefore there is no alternative way to dealt with him further accept to approve the suggestions of Enquiry Officer.

In view of the above while exercising the power vested on me under section (3) of Removal from Service (Special Power) Ordinance 2002, the Constable Habib ur Rahman No. 376 of this District Police is hereby dismissed from the service from the date of his absence i.e. 26-5-2007.

(Order announce)

OB No. 10
Dated 29-1 /2008.

DISTRICT POLICE OFFICER.
BUNER.

etc
MRW

Annexure

(9)

CFR
M. R. Khan

حساب حساب آئی جی کی ماہانہ قیمت

10656/88

عزت مآب جناب ڈی جی جی صاحبان عالی شان اور جن

سائل :- حبیب الرحمن ولد زبیر خان ساکن تحصیل کالونی ڈیڑہ۔ یونین

درخواست گزار ڈی پی اے کسٹمر درخواست بیدریہ جال فڈ مانی سائل
19/10/20

SE S. Khan

درخواست نمائند سائل تسبیل ہے

(i) یہ کہ سائل ساکن تحصیل کالونی ڈیڑہ کھارنہ اور کھارنہ باشندہ ہے

(ii) یہ کہ سائل کمر پولیس میں کثرت کثرت تقری ہو کہ عدہ نو سال تک فکھ

مضی بنائے دیانہ ای۔ ایمانداری سے انجام دیا تھا۔ اور عدہ فکھ دورانی
19/10

(iii) یہ کہ سائل کابغائی بیدریہ ملک حدیثا سلسلہ کثرت عدہ درری حکیم بیدریہ

عید قانونی رہائش پر گنہگار ہوا۔ جیسا وہاں پر موجود کوئی اقدار ہینا تھا۔

بدین وہ سائل نے یہ آف جیوری جس پر پندرہ روز کی رحقت بیدریہ

ملک چلے گیا۔ جہاں پر چونکہ قانون کثرت ہو کہ اور جہاں درڈ سائل فکھ

وقت سے سائل کو بھی عید قانونی رہائش کے وہ عدہ گنہگار کیا۔ اور ساو سائل

یہ سائل کے ساتھ موجود رہا ویز پاسپورٹ۔ ویزہ۔ عدہ میں نقائص کی نشاندہی

جو پابند سلسلے میں نے کے کافی عدہ بیدریہ صافی عدہ۔ مین سماعت جاری رہی

دوہ یہ کہ چونکہ سائل کو ملک پاکتان میں موجود نہ تھا۔ بدین وجہ انکے عدہ ملک

نکوانڈری بیوی۔ اور سائل کو مکمل طور پر تسلیم کیا۔ اور روزانہ ارور اہیار تو

بیدریہ ملک جانا ہینا۔ ہینا جمل کاروائی بکفہ نہ ہو کہ بیدریہ ڈی۔ پی۔ او صافیا

نے بکفہ حکم کیا کہ سائل کو صرف 29/000 درخواست کیا۔ جو قابل فکھ

(iv) یہ کہ سائل عدویہ اور لہجاری۔ چھوٹے۔ چھوٹے پیسے۔ انکے کسوا کوئی بیاداری

روزانہ حالت آری پیش لکھ دستاوی کثرت وہ زندگی گزارنے پر پورے

SE / 01/02
1303/88

0349-8276089



①
CFC
MLU

OFFICE OF THE
REGIONAL POLICE OFFICER, MALAKAND
AT SAIDU SHARIF SWAT.

Ph: 0946-9240388 & Fax No. 0946-9240390
Email: cbmalakandregion@gmail.com

10

ORDER

This order will dispose of appeal of Ex-Constable Habib-ur-Rahman No.376 of Buner District in connection with major punishment awarded by the then District Police Officer, Buner vide OB No.10, dated 29-01-2008 i.e. dismissal from service, received from CPO, Peshawar vide No.S/446/23, dated 20-02-2023.

Brief facts of the case are that Ex-Constable Habib-ur-Rahman No.376 of Buner District while posted to Police Post Jowar was proceeded on 15 days leave w.e.f. 11-05-2007, but intentionally absented himself and failed to report back for duty on 26-05-2007. He was informed time and again at his home address through DFC Sher Zamin No.199, but he was not found present at his home, he was also informed by publishing Notice in the daily newspaper "Daily Express" dated 09-08-20107 and "Pakistan" dated 21-09-2007 vide DPO/Buner Memo: No.4244/OASI, dated 21-08-2007 through Director, Information Peshawar, but not responded. Consequently, he was issued Charge Sheet coupled with statement of allegations and Mr. Siraj-ul-Hassan Khan DSP/Investigation, Buner and Inspector Hidayat-ur-Rahman of Investigation Wing, Buner were appointed as Enquiry Officers to conduct proper departmental enquiry against above-named Ex-Constable and submit their findings report. The Enquiry Officers conducted proper departmental enquiry, recorded the statements of all concerned and informed the Ex-Constable concerned to appear before the Enquiry Officers to defend the willful absence from duty rendered by him, but he did not bothered to appear before the Enquiry Officers. After conducting proper departmental enquiry and thorough probing into the matter, the Enquiry Officers, submitted their findings report, wherein they intimated that the delinquent Constable was no more interested in Police service and it was also rumor that he was proceeded abroad for livelihood and recommended him for awarding major punishment of dismissal from service. The enquiry papers were perused by the then District Police Officer, Buner and found that the allegations leveled against him were proved beyond any shadow of doubt. Being found guilty of the charges leveled against him, the then District Police Officer, Buner awarded him major punishment of dismissal from service from the date of his absence i.e. 26-05-2007 vide his office OB No.10 dated 29-01-2008.

He was also called in Orderly Room on 08-06-2023 in this office and heard him in person, but he could not produce any urgent reason to defend the charges leveled against as well as the prolong lapse for preferring appeal for re-instatement into service, therefore, his appeal is hereby rejected, being time barred.

PA/PC/PSO

Regional Police Officer,
Malakand at Saidu Sharif, SWAT

No. 8708-09/W.,
Dated 13-06-2023.

Copy for information & necessary action to the:-

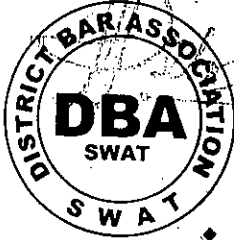


- 1) Inspector General of Police, Khyber Pakhtunkhwa, Peshawar with reference to CPO, Peshawar Memo: No.S/446/23, dated 20-02-2023.
- 2) District Police Officer, Buner with reference to his office Memo: No.378/PA, dated 06-01-2023 and No.414/PA, dated 19-04-2023. Service Roll and Fuji Missal containing complete enquiry file of above-named Ex-Constable, received with the memo: under reference, are returned herewith for record in your office.

2572
14/6/23

Rs: 20/-

نوٹ: اس کات ہارکی ڈوکائی، قابل قبول ہوگی۔

11

| | | |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| بار کونسل نمبر: BC. 11. 2462 |   | سیریل نمبر: 124811 |
| بار ایسوسی ایشن نمبر: | |  |
| رابطہ نمبر: 0345 9524225 | | |
| ای میل ایڈریس: nic | | |

ڈسٹرکٹ بار ایسوسی ایشن سوات

in the Court Before the Service Tribunal Khyber Pakhtunkhwa at Peshawar

| | |
|--------------------|-----------------------------------|
| منجانب: | دعویٰ اور خواہش: <u>سرسری اصل</u> |
| حیب الرحمن بنام | علت نمبر: |
| ڈسٹرکٹ ایویس ایس | مورخہ: |
| | جرم: |
| | تھانہ: |

بابت تحریر آئیکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے برائے پیروی مقدمہ


آن مقام ہائی کورٹ کیلئے محمد رحیم شاہ ایڈووکیٹ ہائی کورٹ کو مقرر کر کے

اقرار کیا جاتا ہے، کہ صاحب موصوف کو مقدمہ کی کل کاروائی کو کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث کرنے، دعویٰ، جواب دعویٰ، اقبال دعویٰ اور درخواست برائے سرسزگی مقدمہ، منسوخی ڈگری یکطرفہ، اجراء و پیروی کرنے کا مختار ہوگا۔ نیز دائر کرنے اپیل نگرانی، نظر ثانی و پیروی کرنے کا مختار ہوگا۔ اور مقدمہ مذکورہ کیلئے کل وقتی یا جزوی کاروائی کیلئے کسی دیگر وکیل یا مختار قانون کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی جملہ مذکورہ اختیارات حاصل ہوں گے، اور اس کا ساختہ و پرداختہ منظور قبول ہوگا، بدوران مقدمہ جو خرچہ و ہرجانہ کسی بھی سبب سے حاصل ہوگا، وہ وکیل موصوف وصول کرنے کا حقدار ہوگا، کوئی تاریخ پیشی مقام مذکورہ بالا سے باہر ہو، تو وکیل صاحب پیروی مقدمہ کرنے کے پابند نہ ہوں گے، مقدمہ کسی عدالت میں بعدم پیروی خارج ہونے یا ڈگری یکطرفہ ہونے کے صورت میں وکیل صاحب ذمہ دار نہیں ہوں گے،

لہذا وکالت نامہ لکھ دیا کہ سند رہے

ہائی کورٹ درالقضاء سوات

حیب الرحمن ولد ریاض خان
 Mob: 0349-9276089 Nic: 15101-11569369-5

Attested & Accepted by


ایڈووکیٹ دستخط:
 Mr. Rahim Shah (AHC)

المقوم: 9/7/2023